

DARK DESIGN:

The Art of Deception by Design



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Contributors:

Amanda Manyame & Ridwan Oloyede

amanda@digitallawhaus.com

contact@techhiveadvisory.org.ng

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Usage of the Report

The Guide is general and educational in nature and is not intended to provide, and should not be relied on, as a source of legal advice. This information and material provided in the Guide may not be applicable in all (or any) situations and should not be acted upon without specific legal advice based on particular circumstances.

Introduction

The proliferation of the internet has resulted in the digitisation of a lot of services leading to mundane services being utilised online. In an attempt to ensure that services online are not only effective but operate seamlessly and afford service providers competitive advantages the user-centered design approach has evolved and been improved. This, coupled with advances made in Artificial Intelligence, Machine Learning, Big Data Analytics and Cloud Computing, has allowed for user-centered design to be predictive and effectively allow for e-commerce services to operate beyond what most thought fathomable. This has also resulted in dark patterns being made use of more and more in electronic transactions.

This research considered different manifestations of dark pattern modelled after the study by the team of researchers at Princeton University¹. Different manifestations of the Princeton Model² were compared with services rendered on the African continent by both service providers on the continent and those based outside the continent, targeting the continent. The research also examined websites and mobile applications across different sectors for use cases of dark pattern in media, betting, e-commerce, flight aggregation, advertisement, games, lending tech and hospitality.³⁻⁴

The research aims at contributing to the knowledge base, while also increasing the level of awareness of dark patterns on the continent. The research addressed the following questions:

1. What are dark patterns?
2. How do users experience dark patterns?
3. What are the legal frameworks that provide for dark patterns in Africa?
4. What are the policy and legal implications of dark patterns?

Understanding Dark Patterns

As more and more services are accessible online, the design of these online services is important to ensure the usability and optimisation of the product, for both the users and the entity providing the service or product. Accordingly, the user-centered design approach, which is based on observing internet users' interaction with products and

1. "Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites" (Princeton.edu, 2019) <<https://webtransparency.cs.princeton.edu/dark-patterns/#data>> accessed November 5, 2020

2. Ibid.

3. Flavio Lamenza, "Stop Calling These Dark Design Patterns or Dark UX — These Are Simply A**hole Designs" (Medium, April 12, 2018) <<https://uxdesign.cc/stop-calling-these-dark-design-patterns-or-dark-ux-these-are-simply-asshole-designs-bb02df378ba>> accessed November 5, 2020

4. Arushi Jaiswal, "Dark Patterns in UX: How Designers Should Be Responsible for Their Actions" (Medium, April 16, 2018) <<https://uxdesign.cc/dark-patterns-in-ux-design-7009a83b233c>> accessed November 5, 2020

services online, is adopted. The use of user experience design (UX) and user interface design (UI) to influence human decision making processes by employing principles used by Psychologists to study and understand the human mind is gaining grounds. The understanding obtained is then used to cater to user experiences that effectively and intentionally influence human behaviour in a manner that is desirable to others⁵. This is referred to as dark patterns; a design mechanism that misleads users into making decisions that are not in their immediate interest⁶.

The term ‘dark patterns’ was introduced by Harry Brignull, a UX Designer. Although used for years in the advertising industry to influence consumers or would-be consumers, dark design or dark patterns are used to “exploit the user by implementing deceptive functionality in the user interface”⁷. As well intended and necessary as UX design is, it could be manipulated in ways that present certain problems for policy-makers and users⁸. Dark patterns present a challenge for users’ right to privacy and the ability to control their personal data. Some of the ways that this happens include: by hiding privacy filters and settings, collecting large volumes of personal data, making it challenging to opt-out of certain settings and cookies, and making it long and difficult to understand privacy policies. Accordingly, dark patterns potentially violate data protection regulations because they undermine the principle of consent, by hiding - accidentally, unintentionally, or through poor design - these privacy choices⁹. Additionally, dark patterns have an impact on competition policies and laws, as a result of the competitive advantage that UX design provides for online services. Furthermore, consumer protection laws are impacted as they provide for the promotion of consumer rights on and offline. Accordingly, dark patterns have an impact on consumer protection laws as they impact the very users that make use of them. Also, dark patterns impact children online and have a bearing on their protection while they make use of services online. As a result of the aforementioned challenges to users, dark patterns thus present policy concerns, some of which are somewhat addressed by laws and policies presently in force, while others require policy-makers to amend and/or enact new laws and policies that specifically address the negative effects of dark patterns.

