

# Sorin Berbece

Lawyer

The background is white with various black geometric elements scattered around. There are several thin, hand-drawn style lines of different lengths and orientations. There are also a few circles, some with outlines and some solid black. There are three 'x' marks, one at the top center, one on the right side, and one on the far left edge. The main text is centered and consists of two words, 'DARK' and 'PATTERNS', stacked vertically. Both words are in a bold, sans-serif font. The word 'DARK' has a thin horizontal line above it and another below it. The word 'PATTERNS' has a thin horizontal line above it and another below it.

# DARK PATTERNS

*(They're Everywhere)*

**'Let there be light!'**

**Dark patterns under the lens of the EU legal framework**

**Master of Intellectual Property and ICT Law**

**KU Leuven**

**2019**

**Student: Sorin Berbece**

**Promotor: Prof. Dr. Peggy Valcke**

**Co-promotor: Dr. Damien Clifford**



[illegible]

# Dark Patterns v Data Protection

- Principles of personal data protection
- Rights of data subjects
- Consent



# Transparency principle

- CNIL fined Google with EUR 50 million for failing to comply *inter alia* with the transparency principle.
- Google failed to comply with the ‘easily accessible’ requirement:
  - increased number of clicks for information on data retention (4), geolocation services (5) and personalized advertising (6) v 1-2 clicks to Accept => **‘Ease’**
  - spread of relevant information across different documents (‘Privacy Policy and Terms of Service’ and ‘Privacy Policy’) => **‘Hidden Information’**
  - use of non-explicit titles meant to mislead the user into thinking that data retention information cannot be found under the respective title (‘Exporting and deleting information’) => **‘Misdirection’**

# Other data protection principles?

- **Fairness of processing.** Dark patterns are unfair means.
- **Purpose limitation.** LinkedIn sent invitations to the user's contacts on the user's behalf. LinkedIn settled in court for \$13 million. (**'Friend Spam'**)
- **Lawfulness of processing.** Failure to comply with data protection principles implies a failure to comply with the lawfulness of processing.
- **Accountability.** Dark patterns are at odds with the obligation to continuously implement measures to promote and safeguard data protection.

# Data subjects' rights



## DECEIVED BY DESIGN

How tech companies use dark patterns to discourage us from exercising our rights to privacy

