

The Study on "Dark Pattern" Behaviors in Digital Markets and Issues of Competition and Consumer Protection

Abstract

Keywords : Dark Patterns, Consumer Manipulation, Website Design, EU Unfair Commercial Practices Directive, Section 5 of the U.S. Federal Trade Commission Act

This report aims to investigate various "dark pattern" tactics employed by websites in the digital market and the resulting issues related to competition and consumer protection.

In Chapter 2, the report categorizes "dark pattern" behaviors in digital markets and provides specific examples. It primarily compiles classification methods proposed by academia, as well as those presented in official reports from the EU, UK, U.S., and South Korea, to offer explanations and comparisons. We found that the classification of nineteen types proposed by Luguri et al. (2019) is the most widely adopted. Leiser & Yang (2022) attempted to introduce a four-tiered classification system similar to the structure of the EU's Unfair Commercial Practices Directive (UCPD).

Furthermore, Chapter 2 also examines the impact of dark patterns on consumer decision-making and the various physiological and psychological effects these patterns can have on consumers, leading to behavioral changes. This section mainly references existing academic literature and official reports, including behavioral economics theories and various empirical studies.

Chapter 3 of the report investigates the enforcement goals, strategies, and tools used by competition law authorities in various countries to address "dark

pattern" behaviors in digital markets. It focuses on the relevant regulations and enforcement tools available in the EU and the U.S. to handle dark patterns. Although dark patterns may also violate other scattered regulations, the primary legal framework cited by national authorities in their investigations and penalties at the EU level is the EU's Unfair Commercial Practices Directive. In the U.S., out of eight representative cases handled by the FTC involving dark patterns, the FTC mostly invoked Section 5 of the FTC Act, which deals with deceptive or unfair practices, as the main basis for penalties or prosecution.

In addition to existing regulations that can be used to penalize dark patterns, this study found that the EU and other countries are gradually introducing explicit prohibitions or preventive legislation against dark patterns. In the EU, the Digital Markets Act, the Digital Services Act, and other regulations explicitly prohibit the use of manipulative dark pattern designs by large commercial websites. The U.S. FTC has also proposed several regulatory drafts, including the Rule Concerning Recurring Subscriptions and other Negative Option Plans and the Rule on Unfair or Deceptive Fees, which address typical dark pattern tactics used in both offline and online environments.

Chapter 4 of this report examines representative enforcement cases from EU member states and the United States. Six representative cases from EU countries and eight from the U.S. were selected to illustrate the facts of the cases, the primary legal provisions relied upon for enforcement, and to provide a comprehensive analysis. The cases reveal that the investigations or penalties imposed by authorities in EU member states are generally based on the EU's Unfair Commercial Practices Directive or the corresponding domestic laws derived from it in each member state. As for the U.S., the enforcement cases handled by the FTC primarily rely on Section 5(a)(1) of the FTC Act, which

prohibits unfair or deceptive commercial practices.

Chapter 5 of this report aims to understand the adoption of dark pattern techniques in Taiwan's digital market and website design through interviews with industry experts, including website design specialists. After analyzing the interviews, it was found that various dark pattern techniques are indeed widely used in Taiwanese website design. Five experts were interviewed for this study, including four industry leaders, such as a senior web interface designer, and one academic professor. The interview results indicate that the practice of employing dark pattern techniques is prevalent in Taiwan's website design and industry trends.

Chapter 6 of this report critically compares Taiwan's regulations and enforcement tools, as well as similar cases in Taiwan. When compared to the nineteen types of dark patterns identified by Luguri et al. (2019), the Fair Trade Commission (FTC) in Taiwan has penalized similar practices in seven cases. However, six of these cases involved practices in the physical world, with only one case, involving the practice of misdirection, pertaining to a website. The analysis further explores the division of responsibilities among Taiwan's Fair Trade Act, Consumer Protection Act, and Personal Data Protection Act. The comparison reveals that in the U.S., EU, and South Korea, consumer protection agencies are responsible for invoking consumer protection laws to impose penalties. However, Taiwan's Consumer Protection Act lacks a central, centralized authority and administrative penalty provisions, and the Personal Data Protection Act also lacks a central authority, with its framework being incomplete. Articles 21 and 25 of the Fair Trade Act are still viable enforcement tools, but the FTC is not a consumer protection authority. The application of Article 25 is limited to large websites "sufficient to affect the order of competition," where enforcement

is necessary.

Finally, regarding legislative amendments, since the FTC is not a consumer protection authority, and in other countries, dark pattern enforcement is typically conducted by consumer protection agencies, this study recommends amending the Consumer Protection Act. The amendment should establish a central, centralized consumer protection authority and grant it the power to investigate and penalize various unfair commercial practices.