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Guidelines

Protection of the Online Consumer

Boundaries to online influencing:
Preventing deception in an online environment



TABLE OF CONTENTS

Table of contents	1
About these guidelines	5
Why these guidelines?	5
Why does ACM target online selling with these guidelines?	5
For whom are these guidelines?	5
From what rules do the interpretations in these guidelines follow?	5
What is the role of the Netherlands Authority for Consumers and Markets?	6
Principles	7
How do you prevent deception in an online environment?	
CLEAR INFORMATION	9
What do you need to inform online consumers about according to the law, and how do you do so?	
1 Providing information about your business and offers	10
1.1 What is required and what is not allowed?	11
1.2 Tips	11
1.3 Examples	11
1.4 Relevant regulations	12
1.5 Explanation of regulations	12
1.6 Enforcement	12
1.7 More information: links and footnotes	12
2 Providing information about prices	13
2.1 What is required and what is not allowed?	13
2.2 Tips	14
2.3 Examples	14
2.4 Relevant regulations	15
2.5 Explanation of regulations	15
2.6 Enforcement	15
3 Providing information about personal data	16
3.1 What is required and what is not allowed?	17
3.2 Tips	17
3.3 Examples	17
3.4 Relevant regulations	17
3.5 Explanation of regulations	17
3.6 Enforcement	18
4 Consumer reviews	19
4.1 Online reviews	19
4.1.1 What is required and what is not allowed?	19
4.1.2 Tips	20
4.1.3 Examples	20
4.1.4 Relevant regulations	21
4.1.5 Explanations of regulations	21
4.1.6 Enforcement	21
4.1.7 More information: links and footnotes	21
4.2 Recommendations	21
4.2.1 What is required and what is not allowed?	22
4.2.2 Tips	22

4.2.3	Examples	22
4.2.4	Relevant regulations	22
4.2.5	Explanation of regulations	22
4.2.6	Enforcement	22
4.2.7	More information: links and footnotes	23
4.3	Notifications regarding the behavior of other consumers	23
4.3.1	What is required and what is not allowed?	24
4.3.2	Tips	24
4.3.3	Examples	24
4.3.4	Relevant regulations	24
4.3.5	Explanation of regulations	25
4.3.6	More information: links and footnotes	25
5	Advertising	26
5.1	What is required and what is not allowed?	26
5.2	Tips	26
5.3	Examples	27
5.4	Relevant regulations	27
5.5	Explanation of regulations	27
5.6	More info: links and footnotes	27
6	Advertising by influencers	28
6.1	What is required and what is not allowed?	29
6.2	Tips	29
6.3	Examples	29
6.4	Relevant regulations	29
6.5	Explanation of regulations	29
	FAIR DESIGN	30
	What rules apply to the design of your online environment?	
7	Default settings	31
7.1	What is required and what is not allowed?	32
7.2	Tips	32
7.3	Examples	33
7.4	Relevant regulations	33
7.5	Explanation of regulations	33
7.6	Enforcement	34
7.7	More information: links and footnotes	34
8	Ranking of search results	35
8.1	What is required and what is not allowed?	36
8.2	Tips	36
8.3	Examples	37
8.4	Relevant regulations	37
8.5	Explanation of regulations	37
8.6	Enforcement	38
8.7	More information: links and footnotes	38
9	Cancelling your contracts	39
9.1	What is required and what is not allowed?	39
9.2	Tips	40
9.3	Examples	40
9.4	Relevant regulations	40

9.5	Explanation of regulations	41
9.6	Enforcement	41
9.7	More info: links and footnotes	41
10	Unconscious clicking behavior	42
10.1	What is required and what is not allowed?	42
10.2	Tips	43
10.3	Examples	43
10.4	Relevant regulations	43
10.5	Explanation of regulations	44
10.6	More information: links and footnotes	44
	FREE CHOICE	45
	How do you offer consumers a free and fair choice to buy or use something online?	
11	In-game purchases	46
11.1	Business models	46
11.1.1	Different types of business models	46
11.1.2	In-game sales techniques	47
11.1.3	Rules regarding in-game sales techniques	47
11.1.4	More information: links and footnotes	47
11.2	In-game stores	48
11.2.1	What is required and what is not allowed?	48
11.2.2	Tips	49
11.2.3	Examples	49
11.2.4	Relevant regulations	49
11.2.5	Explanation of regulations	49
11.3	In-game currency	50
11.3.1	What is required and what is not allowed?	50
11.3.2	Tips	50
11.3.3	Examples	51
11.3.4	Relevant regulations	51
11.3.5	Explanation of regulations	51
11.3.6	Enforcement	51
11.4	Loot boxes	51
11.4.1	What is required and what is not allowed?	52
11.4.2	Tips	52
11.4.3	Examples	52
11.4.4	Relevant regulations	52
11.4.5	Explanation of regulations	52
11.4.6	More information: links and footnotes	52
11.5	Promoting games as 'free'	53
11.5.1	What is required and what is not allowed?	53
11.5.2	Tips	53
11.5.3	Examples	53
11.5.4	Relevant regulations	53
11.5.5	Enforcement	53
11.5.6	More information: links and footnotes	54
11.6	In-game payment settings	54
11.6.1	What is required and what is not allowed?	54
11.6.2	Tips	54
11.6.3	Examples	55
11.6.4	Relevant regulations	55
11.6.5	Enforcement	55