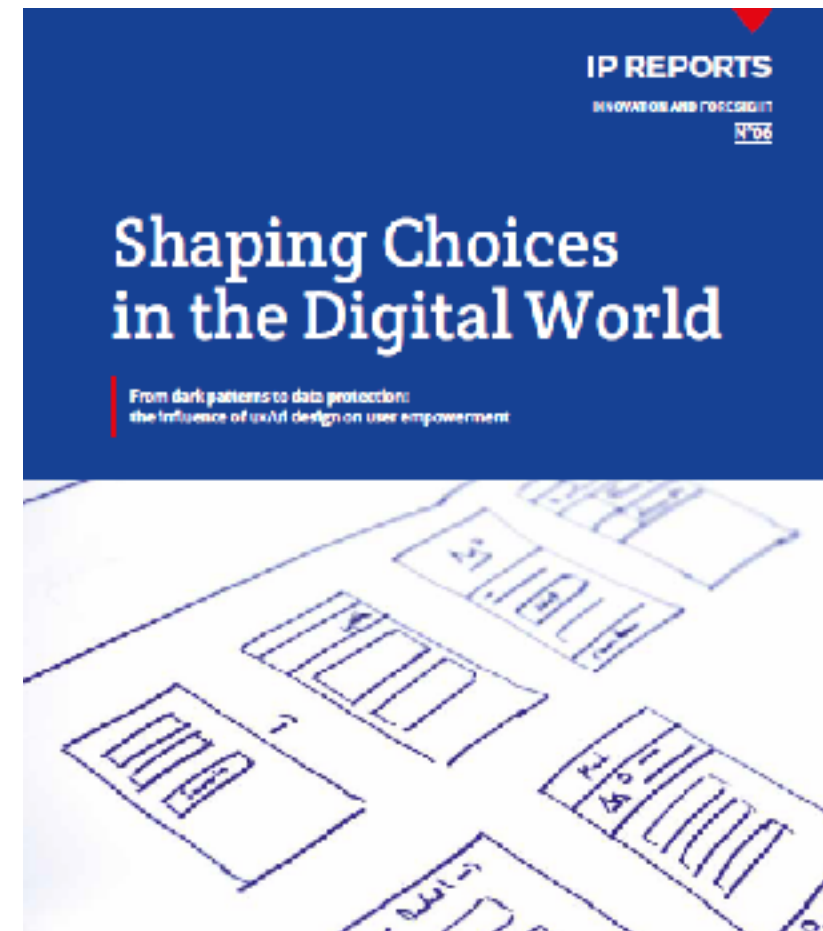
27.06.2018



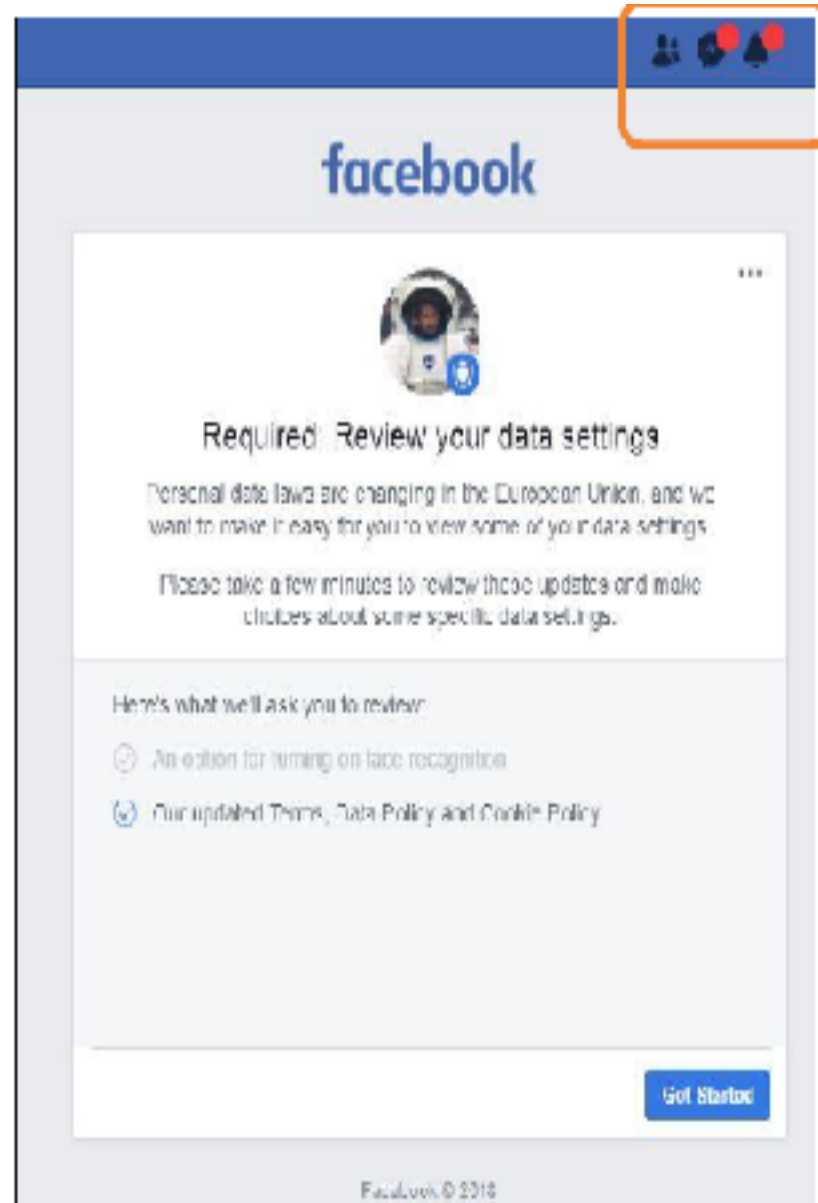
## EVERY STEP YOU TAKE

How deceptive design lets Google track users 24/7

29.11.2018







## Your options

If you don't accept these, you can't continue to use Facebook. You can delete your account, and we'll give you the option to download a copy of your information first.

CLOSE

DELETE ACCOUNT



### Turn on face recognition if you want us to use this technology

If you turn this setting on, we'll use face recognition technology to understand when you might appear in photos, videos and the camera to do things such as help protect you from strangers using your photo, find and show you photos that you're in but haven't been tagged in, tell people with visual impairments who's in a photo or video, and suggest people that you may want to tag. Select Accept and Continue to turn on face recognition or Manage Data Settings to keep it turned off.

