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Executive summary

Bans on traditional tobacco advertising highlight the strongly promotional role of tobacco imagery in films and video programs. On World No-Tobacco Day 2005, less than a year after India implemented its universal ban on tobacco advertising, its Minister of Health and Family Welfare announced a ban on tobacco imagery in the nation's films and broadcast programs.

Opposition, including from the Ministry of Information & Broadcasting, which quickly announced the proposed ban was unworkable and advocated entertainment industry self-regulation, succeeded in delaying limits for on-screen tobacco for more than a year despite NGO advocacy efforts.

Elements of a policy compromise disclosed in June 2006 risk undermining the Ministry of Health's intention: permanently to reduce adolescent exposure to tobacco imagery of major benefit the tobacco industry, particularly as Philip Morris International enters the Indian market to expand the market for premium cigarettes and battle for share British American Tobacco's Indian affiliate, ITC.

Recommendations for an effective policy in India's constitutional and policy environment include:

- In place of the subjective terminology favored by the tobacco industry and its film industry proxies around the world, a categorical standard of zero tobacco imagery *except* for (a) portrayals of actual historical figures documented to have used tobacco and (b) the unambiguous depiction of the dire health consequences of tobacco use, with no brand display in any case;
- An independent review committee, with no conflicts of interest, mandated to safeguard the public health by transparently applying the policy standards to the relatively few media productions that propose to include tobacco imagery despite the new policy;
- Identical treatment for films imported from overseas and Indian films released before the policy, namely strong anti-tobacco spots vetted by experts in tobacco prevention showing before and after the film or program in any and all distribution channels;
- Public certification, under penalty of perjury, by credited producers of any Indian film or video program with tobacco imagery released after the policy and all imported films and video programs with tobacco imagery that no one associated with the production accepted any consideration to include tobacco.

1. Background

Smoking in the movies is a major recruiter of new smokers.¹ The global tobacco industry needs tobacco on screen. The new adolescents that the U.S. film industry recruits each year in America are worth \$4.1 billion (present value) in U.S. tobacco sales.² The importance of tobacco on screen becomes more important to the tobacco industry as its access to other promotional channels is cut off. Paid product placement in the U.S. began in earnest after tobacco ads were barred from television and radio airwaves in 1970.³

The World Health Organization recognized the importance of smoking in the movies when it made the theme of World No Tobacco Day 2003 “Tobacco Free Film, Tobacco Free Fashion.”⁴ The WHO Framework Convention for Tobacco Control (FCTC) obligates signatories to end tobacco advertising (subject to constitutional restrictions). Progress in implementing this provision of the FCTC will make tobacco on screen more important to the tobacco industry. Unchecked, tobacco on screen could subvert much of the effect of restricting traditional advertising. For example, tobacco brand appearances in popular Hindi-language films nearly tripled after India blocked ads in other media in 2004.⁵ Clearing tobacco off screen is key for tobacco control.

Highlighting the importance of the problem of smoking in the movies, on World No Tobacco Day, May 30, 2005, Dr. Ambumani Ramadoss, Minister of Health & Family Welfare (MoH) announced that, among other tobacco control measures, the government would ban tobacco use in films and TV programs as of August 1 by amending the Cigarette and Other Tobacco Products Rules, 2004.⁶

The Ministry was acting on a 2003 WHO study, “Bollywood: Victim or Ally,”⁷ that tracked the incidence of tobacco in Hindi-language films and explored its impact on adolescents. The report itself recommended six policies “to reduce the influence and negate the impact of tobacco portrayal in films”: on-screen certification of no payoffs; an end to film event sponsorships by the tobacco industry; strong anti-tobacco spots before and after any film with tobacco

¹ Charlesworth A, Glantz SA. Smoking in the movies increases adolescent smoking: A review. *Pediatrics* 2005;116(6):1516-28.

² Alamar B, Glantz SA. Tobacco industry profits from smoking images in the movies. *Pediatrics* 2006;117(4):1462.

³ Mekemson C, Glantz SA. How the tobacco industry built its relationship with Hollywood. *Tob Control* 2002;11(Suppl 1):i81-i91.

⁴ <http://www.who.int/tobacco/communications/events/wntd/2003/en/index.html>

⁵ Goswami H, Kashyap R. Tobacco in movies and impact on youth. Burning Brain Society, Chandigarh: 2005. <http://www.burningbrain.org/pdf/tobaccoinmovies.pdf>

⁶ Notification reproduced at http://www.angelfire.com/sc3/burningbrain/movie_rules.htm consulted on June 6, 2006.

⁷ Policy Analysis and Communications/World Health Organization Tobacco Free Initiative. (2003) *Bollywood: Victim or ally: a study on the portrayal of tobacco in India cinema.* <http://www.smokefreemovies.ucsf.edu/pdf/Bollywood%20final-report2.pdf>

imagery; no more tobacco brands; and “embedded warnings” during tobacco scenes.⁸

MoH’s proposal, a total ban on tobacco use in new films, went further. It also prescribed embedded warnings for films produced prior to the ban or imported into India. The MoH proposed that health warnings, added to film re-releases and videos or keyed by a broadcaster during transmission would appear as static or crawling text at the bottom of scenes containing tobacco imagery.

Bollywood interests immediately challenged the MoH policy and the Ministry of Information & Broadcasting (MoI&B) and implementation of the MoH policy was delayed. A year after the original announcement, press reports indicated that a compromise policy had been developed but, as of June 8, 2005, policy details had not been announced. These details will have a major impact on whether the regulations as implemented will substantially affect tobacco use by India’s young people or create a policy in name only while leaving the tobacco industry unaffected.