12	Personalization	56
12.1	What is required and what is not allowed?	57
12.2	Tips	57
12.3	Examples	57
12.4	Relevant regulations	58
12.5	Explanation of regulations	58
12.6	Enforcement	58
13	Promoting more and more-active use	59
13.1	What is required and what is not allowed?	60
13.2	Tips	60
13.3	Examples	60
13.4	Relevant regulations	60
13.5	Explanation of regulations	60
13.6	More information: links and footnotes	61
14	Emphasizing limited availability	62
14.1	What is required and what is not allowed?	63
14.2	Tips	63
14.3	Examples	63
14.4	Relevant regulations	64
14.5	Explanation of regulations	64
14.6	Enforcement	64

ABOUT THESE GUIDELINES

About the Guidelines on the Protection of the Online Consumer

Why these guidelines?

Online businesses are getting better and better at nudging consumers in their decision-making processes and purchasing processes. Persuading consumers is allowed, but there are boundaries. These boundaries follow from consumer protection law but are sometimes difficult for businesses to apply to real-world situations. In that context, these guidelines serve as a tool for businesses. Using practical examples, ACM explains how consumer protection law works in practice in the online world. ACM will regularly review these guidelines.

Why does ACM target online selling with these guidelines?

Persuading consumers to buy products is part of doing business. It is certainly not unique to businesses in the online world. However, businesses are getting better and better at nudging and influencing consumers online, and do so more often. Armed with data about the specific desires, preferences, and current circumstances of consumers, businesses are able to provide valuable services. However, consumers can also be nudged into making choices that are not in their interests. Since online selling has become so dynamic and data-driven, consumers are finding it harder and harder to understand whether and, if so, how they are nudged into buying something. As a result, it has sometimes become more difficult for consumers to make an informed decision that is in line with their interests (economic or otherwise). For ACM, that is one reason to specifically target online selling with these guidelines.

For whom are these guidelines?

These guidelines are for people that play a role in the design of online environments and the online selling of products to consumers, for example marketers (internal and external), UX designers, compliance officers, legal advisors, and managers that make decisions regarding targets and incentives, as well as anyone developing websites, games, or apps. These guidelines are also for all businesses that sell products to consumers online or businesses that operate a platform on which other businesses are able to offer their products. In addition, these guidelines offer interest groups, trade associations, and consumer organizations insight into how ACM assesses online persuasion. Finally, consumers are also able to use the contents of these guidelines to learn more about their rights.

From what rules do the interpretations in these guidelines follow?

The interpretations in these guidelines have been based on consumer protection law, particularly the rules regarding unfair commercial practices. These rules set boundaries to the degree to which businesses are allowed to nudge consumers in their decisions. These boundaries are largely technology-neutral. This means that they apply to all the various channels through which businesses and consumers are in contact with each other, for example in a brick-and-mortar shop, online on the computer, via mobile phones or through a digital assistant. In these guidelines, we apply the rules to the online channels. In addition, ACM also includes the guidance of the European Commission in its explanations of these guidelines, as well as relevant national and European case law. We also refer to self-regulatory bodies such as the Dutch Advertising Code Committee.

Attention: Check for yourself whether you comply with all the rules and regulations that apply to you. Sector-specific rules may also apply online, such as rules from the EU Directive on package travel and linked travel arrangements. In addition, competition rules and the General Data Protection Regulation (GDPR) also apply. These rules fall outside the scope of these guidelines. These guidelines only contain ACM's interpretations of consumer protection rules with regard to several, common online persuasion

techniques. As such, these guidelines are not an exhaustive list of interpretations, but merely offer guidance. In any formal assessment, ACM will take into account any legal developments and changes to the law.

What is the role of the Netherlands Authority for Consumers and Markets?

The Netherlands Authority for Consumers and Markets (ACM) is an independent regulator. ACM's mission is to ensure that markets function well for both people and businesses. It does so by, among other activities, enforcing compliance with the laws and rules that businesses must comply with in their dealings with consumers. On behalf of the Dutch government, ACM checks whether businesses follow the rules, and it can take action if businesses do not.

PRINCIPLES

How do you prevent deception in an online environment?

