

## Asia Internet Coalition (AIC) Industry Submission on Draft Guidelines for Prevention and Regulation of Dark Patterns, 2023

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5 October 2023

To  
Sri Anupam Mishra  
Joint Secretary  
Department of Consumer Affairs  
Ministry of Consumer Affairs, Government of India

We, at the [Asia Internet Coalition](#) (“AIC”), are grateful to the Department of Consumer Affairs (“DoCA”) for providing us the opportunity to comment on the draft Guidelines for Prevention and Regulation of Dark Patterns, 2023 (“[Draft Dark Pattern Guidelines](#)”). We acknowledge the need to address concerns regarding the use of dark patterns on the internet to promote and protect the consumer’s rights and well-being. In this regard, the public consultation process undertaken by DoCA is a welcome step.

As an industry association comprising leading internet and technology companies, AIC is committed to the cause of a safe and open internet. This endeavour includes addressing the use of dark patterns on online platforms and services. In this regard, we have provided our comments to the Draft Dark Pattern Guidelines below.

### **Detailed Comments to the Draft Dark Patterns Guidelines**

#### **I. Preliminary Remarks**

##### **A. The current self-regulatory model is sufficient to regulate dark patterns.**

1. To aid the growing digital economy in India, it is important to ensure that online, e-commerce, and digital advertising services are able to meet the costs of doing business. The current formulation of the Draft Dark Pattern Guidelines will increase the regulatory burden on these online, e-commerce and digital advertising services. These additional regulatory compliances may stagnate the growth of India’s digital economy by having an adverse effect on the ease of doing business. Thus, we request the DoCA to consider the current self-regulatory framework as the first step in combating the use of dark patterns.
2. Considering the evolving nature of technology and the technological workarounds that are used to deploy dark patterns on the internet, the regulation tackling such dark patterns should be dynamic in nature. Self-regulation allows companies to continuously change and adapt their internal policies in response to evolving technologies while also ensuring accountability on the part of the relevant market players. A self-regulatory framework is able to achieve this without increasing the burden of compliances on platforms and online services/products.

3. Online platforms, and especially online advertisements, are already regulated under various existing laws. For instance, those online platforms that qualify as online intermediaries are regulated under the Information Technology Act 2000 (“**IT Act**”). Whereas e-commerce platforms are regulated under the Consumer Protection Act 2019 (“**CPA**”). Additionally, sector-agnostic obligations under the Digital Personal Data Protection Act 2023 (“**DPDP Act**”) also apply. Self-regulation can ensure that the attempt to regulate dark patterns is in harmony with these already existing obligations.
4. Further, these existing laws require online platforms such as online intermediaries and e-commerce platforms to have consumer grievance redressal mechanisms. Currently, these grievance redressal mechanisms can be availed by users to address their grievances against dark patterns. However, no such obligation is applicable to advertisers under the CPA. While existing laws extend the requirement of a grievance redressal mechanism to online platforms and services, they do not apply to advertisers. We request the DoCA to consider extending equivalent obligations to advertisers under the existing CPA framework. This would allow consumers to raise their grievances against advertisers and hold them accountable for their use of dark patterns in online advertisements.

## **B. Regulatory Overlap with existing laws.**

1. Existing laws in India already account for the regulation and prevention of dark patterns (as further discussed below). Any attempt to introduce a separate regulatory framework would cause unnecessary regulatory overlap. This overlap will result in divergence across applicable legal frameworks leading to uncertainty in terms of compliance requirements. The combined effect would be a negative impact on the ease of doing business of these digital service providers.
2. The following existing and upcoming laws adequately regulate dark patterns:
  - a. **CPA:** Under the CPA dark patterns such as drip pricing, disguised advertisements, false urgency, etc. are already regulated as they constitute unfair trade practices or misleading advertisements. The Central Consumer Protection Authority’s (“**CCPA**”) Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (“**Misleading Ads Guidelines**”) provide for specific guidelines in this regard which apply to both online and offline advertisements. The CPA and especially the Misleading Ads Guidelines act as a sector-agnostic regulation and any further regulation would lead to overlap with compliance requirements under it.
  - b. **DPDP Act:** Dark patterns such as interface interference and subscription trap, which concern the privacy rights of consumers, can be tackled through the data processing obligations under the DPDP Act. For instance, the data fiduciaries are required to obtain free, informed, and clear consent through an affirmative action for data collection. Therefore, principles of transparency and data minimisation are already an integral part of the obligations under the DPDP Act. This ensures that data fiduciaries’ design