India’s stakes are especially high because its national cinema is so prolific and its film market is not yet dominated by Hollywood, like the rest of the world’s. Limits set on future tobacco imagery will influence India’s largest-ever generation directly. They will also set a precedent — of success or failure — for other Framework signatories around the world.

2. The Policy’s History from June 2005 to June 2006

With so much hanging in the balance for the multinational tobacco companies, particularly Philip Morris International and BAT, it would be reasonable to expect that they would not grieve if the MoH’s initiative failed. Aware of their low public standing and the difficulty politicians (and other elites) have when they are seen supporting the tobacco industry’s interests, multinational tobacco companies have a long history of working secretly through third parties, or “fronts,” to oppose policies that will hurt their sales and profits, such as advertising bans⁹ or smokefree policies.¹⁰ The companies often rely on lawyers or public relations firms to manage the public opposition to these policies so the tobacco industry’s role is obscured.

⁸ Aside from event sponsorship bans (addressed by the U.S. 1998 Master Settlement Agreement between tobacco companies and state Attorneys General) and “embedded warnings,” WHO’s recommendations embody the policy goals of the Smoke Free Movies project based at the University of California-San Francisco Center for Tobacco Control Research and Education. See <http://www.smokefreemovies.ucsf.edu/solution/index.html>.

⁹ Neuman M, Bitton A, Glantz S. Tobacco industry strategies for influencing European community tobacco advertising legislation. *Lancet* 2002; 359(9314): 1323-30.

¹⁰ Barnoya J, Glantz SA. The tobacco industry’s worldwide ETS consultants project: European and Asian components. *Eur J Public Health* 2006; 16(1): 69-77.

In India, arguments similar to those made by tobacco industry fronts against the 2004 advertising restrictions began to appear almost immediately after MoH's May 30, 2005 proposal to restrict tobacco on screen. By mid-June, a spokesperson for India's Film and Television Producers Guild was claiming in a news magazine that the new rules were unnecessary:

Given the fact that the Censor [sic] Board for Film Certification has already laid down guidelines which are sufficient to tackle this issue, it is rather strange that this sudden high-handed decision has been clamped down on this industry.¹¹

A Mumbai film director went even further, telling a leading Indian news magazine:¹²

To accuse us of surrogate advertising is as bad as George Bush accusing Saddam Hussein of harbouring weapons of mass destruction and then bombing out the place.

Introducing language used later by other policy opponents, a more sophisticated statement emerged from the Ministry of Information & Broadcasting (I&B). The same news story quotes Sharmila Tagore, chair of the Central Board of Film Certification (CBFC), making arguments parallel to those made by the U.S. film industry to justify continued smoking in films:

I understand the concerns of the Health Ministry. Obviously they've done a lot of research. They have found instances of the tobacco industry using the film industry for surrogate advertising. There are recent films like *Lucky*, *Shabd* and so on where they show Marlboro footage. The Health Ministry feels that it has an impact on impressionable minds. But if they say don't smoke [on screen], it becomes a little difficult to accept it. We are in the entertainment industry, competing with foreign films as well. Films also depict life and what happens in the larger society. It is going to be a difficult thing to implement. There are period films, foreign films, documentaries, as well as films about street children and tribal people where it will be difficult to enforce the ban.

Tagore declared that while "there is no doubt the tobacco companies are targeting developing countries," she was "totally against the showing of embedded warnings." The news report concludes:

¹¹ Krishnakumar, R. "A Sharp Response." *Frontline*, June 18, 2005. Consulted at <http://www.hinduonnet.com/fline/fl2213/stories/20050701003911100.htm> on June 6, 2006.

¹² Krishnakumar, R. "A Sharp Response." *Frontline*, June 18, 2005. Consulted at <http://www.hinduonnet.com/fline/fl2213/stories/20050701003911100.htm> on June 6, 2006.

As a prelude to likely discussions within the government, Sharmila Tagore suggested that a film (depicting tobacco use) could be preceded by anti-tobacco warnings soon after the appearance of the Censor Certificate notification as well as during the interval. In addition, the actors could make an appeal to the viewers.

This initial suggestion is the core of the compromise policy sketched out, a year later, by MoH's press statement on May 31, 2006. In exchange for permitting tobacco imagery supposedly justified by "artistic necessity," however, the compromise does call for "embedded warnings."

As industry resistance mounted, spearheaded by MoI&B, the original implementation date was delayed from August 1 to October 2, 2005. On August 17, three Indian NGOs — ACT-INDIA (Mumbai), HRIDAY and SHAN (New Delhi) — and the U.S.-based Smoke Free Movies project ran an unprecedented advocacy advertisement in the center spread of *Screen* (Figure 1), a widely-read Indian film industry journal, countering the campaign being run by film industry figures and the I&B to convince the country that the film industry should be allowed to regulate itself on tobacco.¹³ To leverage the paid advertisement, HRIDAY-SHAN sent copies to every Member of Parliament and to Ms. Tagore at the Central Board of Film Certification.

This was not civil society's first intervention on behalf of MoH's original policy proposal. For example, HRIDAY-SHAN's leadership published a summary of the case for the ban on tobacco imagery in a leading peer-reviewed medical journal, timed for the Ministry's policy announcement.¹⁴ HRIDAY-SHAN also issued a laudatory press release on World No-Tobacco Day 2005. As resistance channeled through I&B mounted, health and tobacco control NGOs in ten Indian cities gathered 45,000 supporting signatures from parents, students and health professionals and transmitted them to MoH in late September.

