Tobacco advertising, promotion and sponsorship: depiction of tobacco in entertainment media: report by the expert group

Key Recommendations

- FCA does not endorse the Expert Group’s recommendations in FCTC/COP/8/7 that calls for the establishment of a Working Group to develop an addendum to implementation guidelines for Article 13. FCA also does not see value in creating a Working Group to discuss the development of a new protocol on cross-border TAPS – an issue that has previously been considered by the COP and rejected.
- FCA recommends that Parties review reports prepared on Article 13 for previous COP sessions, particularly A/FCTC/COP/2/10 and FCTC/COP/3/9.
- FCA encourages Parties to consider implementing the knowledge hub for cross-border tobacco advertising, promotion and sponsorship (TAPS) that would operate as a formal notification system, as was proposed prior to COP3 in FCTC/COP/3/9.
- FCA suggests that Parties request the Secretariat to commission a monitoring guide from marketing and analytics experts, which would detail methods and social media analytics tools currently available to investigate covert TAPS on contemporary cross-border media platforms, specifically social media platforms.

Why this is important

Banning TAPS remains an essential intervention for reducing tobacco consumption and tobacco-related harms. Article 13 of the FCTC requires Parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship (TAPS). This includes cross-border TAPS originating from a Party’s territory, while also recognising that Parties’ have a sovereign right to ban cross-border TAPS from entering their territory.

FCA would like to thank the Expert Group for highlighting the important issue of cross-border TAPS and depiction of tobacco in entertainment media. The Expert Group has raised the alarm regarding the evolution of TAPS and the challenges faced enforcing Article 13, including marketing through entertainment and social media. Recent investigations into tobacco advertising on social media platforms – a medium that did not exist at the drafting of the FCTC - have uncovered new threats that potentially undermine Article 13 and require international cooperation to correct.
Unfortunately, the Expert Group’s proposals for action to address the problems it identified are likely to be costly and impractical. A previous Expert Group (before COP2) and a previous Working Group (before COP3) made a number of excellent proposals that the COP failed to take up at the time, but which FCA proposes could be revived now.

Background

New patterns in media consumption, tobacco industry marketing and their potential to normalize and increase tobacco use among youth have been fully described by the Expert Group.

Further, additional recent evidence shows that tobacco companies have been using social media channels to advertise their products, often using covert methods - such as paying for promotion through so-called ‘social media influencers’ who publish material without disclosing their financial ties with the tobacco industry. Anonymous multi-country interviews conducted with influencers paid to promote cigarettes on social media show that the companies recruit and use the youngest influencers with the largest potential audience to reach an unrestricted global audience with their tobacco marketing.

Challenges of enforcing a comprehensive ban on TAPS particularly in emerging global media platforms have long been recognised. However, Parties recognise that international cooperation is required to address cross-border TAPS both in traditional media, and contemporary platforms such as the internet, video games, and social media. Parties also recognise that enforcing a comprehensive TAPS ban requires support from non-state actors, with FCTC/COP/8/7 highlighting:

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

Previous COP sessions have considered how to effectively address cross-border TAPS. As a starting point, it is important to review the work previously completed by intersessional groups established by the COP on the subject of cross-border TAPS.

Decision FCTC/COP2(8) led to the creation of a Working Group tasked with developing the guidelines for implementing Article 13 that were adopted during COP3. The Working Group’s mandate also included the development of further recommendations for measures which would assist Parties to put an end to cross-border TAPS. To this end, at COP3, the Working Group recommended the establishment of a website -- referred to as a knowledge hub -- which would operate as “a facility for

---

4 Petition filed by ACT promoção Saude (Brazilian NGO) to the federal prosecutor of the State of São Paulo, federal prosecutor of São Paulo and to Procon/SP, against Souza Cruz (Brazilian subsidiary of British American Tobacco) denouncing new marketing strategies in social media and events. September 17, 2018.
reporting instances of cross-border advertising, promotion and sponsorship. The logic of the knowledge hub serving as a notification system is that all Parties are already bound by Article 13 and hence should have a ban on TAPS; if advertising “leaks” or is targeted from one Party to another, e.g. via cross-border media, there should be a simple way for the recipient Party to inform the originating Party of the violation.

