Authority for Consumers & Markets

Public call for information

Persuasive strategies in online choice architectures for consumers

Would you like to help flesh out professional standards regarding the influencing of consumer behavior? Would you like to help prevent deception and other unfair commercial practices online? If so, the Netherlands Authority for Consumers and Markets (ACM) would like to ask you some questions about ethical standards and behavioral persuasion in online choice architectures for consumers.

1 For whom is this request?

- Are you an expert in online marketing, conversion optimization or user experience? And do you sometimes struggle with questions about how far you can go with nudges on retail websites, in apps and other online choice architectures for consumers? Have you sometimes encountered situations that were unethical in your opinion? Or

- Are you in any way (professionally, scientifically, policy-wise or just out of interest) involved in behavioral persuasion in online choice architectures for consumers? Or

- Does your organization represent the interests of consumers, businesses or professionals, and do you, in that capacity, have any knowledge and insights about the limits and possibilities of consumer persuasion in retail websites, apps, and other online choice architectures?

If so, ACM invites you to help us prevent consumers from being misled, prevent aggressive online commercial practices, and prevent unfair competition that may result from such practices.

ACM is asking for your help because it is drawing up guidelines regarding behavioral persuasion of consumers in online choice architectures such as online stores and mobile shopping apps. With these guidelines, ACM seeks to help online businesses and their advisors give form to their professional diligence with regard to this topic. In order to make these guidelines as relevant and up-to-date as possible, ACM would like to hear from different civil-society groups what trends and developments they are seeing right now, and what their opinions are about those trends and developments.

We will further explain our call for information below. If you still have any questions after reading the explanation, please do not hesitate to contact us by sending an email to beslisonline@acm.nl.

Thank you for your time and consideration.

Markets that work well for people and businesses

Why is ACM drawing up guidelines regarding online choice architectures?

Over the past few years, the digitalization of the economy has brought consumers significant benefits: innovative products and services, faster services, personalization (offers, products and services), cheaper products, and better opportunities to look around and compare conditions before you make a purchase. While the digital economy, on the one hand, offers consumers more opportunities to make an informed choice, we also see, on the other hand, that the information asymmetry between consumers and businesses is growing. By using data, businesses acquire more and more knowledge about consumers, their behavior, and about how to influence that behavior. And the online choice architecture offers countless ways to influence consumer behavior with that knowledge. At the same time, the mechanisms underpinning those choice architectures are becoming more and more difficult for consumers to comprehend.

Businesses optimize their online choice architectures, and, in doing so, determine to a large extent what consumers choose. In many cases, choice architectures help consumers make choices that fit with their situations and preferences. However, consumers are sometimes steered towards choices that they normally would not have made. Some businesses are not aware of the negative effects that their design choices have on consumers. Other businesses consciously use their online persuasive strategies to mislead consumers or to exert undue pressure.

ACM wants businesses to be aware of the potential effects of their design choices, and ACM also wants them to take into account the interests of consumers when designing their choice architectures. It also believes that consumers should be protected online against persuasive strategies that abuse their behavioral pitfalls.[1] With these guidelines, in which it provides real-world examples, ACM wishes to promote good practices and to provide clarity about prohibited practices. Good practices are choice architectures that help consumers *and* from which businesses benefit as well: for example, a long-lasting relationship with a satisfied customer. Prohibited practices include misleading or coercive persuasive strategies that steer consumers towards choices that they would not have made otherwise. With these examples, ACM wishes to offer online businesses practical guidelines with which they are able to operationalize their professional standards when designing their choice architectures.

2   Why cooperate with this call for information?

The law or case law is clear with regard to certain online persuasive strategies: for example, businesses cannot pre-tick checkboxes for optional products or services during the purchasing process for consumers. In other situations, answering the question of whether or not a specific persuasion strategy is acceptable is less clear-cut. Furthermore, the circumstances in which

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[1] See also: ACM InSight 2019: Consumer protection in a changing society https://www.acm.nl/en/publications/insight-2019-consumer-protection-changing-society and https://fd.nl/opinie/1267966/misbruiken-van-voorspelbaar-consumentengedrag-moet-stoppen (an article in the leading financial newspaper in the Netherlands about this subject).

products and services are offered in online environments are evolving rapidly. By answering the questions in this call for information, you will help ACM find familiar and real-world examples. You will also help ACM gain insight into the relevant questions that representatives of businesses and consumers have, so that ACM is able to address those questions. That is how you help prevent unfair online commercial practices, and how you help improve professional standards.