#### What's collected?

MANAGE DATA SETTINGS

ACCEPT AND CONTINUE

X CLOSE

← BACK



### Face recognition

Before you manage your data settings, these examples can help you decide what choices to make.



Face recognition technology allows us to help protect you from a stranger using your photo to impersonate you or tell people with visual impairments who's in a photo or video using a screen reader.



If you keep face recognition turned off, we won't be able to use this technology if a stranger uses your photo to impersonate you. If someone uses a screen reader, they won't be told when you're in a photo unless you're tagged.

### Manage your settings for face recognition

To recognise whether you're in a photo or video, our system compares it with your profile picture, and photos and videos that you're tagged in. This lets us know when you're in other photos and videos so that we can create a better experience.

Allow Facebook to recognise me in photos and videos



Don't allow Facebook to recognise me in photos and videos



CONTINUE

# Support great journalism.

We rely on readers like you to uphold a free press.

## Free

Browse now

- ✓ Read a limited number of articles each month
- ✓ You consent to the use of cookies and tracking by us and third parties to provide you with personalized ads

## Basic Subscription

\$6 every 4 weeks  
or just \$73 \$60/year

Subscribe now

- ✓ Unlimited access to washingtonpost.com on any device
- ✓ Unlimited access to all Washington Post apps
- ✓ You consent to the use of cookies and tracking by us and third parties to provide you with personalized ads

## Premium EU Ad-Free Subscription

\$9 every 4 weeks  
or just \$117 \$90/year

Subscribe now

- ✓ Unlimited access to washingtonpost.com on any device
- ✓ Unlimited access to all Washington Post apps
- ✓ No on-site advertising or third-party ad tracking

Oh, the places you'll see

Turn on location history to see photos  
grouped by where you've been

TURN ON



☒ Sky WiFi (and its advertising partners) may use my data to provide me with tailored advertising.

If you would like more information about this (including details of your advertising partners), click here to see the relevant section of our [Privacy Policy](#).

☒ Sky WiFi may share my personal data with Sky UK Limited so that the Sky TV adverts I see are more relevant to me.

If you would like more information about this click here to see the relevant section of Sky's [Privacy Policy](#).

[Back](#)

[Terms](#) [Privacy & Cookies](#) [About Us](#)



declaration!



#### This website uses cookies

We use cookies to personalise content and ads, to provide social media features and to analyse our traffic. We also share information about your use of our site with our social media, advertising and analytics partners who may combine it with other information that you've provided to them or that they've collected from your use of their services.

☒ Necessary ☒ Performance ☒ Statistics ☒ Marketing [Show details](#)

[OK](#)

#### Please enter your details to reserve your item(s)

Title :

First name \* :

Last name \* :

Email \* :

Phone number \* :

- ☐ Please do not send me details of products and offers from Currys.co.uk
- ☐ Please send me details of products and offers from third party organisations recommended by Currys.co.uk

[Reserve items](#)

# Data protection by design and by default

## **Data protection by design?**

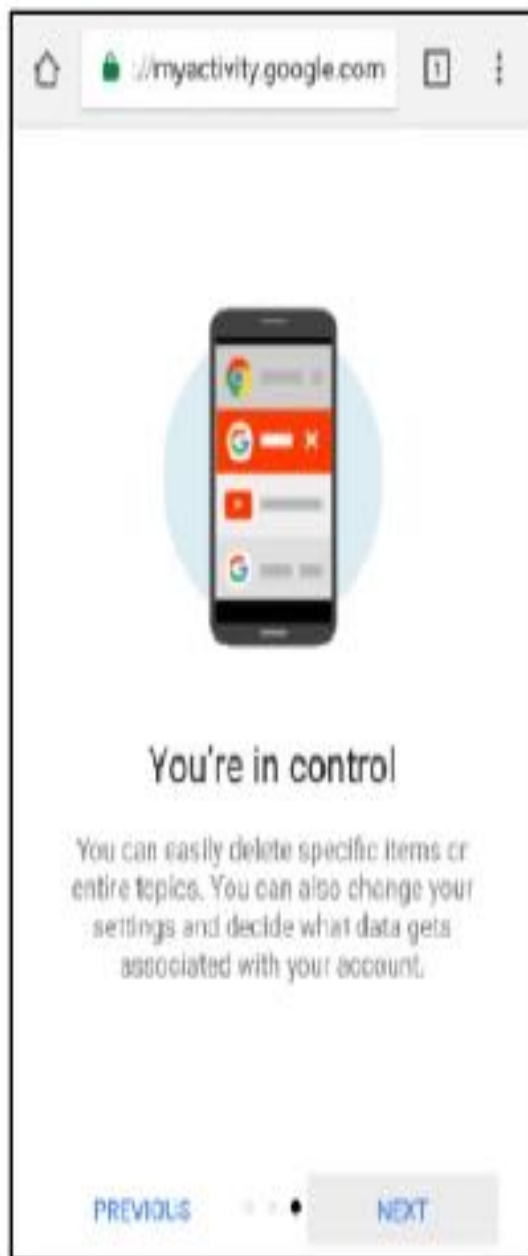
Dark patterns are not technical measures which are meant to:

- implement data protection principles
- integrate the necessary safeguards into the processing in order to meet the requirements of the GDPR, and
- safeguard the rights of data subjects.

## **Data protection by default?**

Dark patterns oppose the idea of data protection by default since they aim to nudge users into accepting the most privacy intrusive options.

# The right to privacy – Location data



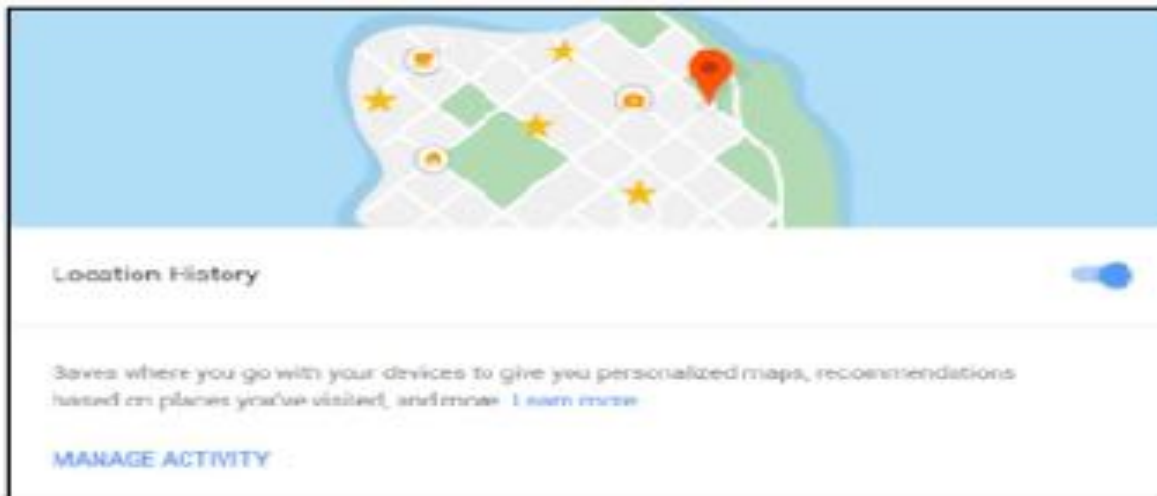
myactivity.google.com

**You're in control**

You can easily delete specific items or entire topics. You can also change your settings and decide what data gets associated with your account.

PREVIOUS

NEXT



**Location History**

Saves where you go with your devices to give you personalized maps, recommendations based on places you've visited, and more. [Learn more](#)

[MANAGE ACTIVITY](#)



**Personal info & privacy**

Manage your info settings and see what we can do to make your experience better.

[Your personal info](#)

[CONTACT](#)

[Manage your Google activity](#)

[Data Settings](#)

[Control your location](#)

**Privacy Checkup**

Check how Google & others have collected your info and get suggestions on how to manage it.