Implementation was again put back, to January 1, 2006 and negotiations between MoH and I&B continued. Also, in September 2005 a petition filed by a film director on free speech grounds brought the policy question to court in Delhi. I&B entered the case on the plaintiff's side. MoH argued:

There is no fundamental right to trade in tobacco, much less a fundamental right to depict smoking by film/TV characters.¹⁵

Regardless, on November 30, 2005 MoH announced that it had re-filed its notification to amend the 2004 Tobacco Products Rules. The new filing reportedly added exceptions to the smoking ban for depictions of tobacco's "ill

¹³ See http://www.smokefreemovies.ucsf.edu/ourads/India01_lg.html.

¹⁴ Reddy KS, Arora M. Ban on tobacco use in films and television represents sound public health policy. *National Medical Journal of India* 2005;18(3):115-118.

¹⁵ Online report consulted at <http://in.rediff.com/news/2005/nov/10ban.htm> on June 6, 2006.

Why Indian films *will lead* the world on October 2, 2005.

Forty percent of India's total health budget is consumed by tobacco-related diseases, which kill 800,000 Indian adults annually. Meanwhile, India's state-subsidized film industry is helping to addict their young replacements. *What's wrong with this picture?*

Clear tobacco off the screen now.

How serious is the problem? Three out of four Indian films now feature tobacco. Cigarettes pushed by foreign firms are showing up on screen more often. The stars are brandishing packets from Philip Morris or British American Tobacco (BAT).

Tobacco product placement in Hollywood is exhaustively documented. So are tobacco industry efforts to conceal and deny it. Isn't it conceivable that the same influences are at work in Bollywood?

The tobacco industry has not invested millions in the global film industry because it cares about art or culture. It aims to get around ad restrictions in other media.

A decade of research in the U.S., Australia and other nations finds smoking scenes are powerful lures. For example, a two-year study found that U.S. adolescents who see the most



smoking in films are three times as likely to start smoking. Hollywood movies recruit *half* of new young smokers—390,000—in the U.S. alone.

Why would India be any different? Seventy-nine percent of U.S. movies feature tobacco; seventy-six percent of Indian films do. As any parent knows, India's teens are as swayed by commercial trends as kids anywhere. Rural youth, with less education, are even more likely to be influenced by films than urban youth.

The single most effective way to reduce future deaths is to reduce kids' exposure to

smoking on screen. Half of those who start smoking in India are less than fifteen years old.

Tobacco kills. Like mosquitoes spreading malaria, movies are a disease vector for tobacco.

Bhopal is the classic example of industry acting recklessly and evading responsibility. Yet, in terms of deaths, today's tobacco crisis in Bollywood far exceeds it. The thousands of adolescents recruited to use tobacco each month are a costly burden on India's future.

The Ministry of Health's straightforward proposal to clear the screens of tobacco gives everyone in Bollywood the chance to be the heroes and heroines we truly believe they are.

Backed by Indian law, international agreement and scientific consensus.

Indian law bars tobacco advertising and promotion. On-screen smoking is proven to be promotional and directly benefits the tobacco industry. We prefer that the death-dealing stop and that future damage claims be avoided. We support the Ministry's *forward-looking* remedy. Let the past go—make *future* films smokefree.

International health authorities agree. The question is not *if* films will be smokefree; only *when*. India's largest generation in history is coming of age. Equipped with a powerful policy tool to stem the tobacco epidemic, it is natural, indeed inevitable, for India to take the lead.

'SMOKING IN THE MOVIES is a major problem worldwide because it represents such a powerful promotional force. It not only encourages children to begin smoking but reinforces tobacco industry marketing images that smoking is a way to increase your social status as adults.'

WORLD HEALTH ORGANIZATION (Geneva)

Bollywood leaders can appreciate such an opportunity to set the global film standard. For everyone in India, this is a once-in-a-lifetime chance to make an historic contribution to world health. For those still uncertain, four points:

- 1) **PROBLEM:** Movies with smoking are toxic on a mass scale. The scientific case is solid as tobacco's link to cancer.
- 2) **SOLUTION:** Clear tobacco off the screen.
- 3) **'SELF-REGULATION' WON'T WORK:** It protects the industry, not the audience. Pledges, expedient loopholes and PR campaigns will not reduce exposure to on-screen smoking—the only way to avert addiction and disease.
- 4) **URGENCY:** Every month of delay costs India years of suffering and death.

THIS ORIGIN INITIATIVE IS SPONSORED BY:

ACT-INDIA (Mumbai)

HRIDAY | Health Information Disseminated Amongst Youth (New Delhi)
SHANI | Student Health Action (New Delhi)
SMOKE FREE MOVIES | UCSF Center for Tobacco Control Research and Education (USA)
 INQUIRIES & COMMENTS WELCOME:
info@hriday-shan.org

Figure 1. Advertisement run by Indian NGOs in support of the MoH in Screen on August 17, 2005.¹⁶

effects” and “smoking scenes during live telecasts, old movies and films made on ... historical characters.” Older movies with tobacco use would be excepted if they included 30-second anti-tobacco spots before the film showing, during the intermission and after the film.¹⁷

The next day, however, *The Times of India* quoted I&B Minister Priyaranjan Dasmunsi taking an absolute position against any controls:

... while smoking on screen, or public places, should be discouraged, there cannot be a ban if the script demands that a character smoke.¹⁸

The January 1, 2006 implementation date passed without action. On January 19, the Ministers separately addressed a conference of news editors. Both

¹⁶ The full ad is at http://www.smokefreemovies.ucsf.edu/ourads/India01_lg.html.

¹⁷ Rashid, T. “Ministry OKs On-Screen Smoking for Live Shows, Old & Historical Films.” *The Indian Express*, December 1, 2005. Consulted at http://www.indianexpress.com/res/web/plc/full_story.php?content_id=83048 on June 6, 2006.

