



October 20, 2020

BY EMAIL (PrivacyRegulations@doj.ca.gov)

Re: EFF comments on proposed Cal DOJ regulations on “dark patterns”
(OAL File No. 2019-1001-05)

Salutations:

The Electronic Frontier Foundation (EFF) writes in support of the proposed regulations from the California Department of Justice (DOJ) to protect against what are commonly called “dark patterns.” These are manipulative user experience designs that businesses use to trick consumers into surrendering their personal data. Specifically, we support the proposed regulations at Section 999.315(h), within the third set of proposed modifications of CCPA regulations, which the California DOJ published on October 12.

The California Consumer Privacy Act (CCPA) created a right of consumers to opt-out of the sale of their personal data. Businesses might use dark patterns to hamstring this CCPA right. The proposed DOJ regulations will secure this right by stopping dark patterns. Among other things, the proposed regulations would:

- Require opt-out processes to be “easy” and “require minimal steps.”
- Ban opt-out processes “designed with the purpose or having the substantial effect of subverting or impairing a consumer's choice to opt-out.”
- Limit the number of steps to opt-out to the number of steps to later opt back in.
- Ban “confusing language” such as “double negatives” (like “don’t not sell”).
- Ban the necessity to search or scroll through a document to find the opt-out button.

For more on EFF’s opposition to dark patterns, please see:
eff.org/deeplinks/2019/02/designing-welcome-mats-invite-user-privacy-0.

For the DOJ’s proposed regulations, please see:
oag.ca.gov/sites/all/files/agweb/pdfs/privacy/ccpa-text-of-third-set-mod-101220.pdf

Sincerely,

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