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Addressing dark patterns in a targeted manner: for fair interfaces against manipulative designs

Introduction

The term "dark patterns" was first coined in 2010 by British UX designer Harry Brignull. He used it to describe designs of digital user interfaces that are deliberately designed to mislead users into making decisions they would not otherwise make. From around 2018 onwards, the term increasingly came into focus for consumer protection organisations, both in Europe and in the USA. In the European Union, the discussion gained particular relevance in the wake of the introduction of the General Data Protection Regulation (GDPR) and the debate on consent mechanisms.

With the Digital Services Act (DSA), the EU has for the first time enshrined a concrete ban on dark patterns for online platformsⁱ. In 2025, the European Commission identified the issue as a central element of its Digital Fairness Initiative and consumer protection agenda. This initiative aims to achieve greater transparency, fairness and consumer protection in the digital space. International organisations such as the Organisation for Economic Co-operation and Development (OECD)ⁱⁱ and the US Federal Trade Commission (FTC) are also addressing dark patterns, underscoring the global relevance of the issue.

As the German Association of the Digital Economy (BVDW), we have been following the debate on dark patterns and digital fairness for some time and are actively contributing to the discussions. On the one hand, user-unfriendly or manipulative design patterns undermine trust in digital services and products. On the other hand, it can jeopardise the climate of innovation if they are addressed in a regulatory manner that is unclear or overly restrictive. It is of central importance to us that consumers are protected from practices that are genuinely misleading or harmful, while at the same time digital companies are provided with a legally secure, transparent and innovation-friendly framework.

Our goal is to help shape regulatory standards, define clear criteria for dark patterns, differentiate between unfair manipulation and permissible design, and take into account both user interests and economic realities. Especially in the context of the Digital Fairness Initiative, it is crucial to create more transparency and legal clarity.

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1. Definition of dark patterns

To date, there is no uniform definition of dark patterns. In EU law, dark patterns are mentioned for the first time in the text of the DSA. The DSA describes them as "practices that, either intentionally or in fact, significantly distort or impair the ability of users of the service to make autonomous and informed decisions". The latest fitness check on EU consumer law refers to "unfair commercial practices that are employed through the structure, design or functionalities of digital interfaces or system architecture and may influence consumers to make decisions they would not otherwise have made".

Even in academic papers and discussions, there is still no uniform definition. Dark patterns are similarly described as design patterns in digital interfaces (e.g. websites or apps) that deliberately mislead users into making decisions or taking actions that are not in their best or intrinsic interests. Users would not have made these decisions or taken these actions without these dark patterns. For example, this refers specifically to links that lead to different websites than intended, additional paid goods that are added to the online shopping basket without notice, or false calls for urgency.

The definitions proposed so far do not adequately explain what actually makes dark patterns "dark". It remains unclear exactly how they differ from ordinary, legally permissible and socially accepted marketing or advertising measures. Ultimately, consumers will buy or use products or services that they consider to be interesting or relevant. They are often made aware of these products or services through marketing. In order to be noticed by consumers, products or services must indeed be actively advertised. The Oxford Dictionary describes marketing as "*the activity or business of promoting and selling products or services, including market research and advertising*".

Marketing and advertising are also used in the "offline" world to inform consumers about new products or deals. In these settings there are also examples of proven sales tactics, such as clustering certain products or offers at specific points in the sales process. Marketing is used to influence consumer decisions, but respects the decision-making autonomy of consumers. Relevant, user-centred marketing focuses on the needs of customers in order to make suitable offers and build trust. In short, advertising may influence, but it must not deceive or pressure.

The intention to manipulate is crucial: only when a design specifically aims to induce users to take actions that they would not have taken or would have taken differently if they had been provided with clear information does influence become a dark pattern. It is therefore specifically about deliberately deceiving consumers. However, the assessment is complex and diverse. If someone shops when they are hungry and buys more than they perhaps planned, this is an individual weakness, not systematic abuse. That is why the level of knowledge of consumers is also crucial.

This is precisely why a differentiated approach and in-depth examination of the definition of dark patterns is needed, both at the legal and scientific levels. Companies also need clear and practical guidelines in order to use their creative freedom responsibly while ensuring legal certainty. The definition should differentiate between legitimate and permissible design practices, as are

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common in marketing, and manipulative consumer deception. It is not only the analytical or claimed purpose of a design that is decisive, but rather its practical implementation. Transparency, autonomy and fairness towards users must be maintained, but design and layout also always serve liberal and economic interests.

2. Dark patterns in practice

As the Federal Association of the Digital Economy, we are committed to doing our part to contribute to a fair, sustainable and democratic future. With every data-driven development, our responsibility also grows. As described in the first part, we need clearer definitions of dark patterns and a distinction from normal design practices. That is why, in this part of the paper, we list examples of dark patterns that have already been regulated by legislation and are also rejected by the digital economy. The third part of this paper describes how the dark patterns described are already regulated in principle by existing legislation.