¹⁸ Sunhat, K. “Dasmunsi Twist to Smoking Ban Issue.” *The Times of India*, December 2, 2005.

denied they were in “confrontation.”^{19 20} However, I&B Minister Dasmunsi repeated that imposing restrictions was “not an easy task.” A total ban could only be enforced, he claimed, if the tobacco industry itself were outlawed. The I&B Minister also echoed film industry representations that the problem must be resolved through voluntary consensus:

Writers and scrip-writers are requested to ensure that smoking is not glamourised or made to look motivational.

Two press reports interpreted the I&B Minister’s statement as the final word on the controversy.^{21 22}

The same week, an NGO study co-sponsored by WHO and MoH was published online, updating the 2003 WHO report.²³ It showed that the percentage of Bollywood releases with tobacco use had climbed from 76 percent to 89 percent and that brand appearances had nearly tripled in Bollywood films after India banned tobacco ads in other media in 2004. The study received virtually no coverage, despite NGO press efforts in India, New Zealand and the United States This was in marked contrast to the Indian media’s attention to the back-and-forth between MoH and I&B over the previous six months.

The policy impasse continued through the winter. On February 22, 2006, it was reported that MoH had asked the Prime Minister’s office to “intervene to facilitate a ban on the depiction of smoking in films and television.”²⁴ According to MoH, the ministerial consensus brokered by the Cabinet Secretary is to be submitted to the court by the end of summer 2006.

2.1 Challenges to civil society

While Bollywood (and the tobacco industry) are wealthy and able to press the government to protect their interests, protecting public health depends on principled action by government and civil society. Regulatory action depends on the government – in this case led by the MoH. But active, persistent and resourceful support from nongovernmental organizations is important for the

¹⁹ “Health Ministry to go ahead with smoking ban in movies.” Webindia, January 19, 2006. Consulted at <http://www.tobacco.org/news/215083.html> on January 8, 2006.

²⁰ “Fire Over Screen Smoking Doused.” *Hindustan Times*, January 18, 2006. Consulted at <http://www.tobacco.org/news/214993.html> on June 6, 2006.

²¹ “Fire Over Screen Smoking Doused.” *Hindustan Times*, January 18, 2006. Consulted at <http://www.tobacco.org/news/214993.html> on June 6, 2006.

²² “Air Over Smoking Ban in Films Cleared.” *India Daily*, January 18, 2006. Consulted at <http://www.tobacco.org/news/214946.html> on June 6, 2006.

²³ “Bollywood Lights Up Cigarette Sales.” *The Times of India*, January 22, 2006. Consulted at <http://timesofindia.indiatimes.com/articleshow/1380953.cms> on January 22, 2006. Report details at <http://www.burningbrain.org/tobaccoinmovies/index.html>.

²⁴ “PMO to sort out tangle over film smoking ban.” *The Times of India*, February 22, 2006. Consulted at <http://timesofindia.indiatimes.com/articleshow/1424624.cms> on February 23, 2006.

government to succeed. To the Indian NGO sector's credit, it was research released by an NGO (with support from WHO) that helped precipitate MoH's original policy initiative against on-screen tobacco. Soon after MoH's May 30, 2005 announcement, however, a WHO official in New Delhi explained in a press interview that it was civil society's relative weakness that might have led the government to propose official measures that went beyond WHO's 2003 policy recommendations:

In the case of countries like the U.S. where NGOs and anti-tobacco movements had far more teeth, they could monitor the scene much more effectively. Here government intervention perhaps was hence necessary. The WHO was concerned about the health of the citizens and had made several recommendations. How to do it, how much to do etc., was the lookout of the government.²⁵

Given the talent, energy and personal commitment in India's tobacco control movement, any relative weakness of NGOs appears due to structural factors. India's tobacco control NGOs have not yet been able to develop a sufficient mix of independent funding sources. Competition for the limited resources channeled by government may hamper efforts to build lasting coalitions. Without aggressive, independent advocacy, a solid infrastructure and coordination mechanisms in place, civil society is not readily poised to move on tobacco issues in a timely, strategic and opportunistic fashion, nor does it have the resources to mount advocacy campaigns — legal, political, media — capable, in combination, of changing the calculus of power.

These structural obstacles, hardly unique to India and found frequently enough in Western nations reputed to enjoy vigorous civil societies, leave advanced public policy initiatives — such as the MoH's original program — dangerously exposed to well funded, disciplined opposition. As a consequence, the opposition has been able to trap the policy in court, define the issue as censorship, characterize MoH as a dinosaur of central planning and pose the solution as peace between two ministries rather than policy that serves the public interest.

Acting together, strategically and persistently, the NGO community might have had a chance, from the start, to define the issue as 21st Century India taking the lead, using cutting-edge global health policy to protect the rising generation

²⁵ *Frontline*, June 18, 2005. In fact, after five years of advocacy under a tobacco-friendly national administration, tobacco control NGOs in the U.S. have yet to win any policy point outlined in WHO's 2003 India report. A major difference between India and the U.S. is that U.S. age classifications (specifically the "R" rating that bars entry to anyone 17 or younger without a parent or adult guardian) have teeth. Updating the classification for future tobacco imagery to "R" in the US would reduce adolescent exposure by half, mainly by motivating producers to keep tobacco out of films that would otherwise be rated to attract larger, more general audiences. In nations where film certificates carry less weight in the marketplace, other measures will be needed to reduce or mitigate adolescent exposure substantially.

from transnational predators high jacking Indian cinema. In reality, it is the tobacco industry and its film industry clientele that represent a discredited past, while public health advocates are champions of citizen empowerment. This platform might have made it easier to each beyond the tobacco control sector to win active support from professional organizations, opinion leaders and others who can build public consensus behind such far-reaching policy.

