

aringer herbst winklbauer

TRANSPARENCY & DARK PATTERNS

04 March 2025

Alpine Privacy Days 2025

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DIE ZEIT

WOCHENZEITUNG FÜR POLITIK WIRTSCHAFT WISSEN UND KULTUR



26. Februar 2025
09/2025



19. Februar 2025
08/2025



12. Februar 2025
07/2025



5. Februar 2025
06/2025



29. Januar 2025
05/2025



22. Januar 2025
04/2025



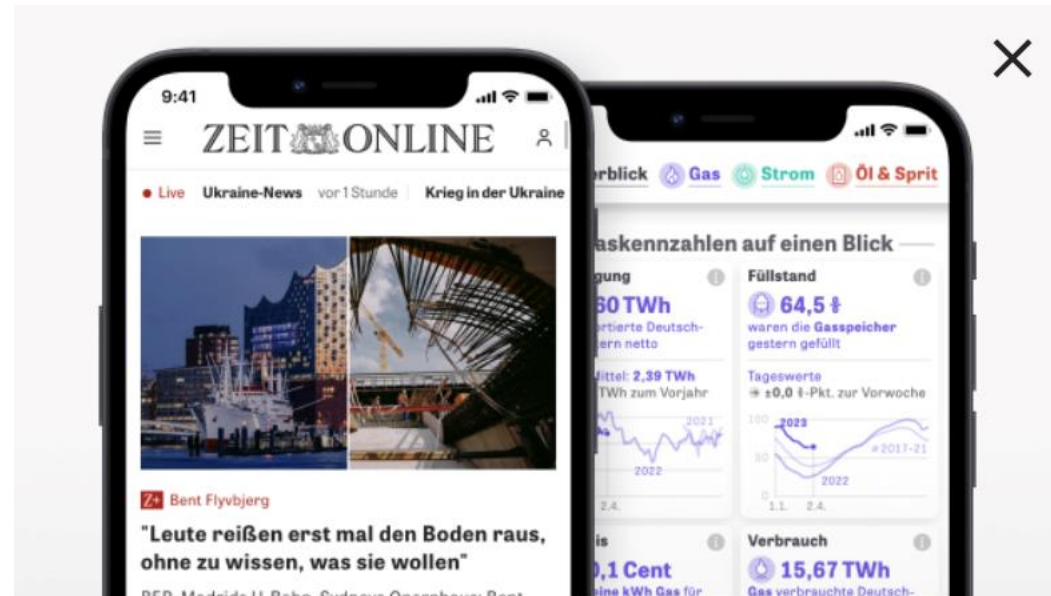
15. Januar 2025
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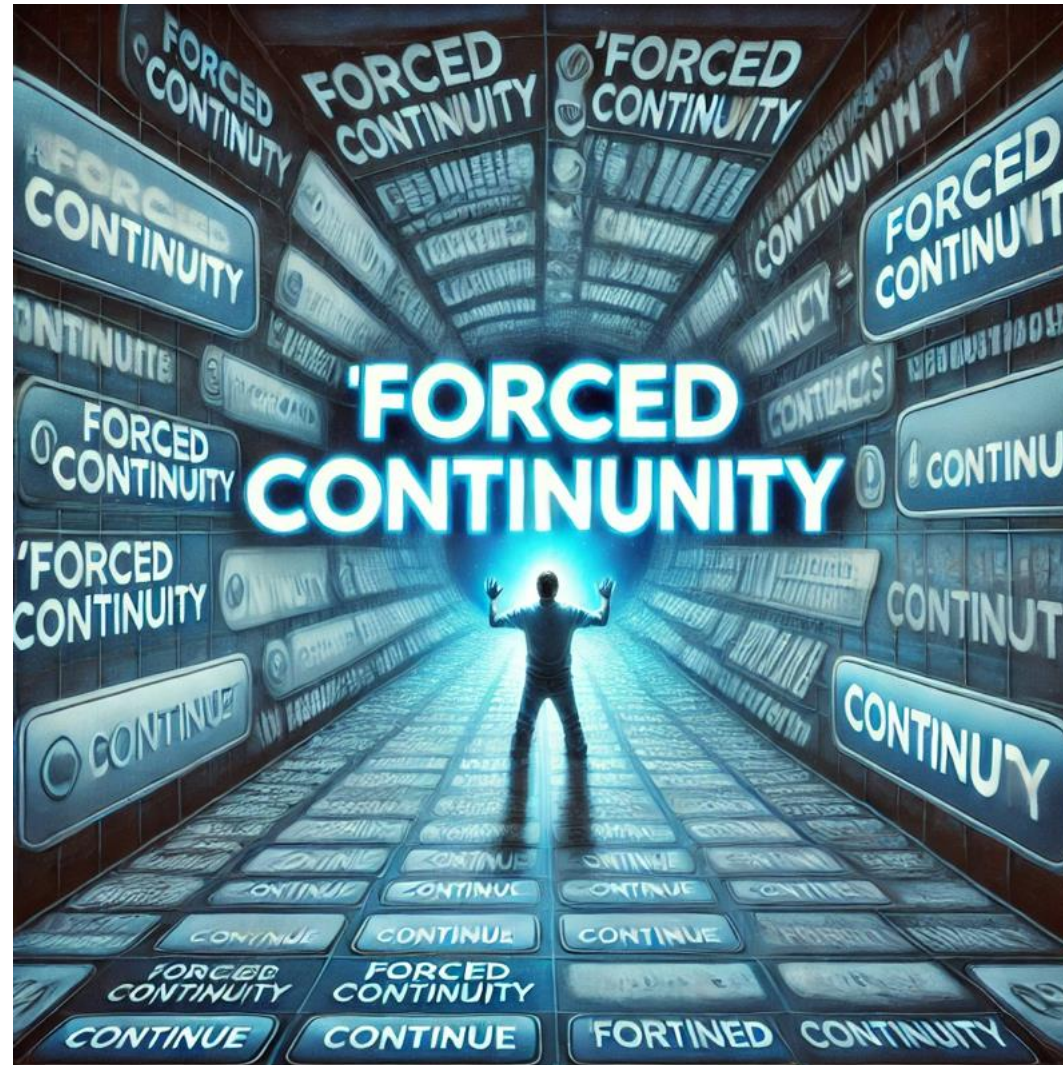
ZEIT ONLINE

