



AVOIDING DARK PATTERNS: CLEAR AND UNDERSTANDABLE LANGUAGE, SYMMETRY IN CHOICE

SUMMARY

- Dark patterns harm consumers by subverting and impairing their autonomy, decisionmaking, or choice.
- Dark patterns are about effect, not intent.
- Using clear and understandable language and offering consumers symmetrical choices avoids impairing and interfering with consumers' ability to make their choice.

ENFORCEMENT OBSERVATIONS

User interfaces or choice architectures that have the substantial effect of subverting or impairing a consumer's autonomy, decisionmaking, or choice are "dark patterns" under the California Consumer Privacy Act and its implementing regulations (the "CCPA"). Deploying these sorts of user interfaces is a privacy averse practice.

The Enforcement Division reminds businesses to carefully review and assess their user interfaces to ensure that they are offering symmetrical choices and using language that is easy for consumers to understand when offering privacy choices. This includes user interfaces that businesses deploy through service providers, such as consent management platforms.

ENFORCEMENT ADVISORIES GENERALLY

Enforcement Advisories address select provisions of the CCPA. Advisories do not cover all potentially applicable laws or enforcement circumstances; the Enforcement Division will make case-by-case enforcement determinations. Advisories do not implement, interpret, or make specific the law enforced or administered by the California Privacy Protection Agency, establish substantive policy or rights, constitute legal advice, or reflect the views of the Agency's Board.

Advisories do not provide any options for alternative relief or safe harbor from potential violations. The statutes and regulations control in the event of any conflicting interpretation. This Advisory provides the questions that follow as hypothetical examples of how a business might review its practices. Businesses should consult the statute, regulation, and/or an attorney before taking any action to ensure compliance with the law.



WHAT THE LAW AND REGULATIONS SAY

The CCPA states:

“Dark pattern” means a user interface designed or manipulated with the substantial effect of subverting or impairing user autonomy, decisionmaking, or choice, as further defined by regulation.

Civil Code § 1798.140(l).

“Consent” means “any freely given, specific, informed, and unambiguous indication of the consumer’s wishes by which the consumer...signifies agreement to the processing of personal information relating to the consumer for a narrowly defined particular purpose.” Civil Code § 1798.140(h). “[A]greement obtained through use of dark patterns **does not** constitute consent.” *Id.* (emphasis added).

The regulations require businesses to design and implement methods for submitting CCPA requests and obtaining consumer consent that use easy-to-understand language, and that incorporate the principle of “symmetry in choice.” See 11 CCR § 7004(a)(1)-(2).

Easy to understand. The methods shall use language that is easy for consumers to read and understand. When applicable, they shall comply with the requirements for disclosures to consumers set forth in section 7003.

11 CCR § 7004(a)(1).

[C]ommunications to consumers shall be easy to read and understandable to consumers. For example, they shall use plain, straightforward language and avoid technical or legal jargon.

11 CCR § 7003(a).

Symmetry in choice. The path for a consumer to exercise a more privacy-protective option shall not be longer or more difficult or time-consuming than the path to exercise a less privacy-protective option because that would impair or interfere with the consumer’s ability to make a choice....

11 CCR § 7004(a)(2).



The regulations provide multiple illustrative examples:

Not symmetrical or unequal choice

When the business's process for opting out of the sale/sharing of their personal information takes more steps than the process to opt back in.

See 11 CCR § 7004(a)(2)(A).

A process to opt-in to the sale of personal information that only gives the choice of "yes" and "ask me later."

See 11 CCR § 7004(a)(2)(B).

Symmetrical or equal choice

A website banner seeking the consumer's consent to use a consumer's personal information that offers the choices "Accept All" and "Decline All."

See 11 CCR § 7004(a)(2)(C).

A process to opt-in to the sale of personal information that gives the choice of "yes" and "no."

See 11 CCR § 7004(a)(2)(B).

FACTUAL SCENARIO

Business A is considering user interface designs to seek consumers' consent to use their personal information and to honor requests to opt out of sale. Business A is reviewing versions designed by a service provider as well as ones designed in house.

SAMPLE ONE

Manage Content Preferences [Privacy Policy](#)

> **Strictly Necessary Cookies** Always active

> **Performance Cookies** ☒

> **Functional Cookies** ☒

> **Targeting Cookies** ☒

> **Do Not Sell My Personal Information** ☒

[Save settings](#) **Agree**

SAMPLE TWO

Your Privacy Matters

We use cookies to personalize content, analyze traffic, and enhance your browsing experience. By using this website, you consent to our use of cookies. See our [Privacy Policy](#) for more information and options.

OK [Privacy Policy](#)



SAMPLE THREE

Before you continue...

We use cookies to deliver the best possible user experience. When you visit our website, we may store and retrieve information on your browser, or access data like your IP-address or device information. [Privacy Policy](#).

Enhance my experience

Other choices

QUESTIONS THE BUSINESS MIGHT ASK

As Business A reviews these user interfaces, it should ask itself the following questions consistent with 11 CCR §§ 7003(a) and 7004(a)(2) to determine whether: (1) the language is easy to understand and (2) the interfaces give consumers symmetrical choices:

- Is the language used to communicate with consumers **easy to read and understandable**?
- Is the language used **straightforward** and does it **avoid technical or legal jargon**?
- Is the consumer's path to saying "no" **longer** than the path to saying "yes"?
- Does the user interface make it **more difficult** to say "no" rather than "yes" to the requested use of personal information?
- Is it more **time-consuming** for the consumer to make the more privacy-protective choice?

ISSUED BY

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