Manifestations of Dark Patterns and Analysis of Findings

As previously mentioned, dark patterns have been in use since the period preceding the existence of the internet, however their proliferation has increased as a result of the internet. Some of the dark patterns used, include: Bait and Switch, Disguised Ads, Forced Continuity, Friend Spam, Hidden Costs, Misdirection and Price Comparison Prevention. We considered several online platforms and services that are used in Africa, and discovered that many of the different types of dark patterns are being used on these platforms.

The different dark patterns are recorded below:

5. M. Maier & R. Haar (2020) Dark design patterns: An end-user perspective retrieved from <https://doi.org/10.17011/http/urn.202008245641>> Accessed November 21 2020

6. Brownlee, J (2016, August 22). Why dark patterns won't go away. www.fastcompany.com/3060553/why-dark-patterns-wont-go-away Accessed November 21 2020

7. M. Maier & R. Haar (2020) Dark design patterns: An end-user perspective retrieved from <https://doi.org/10.17011/http/urn.202008245641>> Accessed November 21 2020

8. S. Rieger & C. Sindors (2020) Dark Patterns: Regulating Digital Design, Stiftung Neue Verantwortung < <https://www.stiftung-nv.de/en/publication/dark-patterns-regulating-digital-design>> Accessed November 21 2020

9. C. Sindors (2020) Dark Patterns Are Changing How the Law Understands Technology retrieved from <<https://xd.adobe.com/ideas/perspectives/social-impact/design-policy-regulation-dark-patterns/>> Accessed November 21 2020

Sneaking

Attempting to misrepresent user actions, or delay information that if made available to users, they would likely object to.

We found 3 cases of sneaking on flight aggregator websites, wherein added costs like seat selection and other costs were added to the airfare.

Urgency

Imposing a deadline on a sale or deal, thereby accelerating user decision-making and purchases.

We found five cases of Urgency in flight booking with phrases like “the price may increase if you book later”. Three hotel booking platforms had “our last two rooms”, another had “hurry! 17% of properties on our site are fully booked”, while another had “extremely rare, lowest price in the last 6 months”. We also found two use cases in e-commerce prompting buyers that particular products will soon be out of stock, and giving a limited time prompt. The use of urgency is therefore engineered in a way to prompt users to make faster decisions with a feeling that the services or product will be out of stock.

Misdirection

Using visuals, language, or emotion to steer users toward or away from making a particular choice.

We found two cases of shaming of consumers into making a choice for a product with phrases like “we sincerely hope that those who cannot own ***** today never stop trying” and “the chances that you can acquire a ***** are really low”. They are couched in such a way to bully or shame the consumer into buying the product. We also found an instance where grey style font and visual presentation was used to steer users to or away from certain choices.

Social Proof

Influencing users' behaviour by describing the experiences and behaviour of other users.

We found two instances in hotel reservations where users are prompted that the hotel was booked for the same date three hours ago. We similarly found nine instances of similarly worded testimonials mainly on hotels and digital lending platforms. Our research also revealed that there is a marketplace for positive review-as-a-service. Further, on a hotel reservation platform, we found instances where a similar comment was repeatedly used for different hotels.

Scarcity

Signalling that a product is likely to become unavailable, thereby increasing its desirability to users.

We found a recurring trend in hotel reservation and e-commerce where a particular hotel room or product is described to be running out of stock or being reserved frequently. An example is a hotel reservation posted about a room to have been “booked 4 times in the last 6 hours” and in another instance we found a reservation website posted about a hotel that “only 1 left like this on our site”.

Obstruction

Making it easy for the user to get into one situation but hard to get out of it.

We found seven instances of this on both mobile apps and websites, where it is easier for users to sign up for a product, but difficult to opt out or without the option to opt-out completely. We similarly found instances of newsletters where the “unsubscribe” button is not made visible to the user, instances where it is completely absent, or where after clicking unsubscribe, it leads the user to another page which slowly cascades into an endless or difficult road to opt out of the direct marketing. Another instance of this, is where it is difficult to cancel a free trial.