practices cannot include dark patterns if they are to remain compliant with the DPDP Act.

- c. **IT Act:** The IT Act and the rules made thereunder, impose specific obligations on online intermediaries and additional obligations on online platforms such as social media intermediaries, online gaming intermediaries etc. These regulations also curb the usage of dark patterns on the platforms of these regulated digital service providers.
  - d. **DIA:** The upcoming Digital India Act (“DIA”) will also be well-equipped to regulate dark patterns on the internet through user safety provisions. It is likely to impose obligations on online platforms and digital services to ensure user safety on the internet.
3. We recommend the DoCA consider adopting the approach taken by the European Union (“EU”) which is already at an advanced stage of regulating dark patterns. The EU already had various principle-based obligations that were imposed on online service providers through directives such as the Unfair Commercial Practices Directive, the Digital Services Act, and the General Data Protection Regulation. The EU relied on these existing laws and regulations to curb the use of dark patterns. This prevented any regulatory overlap for online platforms and service providers. Similarly, India has existing laws such as the IT Act, CPA, and DPDP Act which can be relied on to regulate the use of dark patterns. We request the DoCA to consider this approach before taking steps to introduce additional regulatory obligations such as the Draft Dark Pattern Guidelines. In case the DoCA feels a separate regulatory framework is required, then we suggest that such regulation be sector and medium-agnostic and apply to both offline and online content and advertisements.

## II. Specific Comments on the Draft Dark Pattern Guidelines

We have provided our comments on the proposed Draft Dark Pattern Guidelines in a clause-by-clause manner in the following table for ease of reference.

S. No.	Guidelines	Observations and Suggestions
1.	Guideline 1: Short title and commencement.	<p>The Draft Dark Pattern Guidelines will be brought into force on being published in the Official Gazette by the DoCA. However, this would create regulatory hurdles for stakeholders with respect to complying with the applicable regulations in a timely manner. As a result, they will face the risk of attracting penal provisions for non-compliance immediately upon enforcement of the regulation.</p> <p><i>Recommendation:</i> We therefore recommend that the DoCA should provide a sufficient buffer period between the publication and implementation of the Draft Dark Pattern Guidelines. A similar approach was adopted in case of the Advertisement Standard Council of India’s (“ASCI”) ‘Guidelines for Online Deceptive Design Patterns in Advertising’ (“ASCI Dark Pattern</p>