The most important principle is the consumer's interest. Consumers must have sound information in order to be able to decide whether they wish to buy a product or service. Persuasion is allowed, but may go too far if your persuasion techniques nudge the average consumer to make a choice they would not have made if they had been able to make a well-informed decision. This means there are limits to how much you can influence consumers in their decision-making processes. Below, we have listed the basic principles for preventing misleading practices or deception in online environments.

1) Organize your organization in such a way that you promote compliance

Have the right processes in place within your business to prevent online misleading practices. Make sure the marketing, design, and legal departments coordinate well with each other. For example, have your online environment checked by a legal expert. Do not manage your designers and marketers of your website solely in terms of increasing your conversion rate, but also in terms of compliance with the rules, or in terms of how well consumers are able to make an informed decision and the right choice. Check whether your business works according to the basic principles of fairness by design (which means that, when designing your online environment, you ensure that people are able to make a fair choice) and privacy by design (this means that, already when you design your online environment, you ensure that personal data is well protected).

2) Test the effects of your online choice architecture

Check whether your online environment helps consumers in making an informed decision. Therefore, do not only measure the sales, but also whether consumers are making a choice they would have also made without your persuasion techniques. Analyze whether the design of your online environment or the use of persuasion techniques produce any harmful effects for consumers. Test whether consumers see and understand all information. Do you use algorithms? These, too, have to comply with consumer protection rules. As such, test and monitor your algorithms. You are responsible for the working of the algorithms.

3) Give complete information

In any case, state the price and all costs in euros, and give a sufficiently detailed description of the product or the service. In addition, state information about the collection or use of data. Do you present products in a certain order, personalize products or prices, or use algorithms? Tell consumers you do, and explain how you do this. And finally: did you pay a consumer to write a review? Clearly state this.

4) Give correct information

Only call your product or service 'free' (or anything similar) if this is the case. If consumers pay with personal data, it is not 'free'. An app in which in-app purchases are possible is also not free. Tell consumers this. Moreover, do not give the impression that consumers have to decide quickly to purchase something if this is not true, for example by using false notifications such as: 'only a few items left' or 'limited-time offer'. And finally: do not use fake reviews.

5) Give easy-to-understand information

The language level of your clients can vary greatly. Therefore, always make sure that you offer the information in a form and language that your target audience can understand. For example, avoid jargon (legal or otherwise), double negatives, discontinuous structures, and words with ambiguous meanings. You can only know whether people really understand your information if you analyze comprehension.

6) Give the information before consumers make a purchase

Consumers must be able to make an informed decision. Essential information, such as the price, therefore, must be clear right at the start of every offer. In any case, you must provide other important information before consumers make their purchase. Are consumers required to create an account? In that case too, give all important information on time.

7) Make sure that the information is easy to find

Any information that is important to consumers' decisions cannot be hidden on your website or in the general terms and conditions. Consumers must be able to find information on, for example, customer service, use of personal data, and other conditions in a logical place.

8) Make sure the environment is logical and fair

Consumers cannot be put on the wrong track by the design of the online environment. Use well-organized menus and offer options in a balanced manner. For example, any options that are unfavorable to the business cannot be hidden behind multiple clicks, or on hard-to-find pages. In addition, think of the use of clear fonts and logical colors, icons, and click sequences.

9) Ensure the default settings are favorable to consumers

Do you use default settings to make consumers make a specific choice, for example using pre-ticked boxes? Such settings cannot influence consumers in their decision-making processes on the basis of pressure, undue influence, or incorrect information. In any case, never use pre-ticked boxes if you offer consumers a product for which they have to pay. It is also not allowed to pre-tick the box for signing up for a newsletter for people who are not yet customers.

10) Be mindful of the vulnerabilities of consumers

Be mindful of the limitations of consumers in terms of attention, energy, and time. Do not exploit consumers' vulnerabilities to urge them to purchase something. Some groups of consumers are extra vulnerable, for example elderly people and children. Be conscious of the fact that all consumers can be temporarily vulnerable under special circumstances.

11) Look at the big picture

Be careful with stacking persuasion techniques and design choices that nudge consumers to do certain things. This increases the chance of deception and undue influence. In its assessments of practices, ACM looks at the big picture. Therefore, check whether the whole of your online environment does not produce any harmful effects to consumers.

CLEAR INFORMATION

What do you need to inform online consumers about according to the law, and how do you do so?

Consumers need clear, correct, and complete information. With such information, they are able to decide whether they wish to buy a product from you. In the section *Clear Information*, you can find what rules apply to specific topics:

- 1. Providing information about your business and offers
- 2. Providing information about prices
- 3. Providing information about personal data
- 4. Consumer reviews
- 5. Advertising
- 6. Advertising by influencers

1 Providing information about your business and offers

How to provide information online about your business and offers

Consumers need correct and complete information. With such information, they are able to make well-informed decisions about whether or not they want to buy a product from you. Consumers must receive all information in a timely manner, including online. That is why the law stipulates about what you, as a business, must provide consumers in terms of information, and how you must do so.