3 Who may respond?

ACM is interested in well-founded insights from all interested parties: business associations, trade associations, consumer organizations, academic experts, interested members of the public, online retailers, and marketing service providers. With regard to the latter two groups, ACM has several specific questions on top of the general questions.

Would you like to respond to just one question or several questions in this call for information? If so, we still invite you to share your input.

4 How can you respond and until when?

You can send your input (plus any underlying documents) to the following email address: beslisonline@acm.nl.

Would you like to send your email to us encrypted? You can do so by using Cryptshare. You can request a Cryptshare manual by sending an email to the abovementioned email address.

Any information you provide us will be treated confidentially, and will only be used in the drafting of the Guidelines regarding online choice architectures. If, at some point, this information were to be published, it would not be possible to trace it back to individuals, organizations, or businesses.

This call for information will be open from 12 July through 16 August 2019.

5 What would ACM like to know?

5.1 Context

ACM is asking the below questions as part of its consumer protection duties. These duties include the enforcement of rules that apply to traders that offer products or services to consumers. Some of these rules concern the provision of information to consumers, and some seek to prevent misleading and aggressive commercial practices. ACM enforces compliance with these rules for all products and services, except for financial products and services. On ACM's website, you can find more information about these rules: https://www.acm.nl/nl/onderwerpen/verkoop-aan-consumenten

(in Dutch).

The questions in this call for information are about online choice architectures for consumers. These include online stores (desktop and mobile versions), retail platforms, shopping apps, and digital assistants. However, an ad banner with a link to an online store can also be regarded as part of that choice architecture. The questions concern all stages of the customer journey: from the first time consumers start to look around and the choices they are presented with, to all the steps that lead to the actual purchase of a product or service. Even after a consumer has become a customer, they make decisions, for example, about subsequent purchases, or about renewing or canceling a subscription. The questions concern the choice architectures in all of these stages.

In several questions, we ask for examples. If possible, please substantiate your answers to these questions with concrete examples such as screenshots.

5.2   Questions

General questions:

1. What examples do you see regarding persuasion in online choice architectures that mislead consumers or influence their choices by exerting strong pressure?

2. In your opinion, are there any sectors in which unwanted persuasion of consumers occurs disproportionally often? If so, what sectors?

3. In your opinion, are there any specific groups of consumers that deserve more protection against unwanted persuasive strategies? If so, what target groups?

4. In your opinion, what starting points and methods should companies use in order to guarantee that they will not persuade consumers by misleading them or by exerting too much pressure? And how should they take into account the interests of the consumer groups mentioned under 3?

5. In your opinion, what would help make online choice architectures fairer for consumers?

6. Do you have any other comments?

Specific questions for businesses that commercially exploit online retail stores, apps, or other online choice architectures for consumers and their UX or conversion optimization service providers.

7. What are the most important nudges/strategies that you apply on your websites and other choice architectures for consumers?

8. On the basis of what criteria do you determine whether the design of this choice architecture is effective? In that assessment, do you take into account both short-term and long-term effectiveness? What critical process indicators (CPIs) do you include in those criteria? And how do you measure these?

9. What ethical standards do you follow when designing your online choice architectures? And how do you safeguard these in that process?

10. What experts do you use in order to protect ethical standards and customer interests? Do you employ any trained 'behavioral influencers' (for example, psychologists, behavioral economists) or do you temporarily acquire such expertise?

11. When analyzing the customer's interests, do you sometimes face any ethical dilemmas: for example, a nudge that is positive for one aspect of the customer's interests but negative for another aspect, or that there is a difference between short-term and long-term effects? If so, could you share any examples thereof with us?

6 What will ACM do after this call for information?

ACM will use the responses to this call for information for identifying current real-world trends and questions, and which of them should be given attention in these guidelines. This fall, ACM will publish a draft version of the guidelines for public consultation. ACM expects to publish the final guidelines in late-2019.