		<p><b>Guidelines</b>”), wherein a draft version was published on 11 May 2023, an official copy was released on 15 June 2023 but were finally made effective from 1 September 2023.</p>
2.	Guideline 2: Definitions	
	Guideline 2(1)(d): “Commercial Gains”	We note that this term has not been used anywhere in the Draft Dark Pattern Guidelines. Therefore, the DoCA should consider removing it from the list of defined terms.
	Guideline 2(1)(e): “Dark Patterns” and Guideline 2(1)(i): “Specified Dark Patterns”	<p>We note that “Dark Patterns” are defined along with “Specified Dark Patterns”. The former is a prescriptive exclusive definition which refers to “<i>any practices or deceptive design pattern</i>” on any platform which is “<i>designed to mislead or trick users to do something they originally did not intend or want to do</i>”. Whereas the latter refers to the list of dark patterns specified in Schedule I to the Draft Dark Patterns Guidelines. Two such similar terms are not required, especially considering they are already interlinked. Considering that the issue of dark patterns is relatively new, and it is likely that new dark patterns may emerge, we recommend avoiding a prescriptive definition which runs the risk of becoming outdated.</p> <p><i>Recommendation:</i> We, therefore, would like to request that “dark patterns” should be defined as:  <i>“Dark patterns” shall mean the dark patterns listed and defined in Annexure 1 and any other dark pattern that the CCPA may include in Annexure 1 from time to time, where such dark pattern amounts to misleading advertisement or unfair trade practice or violation of consumer rights under the Act.</i></p> <p>Accordingly, the definition of “specified dark patterns” should be removed. This would provide flexibility to the DoCA to include any kind of dark patterns by amending Annexure 1 without substantially amending the guidelines.</p>
	Guideline 2(1)(g): “Platform”	We note that “platforms” are defined as having the same meaning under the Consumer Protection (E-Commerce) Rules 2020 (“ <b>E-Commerce Rules</b> ”). However, such a broad definition also covers intermediaries which are regulated under the IT Act and can avail the safe harbour protection under Section 79 of the IT Act. This includes platforms which provide a neutral conduit for consumers to access third party content and information without altering the

		<p>same. The E-Commerce Rules account for this exception under Rule 5 wherein marketplace e-commerce entities can avail the safe harbour protection by complying with Section 79 of the IT Act and the rules made thereunder. But a similar exception is not present under the Draft Dark Pattern Guidelines. As a result, online intermediary platforms can be held responsible for the dark patterns that may be present in third party content and advertisements hosted by them, which is against the safe harbour protections available to intermediaries. In this regard, please refer to our detailed comments against ‘Guideline 4’, provided below.</p> <p><i>Recommendation:</i> Considering, the importance of safe harbour provision for intermediary platforms (further explained below), we request the DoCA to consider the following definition:</p> <p><i>“Platform” means an online interface which can include any website or a part thereof and applications, excluding intermediaries which comply with Section 79 of the Information Technology Act 2000 and the rules made thereunder.</i></p>
	<p>Guideline 2(1)(j): “User”</p>	<p>The CPA and the rules and guidelines made thereunder have the common aim to provide for protection of the consumer’s interests and well-being (whether as individuals or as a class). A consumer under the CPA is defined as “any user of such goods other than the person who buys such goods for consideration...”. To ensure consistency and uniformity with the entire CPA framework, the term “user” used in the Dark Pattern Guidelines should be substituted with the term “consumer”, as defined under the CPA.</p> <p><i>Recommendation:</i> We suggest that “consumer” can be defined under the Draft Dark Pattern Guidelines as having “the same meaning as defined under the Act (CPA)”. Accordingly, the term “user” can be removed.</p>
	<p>Lack of definition of the term “endorser”</p>	<p>We note that the Draft Dark Pattern Guidelines lacks a definition of the term “endorser”. We request the DoCA to define this term under the Draft Dark Pattern Guidelines so that the dark pattern of disguised advertisements, which includes endorsements from influencers and celebrities, may be adequately addressed. Including this definition would enable individuals to hold endorsers liable for their use of dark patterns. In this regard, we have also recommended certain changes to Annexure-1 on ‘disguised advertisements’, as outlined below.</p>