Forced Action

Forcing the user to do something tangential in order to complete their task.

We found three instances on both mobile apps and websites where users are coerced into creating accounts or sharing their information to complete a task. In another instance, we found excessive trackers and permissions which were not necessary for the app to function, but were made compulsory before the app can be used. This is similar to a take it or leave it scenario. In addition to this, we also found two games that made it difficult for players to proceed without making in-app purchases, thereby forcing the player into making in-app purchases. We found the use of pay to skip, premium currency, pay to win and artificial scarcity¹⁰. Another instance was found on sport betting platforms where brighter colours are used in an attractive way to force decision.

Balancing Persuasion and Deception

Not all forms of dark pattern are expressly prohibited under the law. Although there is a thin line between persuasion and deception, it is hard to legislate around behavioural and psychological tracking. While service providers may have legitimate purpose and incentive for personalising their approach, it becomes a problem when it does not align with the interest of the consumer. In as much as a good number of services online are competing for consumers’ attention, in most cases, the line between doing legitimate business and deception engineered to prompt decision making in favour of a service provider is not often clear.

Bundling of terms of service and privacy notice is not favourable to the consumer and not the best practice, they are two distinct documents and should be separated. The use of light

10. “Dark Pattern Games”: (2020) <<https://www.darkpattern.games/>> accessed on November 6, 2020

colours and unfavourable font options or use of white buttons with white text is deceptive. Use of small buttons to opt out of a service or making opting out difficult for consumers is a big problem. In an instance, the Norwegian Consumer Council criticised Facebook and Google for systemically deploying design choices that nudge consumers towards making decisions which negatively affect them, such as excessive data sharing by default¹¹.

“The deception enabled by dark pattern design not only erodes privacy but has the chilling effect of putting web users under pervasive, clandestine surveillance, it also risks enabling damaging discrimination at scale. Because non-transparent decisions made off of the back of inferences gleaned from data taken without people’s consent can mean that — for example — only certain types of people are shown certain types of offers and prices, while others are not”¹². Beyond the privacy implication, digital nudging to manipulate consumers' decisions in favour of a business is a classic case of commodification of human behavioural psychology. While there is a valid case for legitimate marketing strategy for business, crossing the line of ethics and legal regulation is an anomaly. Designers and business may contemplate the manipulation matrix for ethical behavioural design consideration¹³.

Legal Framework Regulating Dark Patterns

As illustrated by the above research findings and analysis, dark patterns are by their very nature intended to influence users and often result in influencing users to make decisions they otherwise would not have made. For example, obstruction, which can be experienced when a website makes it difficult for a user to unsubscribe to a mailing list or services and the user ends up not unsubscribing. Accordingly, dark patterns are viewed as being manipulative. Apart from the manipulative nature of dark patterns, it has been asked whether they are illegal or against the law. Having consideration of the impact of dark patterns on users, violating some of the rights and protection afforded users in terms of law, concerns do arise that dark patterns, in a number of instances violate certain laws.

In the United States of America there is the Deceptive Experiences To Online Users Reduction Act, 2019 (DETOUR Act)¹⁴, which prohibits ‘the usage of exploitative and deceptive practices by large online operators’ and aims ‘to promote consumer welfare in the use of behavioural research by such providers’¹⁵. Although targeted at platforms with a million or more monthly

11. “New Analysis Shows How Facebook and Google Push Users into Sharing Personal Data: Forbrukerrådet” (Forbrukerradet.no, 2018) <<https://www.forbrukerradet.no/side/facebook-and-google-manipulate-users-into-sharing-personal-data/>> accessed November 6, 2020. The DETOUR Act is currently at the Bill phase and was introduced to the Senate of the United States during 2019. <<https://www.congress.gov/bill/116th-congress/senate-bill/1084/all-info>>

12. Lomas N, “WTF Is Dark Pattern Design?” (TechCrunch, July 2018) <<https://techcrunch.com/2018/07/01/wtf-is-dark-pattern-design/>> accessed November 3, 2020

13. “Using the Manipulation Matrix for Ethical Behavioral Design | Designli Blog” (Designli Blog, November 15, 2018) <<https://designli.co/blog/using-the-manipulation-matrix-for-ethical-behavioral-design/>> accessed November 6, 2020

14. The DETOUR Act is currently at the Bill phase and was introduced to the Senate of the United States during 2019. <<https://www.congress.gov/bill/116th-congress/senate-bill/1084/all-info>>

15. Preamble of the DETOUR Act, 2019

active users, the DETOUR Act, if passed into law will ban ‘designing, modifying, or manipulating a user interface in a way that impairs users from making educated decisions before consenting and giving companies access to their personal data’¹⁶. The Bill would only affect platforms with over 100 million authenticated users during a 30-day period¹⁷. Furthermore, the provisions of the Bill will be enforced by the Federal Trade Commission alongside any other applicable self-regulatory body that is required to be registered with the Federal Trade Commission¹⁸.

