

December 14, 2023

Guidelines for Prevention and Regulation of Dark Patterns, 2023

On November 30, 2023, the Central Consumer Protection Authority ("hereinafter referred to as **CCPA**") released the 'Guidelines for Prevention and Regulation of Dark Patterns, 2023' (hereinafter referred to as "**Guidelines**") under section 18 of the Consumer Protection Act 2019. The purpose of this Guidelines is to prevent and regulate the use of dark pattern (as defined below) practices, prohibiting individuals or platforms from engaging in such activities.

Furthermore, these Guidelines shall be applicable to all platforms systematically offering goods or services in India, advertisers and sellers.

The term 'dark patterns,' as outlined in the Guidelines, refers to a range of practices and deceptive design patterns employed within user interfaces or user experience interactions on any platform. These strategies are purposefully crafted to mislead or trick users into undertaking actions they did not originally intend or desire to perform. This is achieved by subverting or impairing consumer autonomy, decision-making, or choice, thereby resulting in activities that amount to misleading advertisements, unfair trade practices, or violations of consumer rights. In essence, these techniques are strategically devised to manipulate users and guide them towards making choices that run counter to their original intentions. The comprehensive definition in the Guidelines underscores the importance of curbing these practices to safeguard consumer autonomy and promote fair and transparent interactions in the digital landscape.

It is pertinent to mention here that if a dark pattern practice is governed by any other currently effective law or the rules and regulations established under it, the provisions outlined in these Guidelines will be supplementary and not intended to override or diminish the effect of such existing laws.

The Guidelines outline specific dark patterns explicitly listed in its Annexure I (hereinafter referred to as "**Annexure I**"). However, it is important to clarify that the practices and examples outlined in Annexure I are intended for guidance purposes only and should not be regarded as binding opinions or decisions as different interpretations may arise based on varying facts or conditions.

Following are the 13 specified dark pattern practices identified under the Guidelines. However, it's important to note that the CCPA retains discretion to add additional dark patterns under Annexure I as deemed necessary from time to time.

I. False Urgency:

This practice involves presenting or suggesting urgency or scarcity in a deceptive manner to prompt users into an immediate purchase or actions that

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AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

may result in a purchase. It includes the false portrayal of product popularity and the inaccurate representation of product quantities to manipulate user decision-making.

II. BASKET SNEAKING:

It is the term used to describe the practice of adding extra items like products, services, or charitable contributions during the checkout process on a platform without the user's explicit agreement. This results in the total amount payable by the user exceeding the amount intended for the chosen product or service. However, it's crucial to highlight that the inclusion of free samples, complimentary services, or necessary fees disclosed at the time of purchase is not classified as basket sneaking. "Necessary fees" pertain to charges vital for completing the order, such as delivery fees, gift wrapping costs, additional government taxes on the product, or any other charges explicitly communicated to the consumer during the purchase.

III. CONFIRM SHAMING:

It refers to the tactic of employing phrases, videos, audio, or other means to evoke feelings of fear, shame, ridicule, or guilt in the user's mind. This could involve statements designed to prod users into taking specific actions, such as adding travel insurance when booking tickets or making donations to a particular cause. The objective is to manipulate the user into a specific action, such as purchasing a product or service from the platform or maintaining a subscription, all geared toward achieving commercial gains by undermining consumer choice.

IV. FORCED ACTION:

It is the act of compelling a user to perform an action that requires them to purchase additional goods, subscribe to unrelated services, sign up for unrelated services, or share personal information in order to acquire or subscribe to the initially intended product or service.

V. SUBSCRIPTION TRAP:

It encompasses various practices, including making the cancellation of a paid subscription either impossible or a complex and lengthy process, hiding the cancellation option, compelling users to provide payment details or authorize auto debits for accessing a free subscription and introducing ambiguity, latency, confusion, or complexity in the instructions related to canceling a subscription.

VI. INTERFACE INTERFERENCE:

It is used to design element that manipulates the user interface by highlighting specific information while concealing other relevant details related to that data. The objective is to redirect the user from their intended action.

VII. BAIT AND SWITCH:

It refers to the deceptive practice of promoting a particular outcome based on the user's action and then subsequently providing an alternative outcome. For instance, a seller might initially advertise a high-quality product at a low price. However, when the consumer is prepared to make the purchase, the seller asserts that the product is no longer available and instead proposes a similar-looking product at a higher price. This tactic aims to lure customers with an attractive offer and then switch them to a more expensive alternative.

VIII. DRIP PRICING:

It encompasses various practices, including:

- a) withholding or surreptitiously revealing elements of prices within the user experience;
- b) disclosing the price post-confirmation of purchase i.e. charging an amount higher than initially disclosed at checkout;

- c) advertising a product or service as free without appropriate disclosure that continued use requires in-app purchases; and
- d) preventing a user from accessing a paid-for service unless additional purchases are made.

It is important to note that a marketplace e-commerce entity is not held liable for price fluctuations attributable to changes made by third-party sellers or factors beyond their control.

IX. DISGUISED ADVERTISEMENT:

It refers to the practice of presenting advertisements in a manner that camouflages them as other types of content, such as user-generated content, news articles, or false advertisements. The intention is to seamlessly blend these ads with the rest of the interface, deceiving customers into clicking on them.

X. NAGGING:

It constitutes a practice where a user experiences repeated and persistent disruptions or annoyances in the form of requests, information, options, or interruptions, all aimed at facilitating a transaction for commercial gains, unless explicitly permitted by the user, for instance, websites repeatedly encouraging user to download their app or incessant prompts to enable or accept notifications or cookies with no option to decline.

XI. TRICK QUESTIONS:

It involves purposefully using confusing or ambiguous language, including confusing wording, double negatives, or similar tactics, to mislead or redirect a user from taking the desired action or to prompt a consumer to provide a specific response or take a particular action.

XII. SAAS BILING:

It involves the systematic process of generating and collecting recurring payments from consumers within a software as a service (SaaS) business model. This practice leverages positive acquisition loops in recurring subscriptions to discreetly acquire funds from users. For example, transitioning from a free trial to a paid subscription without providing any notification to the user, charging customers for features and services they don't utilize, etc.

XIII. ROUGE MALWARE:

It encompass the utilization of ransomware or scareware with the intention of deceiving users into believing their computer is virus-infected. The primary objective is to convince them to purchase a counterfeit malware removal tool, which, in actuality, installs malware on their computer. For example, a pirate website or app promising consumers free content but leading to embedded malware upon accessing the link, etc.

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AWARDS & RECOGNITIONS



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