This list highlights typical characteristics and functions of dark patterns and illustrates how certain manipulative design practices can push users to make decisions that they might not have made under transparent conditions. Since dark patterns often contain several manipulative elements at the same time, we have classified the following examples according to their dominant characteristic.ⁱⁱⁱ

2.1. Misleading design

Misleading design means that graphic elements are used to falsify or omit information. For example, graphic elements are used to conceal information, change choices, or lead users to a different page.

- Deceptive design: Users are visually misled, e.g. by buttons with misleading labels.
- "Bait & switch": Clicking on a link leads to a different page than expected.
- Hidden information: Information relevant to decision-making, such as costs or contract terms, is deliberately placed where it is difficult to find.
- Linguistic tricks: Confusing language, such as a double negative in a question, which misleads the user into performing the opposite action.
- False urgency/scarcity tactics: Users are presented with an artificial shortage to pressure them into making a quick purchase or taking action. This is also linked to feelings of social pressure and fear of missing out.

2.2. Coercion & pressure

Dark patterns that exert coercion and pressure are based on the manipulation of emotional mechanisms. The aim is to speed up decisions or hide alternatives. Users are pressured into action or agreement through suggestive wording or pressure.

- Confirm-shaming: Rejections are worded in such a way that users should feel ashamed of their decision or have a guilty conscience.

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- **Countdown:** Build pressure by counting down a certain period of time. The product or service is supposedly only available for a limited time, even though this is not true.

2.3. Tricky consent

Tricky consent mechanisms are mechanisms that take advantage of, for example, default settings designed in a certain way to "trick" users into making a certain decision.

- **Hidden consent:** Opt-in boxes are preselected.
- **Unclear choices:** When certain options are highlighted and other options are hidden or difficult to access.

2.4. Distraction and overload

Users will agree to certain settings or steps at a specific point in time due to overload or distraction, even though they would not do so under other circumstances.

- **Click fatigue:** Users become overwhelmed by multiple clicks and/or pop-ups, so they "agree" in order to move on.
- **Visual overload:** Misleading highlights or distraction from critical options.

2.5. Social manipulation

Similar to pressure, social manipulation is based on manipulating emotional or social mechanisms to speed up decisions or block out alternatives.

- **Social pressure:** Conveys the false impression of high demand or popularity, thereby creating psychological pressure to make a quick decision for fear of missing out (FOMO).
- **Social proof:** fake customer reviews or testimonials ("You're really missing out if you don't buy this product/service").

3. Legal basis: Which dark patterns are prohibited in the EU?

Dark patterns are already regulated in principle by existing legislation, but in some cases they are still too vaguely defined. To date, various pieces of legislation, such as the DSA, the GDPR, the Unfair Commercial Practices Directive (UCPD) and the AI Regulation, address individual manifestations of dark patterns. However, these regulations often only apply to certain market participants or under certain legal conditions. This results in a complex, fragmented regulatory framework that imposes both general and specific requirements on interface designs. An overview of existing and upcoming regulations shows how extensively the topic is already regulated. The upcoming omnibus procedure may be able to propose some solutions for simplification in this regard.

Law / Legal act	Reference to dark patterns	Comment	Status
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Digital Services Act (DSA)	Article 25 (1) prohibits dark patterns on online platforms and search engines	Only online platforms affected; no prohibition if GDPR/UCP Directive applies	Fully in force
	Prohibits "misleading" and "aggressive" practices (Articles 6 to 9). Some practices are explicitly prohibited in the Annex. Some dark patterns may fall under this.	The term "dark patterns" is not used, no specific interface rules	Fully in force
General Data Protection Regulation (GDPR)	Strict consent rules; manipulative UX (e.g. cookie banners) may violate the GDPR	Relevant for data protection, not generally for interface design	Fully in force
Artificial Intelligence Regulation (AI Regulation) – AI Act	Article 5 prohibits manipulative AI systems, subliminal techniques and the exploitation of weaknesses	No direct reference to "dark patterns", but overlap in terms of content	In force (fully applicable from August 2026)
Digital Markets Act (DMA)	Article 13 contains an anti-circumvention clause that is also intended to prevent manipulative UX by gatekeepers	Applies only to gatekeepers (large platforms)	Fully in force
Data Act	According to Recital 38, interfaces must not be designed in a manipulative or confusing way in order to influence data access.	Access to and use of mainly industrial data	Fully in force
Consumer Rights Directive	Article 16(e) prohibits dark patterns in online financial services.	Specifically covers distance financial contracts	Fully in force
Unfair Contract Terms Directive (UCTD)	Protects consumers from unfair terms in standard contracts	Applies only to contracts	Fully in force

As the overview shows, a large number of legal acts have been developed at EU level in recent years that regulate or affect certain aspects of dark patterns or specific market participants. This has resulted in sectoral and horizontal regulations that address a variety of manipulative design and unfair business practices, albeit with different focuses and areas of application.