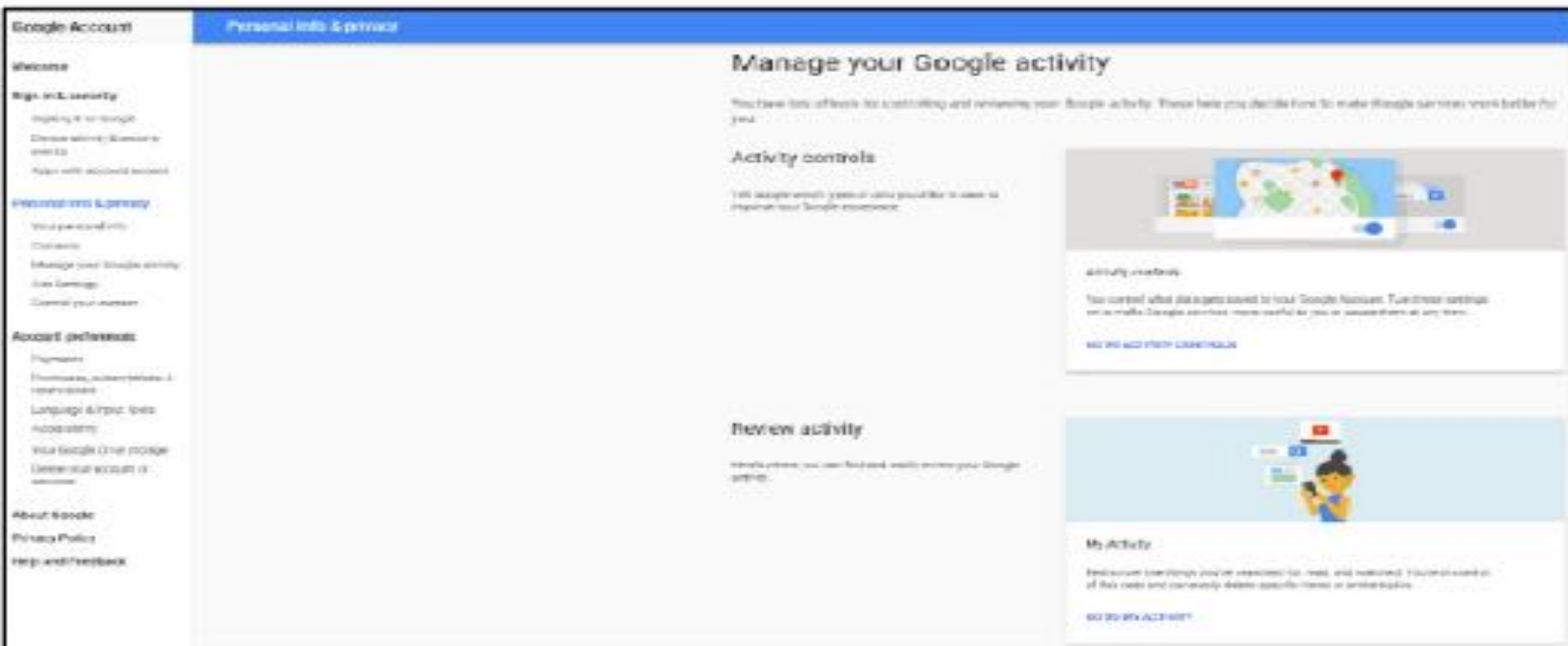
[GET STARTED](#)

[See what you can do to control it](#)

**My Activity**

Discover what you've done recently and delete it if you want.

[GO TO MY ACTIVITY](#)



**Google Account**

**Personal info & privacy**

**Manage your Google activity**

You have lots of tools for controlling and reviewing your Google activity. These help you decide how to make Google services work best for you.

**Activity controls**

With Google activity controls, you can decide what to save to improve your Google experience.

**Review activity**

Here's where you can find and delete items from your Google activity.

**Activity controls**

You control what data gets saved to your Google Account. Turn these settings on to make Google services more useful for you or pause them at any time.

[GO TO MY ACTIVITY CONTROLS](#)

**My Activity**

Discover everything you've explored for work, and whatever. You can delete all of this info and manually delete specific items or entire topics.

[GO TO MY ACTIVITY](#)





# The right to privacy - Location data

The screenshot shows the 'Manage your Google activity' page within the Google Account interface. The left sidebar contains links for 'Welcome', 'Sign in & security', 'Personal info & privacy', 'Account preferences', and 'About Google'. The main content area is titled 'Manage your Google activity' and includes sections for 'Activity controls' (with a map icon), 'Review activity' (with a person icon), and 'My Activity' (with a list icon). Each section has a brief description and a 'GO TO MY ACTIVITY' link.

The screenshot shows the 'Google My Activity' page. It features a 'Bundle view' section with a 'Data view' button. Below this is a 'Delete activity by' section with a blue shield icon and a link to 'Learn more'. The 'Other Google activity' section is partially visible. The 'Activity controls' section has a blue and white toggle switch. The 'My Account' and 'Help' sections have icons. The 'Send Feedback' section is at the bottom. The page also shows a 'Last 1 year' filter and a 'Email ads' section with a 'Go to Gmail' link.

## Delete Location History using a website

You can delete individual locations, locations by date, or your whole location history on the Location History website.