		<p>The Misleading Ads Guidelines defines an endorser as any person who makes an endorsement of any goods or services in an advertisement through its opinions, experiences, beliefs, and findings. Such a definition should be included under the Draft Dark Pattern Guidelines as well.</p> <p><i>Recommendation:</i> The DoCA should consider adding a definition of the term “endorser”, which shall have the same meaning as provided under the Misleading Ads Guidelines. This will ensure regulatory consistency within the CPA framework.</p>
3.	Guideline 3: Application	<p>In furtherance of our recommendation to include a definition for the term “endorser”, we request the DoCA to revise the applicability clause. The Draft Dark Pattern Guidelines should also apply to endorsers, in addition to advertisers, platforms and sellers.</p>
4.	Guideline 4: Prohibition against engaging in dark patterns	<p>At present, the Draft Dark Pattern Guidelines provide for a blanket provision requiring that no person including platforms should engage in any dark pattern. However, such a blanket provision would raise serious concerns for online intermediaries.</p> <p>This provision holds online intermediaries responsible for dark patterns deployed through third party content, including where they merely provide hosting services. Such a responsibility would translate into an obligation on the part of the intermediaries to review and select the information that can be viewed by a user through its platform. As a result, intermediaries will lose their safe harbour protection under Section 79 of the IT Act. We would like to further elaborate on the concerns as follows:</p> <ul style="list-style-type: none"> <li>▪ Shifting the responsibility for third party content that may contain dark patterns on to intermediaries would require intermediaries to constantly review and proactively monitor all content before hosting it on their platform. The Supreme Court in the case of <i>Shreya Singhal v Union of India (2015) 5 SCC 1</i>, had held that intermediaries are not required to proactively monitor user-generated content before publishing it on their website/platforms. This would act as a barrier towards the user’s exercise of their freedom of speech and expression.</li> <li>▪ An attempt to proactively monitor the user-generated content can result in intermediary platforms being considered ‘publishers’ of third-party content. It will attract additional compliance requirements under the IT Act</li> </ul>



		<p>framework. In addition, the intermediaries could also lose their safe harbour protection.</p> <ul style="list-style-type: none"> <li>▪ There is a risk of over-monitoring by intermediaries since they will be over cautious in trying to prevent the use of any dark patterns on their platforms. This may lead to censoring legitimate user generated content thereby impeding the exercise of the users’ freedom of speech and expression.</li> </ul> <p><i>Recommendation:</i> Reiterating our recommendation to revise the definition of “platform”, we request that a proviso be added to this provision to exclude intermediaries from being held liable for user-generated or third-party content. This will also be in line with the approach followed under the E-Commerce Rules wherein e-commerce marketplace platforms are not held responsible for third-party content. The DoCA may consider the addition of the following proviso:</p> <p><i>Provided that all platforms which is hosting third-party generated content and advertisements in accordance with Section 79 of the Information Technology Act 2000 and the rules made thereunder, shall not be held liable under this guideline.</i></p>
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### III. Specific Comments for the dark patterns listed under the Draft Dark Pattern Guidelines

In addition to the clause-by-clause analysis provided above, we also would like to take the opportunity to give detailed comments regarding the regulatory framework envisaged for each dark pattern listed in Annexure 1 to the Draft Dark Pattern Guidelines. At the outset, these dark patterns are already adequately regulated under various existing laws in India. Any additional regulation would lead to both regulatory overlap and increased compliance requirements and costs for advertisers, endorsers, platforms and sellers.

S. No.	Dark Patterns	Observations and Suggestions
1.	False Urgency	<p>‘False urgency’ refers to the practice of providing false information to consumers to induce an immediate action (such as purchase of goods/services) by creating a false sense of emergency. We note that such dark patterns are already regulated through the following set of existing laws:</p> <ul style="list-style-type: none"> <li>▪ The ASCI Dark Pattern Guidelines require that, in case of a consumer complaint, the onus is on the advertiser to prove</li> </ul>

