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ANALYSING FREE TRIAL SUBSCRIPTION MODELS: A ROUTINE BUSINESS PRACTICE OR A DARK PATTERN

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ABSTRACT

With the increase in online transactions, the purchase of products and services has become more efficient and convenient. At the same time, a competitive commercial environment has led to an increase in promotional practices aimed at attracting consumers. One such measure is the offering of free trial subscriptions for a limited period to encourage users to renew the service once it becomes paid. However, such practices may be characterised by deceptive tactics and unfair trade practices that infringe upon consumers' privacy and interests. In this context, this article aims to analyse the legal framework of consumer law in India and other countries and examine the circumstances under which these subscription models are categorised as dark patterns.

INTRODUCTION

Sellers and e-commerce platforms often rely on promotional offers, such as free trial subscriptions, to attract customers. Consumers are provided with free services for a limited period, with the option of renewal upon payment. While on the surface, such practices may seem harmless, certain platforms often employ tactics such as collecting user data for unauthorised use, making the cancellation option difficult to locate or hidden, and automatically renewing subscriptions without due notification to the user. In light of such emerging concerns, consumer protection laws and regulations are being developed by different nations in an attempt to protect consumers' interests and privacy.

THE ISSUE

In a saturated digital market, free trial models are a common marketing technique used to allow consumers to familiarise themselves with the services offered by companies. The rationale is that once they enjoy the services offered, they will be more willing to continue their subscription. The model is used by a variety of companies, such as journals, gyms, music and content streaming platforms, etc.

By definition, such models are not an unethical business practice. However, the problem arises when such platforms resort to manipulative tactics to gain consent and information from consumers. Users are asked to provide their personal, bank, UPI, and other payment details in order to access the free trial. Such techniques include auto-pay options that convert the free trial into a paid subscription without informing consumers or making it difficult for them to end the same. Hidden fees and charges are another element of such traps, wherein the offers that are advertised to attract customers do not include the actual costs that will be borne by the consumers upon acceptance. In some cases, such costs and other terms and conditions are provided but in a small font or in such a manner that they are not perceived by users upon a cursory reading.

Under the Indian Contract Act, free consent is understood to be an agreement on the same thing in the same sense, i.e., *consensus ad idem*.[1] In the context of traditional contracts, the concept of free consent has been expressly discussed and upheld. However, in the digital age where agreements are formed with the click of a button, it has become increasingly difficult to determine the extent of the acceptance given by the consumer. Therefore, with respect to digital agreements on e-commerce platforms, the provisions of the DPDP Act also come into play. The Act states that the consent given by the Data Principal shall be free, specific, informed, unconditional, and unambiguous, with a clear affirmative action, and shall signify an agreement to the processing of their personal data for the specified purpose and be limited to such personal data as is necessary for such specified purpose[2]. Further, consumers who provide their data have the right to withdraw their consent at any time, and such procedure should be as simple as providing consent in the first place[3]. Violations of such provisions attract penalties for those sellers and e-commerce platforms that qualify as data fiduciaries.

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[1] Indian Contract Act, 1872, § 13, No. 9, Acts of Parliament, 1872.
[2] Digital Personal Data Protection Act, 2023, § 6(1), No. 22, Acts of Parliament, 2023.
[3] *Id*. § 6(2).

INDIAN FRAMEWORK GOVERNING DARK PATTERNS

In the modern legal landscape, there has been a shift from the principle of *caveat emptor*, i.e., buyer beware, to *caveat venditor*, i.e., let the seller beware. Such philosophy has culminated in the creation of consumer law guided by the principles of torts and contract law. In 2019, the Consumer Protection Act [4] replaced the old Act of 1986 to adapt to the digital market and curb unfair and deceptive trade practices.