This sort of advocacy and organizing, anticipating the opposition's maneuvers, using the opposition's own strength against it in the beginning and using every month from September 2005 onward to impress the government and the court with the public's unity on the question of toxic films and TV programs can have more impact on policy making than formal outlines of the process might suggest.

Unity of purpose does not dictate uniformity of action. Policy advocates around the world have often found it expedient for some groups to make radical demands — reframing the public debate — while others, promising the opposition benefits and honors if they cooperate, open the door to negotiations. Diversity can be a great strength. The only thing groups need have in common is a quiet agreement on what policy is acceptable — and when to walk away, together.

Meanwhile, NGOs that act boldly can advance tactically. For example, on April 26, 2005, a month before MoH announced its on-screen tobacco plan, Chandigarh's Burning Brain Society asked the CBFC to end tobacco brand display in the films and videos it reviews. On May 19, 2005 the Board agreed that its enabling law mandated it to "delete all the visuals that advertise any cigarette brands directly or indirectly" and it had therefore instructed all its Regional Offices to do so.²⁶ So long as this was treated as a minor victory, it could help link the CBFC's legal fate to the court's decision on the MoH policy. One could argue that if the CBFC's guidelines against on-screen tobacco promotion do not violate free speech standards, then neither would MoH's policy based on the Advertising Law.

There still may be an opportunity to influence the final regulations and, just as crucial, the details of their implementation. While the MoH has been forced to modify its original proposal, it remains possible for an adequate regime to be implemented within the general structure announced on May 31, 2006. Unless these details are carefully worked out, however, the regime as described is likely to have no lasting effect on tobacco presentations on Indian screens, on public health or on tobacco profits.

2.2 The June 2006 compromise, as described

Here are the main points of the compromise policy to be shown the court, as reported in the Indian media:

²⁶ See http://www.burningbrain.org/pdf/Letter_censorBoard.pdf.

All new movies with smoking scenes passed by the new censor committee will have to have disclaimers by the actors themselves seen smoking on screen.... In old movies, a warning and an advisory on the screen a minute before and after the smoking scene will have to be carried. The new rules will be very restrictive but will not take away the freedom of expression.... The new censor panel will only give permission to those films to portray scenes where it is absolutely essential to the story line.²⁷

The provisions include: any film with a smoking scene will be given an A certificate; a committee must be formed by the crew to apply for permission to introduce a smoking scene making a case for why the film cannot be shot without the scene; and the character shown smoking in the film will have to make three or four appearances outside the film to provide the statutory warning, "Cigarette smoking is injurious to health".²⁸

Reports from Indian correspondents suggest that "the new censor committee" will pass films and TV programs not only on tobacco content but also on cruelty to animals and other considerations, diluting its membership and diffusing its mandate. Such an implementation would probably represent a clear defeat for the MoH.

3. SUBJECTIVE STANDARDS

It is essential that the standard be clear and enforceable. Allowing or disallowing tobacco imagery on the basis of subjective criteria calling for committee consensus on a case-by-case basis is a formula for failure. In the United States, both the tobacco industry and the film industry have consistently framed the debate over tobacco product placement and on-screen imagery in terms impossible to operationalize. They defend the status quo yet repeatedly claim to oppose:

- *Glorifying* tobacco;
- *Glamorizing* tobacco;
- *Gratuitous* tobacco use;
- Tobacco use *not integral to the character*;
- Tobacco use *not essential to the storyline*;

²⁷ Sinha K. "Smoking scenes to be allowed if necessary." *The Times of India*, June 1, 2006. Consulted at <http://timesofindia.indiatimes.com/articleshow/1600548.cms> on June 1, 2006.

²⁸ Kannan, R. "Central tobacco authority to be set up." *The Hindu*, June 8, 2006. Consulted at <http://www.hindu.com/2006/06/08/stories/2006060817981300.htm> on June 8, 2006.

- Tobacco use *not historically authentic*.

Even a filmmaker who wished to comply with such guidelines would have a difficult time determining what would or would not be acceptable.

In late 2005, the chief executive of the Motion Picture Association of America put off indefinitely a request from a majority of state Attorneys General (chief law enforcement officials at the state level) that anti-tobacco spots run on future DVDs in the following way:

[T]his is one element that will be considered among other ideas in an overall campaign ... to curtail cigarette smoking in situations in which it does not contribute to the development of the plot, story or character.²⁹

The problem with language like “artistic necessity” is its subjectivity. Substitute “frontal nudity” or “decapitation” for “tobacco” and it becomes clear that *glamorous*, *gratuitous*, *integral* and *authentic* mean different things depending one’s values — and commercial interests.

There are at least 46,000 English-language books about film and cinema.³⁰ Each lays out idiosyncratic criteria for judging the worth of a film. What the tobacco and film industries aim to achieve with ringing phrases like “artistic necessity” or vague phrases like “contribute to the development of the plot, story or character” is to create an infinitely fungible standard that means whatever it needs to mean — to protect tobacco portrayals. They want to place the issue of smoking on screen in the indeterminate realm of fantasy rather than in the objective world of observed health effects.

Indeed, it may become a game for producers to conjure up tobacco provocations that cause controversy or consternation at the government’s new review committee — all publicity being good. Encouraged by the film industry, the press may mock committee members’ insensitivity, philistinism and literal-mindedness. India’s film industry in turn, will seek to come off looking like a brave rebel against the government’s grey authority.