Is it difficult for consumers to find or understand certain information, or to do so in a timely manner? If so, they will not be able to take that information into account in their purchase decisions. As a result, consumers could make decisions that they would not have made if they had known everything. This can be a misleading commercial practice. Unfair commercial practices are prohibited.

It is important that consumers are able to have confidence in online environments. In such environments, they cannot be misled into making a purchase or into giving consent. That is why rules on how to inform consumers have been laid down in consumer law. See the [Checklist for online selling \(in Dutch\)](#) to find out what online-information requirements you must comply with.

When assessing whether you provide information clearly and in a timely manner, ACM takes into account the specific circumstances of each situation. ACM looks at the content of the information as well as the timing of when the information is provided. ACM also takes into consideration the design choices regarding the presentation of the information. In that context, ACM takes into account the channel that is used for providing the information.

On a website, you are able to give consumers all of the important information properly. In that context, consumers will appreciate it if you offer information in layers. That means placing the most essential information clearly next to the offer. Make sure to include correct links, which clearly indicate what

information consumers can find when clicking on them. Has your website been optimized for mobile use or do you have an app? If so, your website will have limitations, as it is viewed on a smaller screen. In such situations, too, it will be better to offer information in layers.

Some information can be included in the general terms and conditions. Do you use general terms and conditions? If so, make sure they are clear and easy-to-understand. If one of the general terms and conditions is unclear, then the interpretation that is the most favorable for consumers will apply. In addition, make sure that consumers are able to read the conditions before making a purchase. The general terms and conditions cannot contain any unreasonable provisions. The key characteristics of your offer do not belong in the general terms and conditions either. Present these key characteristics with the offer straight away, for example the price of the product, the amount, or the color. Make sure that all your [general terms and conditions comply with the rules \(in Dutch\)](#).

1.1 What is required and what is not allowed?

- ✓ Present important information about your business and your offers in a timely manner. Use the checklist for online selling to see what information you need to present and at what point you must do so.
- ✓ Inform consumers in a clear and easy-to-understand manner. Do not hide important information, for example in a long text. Do not leave out such information either. Do not make the text vague or ambiguous.
- ✗ Do not let your commercial interests reduce the clarity of your information, even if the provision of certain information may reduce your conversion. Resist the urge of presenting such information less clearly, for example by using small fonts or colors that are barely legible.
- ✗ Do not provide important information so late in the process that consumers take (or could take) decisions that they would not have taken if they had been given the information in a timely manner.

1.2 Tips

- Make sure that important information is clearly visible to consumers, for example by using striking colors and a clear font that is sufficiently large.
- Use the [Checklist for online selling \(in Dutch\)](#) to see whether you meet the information requirements.
- Adjust your language to your target audience. For example, does your website target children? If so, make sure that children are able to understand the information easily.
- Assess constantly whether the information on your website is clear and easy-to-understand for the target audience, for example by conducting a survey (or having one conducted) among customers and/or performing an analysis on behavioral data.

1.3 Examples

1.3.1 Example: Unclear directory assistance services

People looking for government agencies' numbers often use search engines in order to find such numbers. One of the first search results is an ad of a directory assistance service. That company has paid the search engine to have its service come up if someone searches for a particular agency. That company's ads give the impression that they belong to the government agency. The website resembles the government agency's website in terms of design and language. The company does not offer any clear information about its identity, the content, or the price of the service. As a result, consumers erroneously believe they have found the government agency's number. However, if consumers call the agency using the directory assistance service, they pay additional charges on top of the agency's regular rate. In this situation, that is a misleading practice. This is not allowed.

1.3.2 Example: Failure to present important product information

A consumer orders software for their laptop from a website. However, the software is not compatible with their laptop's operating system. Information about what operating systems are compatible with the software is nowhere to be found on the website. That is not allowed, since this concerns an important characteristic of the product. Businesses must present important information on the product page.

1.3.3 Example: Hiding important information in the general terms and conditions

A consumer orders a book from an online store. A few weeks later, they receive an e-mail from the store. It says that they are now required to place an order of at least 25 euros each quarter. This obligation was included in the general terms and conditions. The consumer had accepted those through a pre-ticked box next to the phrase "I accept the general terms and conditions". The online store forces the consumer to meet the obligation of placing an order each quarter. That is not correct. Information about important characteristics and the price of the service should have been clearly stated in the offer. These do not belong in the general terms and conditions. The consumer is not bound by the conditions. Find out how you can [prevent your general terms and conditions from being invalid \(in Dutch\)](#).

