

INTRODUCTION

Imagine that you have used your hard-earned savings to buy a ticket for your first international trip. You've done your research, found the best price, calculated taxes, and you know exactly how much you will be paying for the trip of a lifetime.

But when you get to the checkout page, you find a figure that is much higher than what you calculated. You go back a couple of pages and there, tucked away in one corner of the page, you find a line including travel insurance for your trip, and next to it, a checked box. You never checked the box, then how did this amount get added to your total bill?

Congratulations! You have become the latest victim of Dark Pattern Practices.



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Dark patterns, introduced by Harry Brignull in 2010, refer to specific design practices that manipulate users into making unintended decisions. These practices are created by online companies to coax/lure the users into going against their best interest, to the advantage of businesses. Recognising the negative impact on consumer autonomy, the **Central Consumer Protection Authority (hereinafter referred to as CCPA)** introduced the **Guidelines for Prevention and Regulation of Dark Patterns, 2023 (hereinafter referred to as DPG)** under the **Consumer Protection Act, 2019 (hereinafter referred to as CPA)**. Since dark patterns constitute unfair trade practices under the **CPA Section 2 (47)**, businesses engaging in them face severe legal consequences.

Evolution of the Guidelines:

The introduction of these guidelines represents a significant shift in India's approach to digital consumer protection. Initially, regulatory attention to dark patterns was limited to general provisions under the **CPA** and **Consumer Protection (E-Commerce) Rules, 2020 (hereinafter referred to as CPR)**. However, the need for **DPG** arose as deceptive online practices began to function within loopholes with ease. The **DPG** were developed in response to increasing consumer complaints, making the regulations more comprehensive and explicit. The framework was created by drawing from research on manipulative digital presences in the European Union and United States. This evolution reflects an effort to enhance consumer rights, prevent exploitation, and hold digital platforms accountable.

CPA and CPR:

The two main acts relating to these Guidelines are the **CPA** and **CPR**. The **CPA** empowers consumers against unfair trade practices, misleading advertisements, and defective goods or services. The **CPR** further regulates online platforms, making transparency a legal requirement. The **DPG** supplement these laws by specifically addressing exploitative designs that compromise informed consumer choices.

Enforcement of DPG:

Businesses that engage in dark patterns risk legal action, regulation, and reputational damage. The **CCPA** is responsible for enforcing these guidelines and can impose penalties for violations. The **CPA** allows consumers to file complaints against these dark patterns. If the companies fail to follow the guidelines, it can result in financial penalties under **CPA** provisions, restricting/removing the platforms online, lawsuits/litigation against the organisations and stronger action like bans for non-complying businesses.

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CONCLUSION

The **DPG** represent a significant advancement in protecting consumers in the digital space. As the digital marketplace continues to evolve, the **DPG** sets a strong precedent for responsible online practices, ensuring that consumer autonomy remains a priority in the ever-expanding digital economy. For businesses navigating these new rules, compliance is essential to avoid legal repercussions and maintain consumer trust.



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Overview of the DPG:

The 2023 guidelines define 13 categories of dark patterns, each targeting a different form of consumer manipulation:

1. **False Urgency** – Creating a fake sense of scarcity when there is no actual shortage. e.g., "Only 5 left in stock! 12 others are looking right now!"
2. **Basket Sneaking** – Adding extra items/donations to a user's cart during checkout without explicit consent with the exception of necessary fees/free samples. e.g., including add-ons with pre-ticked boxes to the consumer's cart such as travel insurance for a flight ticket.
3. **Confirm Shaming** – Guilt-tripping users into making choices by using specific phrases, ridiculing their preferred choice. e.g., "No, I don't want to save money" on subscription pop-ups, "I want to be unsecured" for luggage insurance on a flight ticket.
4. **Forced Action** – Making access to one service conditional on an unrelated action that was not disclosed in the first interaction. e.g., requiring social media sharing to proceed, forcing a consumer to join a newsletter/community to buy a product.
5. **Subscription Trap** – Creating barriers to subscription cancellation such as making it a lengthy process, hiding the cancellation option or using confusing/ambiguous instructions for cancellation. e.g., forcing users to call customer support for cancellation while allowing easy online sign-ups.
6. **Interface Interference** – Manipulating user choices through misleading designs by highlighting specific things. e.g., highlighting "Accept" over "Decline" for optional services, making the option for "No" lighter in colour or smaller in size.
7. **Bait and Switch** – Advertising one outcome but delivering another as the only option/alternative e.g., letting a consumer go through the process of buying Product X, but then at checkout saying it's out of stock and providing Product Y (more expensive but very similar product) as a "backup" option.
8. **Drip Pricing** – Hiding mandatory charges until late in the checkout process or after confirming the purchase. e.g., displaying low airline ticket prices and adding "convenience tax" at the final step, not disclosing the fact that a "free" service requires in-app purchases to be used/is only free for a limited time.
9. **Disguised Advertisements** – Making advertisements look like user-generated content instead of disclosing the true intention of the ad. e.g., sponsored articles camouflaged as news reports.
10. **Nagging** – Continuously prompting users to take unwanted and unrelated actions with overloaded requests and interruptions to the website/app disrupting the user. e.g., repeated pop-ups urging app downloads on websites, constant "Allow Notifications".
11. **Trick Questions** – Using confusing wording, vague instructions, double negatives, misguiding colours to mislead users. e.g., 'Continue' in Red and 'Cancel' in Green.
12. **SaaS Billing Exploitation** – Charging users without clear consent or misleading pricing information, charging consumers without notification on a monthly subscription, lopping the charges.
13. **Rogue Malwares** – Gaslighting users into believing their device is corrupted/they have a virus on their device and proposing fake malware removed tools that actually install the malware.

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