Additionally, the Consumer Protection (E-Commerce) Rules, 2020, prohibit an e-commerce entity from adopting unfair trade practices, whether in the course of the offer on its platform or otherwise.[5] Under the Consumer Protection Act, an unfair trade practice refers to any deceptive practice or a fraudulent method used by businesses to promote the sale, use, or supply of goods or services. It is a blanket term that includes these dark patterns, which are used to obtain user consent for one particular thing or service and deem it to be valid acceptance of other things that were not disclosed to the user. Moreover, the Rules state that user consent must be recorded only if it is expressed through an explicit and affirmative action, and not automatically, including in the form of pre-ticked checkboxes[6].

Further, as per the provisions of the Act, the Central Consumer Protection Authority was established to safeguard consumer rights and regulate the conduct of product and service providers by imposing penalties. Under Section 18 of the Consumer Protection Act, the Authority issues guidelines from time to time to prevent unfair trade practices and protect consumer interests.[7]

In 2023, the CCPA issued the Guidelines for Prevention and Regulation of Dark Patterns[8] to curb the deceptive and unfair trade practices of e-commerce platforms, sellers, and advertisers. According to the Guidelines, dark patterns are practices or deceptive design patterns using user interface or user experience interactions on any platform that are designed to mislead or trick users into doing something they originally did not intend or want to do, by subverting or impairing consumer autonomy, decision-making, or choice.[9]

[4] Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019.
[5] Consumer Protection (E-Commerce) Rules, 2020, Gazette of India, pt. II sec.3(i), Rule 6(1) (July 23, 2020).
[6] *Id.* Rule 4(9).
[7] Consumer Protection Act, 2019, § 18, No. 35, Acts of Parliament, 2019.
[8] Guidelines for Prevention and Regulation of Dark Patterns, 2023, Gazette of India, pt. III sec.4 (Nov. 30, 2023).
[9] *Id.* § 2(e).

The CCPA, in its Guidelines, identified 13 types of dark patterns, which include false urgency to prevent user inquiry, basket sneaking by adding more items than agreed upon, confirm shaming, i.e., using guilt as a psychological tactic, bait and switch, rogue malware, subscription traps, etc. Free trial subscription models become traps when they coerce users to provide bank details or allow the auto-pay option, hide the process of cancellation, or do not allow cancellation of the subscription easily in order to ensure conversion to a paid subscription. The Guidelines also prohibit SaaS billing, which is a process of generating and collecting payments from consumers on a recurring basis in a software as a service (SaaS) business model.[10] The Guidelines expressly state that the user must be notified when their free trial is changed into a paid subscription.

In 2025, the CCPA, in a move to strengthen compliance by e-service platforms, issued an advisory stating that such platforms must carry out self-audits to ensure that they do not employ any dark patterns as identified by the Authority, within three months from the issuance of such advisory. Further, these platforms must issue a declaration stating that they have complied with the directions and are free from dark patterns.

The CCPA is authorised to conduct an inquiry to ascertain whether a company is employing dark patterns, either suo moto or on the basis of a consumer complaint[11]. The Guidelines do not expressly state the penalties resulting from the employment of such dark patterns. However, the penalties that can be imposed by the Authority are provided in the Consumer Protection Act. The Authority has the power to order the recall of dangerous, hazardous, or unsafe goods, and the reimbursement of the purchase price. Further, with respect to misleading advertisements, the CCPA can impose a fine up to ₹10 lakh for the first offence and up to ₹50 lakhs for subsequent offences. Non-compliance with such orders can result in imprisonment for up to six months, a fine of up to ₹20 lakh, or both.[12]

INTERNATIONAL REGULATIONS

European Union

[10] Guidelines for Prevention and Regulation of Dark Patterns, 2023, Gazette of India, pt. III sec.4, § 5 (Nov. 30, 2023).
[11] National Restaurant Assn. of India v. Union of India, 2025 SCC OnLine Del 1975.
[12] Consumer Protection Act, 2019, § § 20, 21, 88, No. 35, Acts of Parliament, 2019.

The European Parliament adopted the Unfair Commercial Practices Directive, 2005, and the Consumer Rights Directive, 2011, to safeguard consumer interests from subscription traps.[13] These directives state that details like the period of the free trial, the subscription price, the frequency of billing, etc., must be notified to the consumer. The directives further prohibit other dark patterns like bait-and-switch and require that cancelling a subscription be as easy as signing up for one. Further, a 14-day period for cancellation is also available to consumers.