1. Go to [maps.google.com/locationhistory](https://maps.google.com/locationhistory). You might need to sign in.
2. Pick how to delete your Location History:
  - **By date:**  
To the right of the date you want, click Delete .
  - **By individual location:**  
Pick a location from the list or map. Click More  > **Remove stop from day** > **Remove**.
  - **Entire History:**  
Click **Settings** > **Delete all Location history**.

## Permanently delete all Location History

This information will be deleted from your Google Account and neither you nor Google will be able to access it again.

Google Now and other apps that use your Location History may stop working properly.

☒ I understand and want to delete all Location History.

DELETE LOCATION HISTORY

CANCEL

# Unfair Commercial Practices Directive

- **Promoting Facebook as 'Free' ('Framing') – Misleading commercial practice**
  - Italian Competition Authority fined Facebook with EUR 10 million (2018)
  - Hungarian Competition Authority fined Facebook with EUR 4 million (2019)
- **Invitation to purchase a product with the intention of promoting a different product ('Bait and Switch') – Misleading commercial practice**
- **Falsely claiming that a product will only be available for a limited time ('Forced action and timing') – Aggressive commercial practice**




# Audiovisual Media Services Directive



A cartoon illustration of a man with dark hair and sunglasses sitting at a wooden desk. He is using a laptop. On the desk, there is a potted plant with a single pink flower, a camera, a microphone, and some books. Behind him, there are three floating rectangular boxes: the top one has a crown icon, the middle one has five red hearts, and the bottom one has horizontal lines representing text. The background is a solid pink color.