In addition to the proposed DETOUR Act, the Filter Bubble Transparency Act (FBTA) was introduced to the Senate during November 2019. If passed the FBTA requires ‘that internet platforms give users the option to engage with a platform without being manipulated by algorithms driven by user-specific data’. In reality the FBTA will require large online companies to notify users if they’re delivering content - like search results or a news feed- based on personal information that the user didn’t explicitly provide. That could include a user’s search history, their location, or information about their device. Sites would also need to let need to let users turn off this personalization, although the rules don’t apply to “user-supplied” data like search terms, saved preferences, or an explicitly entered geographical location’.¹⁹ The FBTA will be applicable to online companies that collect data from a minimum of 1 million users and generate an income of over USD 50 million per annum²⁰. Similar to the DETOUR Act, the FBTA provides that the Federal Trade Commission will be responsible for enforcing the provisions of the FBTA.

In the EU the Consumer Rights Directive²¹ provides for, amongst other things, dark patterns with regard to e-commerce platforms. While Article 5(3) the Directive on Privacy and Electronic Communications²² provides that if consent is provided for by a user under misleading circumstances then that consent is invalid. This is also provided for in the EU’s General Data Protection Regulation (GDPR)²³. Furthermore, the Unfair Commercial Practice Directive 2005/29/EC provides that should a user be manipulated into making a commercial decision national authorities or courts may consider this as an unfair commercial practice that is prohibited in terms of the Directive²⁴. In addition, users who have been misled online, should they become aware of this, may file complaints with their relevant national authorities or the Member States authorities tasked with enforcement by the GDPR and the Unfair Commercial Practice Directive.

16. Makena K, “Big Tech’s ‘dark patterns’ could be outlawed under new Senate bill” (The Verge, April 2019)

<<https://www.theverge.com/2019/4/9/18302199/big-tech-dark-patterns-senate-bill-detour-act-facebook-google-amazon-twitter>> accessed November 21 2020

17. Section 2(6)(B) of the DETOUR Act

18. Section 3(d)(1) of the DETOUR Act

19. Robertson A, “The Senate’s secret algorithms bill doesn’t actually fight secret algorithms” (The Verge, Nov, 2019) <<https://www.theverge.com/2019/11/5/20943634/senate-filter-bubble-transparency-act-algorithm-personalization-targeting-bill>> accessed November 21 2020

20. Section 2(4)(B) of the Filter Bubble Transparency Act <https://www.thune.senate.gov/public/_cac-files/c3a43550-7c36-4f77-b05c-d2275c0d568c/CE3DDB84DDB9284CC6D372833D039A20.filter-bubble-final.pdf> accessed November 21 2020

21. Consumer Rights Directive 2011/83/EU <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0083-20180701>> accessed November 21 2020

22. ePrivacy Directive 2002/58/EC

23. Article 4(11) of the General Data Protection Regulation Directive 2016/679

24. European Parliamentary Questions (April, 2019) <https://www.europarl.europa.eu/doceo/document/E-8-2019-000774-ASW_EN.html> Accessed November 21 2020

Notwithstanding policy developments in the EU and the US with regard to dark patterns, our findings did not find the use of dark patterns or its express prohibitions in the legislations we considered on the continent. However, the combination of data protection, consumer protection and electronic transaction laws could impact the use of dark patterns and provide a certain level of protection to users. This is so because dark patterns have a tendency to mislead users into taking certain decisions they would not have naturally intended to, which can be a challenge for consumer protection laws. Also, dark patterns require copious amounts of personal data which may result in data controllers infringing on some internationally recognised data protection processing conditions such as minimalism and obtaining consent from data subjects. In addition, dark patterns may present concerns around unfair competition. Lastly, we found that dark patterns pose a challenge for children online, who are targeted in a similar way to adults, yet children are vulnerable and more susceptible to manipulation.

