



NPC Advisory No. 2023 - 01

DATE : 07 November 2023

SUBJECT : **GUIDELINES ON DECEPTIVE DESIGN PATTERNS**

WHEREAS, Section 7 (g) of the Data Privacy Act of 2012 (DPA) provides that the National Privacy Commission (NPC) is empowered to publish, on a regular basis, a guide to all laws relating to data protection;

WHEREAS, the NPC issued a Circular on the “Guidelines on Consent” to elaborate on the processing of personal data based on consent and to emphasize the fair processing of personal data in a manner that is neither manipulative nor unduly oppressive to data subjects;

WHEREAS, Section 7 (A) of the Guidelines on Consent provides that the use of deceptive methods, such as deceptive design patterns, results in vitiated consent for not being freely given;

WHEREAS, consent is not freely given in instances where there is any element of pressure, intimidation, possibility of adverse consequences for refusal to give consent, or any other inability to exercise free will by the data subject;

WHEREAS, the utilization of deceptive design patterns in personal data processing activities is tantamount to deception and coercion which may result in the vitiation of the consent given by data subjects and the infringement of their data privacy rights;

WHEREAS, data subjects must be made aware of the nature and common examples of deceptive design patterns in order to prevent them from being victimized;

WHEREAS, a personal information controller (PIC) must avoid such practices on their analog and digital interfaces as they have a responsibility to adhere to the general privacy principles at all times and ensure that mechanisms are in place for the exercise of data privacy rights;

WHEREAS, as deceptive design patterns are already rampant, guidelines are necessary to uphold data subject rights to maintain trust in transactions in analog or digital interfaces;

WHEREFORE, in consideration of these premises, the NPC hereby issues this Advisory on deceptive design patterns.

SECTION 1. Purpose. – This Advisory provides guidance on PICs on the nature of deceptive design patterns, and its impact on the lawful processing of personal data based on the data subject’s consent and in line with the general privacy principles. This Advisory aims to prevent the usage of deceptive design patterns on analog and digital interfaces.

SECTION 2. *Definition of Terms.* – Terms used in the DPA and its Implementing Rules and Regulations (IRR), as amended, are adopted herein. In addition, whenever used in this Advisory, the following terms are defined as follows:

- A. “Deceptive Design Patterns” refer to design techniques embedded on an analog or digital interface that aim to manipulate or deceive a data subject to perform a specific act relating to the processing of their personal data.
- B. “Analog Interface” refers to an offline point of interaction between two or more users;
- C. “Appearance-Based Deceptive Design Pattern” refers to a design pattern that manipulates or deceives a data subject through the display or presentation of information;
- D. “Content-Based Deceptive Design Pattern” refers to a design pattern that manipulates or deceives a data subject through the actual contents, including the language and context, of the information made available to them;
- E. “Digital Interface” refers to any software, including a website or a part thereof, or computer or mobile application;¹
- F. “User Experience” or “UX” refers to the overall experience of a data subject using an analog or digital interface in relation to its convenience, accessibility and credibility;
- G. “User Interface” or “UI” refers to the means by which a data subject interacts with a website, a computer or mobile application, or offline points of interaction.

SECTION 3. *Deceptive Design Patterns.* – Deceptive design patterns undermine general data privacy principles and the rights of data subjects. The following is a non-exhaustive list of prevalent deceptive design patterns:

- A. Appearance-Based Deceptive Design Patterns are those, but are not limited to, that:
 - 1. prohibit a data subject from categorically disallowing the processing of their personal data, or repeatedly prompt a data subject to take an action to share more information than what is necessary or originally intended;
 - 2. present control settings that confuse a data subject such that it leads them to inadvertently consent to the processing of their personal data;
 - 3. make it easy to consent to the processing of their personal data but make it difficult to withdraw their consent by requiring the data subject to undertake tedious, complex, and time-consuming processes;
 - 4. accentuate a choice that results in the processing of more personal data, while blurring or obfuscating the option that enables data minimization;
 - 5. purposely complicate or muddle a data subject’s choices relating to the processing of their personal data;

¹ REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), Article 3 (m) (19 October 2022).

6. bombard a data subject with excessive information that is not essential to the processing of their personal data;
7. present default options that benefit the PIC but may be detrimental to the data subject, such as (1) maximizing the amount of personal data that will be processed; or (2) unnecessarily bundling the purposes for processing;
8. use style and design techniques to distract a data subject from the information provided by a PIC: (1) to acquire the data subject's consent for the processing of their personal data; or (2) for the data subject to provide more information than what is required or necessary for the specified purpose declared; or
9. use characters that children know and trust to influence them into providing more information than what is necessary for the declared purpose.

B. Content-Based Deceptive Design Patterns are those, but are not limited to, that:

1. use ambiguous, complex, or confusing language or sentence structures to steer a data subject into making a choice that is detrimental or violative of their rights as a data subject;
2. provide contradicting, fabricated, or misleading information, or omitting relevant information when acquiring the data subject's consent for the processing of their personal data; or
3. frame choices as better alternatives to shame or steer a data subject from making a choice that better adheres to the general principles of privacy or respects their rights as a data subject.

SECTION 4. *Transparency.* – A PIC shall ensure transparency in the presentation of information to the data subject by avoiding deceptive design patterns. In accordance with the DPA and the Guidelines on Consent, a PIC shall ensure that the data subject is aware of the nature, purpose, and extent of the processing of personal data.

The user interface must provide a concise statement in clear, plain, consistent, and straightforward language on the personal data to be processed, nature, purpose, extent, duration, and scope of processing for which consent is used as basis, risks and safeguards involved, the identity of the PIC, the existence of data subject rights, and how these rights can be exercised.

SECTION 5. *Fairness.* – A PIC shall ensure that personal data is processed in a manner that is neither manipulative nor unduly oppressive to a data subject. As such, an analog or digital interface must be designed and operated in a way that the processing of information will not be detrimental, discriminatory, unexpected, or misleading to a data subject. The use of deceptive design patterns on analog or digital interfaces violates fairness and may result in vitiating the consent of the data subject.

SECTION 6. *Accountability.* – A PIC is responsible for the personal data it processes through an analog or digital interface. The user interface and user experience may be used as evidence to show that the data subject has read and understood the information that the PIC has given on the processing that the data subject consented to.

SECTION 7. *Effects on Consent.* – The use of Deceptive Design Patterns contravenes the principle of Fairness as provided in Section 5 of this Advisory. As such, its use may result in invalidating the consent given by a data subject for a specific processing activity and renders

the processing undertaken without valid lawful basis.

SECTION 8. *Privacy by Design.* – A PIC’s use of Appearance-Based Deceptive Design Patterns or Content-Based Deceptive Design Patterns is inconsistent with its obligation to adopt a Privacy by Design approach in the processing of personal data.

SECTION 9. *Interpretation.* – Any doubt in the interpretation of any provision of this Advisory shall be liberally interpreted in a manner mindful of the rights and interests of the data subject.

Approved:

SGD.
JOHN HENRY D. NAGA
Privacy Commissioner

SGD.
LEANDRO ANGELO Y. AGUIRRE
Deputy Privacy Commissioner

SGD.
NERISSA N. DE JESUS
Deputy Privacy Commissioner