		<p>that no false sense of urgency was communicated to the consumer. The advertiser is required to prove that when the limited quantity message appeared in the ads, the stock position was such that the sense of urgency created was not misleading in nature. This requirement helps in redressing the harm caused by usage of dark patterns such as false urgency.</p> <ul style="list-style-type: none"> <li>▪ Any advertisement containing such a dark pattern, can amount to a misleading advertisement as per Section 2(28) of the CPA, because it falsely describes a product such as its quality, quantity, etc. Further, the Misleading Ads Guidelines require that advertisements should include “<i>honest and truthful representations</i>”. Therefore, advertisements which create a sense of false urgency with an intention to mislead the consumers would be prohibited under the Misleading Ads Guidelines.</li> <li>▪ Any content or advertisement which creates a false urgency is also an unfair trade practice as they are deceptive practices that are adopted to promote the purchase of goods and services by consumers [refer to Section 2(47) of the CPA].</li> </ul> <p>Notably, such ads or content which contain dark patterns such as ‘false urgency’ and therefore amount to an unfair trade practice or a misleading advertisement are regulated under the CPA framework. Any manufacturer or endorser using such ads or content can be penalised by the consumer dispute redressal commissions under the CPA (“<b>Consumer Commissions</b>”). The Consumer Commissions can also order for discontinuing such ads or order that a corrective advertisement be issued. Any contravention of such orders can lead to criminal penalties under the CPA. Even the CCPA is empowered under the CPA to conduct investigations into unfair trade practices and misleading advertisements. Any adverse finding by the CCPA can lead to civil penalties for the manufacturer or the endorser or the publisher along with orders for corrective measures. Given that an effective enforcement mechanism already exists under the CPA framework, dark patterns such as false urgency should not be separately regulated through the Draft Dark Pattern Guidelines.</p>
2.	Basket Sneaking	‘Basket sneaking’ refers to the practice of adding extra goods or services or payments towards charity at the time of checking out from a platform. Such deceptive practices are already regulated



		<p>under existing laws and through internal platform policies, as provided below:</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> Basket sneaking tactics are deceptive practices that are adopted at the time of offering goods or services on a platform. Hence, they are likely to be considered as an ‘unfair trade practice’ under the CPA. Further, these patterns often appear in the form of pre-ticked boxes which prevent the consumers to provide explicit consent for any additional goods/services that have been added automatically to the online shopping cart. This is explicitly prohibited under rule 4(9) of the E-Commerce Rules and can lead to penalties for marketplace platforms. Please also refer to our comments above under ‘false urgency’ with respect to the powers of the CCPA and the Consumer Commissions to regulate unfair trade practices under the CPA.</li> <li>▪ <i>Internal policies:</i> Platform operators and digital service providers have internal policies which include self-regulatory provisions based on existing law. For instance, the requirement to not have pre-ticked boxes at the stage of check-out and payment, or cautioning consumers to cross-check the detailed breakup of the payment to be made, etc.</li> </ul> <p>Therefore, online platforms have internal policies in addition to complying with the existing law, to ensure the effective prevention of dark patterns such as basket sneaking. No additional regulation is required in this regard as it would lead to regulatory overlap.</p>
3.	Confirm Shaming	<p>‘Confirm shaming’ relates to the use of a phrase, video, audio, etc. to create a sense of shame or fear or guilt in the consumer. The aim of such techniques is to nudge the consumer to procure certain goods or services or continue with a subscription etc. They affect the freedom of choice that should be available with consumers.</p> <p>‘Confirm shaming’ patterns are already regulated under existing laws (as discussed below) and any additional regulation would create unnecessary regulatory hurdles for online platforms.</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> Under the CPA, practices such as confirm shaming amount to unfair trade practices as they mislead and manipulate consumers to make unwanted choices or exploit their interests. Any e-commerce entity or sellers on such e-commerce marketplace platforms adopting such</li> </ul>

