January 14, 2021

United States Senate   United States House of Representatives
Washington, DC 20510   Washington DC, 20515

Re: *Amazon's dark patterns unfairly and deceptively undermine the will of the consumer*

Dear Senators and Representatives:

We, the undersigned organizations, write to draw your attention to a report by the Norwegian Consumer Council (NCC) released today which investigates the "dark patterns," or manipulative design choices in Amazon Prime's subscription model. The report: <u>You Can Log Out, But You Can Never Leave: How Amazon uses Dark Patterns to Keep Consumers Subscribed to Their Services</u>, examines the unfair and unnecessary hurdles facing consumers who attempt to cancel their Amazon Prime free trial membership. At a time where more consumers than ever rely on digital services, the deceptive and manipulative practices outlined in this report pose a growing risk to vulnerable users who are unaccustomed design features which "deceive, steer, or manipulate users into behavior that is profitable for an online service, but often harmful to users or contrary to their intent."[1]

The research for this report was conducted in the U.S., the U.K., and the E.U., and the results all pointed to a single conclusion — Amazon Prime's subscription model is a "roach motel," where getting in is almost effortless, but escape is an exhausting ordeal. The report concludes that Amazon's practices unfairly and deceptively undermine the will of the consumer.

The practices examined in the report include "forced continuity programs that make it difficult to cancel charges, trick questions to frustrate user choice, and free trials that automatically convert into paid memberships,"[2] which violates a consumer's right against being charged for products sold through online negative options without a simple cancellation mechanism.

Accordingly, we have requested that the FTC investigate Amazon's practices and analyze whether they violate Section 5 of the FTC Act, as well as the Restore Online Shoppers' Confidence Act (ROSCA), which requires "simple mechanisms" to stop recurring charges[3] and the CAN-SPAM Act's prohibition of deceptive subject headings.[4]

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[1] https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf , p. 1

[2] https://www.ftc.gov/news-events/blogs/business-blog/2020/09/10-million-abcmouse-settlement-avoiding-auto-renewal-traps

[3] 15 U.S.C. § 8403.

[4] 15 U.S.C. § 7704, "It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45))."

In the wake of the COVID-19 pandemic, tens of millions of Americans from every walk of life have been forced to adapt by making online platforms like Amazon parts of their daily lives, many of whom have had to obtain food, medicine, and education over the internet for the first time.[5]

As the report notes, these consumers are vulnerable to being unknowingly enrolled into automatically renewing subscriptions, often from free trial offers, that are disproportionately difficult to cancel due to conscious design choices which attempt to delay or redirect user choice. Along with a subscription fee, users trapped by this model can also be forced to give up sensitive personal data like contacts, messages, or location without their meaningful consent or knowledge.

Congress has the power to address these imbalances between powerful, multinational corporations like Amazon and its 126+ million subscribers in the U.S. alone.[6] The report recommends that, "as a general rule, it should not be more difficult to unsubscribe than to subscribe from a digital service."

Below are a few of the ways that dark patterns tip the scales against ordinary consumers:

- With an increasing number of online platforms reaching high levels of popularity among consumers, and a variety of free trial subscriptions lowering the cost of entry, consumers are signing up for ever-more services and the prospect of keeping track of every service becomes complicated. In short, it is very easy to sign up for services, but cancelling subscriptions can be challenging by design.

- User interfaces can be employed to steer consumers into prioritizing Amazon's preferred choices over others, to hide or omit relevant information, or to otherwise trick, confuse, or frustrate users.

- Amazon misdirects consumers and challenges their choices through negatively charged statements intended to discourage users from attempting to stop paying for the service, and it employs graphic designs that may steer users away from unsubscribing through a variety of "visual interference" techniques.

- Before cancelling their Amazon Prime subscription, users must scroll past a number of graphics and statements about "Exclusive Prime benefits" they will lose, a tactic that manipulates users through the fear of loss, and Amazon uses this practice to discourage the user from ending their subscription by repeatedly offering a bevy of identically-designed buttons designed to divert the user's attention away from cancelling or delay their decision.

- If a user manages to cancel their Amazon Prime subscription, they received a message titled "Oh no! Your Prime benefits are ending!". While titled as a "confirmation" email, the contents are written in the style of a warning, informing the user that they would soon lose benefits by ending their Amazon Prime membership while offering bright yellow button that would allow them to retain these benefits. Clicking this button instantly took the user back to their Amazon account, with a message stating that their Prime

[6] Amazon.com Inc. has 126 million members in its Prime loyalty program in the United States as of September, according to a new estimate from Consumer Intelligence Research Partners (CIRP) https://www.digitalcommerce360.com/article/amazon-prime-membership/

membership had been reactivated. This is the roach motel in action: unsubscribing from Amazon Prime takes navigating at least 5 pages, but undoing that choice only takes a single click.

On the basis of these findings, the NCC is filing a complaint before the Norwegian Data Protection Authority against Amazon, and we have likewise urged the FTC to investigate the issues detailed in the report and take the appropriate action under the FTC Act. but there is more Congress must do to fully protect consumers from sophisticated practices which are designed to undermine and confuse their intent to their detriment. Legislative solutions should take a comprehensive approach to meaningfully safeguard consumer choice and privacy with new, robust enforcement mechanisms that combat limitations on user autonomy, choice, or decision-making online and protect vulnerable populations like the elderly and children from manipulative user interface design.

We ask that, in order to protect users and online marketplaces from manipulation and exploitation by powerful platforms, Congress hold tech companies accountable for practices that undermine autonomy and subtly drive consumers to make choices they wouldn't otherwise make. We ask that you work with your colleagues in the House of Representatives and the Senate to bring an end to these dark patterns online through legislation that prohibits dishonest interfaces and creates robust tools to defend user choice at the federal level.

Thank you for your attention to this matter.

Sincerely,

Public Citizen
Campaign for a Commercial-Free Childhood
Center for Digital Democracy
Center for Economic Justice
Consumer Federation of America
Electronic Privacy Information Center
U.S. PIRG