The Working Group recommended that the knowledge hub’s website consist of three separate sections to be accessed by either: 1) Parties; 2) Parties and observers; or 3) the public. In addition to providing a notification system for cross-border TAPS, the knowledge hub’s website was to include contact points for Parties and identify relevant experts, as well as provide information aimed at promoting public awareness on the issue of TAPS.

**Actions for COP8**

The Expert Group that met between COP7 and COP8 made several recommendations in its draft decision, most notably: 1) to establish a Working Group to develop an addendum to the Article 13 implementation guidelines on effective actions to address cross-border TAPS, and 2) for the Working Group to consider the need for a protocol on cross-border TAPS. At this time, the FCA does not endorse the Expert Group’s recommendation for the creation of a Working Group to develop an addendum to the Article 13 implementation guidelines. Implementation guidelines often focus on identifying best practices based on national experience, and it is not clear at this time that there is enough national regulatory experience on dealing with new forms of TAPS to justify a full Working Group.

With regard to the other suggestion contained in the draft decision annexed to the Expert Group’s report that a future Working Group should also consider the desirability of negotiating a protocol on cross-border advertising, this is an idea that has already been examined at length by an earlier Expert Group (FCTC/COP2). The Expert Group even provided a template for such a protocol. However, it advised that there may be cheaper and more efficient ways to handle the issue. At this time, there is no clear evidence that the situation has fundamentally changed, nor is there evidence that a Working Group would be a better vehicle to examine this than the previous Expert Group.

A protocol would cost millions to negotiate and could take many years before it came into force. Further, there is no guarantee that countries from which most of the cross-border TAPS originates would sign on to such a protocol. Thus, it would be more efficient to develop a proper notification mechanism as was recommended by the Working Group established at COP2 (FCTC/COP3/9).

The recommendation to establish this notification mechanism via the knowledge hub was strongly endorsed by FCA at the time; however no decision was made on the proposal during COP3. FCA maintains its support for this proposed approach to addressing cross-border TAPS.

---


6 Paragraph 16 “The expert group reached the view that much of the work of groups 1 and 2 would be better dealt with in guidelines on the obligations that Parties have already assumed under Article 13 than in a protocol.” A/FCTC/COP/2/10. See document at: http://apps.who.int/gb/fctc/PDF/cop2/FCTC_COP2_10-en.pdf

7 During COP3 it was decided to further consider the recommendations at the fourth session. See FCTC/COP/4/10 annex containing Decision FCTC/COP3(14): http://apps.who.int/gb/fctc/PDF/cop4/FCTC_COP4_10-en.pdf
The ability of such a knowledge hub to address this problem would be enhanced by offering access to current trends and data analysis available to assist Parties and observers in enforcing Article 13 as well as identifying new tobacco advertising threats on social media platforms. Those operating the knowledge hub should therefore have access to relevant expertise, including, where appropriate, commercial enterprise level social media analytics tools.\(^8\)

FCA also recommends that Parties consider requesting the Secretariat to commission a monitoring guide from marketing and analytics experts, which would detail methods and social media analytics tools currently available to investigate covert TAPS on contemporary cross-border media platforms, specifically social media platforms. Such a monitoring guide would serve as a resource to Parties in their current efforts to eliminate cross-border TAPS, including notification to other Parties via the proposed (COP3) knowledge hub.

---

\(^8\) Examples of enterprise level social media analytics tools are Brandwatch, Crimson Hexagon, or Digimind, which allow researchers to analyze online conversations through text and images across a diverse range of platforms (e.g., Facebook, Instagram, Twitter, YouTube, blogs, wikis, discussion forums, news sites, online reviews).