		<p>unfair trade practices can be penalised under the CPA [Please refer Rule 4(3) and 6(1) of the E-Commerce Rules]. Further, the Misleading Ads Guidelines require that any advertisement should not exploit the inexperience or sense of loyalty of children, which is often the aim in case of confirm shaming [Guideline 8(b)]. It also prohibits any advertisement which misleads the consumer to the extent of posing a risk to the consumers’ personal or family security [Guideline 4(e)].</p> <p>Please see our comments above on ‘False Urgency’ for details on the powers of the CCPA and Consumer Commissions with respect to misleading advertisements.</p> <ul style="list-style-type: none"> <li>▪ <i>Internal policies:</i> Additionally, internal policies implemented by online platforms including intermediaries impose positive obligations on content generators and third parties. For example, certain platforms have advertising policies which require that advertisements should only contain such information that is relevant to the goods or services being provided and appropriate for the intended audience.</li> </ul> <p>In sum, these policies act as an extra layer of protection to prevent confirm shaming practices, in addition to the existing law.</p>
4.	Forced Action	<p>‘Forced action’ is a practice of forcing the consumer to procure additional goods/services or subscribe to unrelated services as a pre-requisite to procure the originally intended goods/services.</p> <p>We note that dark patterns such as forced action can be adequately addressed through the strict consent requirements under the DPDP Act. Section 6 of the DPDP Act requires that the consent for data processing should be unconditional and free and obtained for only such processing that is necessary for the specified purpose. If consumers are conditioned to consent to processing of their data for other unrelated services in order to procure the intended goods/services, then it will violate the consent requirements under the DPDP Act. These provisions can act as adequate safeguards to prevent the harm caused by deployment of dark patterns such as forced action.</p>
5.	Subscription Trap	<p>‘Subscription trap’ refers to practices which effectively prevent the consumers from unsubscribing from a particular service. However, the ‘subscription trap’ dark pattern can be adequately regulated</p>

		<p>through the guardrails present under existing laws and internal policies of platforms.</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> Practices such as ‘subscription trap’ would not be allowed under the DPDP Act. To elaborate, where consent of the consumer forms the ground for processing their personal data to provide goods/services, they are allowed to withdraw their consent. This process of withdrawal of consent should be of “comparable ease” as compared to the process of providing consent [Section 6(4)]. This provision would prevent the usage of ‘subscription trap’ tactics, as defined under the Draft Dark Pattern Guidelines. The DPDP Act also provides for a strict penalty regime in case its provisions are contravened by any entity including online service providers. Such practices would also amount to an unfair trade practice under the CPA. Please see our comments above under ‘False Urgency’ for details on the powers of the CCPA and Consumer Commissions with respect to unfair trade practices.</li> <li>▪ <i>Internal policies:</i> Online platforms have internal policies to also regulate such practices. For instance, they do not allow advertisers to post ads that direct consumers for subscription services including negative options or automatic renewal. Other examples include, for instance, a mandatory requirement to disclose the methods of unsubscribing from services or to provide for payment details including recurring charges as part of subscription service requirements.</li> </ul> <p>In our opinion, no further regulatory framework is required to regulate dark patterns like ‘subscription trap’.</p>
6.	Interface Interference	<p>Dark patterns such as ‘interface interference’ misdirect consumers by highlighting irrelevant information and obscuring relevant information in online content and advertisements. We acknowledge the need to regulate such dark patterns as they are detrimental to customers’ interests. However, existing laws and internal platform policies already account for the same, as discussed below:</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> There are already existing legal frameworks that adequately govern the dark pattern of ‘interface interference’ – especially since it could constitute an unfair</li> </ul>

