International Consumer Protection and Enforcement Network

ICPEN Dark Patterns in Subscription Services Sweep

Public Report

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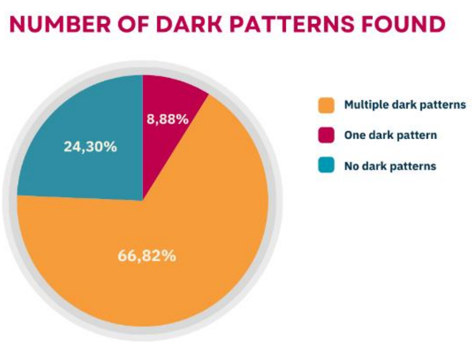
In 2024, 27 ICPEN Consumer Protection Agencies from across 26 nations participated in a sweep on dark patterns in subscription services. *Dark patterns* are defined as practices commonly found in online user interfaces and steer, deceive, coerce, or manipulate consumers into making choices that often are not in their best interests. Together with the Global Privacy Enforcement Network (GPEN) a simultaneous sweep was conducted on the basis of the OECD taxonomy of dark commercial patterns.[1] The ICPEN sweep focused on dark patterns in subscription services, while the GPEN sweep focused on deceptive design patterns which may encourage individuals to provide more personal information than they may have intended or cause them to make choices that do not reflect their privacy preferences.

Of the 642 traders swept in the ICPEN sweep, 75,70% made use of at least one dark pattern and 66,82% made use of multiple dark patterns when marketing their subscriptions (see Figure 1). As such, out of all the traders subject to this sweep, only 156 traders were not found to employ any dark patterns to sell their subscription offerings.

The section below delves deeper into the type of dark patterns investigated and the practices most frequently encountered during the sweep.



Sneaking practices try to hide or delay disclosing information that is important to a consumer's purchase decision, but viewed as negative by the trader, and is often related to costs. Examples are adding new non-optional charges to the price right before completing a purchase (also known as drip-pricing) and automatically renewing a subscription after a free trial without consent (i.e. subscription traps).

The most frequently encountered practice that could described as sneaking during the sweep, is the inability of the consumer to turn-off a subscriptions auto-renewal within the purchase flow. This was found in 81% of the traders swept who provide subscriptions that renew automatically. Other prevalent practices are the lack of information given on the steps to cancel during the enrollment process and not providing information on a date by which the consumer needs to cancel before being charged (again). These practices were observed in respectively 70% and 67% of the traders who sell auto-renewal subscriptions.

Interface Interference is defined as an attempt to frame information in such a way that it steers consumers towards making decisions that are more favorable for the business. Types of interface interference commonly found were false hierarchy, pre-selection and confirmshaming. False hierarchy is created by visually presenting favorable options more prominently. It was found in the sweep that for traders that offer subscriptions that do not start as a free trial, 38,3% made use of false hierarchy to more prominently place a subscription that is advantageous to the trader. In the case of pre-selection, options more beneficial to the business, such as a more expensive subscription or a longer subscription period, are selected by default.

[1] Dark Commercial Patterns: OECD Digital Economy Papers" (OECD Publishing, October 26, 2022), 9-11, https://doi.org/10.1787/44f5e846-en.

22,5% of traders swept that sell both subscription and non-subscription products or services, had the subscription option pre-selected in the purchasing flow.

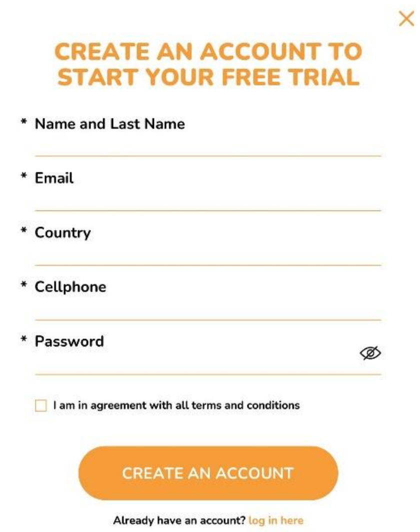
Confirmshaming uses language that evokes a specific emotion of the consumer to manipulate their decision-making.

Obstruction practices try to dissuade the consumer from taking an action, by rendering a task flow more difficult or tedious. For example, a majority of the traders subject to the sweep that provided cancellation information made the cancellation process much more difficult than enrolling in a subscription.

Social Proof is defined as the attempt to nudge consumers towards making a decision based on the supposed behavior of other consumers. In 21,5% of the sweep cases where traders sell both subscription and non-subscription products, they were observed to use notifications of other consumers' alleged activity and other forms of social proof to push consumers towards enrolling in a subscription.

Various agencies observed the use of claims including *'X amount of boxes sold'* or *'most popular'* to denote the demand of a certain product by other consumers.

Forced Action requires consumers to perform an action or provide information in order to access a specific functionality. For example, in at least 66,4% of the cases investigated during the sweep, a trader required the consumer to fill out payment information to access a "free trial" of the subscription.



Urgency practices instill a sense of urgency for the buyer by creating a real or fake time or quantitative limit on the ability to purchase a product or service. Examples are countdown timers or banners that claim a product is *'low in stock'*.

Nagging type of dark patterns send out repeated requests to the consumer, so that they would perform an action that is favorable to the business. A few agencies found that repeated pop-ups with special offers or requests to subscribe frequently occurred on the websites they swept.

To conclude, the results of the ICPEN sweep indicate that dark patterns are widespread.