Für Ihr Abonnement ZEIT Digital berechnen wir Ihnen:

Objekt	Liefer- menge	Heftnummer Auftragsbeginn	Erstverkaufs- tag	Anzahl Ausgaben	Preis in EUR
ZEIT Digital	1	029/2024	03.07.2024	52	312,00

zu zahlender Betrag

312,00



AGENDA

Definitions

Current Status

Future Outlook

Wrap up & Discussion

WHAT IS *Transparency* IN DATA PRIVACY?

*Personal data shall be processed lawfully, fairly and in a **transparent manner** in relation to the data subject*

(Art 5 (1) (a) GDPR)

➤ **Goal:** Being able to make **informed decisions** about personal information

✗ **Dark Patterns:** „unfair commercial practices [...] that can influence consumers to make decisions they would not have taken otherwise“

(European Commission in their “Fitness check of EU consumer law on digital fairness”)

✗ **no common definition** of dark patterns in the EU legal framework

Dark Patterns - TYPES

Dark Pattern 1 Bait & Switch	Dark Pattern 2 Confirm— shaming	Dark Pattern 3 Disguised Ads	Dark Pattern 4 Friend Spam	Dark Pattern 5 Forced Continuity	Dark Pattern 6 Hidden Costs
Dark Pattern 7 Misdirection	Dark Pattern 8 Price Comparison Prevention	Dark Pattern 9 Privacy Zuckering	Dark Pattern 10 Roach Motel	Dark Pattern 11 Sneak Into Basket	Dark Pattern 12 Trick Questions

Source: www.deceptive.design

Confirmshaming

Triggers uncomfortable emotions, such as guilt or shame, to influence users' decision making

WE'RE GIVING YOU
30% OFF*
YOUR FULL-PRICE PURCHASE

Enter Your Email Here

GET MY 30% OFF

NO THANKS, I PREFER TO PAY FULL PRICE



optinmonster

Grow Your Email List

We help transform your site into
a lead-generation powerhouse.

Get More Email Subscribers »

No Thanks, I'm fine with losing customers!