3.2 Structuring the Board

Because the government has decided to have a review committee evaluate individual films and programs, it is crucial that the Board’s integrity and its commitment to the public interest be above reproach. Otherwise, it could simply become a buffer protecting India’s film and tobacco interests from public

²⁹ Motion Picture Association of America president Dan Glickman to Maryland Attorney General Joseph Curran, Jr., December 5, 2005.

³⁰ Search on “cinema/film: book,” June 5, 2006, at <http://www.amazon.com/>.

criticism, much as the Motion Picture Association of America (a private organization created by the Hollywood studios) does in the U.S.

Independent review committee: The government should do all it can to keep the review committee's membership entirely independent of the film, broadcast, advertising and tobacco industries.

All members, no matter what their provenance, should be required to certify that neither they nor their immediate family financially benefit from any of these industries (including but not limited to employment, consulting, share ownership, loans or other considerations in cash or in kind).

The rule should be that *no committee member has any economic interest in the outcome of its decisions*. It is not enough for a member to excuse his or her self from a particular decision yet participate in others. All four of these industries are thoroughly interconnected.

Terms of reference: The review committee's charge should be health, not aesthetics. It should not have a mandate to "balance two goods." Instead, it should pursue the compelling public interest in substantially and permanently reducing adolescent exposure to on-screen tobacco imagery.

Its decisions must be based on state-of-the-art, peer-reviewed independent research into the vectors and effects of adolescent exposure to on-screen tobacco imagery. For example, no evidence says that smoking by antagonists ("bad guys") is any less harmful than tobacco use by film heroes. (Indeed, there is some evidence to the contrary.³¹)

Anecdotes and opinionating should not determine outcomes. Subjective terms invite both. They also encourage the kind of committee dynamics where "If you agree with me on this one, I'll agree with you on that one." Subjectivity destroys accountability. The necessity to reach consensus under these terms will, over time, tend to widen loopholes and allow more tobacco on screen.

100% transparency: Committee process, work materials and data should be easily accessible to the public. Post current documentation, review schedules, tobacco incidence reports and other information on the Web in a timely and standardized way.

The review committee should report on its work, on a regular basis, to the Ministry of Health and these reports should be open to the public. The committee should have access to the analytical skills needed to evaluate its own work and to understand relevant industry and audience trends.

³¹ Tanski S, Sargent JD. Movie character smoking and adolescent smoking initiation: Villains are bad influencers. American Pediatric Association Annual Scientific Meeting, San Francisco, April 2006.

3.3 Two objective exceptions

According to an MoH spokesperson, the compromise policy limits tobacco scenes to those that are “absolutely essential to the story line.” The World Health Organization and leading health groups in the U.S. have operationalized this generalized idea in terms that can be applied categorically — yes or no, the criterion is met or is not met. Both filmmakers and the review committee need be in no doubt or uncertainty about these standards:

- Does the presentation of tobacco clearly and unambiguously reflect the dangers and consequences of tobacco use?
- Is the presentation necessary to represent the smoking of a real historical figure?³²

Depictions of tobacco dangers are excepted because truly accurate depictions of tobacco’s health consequences should not be discouraged. Based on past experience, such depictions will probably remain rare. The “historical figure” exception simply requires independent evidence that the character being depicted used tobacco in real life, in the manner it is being shown. The specific requirement that the tobacco-using character represent a real historical figure who actually used tobacco keeps the door closed against fictional characters using tobacco because they happen to be in so-called “historical” or “period” films.

3.4 The process

There are several simple steps that would allow an effective process to be implemented within the general framework announced by the government.

- ***Create a timely process:*** While it is unclear whether a new review committee is to be set up or the current CBFC is to be revised and expanded, it is important that the review committee and its staff review film and video *before* it receives CBFC certification on other grounds. Clearly state the length of time needed to review the material (e.g., 60 days). Require a sufficient number of transcripts and DVDs to serve the full review process, translated into every Indian “national language” in which the piece will ultimately be released or dubbed.

Administer the process efficiently, but put producers on notice that the review will take time and appeals will take longer. If the producers do appeal, make the appeal hearing public, giving civil society sufficient notice and access to the film-video materials in advance. Stipulate that no production can proceed to the official film certification step or to public sale or exhibition until the review is complete.

³² See <http://www.smokefreemovies.ucsf.edu/solution/index.html>.

Make clear that material without tobacco imagery will not require review (this incentivizes producers to omit tobacco). Also make clear that all film and broadcast material will be subject to sanctions if it evades the required review or adds tobacco imagery after review. Sanctions should be prohibitive. The government should actively collaborate with civil society to spot and report violations.

- ***Define the remedy:*** The committee must have the power to order that the piece be re-edited or re-shot, at the producer's discretion, to remove tobacco imagery. Embedded warnings are *not* an option for *future* Indian and India co-produced films, only for older films being re-released and for imported material.

The delays and costs incurred to remedy the tobacco imagery are not the committee's concern. Producers should be on notice that any tobacco imagery in their pieces will presumably require re-editing or re-shooting unless they meet the two criteria (see 3.3), which constitute the committee's sole, objective standard of "necessity".

- ***Clarify the remedies for older and foreign films:*** Be consistent in treating films and programs produced before the new regulations are implemented (time dimension) or outside its jurisdiction (space dimension).

- ***Reconsider the idea of actors delivering messages:*** The idea of having the actor involved in a smoking scene deliver the warning about tobacco's dangers is attractive but problematic.

Given the logistics of media production, it is likely that producers would want to prepare these spots in the course of producing the film or program itself, and then to submit the entire package for committee review. Either the message delivered by the actor will be a rote formula or it will require a special, continuing effort by the committee to shape and script the messages being delivered.

