

The European Way to Regulate Dark Patterns

A contribution to the debate on the
DSA, DMA and Data Act, and
Suggestions for Amendments

by
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Algorithmic Disclosure Regulation
PRIN Project
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DP: AN 'UMBRELLA TERM' WITHOUT A LEGAL DEFINITION

Different interface design strategies

Different degrees of intrusiveness (magnitude of harm)

Concerns: individual and collective welfare

Cut across different policies and agencies:
consumer, data, competition, AI

UCPD, CRD, GDPR & EPRIVACY

“Nagging”

“Urgency/Scarcity/Social Proof”

“Roach motel”

“Sneak into Basket”

“Privacy Zuckering”

“Obfuscation”

“Hidden Information”

“Confirmshaming”

“Hidden Costs”

“Hidden Subscription”

“Trick Questions”

“Disguised Ad”

“Click Fatigue”

DSA: NEW REGULATION OF DP

Recitals 39a & 62:

- Prohibit the use of structure, design or functionalities of online interfaces to distort users' decisions

EP proposed a New Art. 13a

- General prohibition (§1)
 - Non-exhaustive list of illegal DP (§1)
 - let. (a) → Obfuscation DP
 - let (b) and (c) → Nagging DP
 - let (d) → Roach Motel DP
 - let (e) → preventing right to object to data processing through PIMS
 - Commission can include new DP in the list (§2)
 - Art. 13a is without prejudice to GDPR / **and consumer protection laws**
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ART. 13A DSA: COMMENTS & PROPOSALS

Regulating DP in the DSA is well founded

- Harmful conduct that impact individual rights; safe online environment; DSA complemented by UCDP, CRD, data protection rules

To ensure compliance with Art. 13a DSA would need further amendments:

- (i) make agencies aware of the existence of DP → amend Art. 9 (notice&take down) /or/ new Art. with obligation to inform agencies about illegal interfaces + amend Art. 13 to allow investigations through data-driven techniques
 - (ii) assess that the interface at stance is effectively a DP → future cases will provide Guidance
 - (iii) understand how DP work → enhance regulators' internal expertise of AI and computational tools for investigation
 - (iv) quantify magnitude of DP → requires threshold + right to access to testing data by EC and Digital Service Coordinator (new Art.)
 - (v) quantify harm of DP → establish criteria for different DP (beyond financial loss)
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THANK YOU
FOR YOUR
ATTENTION!

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SOME WORK WE HAVE DONE USING AI TOOLS:

- **Algorithmic Disclosure Rules** (2021). In **Artificial Intelligence and the Law**. [[open access](#)]
- **Talking at Cross Purposes. A computational analysis of the debate over Informational Duties in the DSA and DMA'** (2021). In **Journal of Regulation and Technology** [[open access](#)]
- **I see something you don't see. A computational analysis of the DSA and DMA** (2021). In **Stanford Computational Antitrust** [[open access](#)]