4. Considerations on the Digital Fairness Act and regulations on dark patterns

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In October 2024, the European Commission completed the Digital Fairness Fitness Check. The aim of this was to review the EU's existing consumer protection rules for an increasingly digital world, going beyond dark patterns in the narrow sense. The Digital Fairness Fitness Check examined the applicability and gaps in part of the existing EU legal framework. In addition to dark patterns, the Fitness Check identified the following points for improvement:

- Addictive design: used to encourage consumers to interact with a service for longer and/or spend more money.
- Problematic personalisation: where consumers' personal weaknesses or vulnerabilities are deliberately exploited.
- Digital subscriptions: where unsubscribing is made excessively difficult.
- Problematic business practices by social media influencers and content creators.

The report found that there is often a lack of clear, consistent terms and guidelines to effectively protect consumers from deception and manipulation. However, the analysis did not examine the full range of legal frameworks. For the Digital Fairness Fitness Check, three directives were covered that form the core of the consumer protection framework applicable to most traders and consumer-oriented sectors in the EU:

- Unfair Commercial Practices Directive 2005/29/EC (UCPD);
- Consumer Rights Directive 2011/83/EU (CRD);
- Unfair Contract Terms Directive 93/13/EEC (UCTD).

These three legislative texts form the foundation of consumer protection in the online and offline world. This horizontal, cross-cutting consumer protection legislation has been reinforced and anchored over the last ten years by, among other things, sectoral digital legislation. As shown in the table above, different dark patterns are regulated in sectoral legislation for the respective markets.

Following the fitness check, the European Commission published a public consultation on the Digital Fairness Act in July 2025. The consultation shows that the European Commission wants to investigate unfair business practices such as dark patterns more closely and is seeking the expertise of various stakeholders to this end. As this paper makes clear, numerous legal instruments already prohibit certain forms of dark patterns and other manipulative designs, for example through sectoral and horizontal laws. These are supplemented by initial guidelines from the European Commission, for example on Article 28 DSA, as well as by case law and regulatory practice. In addition, there is also national legislation, which is responsible for implementing EU regulations on the one hand, but can also set its own standards on the other.

Against this backdrop, the question arises as to where exactly the system is failing. From the perspective of the digital economy, the focus should first be on analysing existing implementation gaps before new legislative initiatives are launched. The Digital Fairness Fitness Check was a first step, but it did not examine the entire regulatory framework. In many cases, effective consumer

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protection fails not because of a lack of regulation, but because of a lack of coherence between existing laws, inconsistent (and sometimes hesitant) implementation, unclear responsibilities, or fragmented national enforcement. The national implementation of the DSA clearly illustrates this. Article 25 of the DSA prohibits online platform providers from using dark patterns, but does not provide any further clarity or definition of dark patterns. According to the DSA, the EU Commission also has the option (not the obligation) to develop guidelines on dark patterns. The structure and responsibilities of national supervisory bodies also vary considerably. This partly explains the complexity of legislative, executive and legal processes.

Similar problems arise in the area of data protection law. Different interpretations of the GDPR lead to contradictory decisions at national level. As long as such inconsistencies exist, it is of little help to create new regulatory requirements. On the contrary, the introduction of additional, possibly contradictory rules carries the risk of weakening consumer protection rather than strengthening it. The Draghi Report also rightly points out the need to make regulation more coherent and impact-oriented before further intervention takes place. The challenge often lies not only in the "if" but in the "how" of implementation. Legal texts do not automatically take effect; practical problems and room for interpretation often only become apparent when they are applied. That is why it takes time for legal texts to (be able to) take full effect in practice. Added to this is a lack of clarity in terminology, which is increasingly becoming a threat to discourse. If suddenly every form of personalised address or interface design can be labelled a "dark pattern", there is a risk of watering down the concept. Consumer protection needs clear criteria and robust definitions, not inflationary alarmist terms. This is the only way to take targeted action against abusive practices without discrediting legitimate user guidance or innovation across the board.

This makes it all the more important to further develop, monitor and refine the existing legal framework in a targeted manner before creating additional regulatory levels.

If, after thorough examination, the existing regulations are still insufficient to effectively and uniformly prevent targeted manipulation through digital interfaces, the development of new legislation may be considered. It is all the more important to proceed with caution here, because there is no uniform definition of dark patterns and many practices can be assessed differently depending on the context or interpretation. From the perspective of the digital economy, the existing legal framework is sufficient for the time being, but needs more clarity and legal certainty. A dedicated but narrow set of rules, and above all guidelines, would in principle be able to create clarity and uniform standards in this area, both for the design of user interfaces and for the application of law by authorities and courts. At the same time, such a legal act would have to formulate technology-neutral principles that also cover future manipulative designs without unnecessarily restricting the scope for innovation. It will be crucial that a possible DFA is not designed as a duplicate (and, in the worst case, contradictory) set of rules to existing laws, but rather closes specific gaps, bundles existing principles and strengthens cooperation between data protection, consumer protection and competition authorities.