Accordingly, there are siloed policies and laws in some African countries that provide for protection from dark patterns, the manner in which they are conducted or their impact. These are discussed below:

Data Protection

Different countries have enacted data protection laws in an attempt to safeguard the right of data subjects particularly with regard to the processing²⁵ of their personal data. Generally, as will be evidenced, most jurisdictions have categorised data into personal data and sensitive personal data. Personal data is broadly defined and refers to any information or data that relates to an identified or identifiable person, including a name, national identity number or location data. Sensitive personal data refers to personal data that relates to an identified or identifiable person, including a name, national identity number or location data. Sensitive personal data refers to personal data of an intimate nature such as sex and religion. In addition, data protection regulations provide for conditions for lawful processing of personal data. These 8 conditions are similar and stem from international data protection regulations and best practices such as the OECD, Convention 108 and the EU Directive. These conditions are accountability, purpose specification and processing limitation, data accuracy and quality, data subject participation, data transparency, security safeguards and confidentiality of the personal data. Moreover, an independent authority is established to ensure that personal data is processed in accordance with the data protection law applicable in that jurisdiction.

Notwithstanding, the manner by which personal data is collected, processed and stored as a result of UX design goes beyond what was envisaged when the various national laws were passed.

25. It is accepted in most jurisdictions that “Processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction” – Article 4(2) of the GDPR

Principles of data processing are recurrent themes in most African data protection laws. Transparency requires that an organisation should provide sufficient information to a user before commencing processing activities²⁶. Part of complying with transparency is ensuring the information about processing is easily accessible. Service providers providing consumers with genuine information about their processing activities will not give a false sense of control to consumers about their privacy.

Data minimisation prescribes that only information necessary should be processed²⁷. Upholding this principle will ensure that service providers do not collect excessive information by manipulating consumers and service provision will only be based on personal data necessary to provide such service.

The principle of fairness is close to ethics and it requires that processing activities must not be performed in obscurity and data subjects should be aware of potential risks and controllers must act promptly to comply with the wishes of the data subject²⁸. As it relates to online service, it should be possible for the data subject to understand what is happening with their data²⁹. Implementation of the principle will ensure manipulation or deception is not used to sway the choice of a consumer.

Data protection by design and default mandates controllers to implement appropriate technical and organisational to operationalise principles of data protecting at the design stage of a product and as a default. Users overwhelmingly choose default options online and the default should be privacy preserving. Engineering data protection by design implies deception or manipulation is not part of design.

Electronic Transaction

Increasing number of African countries have adopted an electronic transaction law to strengthen and provide validity for commercial activities conducted online. A common requirement of the law is that consumers should be provided with sufficient information to enable informed decision³⁰. The information should be clearly presented and conspicuously displayed before the consumer confirms the transaction. The fulfilment of the requirement will limit the impact of dark design. Service providers are required to ensure that their marketing practices and information provided to consumers are current, accurate, not deceptive or misleading.

26. Section 25(b) of Kenyan Data Protection Act

27. Section 25(b) of Kenyan Data Protection Act

28. "Handbook on European Data Protection Law - 2018 Edition" (European Union Agency for Fundamental Rights, May 16, 2018) <<https://fra.europa.eu/en/publication/2018/handbook-european-data-protection-law-2018-edition>> accessed November 6, 2020

29. Section 43 of South Africa Electronic Communication and Transaction Act, Section 24 of Uganda Electronic Transaction Act

30. Section 115(3) of Nigeria Federal Competition and Consumer Protection Act

Consumer Protection

Service providers are mandated to provide sufficient information, which will include the amount of applicable charges and methods used to calculate the full price. A consumer cannot be made to pay a price for any goods or services higher than the displayed price for the goods.³¹ This will combat sneak into basket.³² In addition to data protection's law requirement of transparency, service providers are expected to provide consumers with information visibly.³³

Service providers are required to ensure that their marketing practices and information provided to consumers are current, accurate, not deceptive or misleading³⁴. Consumers have right to fair dealings from a provider against the use of force, coercion, undue influence or pressure, harassment, unfair tactics³⁵ as it relates to marketing of goods³⁶ and in the conduct of legitimate business transactions³⁷. This will guard against scarcity bias, urgency and misdirection. In addition, the use of false and misleading representation is prohibited³⁸. Service providers are prohibited from making a representation to the public about the efficacy of goods and service through testimonials and reviews³⁹. This will combat the use of social proof.