**SOCIAL MEDIA  
INFLUENCERS  
AN EFFECTIVE  
WAY TO MARKET  
YOUR PRODUCT**

**influido**  
www.influido.com



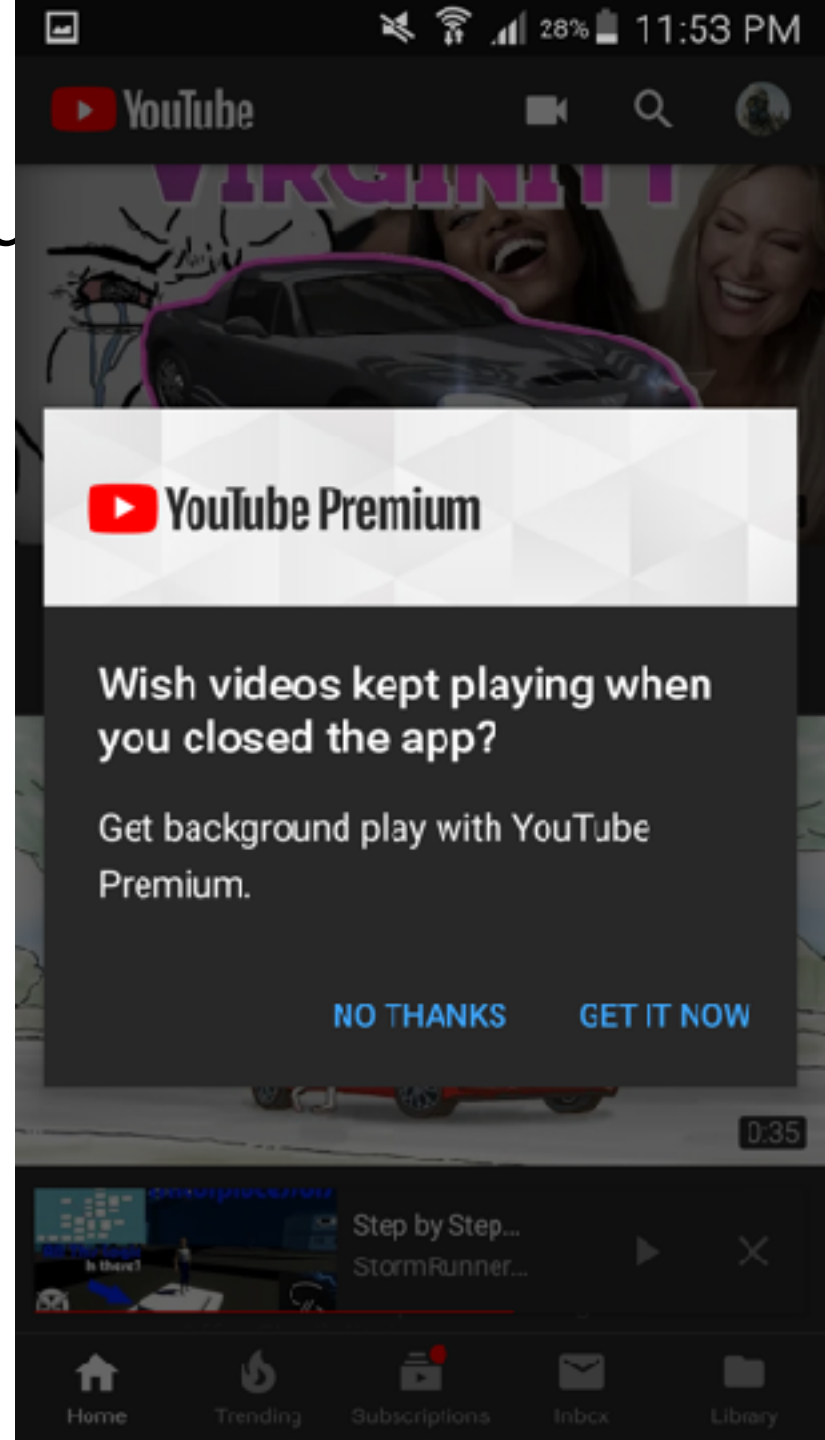
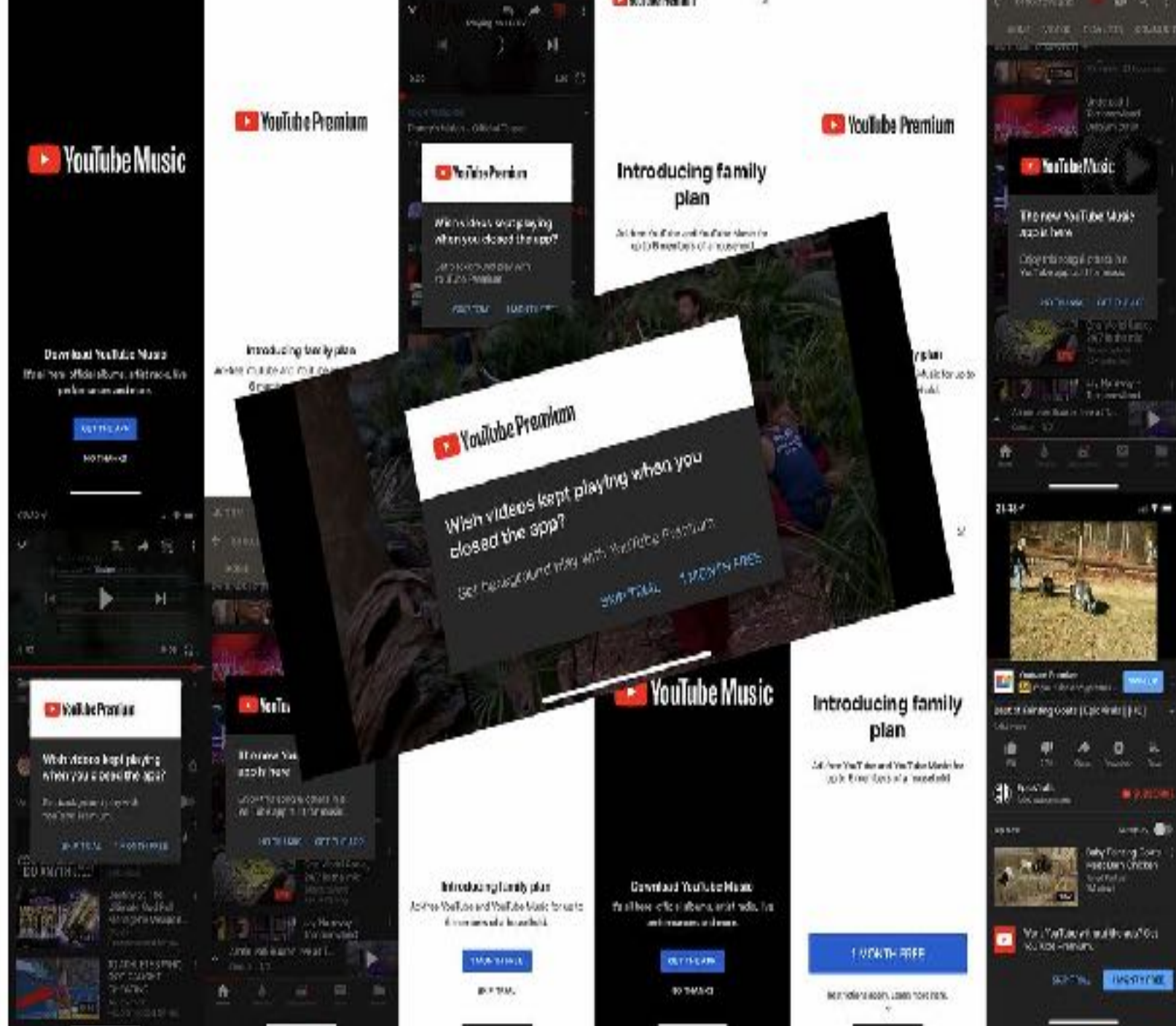
A cartoon illustration of a woman with long dark hair and a yellow headband, wearing a yellow and white top. She is holding a pink smartphone in her left hand and a small black object in her right hand. The background is a solid blue color. The illustration is framed within a video player interface with a blue border and a red progress bar at the bottom.