		<p>trade practice under the CPA. No such unfair trade practices should be deployed by marketplace platforms and sellers as well [Rules 4(3) and 6(1) of the E-Commerce Rules]. Further, every manufacturer, service provider, advertiser and advertising agency should ensure that advertisements do not contain misleading content for consumers such as ambiguous or exaggerated information or omission of relevant information [Guideline 12(d) under the Misleading Ads Guidelines]. As explained above, these existing obligations are enforced by the CCPA and Consumer Commissions through investigative measures and consumer grievance redressal mechanism present under the CPA.</p> <ul style="list-style-type: none"> <li>▪ <i>Internal policies:</i> Further, online platforms have adopted internal policies wherein advertisers should clearly disclose the nature of online content as an advertisement along with the option to skip or close such an advertisement. These policies along with the already existing and effective legal framework provide adequate safeguards to prevent the usage of dark patterns like ‘interface interference’.</li> </ul>
7.	Bait and Switch	<p>The dark pattern of ‘bait and switch’ is typically deployed in advertisements. There are existing laws that could apply to the use of ‘bait and switch’ practices by online platforms, as discussed below:</p> <p><i>Existing law:</i> At the outset, ‘bait and switch’ practices amount to unfair trade practice as per Section 2(47) of the CPA and accordingly marketplace platforms and sellers should not adopt such practices as per the E-Commerce Rules. Reiterating our comments under ‘False Urgency’, the CCPA and Consumer Commissions have requisite powers to regulate such unfair trade practices.</p> <p>Further, marketplace platforms are allowed to obtain undertakings from sellers to ensure that the description contained in advertisements accurately represent the characteristics such as nature, quality, etc. of the goods/services [Rule 5(2) of E-Commerce Rules].</p> <p>Notably, the Misleading Ads Guidelines require that any advertisement which acts as a bait for the consumer should fulfil certain pre-requisites such as – (i) it should not mislead the</p>

		<p>consumer with respect to the prospect of selling such goods or services; (ii) the advertiser should ensure that there is adequate supply of goods and services being advertised; (iii) if the advertiser will be unable to supply the goods/services within a reasonable time then the reasons for the same should be stated, and so on [Guideline 5]. Further, every advertiser should ensure that an advertisement does not contain ambiguous information or omit relevant information, etc. [Guideline 12(d)]. ‘Bait and switch’ advertisements are also regulated under the ASCI Dark Pattern Guidelines.</p> <p>Therefore, any further attempt to regulate ‘bait and switch’ tactics under a separate regulation is unnecessary.</p>
8.	Drip Pricing	<p>‘Drip pricing’ techniques are already regulated under the CPA framework (as discussed below). Besides the powers of the CCPA and the Consumer Commissions, positive obligations imposed on online platforms are also instrumental to prohibit such techniques, as discussed below:</p> <ul style="list-style-type: none"> <li>▪ Under the CPA, consumers have the right to be informed about the accurate price of the goods/services being offered [Section 2(9)(ii)]. A consumer can file a complaint before the Consumer Commissions in case of violation of the said right [Section 17]. Further, any trade practice which materially misleads the consumer regarding the prices of the goods/services, would amount to unfair trade practices. [Section 2(47)(i)(i)].</li> <li>▪ Under the E-Commerce Rules, every seller on marketplace e-commerce platforms and inventory e-commerce platforms should provide a detailed breakup of the prices to be paid for any goods/services. The detailed break-up should also indicate the different voluntary and mandatory charges involved [Rules 6(5)(b) and 7(1)(e)]. Reiterating our comments under ‘False Urgency’, the CCPA and Consumer Commissions are provided with requisite powers to regulate such unfair trade practices.</li> <li>▪ The ASCI Dark Pattern Guidelines considers any online advertisement to be misleading which fails to provide a complete representation of the prices and charges involved in the supply of the goods/services. Therefore, any advertisement using ‘drip pricing’ techniques would amount to misleading advertisements.</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Internal policies which are drafted according to the existing laws, also require that a true and complete representation of all prices and charges involved should be provided by the sellers and advertisers.</li> </ul> <p>We, therefore, recommend that existing laws are sufficient to prevent the usage of unfair trade practices such as drip pricing.</p>
9.	Disguised Advertisement	<p>The Draft Dark Patterns Guidelines define ‘disguised advertisements’ as the practice of masking advertisements as user-generated content or news articles. Such dark patterns are already adequately regulated under existing laws as elaborated below:</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> At the outset, any such practice is likely to amount to a ‘misleading advertisement’ which is prohibited under the CPA. The Misleading Ads Guidelines have further stringent regulations to curb the usage of disguised advertisements. Every advertiser is required to ensure that an advertisement should not have any ambiguous information, omission of relevant information, etc. with an intention to mislead consumers [<i>Guideline 12(d)</i>]. Incremental obligations are imposed on endorsers, such as, they are required to disclose any connection with the advertiser that can materially affect the credibility or value of the advertisement [<i>Guideline 14</i>]. This helps in regulating ‘disguised advertisements’ under the Misleading Ads Guidelines. <p>Reiterating our comments above under ‘false urgency’, we wish to highlight the powers of the CCPA and the Consumer Commissions to enforce and redress any grievances under the CPA.</p> <li>▪ <i>Self-regulatory codes:</i> In this regard, the self-regulatory codes developed by ASCI are instrumental in curbing the usage of disguised advertisement techniques. For instance, ASCI Dark Pattern Guidelines directly require that any advertisement that can be disguised as editorial or organic content should carry clear disclosures. Further, the ASCI’s Guidelines for Influencer Advertising in Digital Media, 2021 require that any endorser or influencer should clearly disclose with prominent labels that its content is an advertisement and is adversarial in nature.</li> <li>▪ <i>Internal policies:</i> Online platforms and service providers also require that any online content or webpages should not be disguised as an advertisement to mislead consumers. E-</li> </li></ul>