Competition Laws

UX design is used, to not only improve the user's experience but to also enable an entity to be competitive in its respective market. Predictions that are drawn from the user's data have been reported to give organisations an advantage of about 6% over its competitors⁴⁰. Accordingly, UX design is important for organisations with regard to remaining competitive within the digital market. This has led to regulators investigating design practices being made use of by online organizations⁴¹. However, in Africa there has been little to no development with regard to the online competitive advantage obtained by service providers making use of dark patterns. South Africa's Competition Commission, during November 2020 announced its investigation into online dominant businesses⁴². However, the motivation for the investigation is not particularly targeted at whether or not dark patterns was in use, it was based on the Competition Commission's commitment to 'investigating and creating new

31. The attempt to purchase something, but somewhere in the purchasing journey the site sneaks an additional item into your basket, often through the use of an opt-out radio button or checkbox on a prior page. "Dark Patterns - Types of Dark Pattern" (Darkpatterns.org, 2020) <<https://darkpatterns.org/types-of-dark-pattern.html>> accessed November 6, 2020

32. Section 114 of Nigeria Federal Competition and Consumer Protection Act

33. Section 123 of Nigeria Federal Competition and Consumer Protection Act

34. Section 124(1) of Nigeria Federal Competition and Consumer Protection Act

35. Section 124 (a) of Nigeria Federal Competition and Consumer Protection Act

36. Section 124(e) of Nigeria Federal Competition and Consumer Protection Act

37. Section 125 of Nigeria Federal Competition and Consumer Protection Act

38. Section 126 of Nigeria Federal Competition and Consumer Protection Act

39. Brynjolfsson E., Hitt L. & Kim H. 'Strength in Numbers: How Does Data-Driven Decision-Making Affect Firm Performance?' (2011) SSRN.

40. Sebastian Rieger & Caroline Sindors Dark Patterns: Regulating Digital Design <https://www.stiftung-nv.de/en/publication/dark-patterns-regulating-digital-design>

41. McKane, J "Takealot's dominance in South Africa to be investigated" (Mybroadband, November 2020) < <https://mybroadband.co.za/news/business/374074-takealots-dominance-in-south-africa-to-be-investigated.html>> Accessed November 21 2020

42. McKane, J "Takealot's dominance in South Africa to be investigated" (Mybroadband, November 2020) < <https://mybroadband.co.za/news/business/374074-takealots-dominance-in-south-africa-to-be-investigated.html>> Accessed November 21 2020

regulations’ to prevent ‘abuse of dominance’ by online service providers⁴³, as per its Competition in the Digital Economy Whitepaper⁴⁴. Similarly, the Competition Authority of Kenya acknowledges the impact of emerging technologies and digital markets and notes that, “whereas regulations should be pro-innovation, pro-digital markets and pro-growth, there is need to secure the rights of all stakeholders in the digital space, both innovators and consumers”⁴⁵. Again, the position of the Competition Commission of Kenya is concerned with harnessing the benefits of the digital economy and ensuring that online platforms do not unfairly undercut the profits of similar services that may be offered online.⁴⁶

Protection of Children Online

Children are also impacted by the dark patterns used on websites, applications and games that are designed for use by children. Children and adolescents are more susceptible to social and peer pressure, thus making them more vulnerable to manipulation by dark patterns. Apart from manipulation, there is the concern of free to use applications, which are mostly used by children and adolescents. Free to use platforms are modelled around the collection, use and sale of user data.⁴⁷ This is why consumer protection laws, data protection laws, electronic transactions laws, as well as children’s laws provide for special and specific protection of children while online. In particular, South Africa’s Protection of Personal Information Act, 2013 requires a competent person’s consent before personal data belonging to a child is processed by a data controller.⁴⁸ Nigeria’s Data Protection Regulation, 2019 (NDPR) provides that data controllers should provide privacy notice that is easy to understand when children’s data will be processed.⁴⁹ Kenya’s Data Protection Act, 2019 provides that, in addition to obtaining consent from a competent person to process a child’s personal data, data controllers are required to ‘incorporate appropriate mechanisms for age verification and consent in order to process personal data of a child’.⁵⁰ Such a provision, although specific to personal data, requires online platforms to proceed cautiously when dealing with children within the Kenyan jurisdiction.