Privacy Zuckering

is a deceptive design practice named after Facebook co-founder Mark Zuckerberg. It refers to the act of creating confusing or misleading privacy settings that trick users into sharing more personal information than they intended.

WhatsApp is updating our Terms and Privacy Policy to reflect new features like WhatsApp Calling. [Read](#) our Terms and Privacy Policy and learn more about the choices you have. Please agree to the Terms and Privacy Policy by 25 September 2016 to continue using WhatsApp.

AGREE

Read more about the key updates to our Terms and Privacy Policy. 

To opt out, you had to click to read the separate terms and conditions, scroll to the bottom, and then uncheck the pre-ticked box.

Share my WhatsApp account information with Facebook to improve my Facebook ads and products experiences. Your chats and phone number **will not** be shared onto Facebook regardless of this setting.

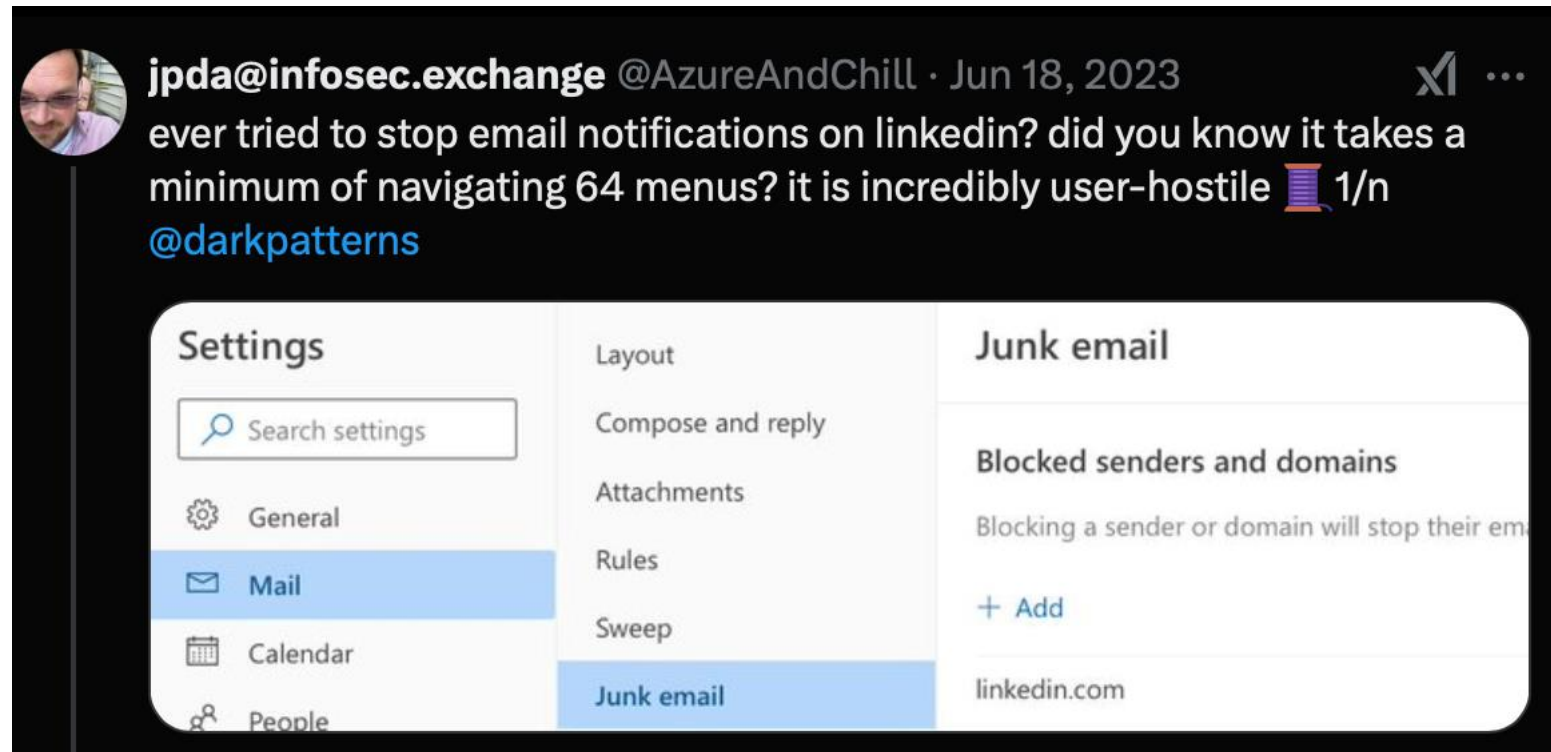


AGREE



Roach Motel

Easy getting in, hard getting out (like roaches in trap by the US brand Roach Motel – “Roaches check in, but they don’t check out!”)