This policy element appears to be an artifact of the 2005 attempt by the film industry and I&B to launch an "anti-tobacco" public service campaign in lieu of actually eliminating tobacco imagery. But there is no research evidence that having the actor deliver the message, developed under whatever principles, is as effective as an anti-tobacco spot developed and evaluated by experts in tobacco prevention messaging.

Conceivably, the message received by adolescents from an actor stepping out of role is that tobacco use can easily be taken up and dropped. It is possible that anti-smoking messages delivered by actors seen smoking in the film or program will simply identify tobacco use with the actor-as-fantasy-object.

Bland recitations of a government health warning, especially the one that the MoH is planning to require, "Cigarette smoking is injurious to health," have not been shown to help adolescents resist tobacco. In stark contrast to the same

actor smoking and emoting, adolescents may consider the dramatic scene more authentic and credible than the required line reading.

The scientific evidence shows that a strong, well-produced anti-tobacco advertisement is necessary to blunt the effect of movie tobacco use.³³ Unless there are rigorous, science-based standards for the required anti-tobacco messages, producers may learn that they can simply employ star power to get tobacco imagery past the review committee.

Requiring producers to have the actor recite the health warning may possibly exert a deterrent effect. If direct payoffs are involved, a tobacco agent may feel that paying to get smoking in a show is not worth “buying” three anti-tobacco spots as well. But over time, as the message’s novelty wears off, any deterrent effect may decline. It must be expected that the tobacco industry, which has a direct interest in the matter, will intensely research the impact of these announcements on its target markets.

The top priority should be to clear tobacco imagery from popular films and TV programs seen by millions in the future. Buying into the Indian film and TV industries’ wish to appear socially responsible distracts from this goal.

- ***Require a certification of no payoffs:*** Any production with tobacco imagery passed by the committee should require an affidavit from the producer(s) that nobody with screen credit, nobody who was employed by the production company during production, nor anyone who worked as an independent contractor, accepted any consideration from a tobacco company or its agents in exchange for including tobacco in the film or program. The affidavit should be submitted under penalty of perjury and retained in the public file.

The practical effect will be that everyone connected with the production will also, under penalty of perjury, need to sign such a statement for the *producer’s* files. Producers should not be allowed to insert words like “to my knowledge” in their affidavits to the committee, as this grants them deniability for the dealings of a subordinate, an “executive producer” (film investor), an actor’s manager, and other personnel.

These affidavits are not onerous. They will rarely be required if the only new films and programs that show tobacco meet the two criteria described previously.

“No payoffs” affidavits should also be required of all foreign films with tobacco imagery seeking theatrical or video distribution in India. If they are not certificated in India but instead are being delivered by satellite or other media

³³Pechmann C, Shih C. Smoking scenes in movies and antismoking advertisements before movies: Effects on youth. *Journal of Marketing* 1999; 63: 1-13.

platform “now in use or yet to be developed,” an affidavit should also be demanded.

For companies based outside India, affidavits can be made a condition for the license to operate, collection of subscription fees, advertising sales or some other decisive condition for doing profitable business in or with India.

- ***Prescribe penalties:*** The film industry must be clear about the price to be paid for defying the standard. It must be high enough to act as a meaningful deterrent. It may be enough right now to say that a film cannot be submitted to the CBFC for certification until it passes the review committee. But one never knows what a court may someday decide about the CBFC or its mandate. In any case, the CBFC may not have sufficient purview over broadcast programs. Therefore, the review committee must have its own schedule of sanctions.

- ***Enforcement:*** Monitoring, sampling and a national phone and Web messaging line should be used to discover and report efforts to bypass the government policy against tobacco on screen.

If enforcement, monitoring or evaluation is separated functions of the central tobacco control establishment, the review committee and the enforcement arm must meet regularly.

The review committee must be kept informed about the rapid convergence of all digital technologies and the strong trend to merge commercial marketing campaigns with program content. This may be a challenge, as the best-informed people work for the industries the committee is regulating directly or indirectly. (Media expertise should be encouraged among all Framework signatories.)

Because the advertising and entertainment industries in India, like everywhere else, are in a great state of flux, the government cannot confine its attention to film and TV as conventionally understood. At the same time, the government’s main focus should be on deterring tobacco imagery at the point of origin: the original production. All of this argues for a simple but inclusive regime.

4. CASE-BY-CASE REVIEW

As noted earlier, India’s film industry is the world’s most prolific. Films are released or dubbed into Hindi, Tamil, Telugu, Bengali, Kannada or Malayalam. Broadcast and cable TV offerings far exceed film production.

This situation threatens gridlock: either the committee will be paralyzed by the workload or the production industry will be paralyzed by delays. Obviously, delays that cost the producers money would make them more reluctant to put tobacco in a film. Avoiding this situation requires that lessons be learned from earlier failures.

4.1 The committee that failed

India's existing Central Board of Film Certification reviewed and rated more than 2,500 feature-length and short films and 1,500 videos in 2003, the most recent year reported on line.³⁴

Section 5b(2)(vi-a) of India's Cinematograph Act, the law establishing the Central Board of Film Certification's mandate and guidelines, already includes language concerning tobacco. It specifically states:

... scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown.³⁵

This language is at once strong and weak, depending on who has the power to define the words "encourage," "justify" and "glamorize." It is further muddled by this vague caveat, stated on the CBFC's web site:

A film is judged in its entirety from the point of view of its overall impact and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to whom the film relates, provided that the film does not deprave the morality of the audience.³⁶

This statement is so vague that it is no standard at all. The Censor Board cannot fairly and consistently enforce its own rules, and filmmakers have no sure guide for knowing how to stay out of trouble.