1.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Title 5 \(Agreements in general\), Section 3 \(general terms and conditions\) of the Dutch Civil Code, Book 6 \(in Dutch\)](#)

1.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)
- [Guidance on the interpretation and application of the Unfair Terms in Consumer Contracts Directive](#)

1.6 Enforcement

- 🔗 [ACM confronted several large retailers](#), because they had insufficiently informed consumers about important characteristics of smart devices.
- 🔗 [ACM imposed a fine on a Dutch hobby and collecting company](#). Consumers that had ordered a sample product from this company at a low price were subsequently sent unsolicited hobby and collecting products. They had to pay for those products. It was not clearly explained to consumers over the phone what was offered to them or at what price.

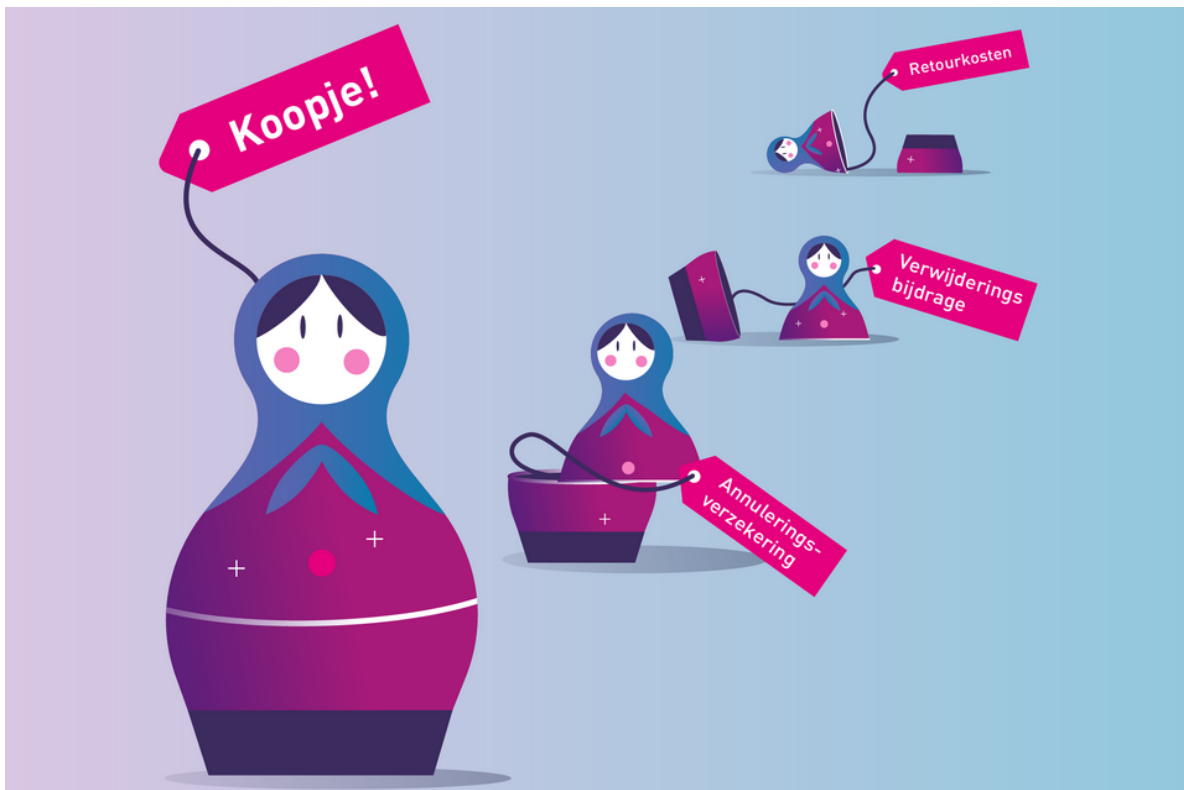
1.7 More information: links and footnotes

- [Effective online transparency – Studies into improving the online provision of information to consumers \(in Dutch\)](#)

2 Providing information about prices

How to provide information online about prices

To consumers, the price of a product is a key element. With that piece of information, they are able to decide whether or not they want to purchase a product from you. That is why you need to inform consumers about the price in a clear and timely manner.



Display the total price, including all additional costs, even if it is a starting price. Do so from the first moment you offer a product at a certain price. It is important that consumers are able to have confidence in online offers. They cannot be misled into making a purchase. That is why consumer law contains [rules on how and when you display prices \(in Dutch\)](#).

Do you personalize prices by using algorithms, or perhaps on the basis of data (personal or otherwise) collected by you and/or others? If so, tell consumers. Does your system collect data on buying behavior, recent searches, or where consumers live? And does it use that data for determining what prices to display? If so, tell consumers that you personalize prices, and explain how you do so. In addition to the requirement of providing information pursuant to consumer law, you are also required to comply with the General Data Protection Regulation (GDPR), which is enforced by the Dutch Data Protection Authority (AP).