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2. Current Status
3. Future Outlook

STATISTICS

April 2022: European Commission's dark pattern study: **97% of the most popular websites and apps** used by EU consumers deployed at least one dark pattern

16. July 2024: Federation of German Consumer Organisations (vzbv): of **22** tested **core platform** services **every service** used manipulative designs

2. July 2024: International Consumer Protection and Enforcement Network (ICPEN) – Dark pattern sweep: of 642 websites/apps deployed **75,7% at least one dark pattern**, and **66,8% two or more**

“Increase the likelihood of us selling our product” — ChatGPT Implements Unsolicited Deceptive Designs in Generated Websites Without Warning



Source: <https://arxiv.org/html/2411.03108v1>

LEGAL FRAMEWORK?

(apart from the GDPR)



Digital Services Act (DSA)

- prohibits online platforms from using dark patterns
- **excludes** practices covered by the UCPD and the GDPR (Art 25 DSA)



Unfair Commercial Practices Directive (UCPD)

- forbids only a **limited number** of dark patterns
- does not deal with digital interfaces



Data Act

- mentions the prohibition in relation to third parties and data holders when they are designing their digital interfaces (Rec 38)



Artificial Intelligence Act (AI Act)

- introduces new prohibitions
- requires **case-by-case interpretation** of terms used



Digital Markets Act (DMA)

- anti-circumvention rule (Art 13) to capture dark patterns used by gatekeepers to influence consumer decisions



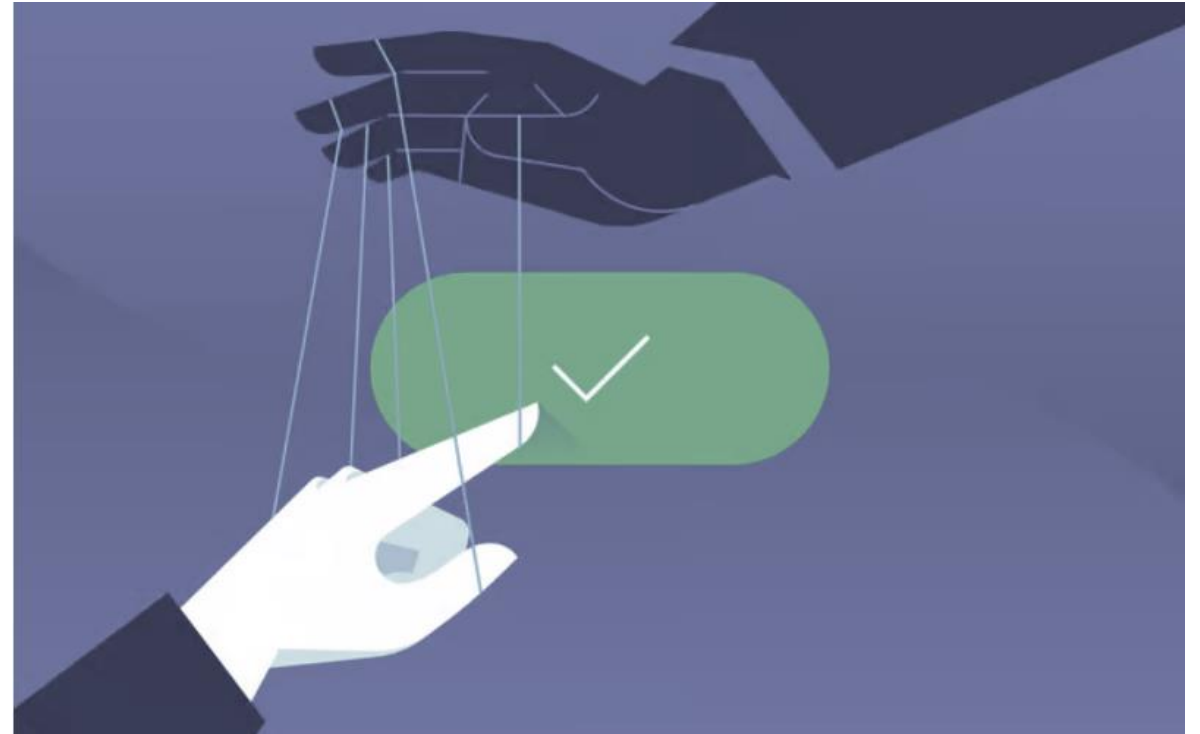
Consumer Right Directive (CRD)