The only way to know if the CBFC has found a way to fulfill its mandate on tobacco is to research what actions it has taken in the past to delete tobacco imagery, up-rate a film with tobacco imagery, or deny certification to a film with tobacco. Available statistics suggest that the Censor Board passes almost every scene of tobacco use that comes before it. As the WHO-supported survey reported in 2005, tobacco penetration of popular Hindi films had increased from 76 percent in 2001-3 to 89 percent in 2004-5. The CBFC did not determine that tobacco brand display was promotional until the question was raised in April 2005. Evidence has not been presented showing the effect of this policy change.

The Censor Board's apparent failure to interpret the vast majority of past tobacco occurrences on screen as promoting tobacco use might be attributable to one or more of the following:

³⁴ Central Board of Film Certification. Calculated from tabular data at <http://www.cbfcindia.tn.nic.in/statistics.htm> on June 5, 2006.

³⁵ CBFC. See <http://www.cbfcindia.tn.nic.in/guidelinespage3.htm>, consulted on June 6, 2006.

³⁶ CBFC. See <http://www.cbfcindia.tn.nic.in/guidelinespage1.htm>, consulted on June 6, 2006.

- **Interest:** Censor Board members appointed by the government include representatives of the film industry or might have connections to the tobacco industry;
- **Lack of information:** existing under the umbrella of the MoI&B, the Board might never have been briefed on WHO's and MoH's conclusion that exposure to tobacco on screen is a powerful recruiter of new young smokers;
- **Film-by-film review:** making it more difficult to appreciate the *cumulative* impact on adolescents of rising rates of tobacco incidence and brand display;
- **Political insecurity:** appointees from different ideological strains may be loathe to exert more control over film content while the Censor Board's own legitimacy is being challenged;
- **Complacency:** members may never have questioned tobacco imagery or thought to explore the commercial connections between the global film and tobacco industries;
- **Lack of mandate:** the vague language of the sub-rule on tobacco may make consistent, aggressive enforcement impossible.

Our analysis suggests the new review committee can avoid these reasons for failure:

- **An independent committee** will have no connection to the tobacco, advertising or entertainment industries;
- **An informed committee** can do its job if it is fully briefed about the research into on-screen tobacco and the history of tobacco corruption in film.
- **Its mission** should explicitly state that the review committee exists to reduce substantially adolescent exposure to tobacco imagery on film and video and to mitigate significantly the effect of tobacco imagery in legacy and imported material;
- **With the Indian government** obligated by the international WHO Framework Convention for Tobacco Control to safeguard its population against tobacco promotion and with an NGO sector encouraged to participate fully in the review committee's work, it should be possible to build broad-based public and political support;
- **Underlying all of its work,** the review committee must be empowered to presume that all tobacco imagery on screen is promotional in its effect and

therefore prohibited, and that the sole, objective exceptions to this rule are those listed at 3.3.

4.2 Establish a monitoring and evaluation protocol

From the beginning, gather data on the incidence of tobacco in film. Set up survey programs to learn about Indian adolescents' exposure to tobacco imagery through various channels.

Set performance standards for the review committee. For example, analyze the past five years of "top 100" India-produced films to assess how much tobacco incidence would have occurred if the "two exceptions" criteria (3.3) were in effect when the films were released. Then, set that incidence as the goal for the Indian film and TV industries 24 months after the measure finally goes into effect. Monitor progress closely.

If the goal is not reached (within a sensible margin), automatically trigger a new policy that bars all tobacco depictions, subject to the two exceptions — *without regard to any other consideration*. The committee's mandate would be revised accordingly. If the goal is reached, extend the test indefinitely, evaluating every 24 months.

Specifications for the benchmark film sample must be carefully defined because the industry may try to skew it. Performance standards for older and foreign films should also be linked to the trip wire.

With a trip wire in place, the tobacco and film industries have less incentive to break the review committee; doing so will only bring on a tougher regime. In effect, in its new rules the government could appear to accept the film industry's offer to reduce tobacco content voluntarily — with the ironclad proviso that if this cooperation fails to achieve its benchmark, a stricter interpretation will automatically go into effect.

The film industry would almost certainly mount a second legal challenge to the more rigorous regime. The trip wire arrangement, however, will give India two years, used wisely, to gather more data and mount an even more powerful defense than it can today.

The opposition may suggest that the trip wire gives the review committee an incentive to fail in its first two years, in order to deliberately bring in the tougher regime. That is one more reason to emphasize hard data and complete transparency. None of this need be a matter of arbitrary opinion.

If the committee is also responsible for reviewing all original TV programming prior to broadcast — or only those programs with tobacco imagery, which seems feasible — other programming must be sampled scientifically to see if the broadcast industry is following the rules.

The government must have the power to sanction swiftly, with due process, any of India's 250 broadcast operations in case of error or evasion. The public should be encouraged to report problems. The committee must have the power to obtain video recordings from broadcasters when a public complaint is filed.

5. Conclusion

If the policy scheme described in the latest news reports is approved by the court and implemented by the government without well-informed rigor — if the review committee's membership is split between film/broadcast industry nominees and MoH nominees, if its mandate presumes "artistic necessity" justifies tobacco imagery, and if arbitrary decision-making and dysfunction prevail — tobacco on screen will have been institutionalized and legitimized for decades to come, with tragic effects on public health. India will be a model of failure, not leadership.

Failed public policy is a victory for the tobacco industry because it forecloses genuine change. As described in this report, however, it is still possible to implement an effective regime within the boundaries of the policies that were publicly announced in early June 2006.