Notwithstanding, child online protection policies and laws, mostly provide for criminal offences such a child online pornography, cyberbullying and other online harms, not including dark patterns.

43. Competition in the Digital Economy Whitepaper <http://www.compcom.co.za/wp-content/uploads/2020/09/Competition-in-the-digital-economy_7-September-2020.pdf> Accessed November 21 2020

44. Online Markets and Effective Competition Regulation <<https://www.cak.go.ke/online-markets-and-effective-competition-regulation>> Accessed November 21 2020

45. UNCTAD, “Intergovernmental Group of Experts on Competition Law and Policy: Country Statement: Competition Issues in the Digital Economy – The Case of Kenya” July 2019 <https://unctad.org/system/files/non-official-document/ciclp18th_cont_Kenya%20Comp%20Auth.pdf> Accessed November 21 2020

46. Janet Read, “Creating a Framework to Support the Critical Consideration of Dark Design Aspects in Free-to-Play Apps”, Conference Paper: The Interaction Design and Children” June 2019, <https://www.researchgate.net/publication/333630257_Creating_a_Framework_to_Support_the_Critical_Consideration_of_Dark_Design_Aspects_in_Free-to-Play_Apps> Accessed November 21 2020

47. Janet Read, “Creating a Framework to Support the Critical Consideration of Dark Design Aspects in Free-to-Play Apps”, Conference Paper: The Interaction Design and Children” June 2019, <https://www.researchgate.net/publication/333630257_Creating_a_Framework_to_Support_the_Critical_Consideration_of_Dark_Design_Aspects_in_Free-to-Play_Apps> Accessed November 21 2020

48. Section 34 & 35 of the Protection of Personal Information Act, 2013 <<https://popia.co.za/section-34-prohibition-on-processing-personal-information-of-children/>> Accessed on November 21 2020

49. Article 3.1 (1) of Nigeria’s Data Protection Regulation, 2019 <<https://nitda.gov.ng/wp-content/uploads/2019/01/Nigeria%20Data%20Protection%20Regulation.pdf>> Accessed November 21 2020

50. Section 33 of the Kenyan Data Protection Act, 2019 <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/TheDataProtectionAct__No24of2019.pdf> Accessed November 21 2020

Recommendations

Again, there is a thin line between a legitimate business case and dark pattern. Though, currently, there is no express prohibition of dark patterns in the laws of the African countries we considered. The closest we have are pockets of restrictions available under data protection, electronic transaction and consumer protection laws. In addition to the existing pocket of laws in various African countries, either a new law or an amendment to existing law should expressly prohibit dark patterns and the prohibition should be extended to services targeted at children and other vulnerable populations. No platform or service provider should prevent users from making fully informed decisions. There should be an obligation on service providers to disclose instances of experiment on consumers periodically. The consumer protection body should consider setting up an independent body to review any market behavioural and psychological research.

Beyond legal obligation to ensure safety for consumers, service providers, UI/UX designers should consider data protection by design, ethics by design and building platforms that are not deliberately deceptive. For example, making colours appealingly bright for options favourable to a service provider is not in the consumers' interest. Opting out of a service should be made easy and free trials should not be difficult to cancel or employing guilt or bullying or tricking users into handling more personal data that is ordinarily necessary for the delivery of service should be discouraged. Human behaviour and psychology should not be weaponised for commercial interest.⁵¹ Designs must be empathetic, fair, ethical and user centric. Designers should be responsible for their actions and focus on creating transparency with the users instead of manipulating them.⁵²

There is also a need for policies and laws that specifically provide for the protection of children when making use of online services. Prohibiting the processing of children's personal data without a competent person's consent is not enough, considering that children are still able to make use of the online services. Furthermore, policies and laws need to take into account the vulnerabilities of children to dark patterns, thus taking the same into account in the provisions that provide for dark patterns.