- prohibits traders from applying dark patterns when concluding financial services contracts at a distance

REGULATORY STATUS QUO

Variety of provisions in different legal acts
leading to...

- lack of coherence in implementation
- under-enforcement
- lack of protection
- ambiguity
- complexity



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AI driven DARK PATTERNS

Personalized manipulation

- use of AI to **analyze user behavior** and **craft tailored content** increasing the likelihood of making specific choices (subscriptions, purchases, ...)

Creation of Fake Relationships

- AI can generate **false profiles** on social media platforms, **targeting users' vulnerabilities**, e.g. leading to disclosure of personal information

Dynamic Pricing

- AI can **adjust prices in real-time** to maximize individual users' willingness to pay, potentially **resulting in higher costs**

Lawsuit against Character AI:

Can A.I. be blamed for a Teen's Suicide?

Character.AI adds safety tools after parents sue again

Character.AI was hit with its second recent lawsuit this week from lawyers for two Texas families that want the platform taken down until "public health and safety defects" are fixed.

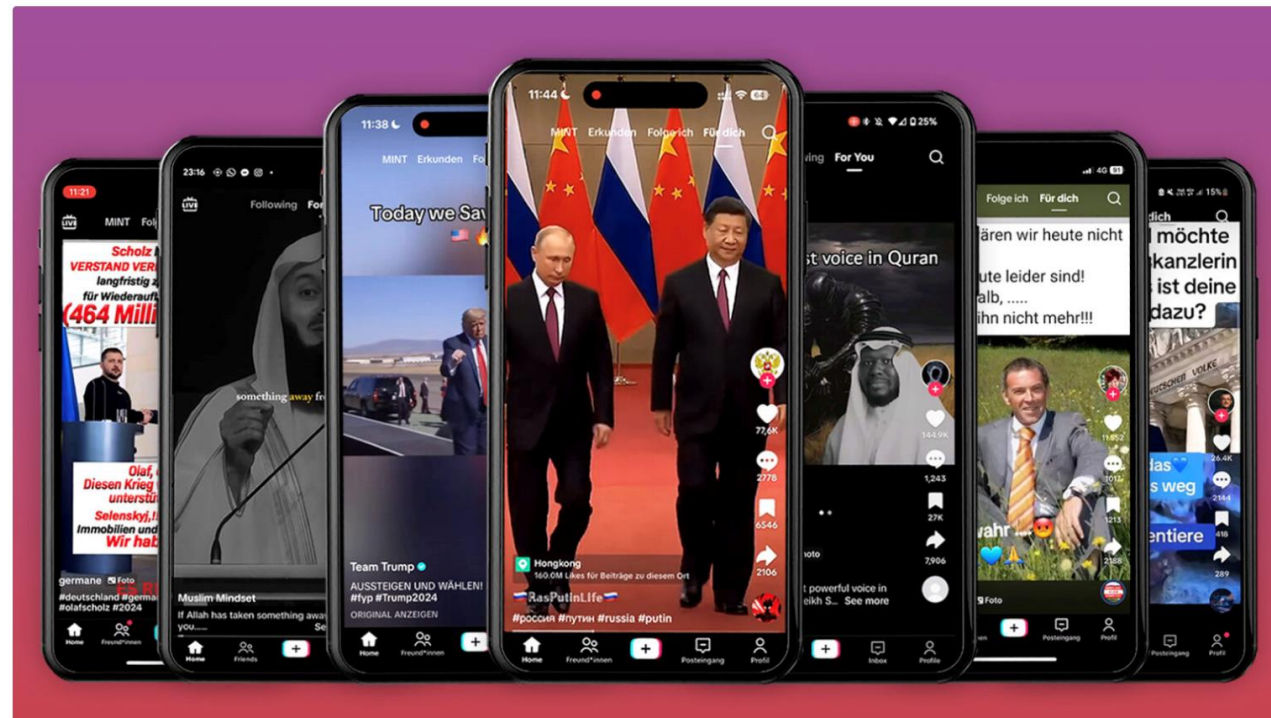