2.1 What is required and what is not allowed?

- ✓ Make sure that your online prices are complete and clear, so display a single price including all mandatory additional costs.
- ✓ Are you unable to display the total price in advance, because, for example, the final price depends on how much the client orders, or on other choices during the order process? If so, make clear in advance what those additional costs are using an example. Next to the price, only one other amount for mandatory additional costs can be presented. Or present a single total

amount, including additional costs using an example. The example must be logical though, for example, when offering a holiday accommodation, the number of people must be logical for the size of the accommodation. If you do not say anything about additional costs, consumers will not have to pay any to you.

- ✓ If the consumer has entered all of their choices, present only a single total price, including all mandatory additional costs. The breakdown of that price can be explained either underneath the price or no more than a single mouse click away. All prices must be displayed in a similar, clear manner in terms of font and color.
- ✗ Do not display any additional costs under an 'i'-symbol. Such costs are often only visible after clicking on or hovering over the symbol. This is not sufficiently clear to consumers.
- ✗ Do not give the false impression that a price is a sale or special price. For example, do you use a 'was/now'-price? If so, [make sure that the 'was' price was the lowest price that you charged over 30-day period preceding the offer](#) (in Dutch).
- ✗ You cannot display the price of your offer excluding mandatory additional costs if you already know the amount of the mandatory additional costs, such as VAT, administrative costs, tourist taxes, or a mandatory bed linen set if the consumer has entered the dates and the number of occupants.
- ✗ Do not pre-tick any checkboxes for options that involve additional costs. These are considered unsolicited supplies. In that case, consumers do not have to pay those costs, since they did not select those options themselves.

2.2 Tips

- Do you offer trips, airline tickets, hotels, or vacations? You can design your online architecture in such a way that you ask the consumer right from the start to enter the dates and the number of people so that you are able to display a single total price straight away. This must be a price that includes all mandatory additional costs.
- Do you offer other businesses the opportunity to offer their products on your website? If so, you can implement technological measures to ensure that they are forced to display a single total price when offering their products.

2.3 Examples

2.3.1 Example: The disposal charge for tires

An online store sells tires on price comparison websites and on its own website. Next to the tires on offer is a price per tire. The consumer is statutorily required to pay a fixed additional fee per tire. This is called the 'disposal charge'. However, these costs are not included in the displayed price. That is not allowed.

The online store must include the disposal charge in the price of the tire, because these represent costs that a consumer must always pay when purchasing tires.

2.3.2 Example 2: A lodge with additional costs

A national chain of holiday lodge parks includes the following in an online ad: 'Enjoy a weekend full of nature! Special offer! The four of you can stay in this lodge for just 160 euros for a weekend between 1 January and 15 March!'

When the consumer clicks on the ad to book a weekend getaway, the costs turn out to be more than 160 euros. Additional costs such as tourist taxes, mandatory final cleaning, and mandatory bed linen are added to the price. These were not included in the advertised price. That is not allowed. The price in this offer must include the costs for tourist taxes, the mandatory final cleaning, and the bed linen.

2.4 Relevant regulations

- [Section 3A of the Dutch Civil Code Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Directive 98/6/EC \(Price Indication Directive\)](#)
- [Sections 2b and 3 of the Dutch Prices Act \(in Dutch\)](#)
- [Decision on Price Indication of Products \(in Dutch\)](#)
- [Section 2B, title 5 of the Dutch Civil Code book 6 \(Provisions on agreements between traders and consumers\) \(in Dutch\)](#)

2.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)
- [Guidance on the interpretation and application of the Price Indication Directive](#)

2.6 Enforcement

- 🔗 [ACM imposed fines on four telecom providers](#) for providing inaccurate and incomplete information about their offers on their websites for consumers. For example, the one-off costs were not clearly displayed in the offer of the subscription, as a result of which the offer looked cheaper than in reality.
- 🔗 [ACM banned an online platform from using fake discounts](#). The online platform lured consumers with significant discounts on prices that it presumably had not charged. In this case, ACM worked together with other European consumer authorities and the European Commission.
- 🔗 [ACM imposed fines on an airline](#). The airline did not consistently include all foreseeable and unavoidable costs in the advertised prices of airline tickets on its website.
- 🔗 [ACM sat down with a business concerning the pre-ticking of a checkbox](#). The business in question automatically added a paid service package of 65 euros to consumers' shopping carts when buying TVs online. This option was pre-selected, and that is not permitted. Consumers must actively make that decision themselves.

3 Providing information about personal data

How to provide information online about the use of personal data

Explain to consumers what exactly you do with their personal data, for example that you sell the data or use it to determine prices or marketing messages, or that you use it to personalize prices. Consumers must be able to make a well-informed decision about what to purchase and from which business they make that purchase. To that end, consumers need to know how your business uses their data. In that way, consumers are also able to compare purchases on the basis of the use of data (personal or otherwise) as well.