51. Fussell S, "How Dark Patterns Online Manipulate Shoppers" (The Atlantic, August 2, 2019) <<https://www.theatlantic.com/technology/archive/2019/08/how-dark-patterns-online-manipulate-shoppers/595360/>> accessed November 6, 2020

52. Arushi Jaiswal, "Dark Patterns in UX: How Designers Should Be Responsible for Their Actions" (Medium, April 16, 2018) <<https://uxdesign.cc/dark-patterns-in-ux-design-7009a83b233c>> accessed November 3, 2020

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18:00 (DSS) 19:00 (LOS)

Departure Flight: Lagos - Dakar

10:50 - 10:40

17:00 PM, Jan 26, 2021

373,507

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Guest Reviews

6.2/10 Excellent

Based on 207 reviews

Excellent 10.0

Good 8.0

Excellent 10.0

Great 7.0

Very Good 7.3

Nonchalant staff

Booking Summary

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Free 24-hour car detailing

Free 24-hour car repair

Free 24-hour car insurance

Free 24-hour car rental

Free 24-hour car storage

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Free 24-hour car detailing

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11/13/20

We have used Nigeria loan app multiple times & have never had any problems. It is wonderful to be able to have this as a stress relief. Money is always deposited right away for me even though it says it will take a while. Thank Nigeria loan app!

Was this review helpful?

Yes No

11/13/20

Always works when in a serious pinch. Worst thing I can think of is that if you're planning to bill further ahead and trying to wait to plan for a couple extra bucks, it can be helpful there. The one dollar sub is a nice to have or cancel which is amazing compared to other apps. In the event of a potential overdraft or when getting close to one, it certainly can help you out.

Was this review helpful?

Yes No

11/13/20

Never money is not uncommon in the 21st century. I often needed money. I went through dozens of applications for loans online, but this application is the best that I have seen approved for a loan. Not would be the best for more such developers.

11/13/20

I was skeptical at first but I used it for my first try. I had some after I did it and almost forgot to check my account this morning when I did the money was deposited in my account! This was a great help for me and definitely will use in the future if I need it again! Thank Nigeria loan app!

Was this review helpful?

Yes No

11/13/20

I am convinced that "Nigeria loan app" is an incredibly smart configuration that addresses a need long overlooked in the financial services industry. I researched tirelessly to find any possible red flags. I found nothing to contradict what is presented. I signed up and have tested the services on my cell and am pleased with the results. One request: best bank with Nigeria loan app so they can help those who need some kindness in relation to money.

Was this review helpful?

Yes No

11/13/20

This app gives you a great picture of your balance and finances, and I have to say, I think it will be good when they roll out banking. The advance feature is GREAT, especially if you have a month where you don't just don't match up with due dates etc.

11/13/20

Within the last year or two things were pretty tight financially, so I looked into apps like this to help me out. I literally downloaded over 30 applications and signed up for every single one. Every other app required at least one of these things: 1. Minimum wage amounts (some as high as \$10,000 a month) 2. Evidence of Direct Deposit (this excludes bank to bank transfers, and transfers from self-employment businesses such as DoorDash). Hour tracking (this means your workplace either has to be a partner with the app OR you have to use GPS tracking so the app can physically detect when you go to and from work, one location only) Not only did I not make enough to qualify for most of the apps with high minimums, but my workplace didn't offer direct deposit, AND I worked for a business with multiple locations so I would only be getting hours for one location which was maybe a third of my total hours. Needless to say this was pretty disappointing. I ended up with only two apps that I could actually use. The other app ended up requiring a minimum transaction amount in your bank account and I stopped using it. Nigeria loan app is the one and only app that really helped. They offer a standard \$20 pa

Was this review helpful?

Yes No

11/13/20

The Nigeria loan app has really pulled thru for me when I truly needed it. Overdrafts can get very expensive very fast... knowing that Nigeria loan app has my back by helping me with \$75 to help prevent overdrafts is such a relief! I don't always need help preventing overdrafts but when they do come about, having Nigeria loan app there to save my A&S is such a relief!

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Was this review helpful?

Yes No

11/13/20

In times like these, it's great to use this app to help make extra cash. I have only used it a couple of times, but it has truly helped me when times are tight. I like that the money is automatically pulled out my account on pay day and I don't accrue daily or high interest fees on the payback. I'm so glad I found this service. It's much better than payday lenders that charge outrageous rates.