REDAKTION

Selbstversuch: So radikalisiert TikTok österreichische Teenager

13. Februar 2025

84

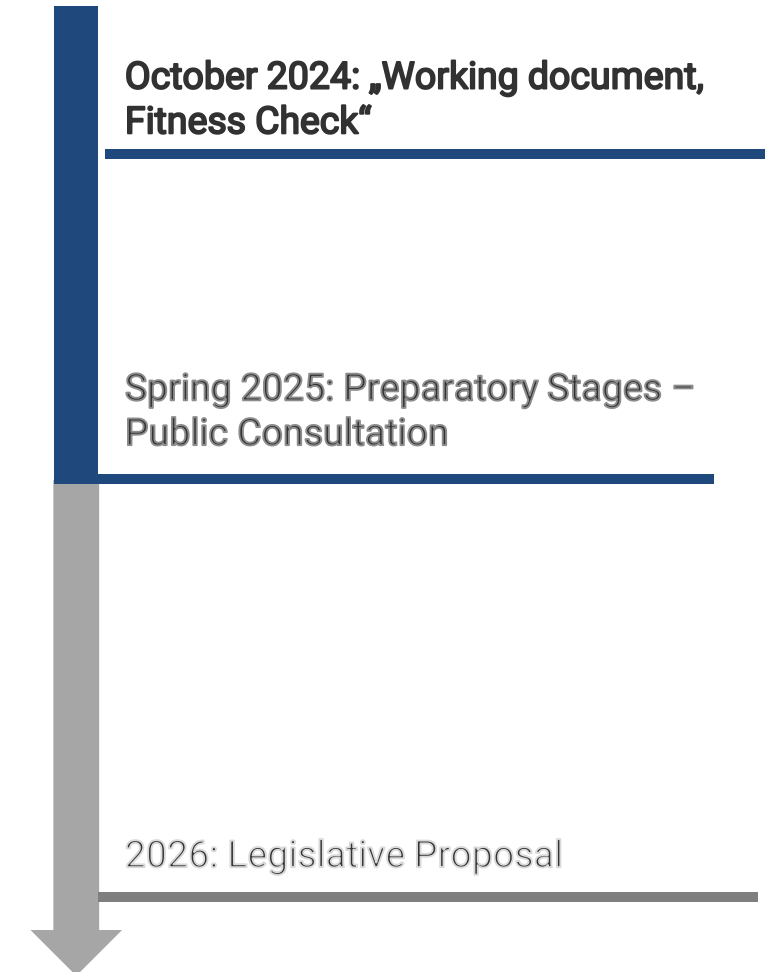


Source: <https://dietagespresse.com/selbstversuch-so-radikalisiert-tiktok-oesterreichische-teenager/>

Commission's legislative proposal: *Digital Fairness Act*

Combating dark patterns

- prohibition of deceptive design practices
- transparency in user interfaces (especially when AI is involved)
- regulations on AI and Algorithms (especially on Algorithmic transparency)
- empowering users to control their data
- clear consent mechanisms
- accountability for platforms
- consumer protection in digital services
- enforcement and penalties



KEY TAKE-AWAYS AND DISCUSSION

- ***Dark patterns*** are (still) an issue
- ***AI-driven practices*** amplify the effectiveness of dark patterns
- The current ***legal framework*** is a ***foundation*** to tackle the problem, but lacks ***specificity*** and ***strict enforcement***
- The goal must be to ***raise awareness***, push for ***ethical design practices*** and ***AI transparency***
- (maybe) in ***2026*** the ***Digital Fairness Act*** will provide for stricter rules

Discussion and Questions

THANK YOU!



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