Is it difficult for consumers to find or understand information about the use of their personal data, or to do so in a timely manner? If so, they will not be able to take that information into account in their purchase decisions. As a result, consumers could make decisions that they would not have made if they had known everything. This can be a misleading commercial practice. Unfair commercial practices are prohibited. ACM enforces compliance with these rules laid down in consumer law.

Information about the use of personal data is thus important information that you are required to provide under consumer law. The General Data Protection Regulation (GDPR) explains exactly what information you have to provide regarding the use of personal data. The GDPR stipulates how you are allowed to process personal data and how you can ask consumers for consent for the collection thereof. The Dutch Data Protection Authority (AP) enforces compliance with the GDPR. The AP and other European data protection authorities are members of the European Data Protection Board. They have drawn up [guidelines](#) on, among other things, the way in which you have to inform about the use of personal data and the privacy options that consumers have.

3.1 What is required and what is not allowed?

- ✓ Give consumers complete information about the way in which you collect and use their personal data. Consumers will then be able to take this into account when deciding to purchase a product from you or from another business.
- ✓ Comply with the GDPR when collecting and using personal data.
- ✓ Does your website use cookies that are not necessary for the functioning of the website, such as tracking cookies, and does the use of such cookies have consequences for the privacy of consumers? Tell consumers, on the first page they see when visiting your website, how you collect and use that information. Offer them the choice to consent to this or not. Make sure that you offer the options 'accept' and 'refuse' in a neutral way, for example by showing both options in a large, noticeable font and colors.
- ✗ Do not leave out any information about the use of personal data. You can, for example, include this information in a privacy statement.
- ✗ Do not provide consumers incorrect information on how you handle their personal data.

3.2 Tips

- Inform consumers in easy-to-understand language about what you do with their personal data. Do not make the information too long or complicated. Make sure that the information is easy to find for consumers.
- Test whether consumers understand the information you provide.

3.3 Examples

3.3.1 Example: Information on the use of data (personal or otherwise) in app stores

An app store informs consumers about various characteristics of the apps, such as the developer, customer ratings, price, compatibility, and age restrictions. However, information on the way in which the apps use data (personal or otherwise) only appears at the bottom of the page. This is a misleading practice, and is therefore not allowed.

If the app provider acts on its own behalf, it must provide this information itself. The information must be easy-to-find for consumers. This means it cannot be presented in the fine print at the bottom of the page. Consumers should not need to scroll or swipe to find it either. It is fine, in any case, if the information is presented near the price.

3.4 Relevant regulations

- [Section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [General Data Protection Regulation](#)
- [Directive \(EU\) 2019/770 \(Directive for the supply of digital content and digital services\)](#)
- [Section 1aa of the Dutch Civil Code, Book 7 \(agreements for the delivery of digital content and digital services between traders and consumers\) \(in Dutch\)](#)

3.5 Explanation of regulations

- [Commission Notice - Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market](#)

3.6 Enforcement

- [The German competition authority imposed far-reaching restrictions on a social media platform for its processing of personal data.](#)

- 🔍 Together with other consumer authorities in 26 countries, [ACM called on two app store providers to adjust their app stores.](#) App providers had to inform consumers better about their app's use of data. [One provider](#) as well as [the other app store](#) provider answered this call.

4 Consumer reviews

Rules regarding the posting of reviews and recommendations

Before consumers buy something, they often look at other consumers' reviews and recommendations. This helps them decide whether or not they wish to purchase a product from you. That is why consumers must be able to rely on consumer reviews, likes, or other forms of consumer feedback. That is why there are rules in place for displaying consumer reviews. You cannot mislead consumers with consumer reviews.



4.1 Online reviews

Consumers often look at reviews before buying something. It gives them additional information, for example about the quality or trustworthiness of the company or the product. If you have good reviews, consumers will be more likely to buy something from you. That is why it is important that consumers are able to rely on reviews. You cannot use consumer reviews to mislead consumers into buying something.

That is why there are rules in place for posting reviews or displaying consumer reviews. These rules also apply if you display testimonials or reviews by influencers, and also if you have another business collect reviews or if you embed reviews into your own website or app from another website (embedded reviews)

4.1.1 What is required and what is not allowed?

- ✓ If you display reviews to consumers, tell them if you take any measures to ensure that the reviews are genuine. This means that the reviews must reflect the experiences of consumers that have actually bought or used the product.