		<p>commerce platforms contain specific policies requiring that any seller should not use advertisements which aim to entice consumers based on false pretences.</p> <p>Therefore, besides the existing framework, any further regulation would lead to unnecessary regulatory burden for the online platforms.</p> <p>We further request the DoCA to consider specifying the obligations of content creators such as advertisers, sellers, influencers and endorses who can also deploy disguised advertisements. However, any online intermediary platform should not be held responsible for merely hosting third party user generated content which might include the usage of dark patterns. In this regard, please refer to our comments under Guideline 4 provided above. Further, the CPA, Misleading Ads Guidelines and the ASCI self-regulatory codes all provide for specific positive obligations for different classes of content creators. Therefore, we request the DoCA to consider the following revisions to the definition of ‘disguised advertisement’ under Annexure 1:</p> <ul style="list-style-type: none"> <li>▪ The clause (b) under the Explanation to the definition of ‘disguised advertisement’ should also hold the endorser or any other third party (engaged by the seller or advertiser to create promotion related content) responsible to make disclosures regarding the nature of a content as an advertisement.</li> <li>▪ A third clause (c) should be added to the Explanation, as provided below:  <i>“Platforms which are acting as intermediaries and are in compliance with Section 79 of the Information Technology Act 2000 and the rules made thereunder should not be liable for the disguised advertisements published by third parties”.</i></li> </ul>
10.	Nagging	<p>Nagging is a technique aimed to disrupt the intended transaction by providing unrelated requests, information, etc. to a consumer while purchasing any goods or services. We wish to highlight that existing laws and internal platform policies already adequately regulate such nagging techniques, for instance:</p> <ul style="list-style-type: none"> <li>▪ <i>Existing law:</i> Nagging techniques are likely to constitute an unfair trade practice under the CPA. Please refer to our comments above under ‘false urgency’ for an overview of</li> </ul>

		<p>the existing regulatory framework under the CPA with respect to unfair trade practices.</p> <ul style="list-style-type: none"> <li>▪ <i>Internal policies:</i> The online platforms and especially e-commerce platforms and service providers include policies to tackle nagging techniques. For instance, e-commerce platforms prevent the incidence of spam messages at high frequencies, operating systems do not allow the use of their services for sending phishing messages or unsolicited commercial communications, etc.</li> </ul> <p>Therefore, the existing framework can effectively curb the usage and deployment of dark patterns and redress the harm caused by them to the consumers' interests and well-being.</p>
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Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact us directly at [Secretariat@aicasia.org](mailto:Secretariat@aicasia.org) or +65 8739 1490. Thank you for your time and consideration. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through stakeholder meetings and discussions.

Sincerely,



**Jeff Paine**  
**Managing Director**  
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