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In conclusion, it should be noted that the debate surrounding the Digital Fairness Act (DFA) and possible regulations on dark patterns currently brings together a variety of different issues that go far beyond dark patterns. Some of these different issues should be considered separately. Ultimately, what matters is what is practicable for both businesses and consumers and what actually has an impact. This includes ensuring that users can clearly identify who to contact in the event of violations and are sufficiently informed about their digital rights. Without effective enforcement, even good rules remain ineffective.

Conclusion

Dark patterns are a central topic in the current discussion on digital fairness and consumer protection. In recent years, a complex network of regulations has developed at European level that already addresses many problematic practices. Nevertheless, the legal situation often remains fragmented and the enforcement of existing rules poses a considerable challenge.

The European Commission completed the Digital Fairness Fitness Check in October 2024. This identified a number of gaps in the existing legal framework and is now being reviewed in consultation with the Digital Fairness Act. The process should clarify whether additional regulation is needed and, if so, in what form. The digital economy is primarily in favour of a clearer overview of the legislation, including its national implementation. As this paper shows, there are sufficient legislative acts prohibiting dark patterns, but there are still some ambiguities in their implementation. The Digital Fairness Act should primarily deal with implementation and enforcement within the framework of the identified gaps, ideally through guidelines, for example, and above all create clarity. The DFA should not lead to further regulatory overlap, but rather complement existing instruments in a meaningful way and improve enforcement.

Transparent, fair and user-centred designs are essential for strengthening trust in digital services. From the perspective of the digital economy, this does not require additional legislation, but rather guidance and clarity. We in the digital economy are prepared to work with policymakers to develop guidelines that set clear standards for permissible design while leaving room for legitimate business models. For us, the key point remains that differentiation and a sense of proportion are necessary. Not every eye-catching design or novel form of advertising is automatically a dark pattern. A differentiated approach is needed to distinguish between prohibited dark patterns, UX design that could be improved and innovative design. The focus of the discussion on dark patterns should be on deliberate deception, without unnecessarily restricting legitimate business models and innovation. Only in this way can a fair, transparent and trustworthy digital space be created that both protects consumers and supports economic development in Europe.

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ⁱ Recital 67 Digital Services Act

Dark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions. Those practices can be used to persuade the recipients of the service to engage in unwanted behaviours or into undesired decisions which have negative consequences for them. Providers of online platforms should therefore be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of online platforms, but which may not be in the recipients' interests, presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision.

It should also include repeatedly requesting a recipient of the service to make a choice where such a choice has already been made, making the procedure of cancelling a service significantly more cumbersome than signing up to it, or making certain choices more difficult or time-consuming than others, making it unreasonably difficult to discontinue purchases or to sign out from a given online platform allowing consumers to conclude distance contracts with traders, and deceiving the recipients of the service by nudging them into decisions on transactions. –consuming than others, making it unreasonably difficult to discontinue purchases or to sign out from a given online platform allowing consumers to conclude distance contracts with traders, and deceiving the recipients of the service by nudging them into decisions on transactions, or by default settings that are very difficult to change, and so unreasonably bias the decision making of the recipient of the service, in a way that distorts and impairs their autonomy, decision-making and choice. However, rules preventing dark patterns should not be understood as preventing providers from interacting directly with recipients of the service and offering them new or additional services. Legitimate practices, for example in advertising, that comply with Union law should not in themselves be regarded as constituting dark patterns. Those rules on dark patterns should be interpreted as covering prohibited practices falling within the scope of this Regulation to the extent that those practices are not already covered under Directive 2005/29/EC or Regulation (EU) 2016/679.

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Article 25 Digital Services Act – Online interface design and organisation

1. Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.
2. The prohibition in paragraph 1 shall not apply to practices covered by Directive 2005/29/EC or Regulation (EU) 2016/679.
3. The Commission may issue guidelines on how paragraph 1 applies to specific practices, notably:
 - (a) giving more prominence to certain choices when asking the recipient of the service for a decision;
 - (b) repeatedly requesting that the recipient of the service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience;
 - (c) making the procedure for terminating a service more difficult than subscribing to it.

ⁱⁱ OECD (2022), "Dark commercial patterns", *OECD Digital Economy Papers*, No. 336, OECD Publishing, Paris, <https://doi.org/10.1787/144f5e846-en>.

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ⁱⁱⁱ Based on, among other sources:

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