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# Dark Patterns

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# Overview

- What are dark patterns?
- Why are they becoming prevalent?
- How are governments responding?
- What can we do?

# Context

- CITP: **understanding** and **improving** the relationship between technology and society
- Clinic: educating public interest technologists

# Dark Patterns

- “User interface techniques that benefit an online service by leading consumers into making decisions they might not otherwise make.”
- Core features
  - Modifying decision space
  - Manipulating information flow
- Subverting autonomy and choice by taking advantage of scarcity of attention

# Simply persuasive tactics?

- Insights from behavioral economics
- Weaponized through rapid A/B testing at scale
- Attention-driven business models

# Challenge

- “Regulators, however, don't have a paradigm for thinking about consumer harms that are not deceptive or involve physical or financial harm, but rather arise from the seizure of attention and consequential cognitive impairments.”  
(Tim Wu, *Blindspot: the Attention Economy and the Law* (2018))

# Policy Responses

- Workshops/Reports
- Legislation
- Litigation

# Legislation

- EU's Digital Services Act
  - "67. Providers of online platforms should [] be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof."
- California's CCPA:
  - Prohibits companies from burdening consumers with confusing language or unnecessary steps such as forcing them to click through multiple screens or listen to reasons why they shouldn't opt out.
- India's 2023 Draft Guidelines on Dark Patterns:
  - "Nagging: shall mean a dark pattern due to which users face an overload of requests, information, options, or interruptions; unrelated to the intended purchase of goods or services, which disrupts the intended transaction."



# Litigation

- “Amazon tricked and trapped people into recurring subscriptions without their consent, not only frustrating users but also costing them significant money.” *FTC v. Amazon* (2023)
- “[T]he provision prohibits the use of dark patterns to encourage a child to “forego privacy protections.” CAADCA § 31(b)(7). However, the State has not shown that dark patterns causing children to forego privacy protections constitutes a **real harm**.” *NetChoice, LLC v. Bonta*, 22-cv-08861-BLF, at \*33 (N.D. Cal. Sep. 18, 2023)

# Roles of Civil Society

- Crusaders
- Litigants
- Lobbyists
- Membership Organizations
- Researchers
- Educators