dreamstime.com

ID 142134715 © Sabelskaya

# Consumer Rights Directive & Unfair Terms Directive

- **The Consumer Rights Directive** expressly forbids two dark patterns:
  - ‘Sneak into basket’ by forbidding ‘Inertia selling’; and
  - ‘Default Settings’ by prohibiting traders to infer consent from using default options
- **Unfair Terms Directive** obliging traders to provide contractual terms in plain and intelligible language under the sanction of interpreting unclear provisions in the favour of consumers.





- Home
- Explore
- Notifications
- Messages
- Bookmarks
- Lists
- Profile
- More

[Tweet](#)

**Dark Patterns**  
@darkpatterns

Exposing deceptive user interfaces since 2010. Edited by @alexanderstark, conceived by @martykay.

[@darkpatterns](#) · Joined September 2010

10 Following · 11.5K Followers

Website: [darkpatterns.uk](#) · [darkpatterns.com](#)

Tweets · Tweets & replies · Media · Likes

**Trevor Murphy** @trevormurphy · Dec 17, 2019

Replying to @DougGilliesUK and @darkpatterns

I take y'all like this, online subscription rate recently on @darkpatterns

Also important to note, this only modal comes up after you submit a form of checkout, where the last box would be you to a weekly drip campaign

We're sad to see you go.

Are you sure you want to unsubscribe completely? Stay in touch weekly related

[Don't Unsubscribe](#)

[I Don't Like This](#)

Email Settings

- ☐ Block all notifications
- ☐ Block product recommendation
- ☐ Block information about deals &
- ☐ Block news on products I watch
- ☐ Block price alert notifications
- ☐ Block product availability notices
- ☐ Block reminders for pending orders
- ☐ Block to receive digital emails

[Update preferences](#)

**Sean Taylor** @adrianstark · Dec 6, 2019

@darkpatterns how about do not show this message again

Latest Tweets

Want to see who you know on Twitter?

View a grid of your connections

**Adrian Stark** @adrianstark · Dec 4, 2019

@darkpatterns So, @darkpatterns wants me to manually un-check like 100 companies if I don't want them collecting my data... #privacy

Privacy Settings

Location History

App Permissions

Account Information

Security

Twitter Ads

Twitter Analytics

Twitter Dev

Twitter for Business

Twitter for Education

Twitter for Government

Twitter for Healthcare

Twitter for Nonprofits

Twitter for Small Business

Twitter for Students

Twitter for Teachers

Twitter for Researchers

Twitter for Journalists

Twitter for Artists

Twitter for Musicians

Twitter for Writers

Twitter for Photographers

Twitter for Filmmakers

Twitter for Designers

Twitter for Developers

Twitter for Engineers

Twitter for Scientists

Twitter for Academics

Twitter for Researchers

Twitter for Journalists

Twitter for Artists

Twitter for Musicians

Twitter for Writers

Twitter for Photographers

Twitter for Filmmakers

Twitter for Designers

Twitter for Developers

Twitter for Engineers

Twitter for Scientists

Twitter for Academics

Search Twitter

dark

To view your results

**You might like**

**AschiteDesign** @AschiteDesign [Follow](#)

**andrew woods** @andrewwoods7944 [Follow](#)

**Trends for you**

[#IranProtests](#) 23K Tweets

[#EkanTime](#) 6,717 Tweets

[#Philippines](#) 10K Tweets

[#Dakota](#) 1,110 Tweets

[#Fest2020](#)

[Show more](#)

Terms · Privacy policy · Cookies · Report

Advertise · Support · [@ 2019 Twitter, Inc.](#)