UK

In the UK, new measures aimed at curbing dark patterns will be added to the Digital Markets, Competition and Consumers Act, 2024, in 2027. Such measures include the disclosure of information relating to the subscription before the free trial, an easy cancellation process, timely reminders regarding the expiry of the free trial, and a 14-day cooling-off period in the case of an increase in the price or the conversion of the subscription into a paid one.[14]

USA

In the USA, the regulations relating to consumer protection and the prohibition of dark patterns are formulated by the Federal Trade Commission. In 2025, the FTC adopted the “click to cancel” rule, whereby e-commerce platforms were ordered to make the cancellation process of subscriptions uncomplicated, convenient, and free from the use of chatbots. The rule was struck down by the U.S. Court of Appeals for the Eighth Circuit due to the failure to follow the procedural rules. However, under the provisions of the Restore Online Shoppers’ Confidence Act (ROSCA) and Section 5 of the FTC Act, the FTC established rules relating to subscription traps[15]. The new rules state that e-commerce platforms must clearly and unambiguously disclose the terms of auto-renewal and allow easy cancellation in the same manner in which consent was taken for accessing subscriptions or free trials.

The FTC filed a lawsuit against Amazon on the grounds that its auto-renewal policies and difficult cancellation process were violative of consumer autonomy and privacy. In 2025, a

[13] *Subscription Cancellations: Enforce the Rules, Don't Rewrite Them*, EUROPEAN TECH ALLIANCE (Apr. 23, 2025), https://eutechalliance.eu/subscription-cancellations-enforce-the-rules-dont-rewrite-them/.

[14] Anna Blest & Richard Shaw, *UK Government Targets Subscription Traps: What Businesses Need to Know*, BRYAN CAVE LEIGHTON PAISNER (July 19, 2026, 2:00 PM), https://www.bclplaw.com/en-US/events-insights-news/uk-government-targets-subscription-traps-what-businesses-need-to-know.html.

[15] Brian J. Goodrich, Benjamin Genn & Ceijenia J. Cornelius, *FTC Steps Up Subscription Enforcement After "Click to Cancel" Rule Struck Down*, HOLLAND & KNIGHT (July 19, 2026, 3:15 PM), https://www.hklaw.com/en/insights/publications/2025/09/ftc-steps-up-subscription-enforcement-after-click-to-cancel-rule.

settlement was reached between the parties, wherein a fine of $2.5 billion was imposed on Amazon.[16] Amazon was further directed to mandatorily disclose the price and terms of the auto-renewal of the subscription during sign-up and provide an option to the consumer to opt out of the membership without any hindrance. Subsequently, the CCPA also issued a notice to Amazon due to the employment of dark patterns like subscription traps and misleading UI design.[17]

CONCLUSION

Dark patterns in the form of free trial subscription models characterised by deception and unfair trade practices have become an emerging issue within the realm of consumer rights and digital privacy law. In response to the same, the Central Consumer Protection Authority of India has taken progressive steps to protect consumer rights and operate in harmony with the international regulatory framework on dark patterns. However, problems in implementation and the convergence of various regulations, like the Consumer Protection Act, the CCPA Guidelines, and the DPDP Act, have created a complex framework wherein the penalties are not clearly specified. Further, as adopted in the European Union and the UK, e-commerce platforms should be required to implement a 14-day cooling-off period, allowing consumers to cancel a free trial or a discounted subscription.

[16] Press Release, Federal Trade Commission, FTC Secures Historic $2.5 Billion Settlement Against Amazon (Sept. 25, 2025), https://www.ftc.gov/news-events/news/press-releases/2025/09/ftc-secures-historic-25-billion settlement-against-amazon.

[17] Neha, *Dark Patterns Outlawed: Online Platforms to Watch Out*, SCC TIMES (July 19, 2026, 3:30 PM), https://www.scconline.com/blog/post/2025/02/27/dark-patterns-outlawed-online-platforms-to-watch-out/.