- ✓ Tell consumers what measures you take, such as technical, organizational, and legal measures. Examples of measures you can take: mandatory registration in order to be able to post reviews; using an automated detection system for recognizing suspicious patterns; a complaints procedure for reviews; rules for posting reviews and effective enforcement against violations.
- ✓ Explain clearly how you deal with reviews, for example where they come from, whether any form of compensation was paid for reviews and how you calculate scores. All of this information must be clear, easy-to-understand and available in the same location where you display reviews.
- ✓ Make sure that the businesses that you hire for collecting and posting consumer reviews online, comply with the rules too. If those businesses fail to do so, you could be jointly held responsible if you did too little to prevent this.
- ✗ Do not post any false reviews ('fake reviews') yourself, and do not have others do so either.
- ✗ Do not present reviews in a misleading manner, for example by influencing the selection, the order or the presentation in general. Also, do not remove negative reviews only, while keeping positive ones.
- ✗ Do not link reviews to a different product or different business than the one that consumers had intended.
- ✗ Have you paid consumers or given them some other form of compensation for reviews, for example by allowing consumers to keep the product for free in exchange for a review? If so, clearly state that you display reviews for which consumers received some form of compensation.
- ✗ Be careful not to harm the trustworthiness of reviews with the way you collect reviews. Exercise restraint in approaching consumers that have posted negative reviews to get them to change their reviews. In addition, be careful with holding out the prospect of compensation to consumers for writing or changing reviews. For example, you cannot use some form of compensation to press for a positive review that would mislead other consumers.
- ✗ You cannot mislead consumers with average review scores, for example, by giving the impression that the average score is based solely on reviews of consumers that did not receive any compensation for them, even though this is factually untrue.

4.1.2 Tips

- Give consumers some time to be able to review a product properly. For example, do not ask for a review right after the customer's order or payment, but rather wait until they have received the product and have had a chance to try it.

4.1.3 Examples

4.1.3.1 Example: reviews without any checks

A website displays consumer reviews. On this website, various sellers sell products. There are reviews about the products as well as reviews about the sellers that offer those products. Visitors to the website are under the impression that these are real reviews.

However, the website's provider does not do anything to ensure that only real reviews are displayed. That is not allowed. Businesses are required to take appropriate measures, and to inform consumers about what measures they are taking.

4.1.3.2 Example: reviews by non-existent people

A cosmetics company has a website. On the homepage, the company displays quotes of satisfied consumers that have given the product four or five stars (out of five stars). For example: "All of my skin problems disappeared within two weeks after using this product!" and "I can highly recommend this! I will never use another product again!".

However, it turns out that these reviews do not come from consumers that have actually bought or used the products. That is misleading, and is thus not allowed.

4.1.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)

4.1.5 Explanations of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

4.1.6 Enforcement

- 🔗 [ACM forced a company to stop misleading consumers.](#) This company asked its clients to leave positive reviews, among other requests. In exchange, the company promised to pay back half of the costs. Therefore, the reviews were not written under fair circumstances. Consumers that read these reviews can therefore be misled.

4.1.7 More information: links and footnotes

- [Abdul Talib, Yurita Yakimin & Mat Saat, Rafeah. \(2017\). Social proof in social media shopping: An experimental design research. SHS Web of Conferences. 34. 02005. 10.1051/shsconf/20173402005](#)

4.2 Recommendations

Consumers that wish to buy something often pay attention to online recommendations by other consumers. If a product or business has many likes, followers, comments, and pageviews on social media, consumers will be more likely to make a purchase. Consumers must therefore be able to rely on recommendations. You cannot use them to mislead consumers into making a purchase.



If a business has many followers on social media or if the business's posts get many comments, views, or likes on social media, it will leave consumers with a positive impression. In addition, the post, product, or

the business itself will sometimes get a higher ranking on online platforms or social media. As a result of the increased visibility and/or positive impression, consumers are more likely to make a purchase.

However, recommendations cannot be used to mislead consumers into making a purchase. That is why, there are rules for posting recommendations or for presenting recommendations in order to promote products. These rules apply to all types of recommendations by consumers that promote products. For example, think of likes, followers, comments, or pageviews.

4.2.1 What is required and what is not allowed?

- ✓ Only post recommendations by consumers that have actually bought or used the product.
- ✓ Only post recommendations with the product that is recommended.
- ✓ Show all recommendations, both the positive and the negative ones.
- ✗ Do not post any fake recommendations and do not have others post such either. Do not use fake followers, fake comments, or fake pageviews.
- ✗ Do not post any misleading recommendations. Make sure that the way in which you present your recommendations does not put consumers on the wrong track, for example by showing the recommendations for one product also with another product.
- ✗ Do not selectively choose which comments you do or do not show on your website, but rather show all comments. If you only post the positive comments but not the negative ones, consumers might wrongly get a positive impression.

4.2.2 Tips

- ➔ Give consumers some time to be able to review a product properly. For example, do not ask for a review right after the customer's order or payment, but rather wait until they have received the product and have had a chance to try it.

4.2.3 Examples

4.2.3.1 Example: increasing visibility on social media

You wish to increase the brand awareness of your business or product. To that end, you hire a business that can increase your visibility on social media. This business does so by adding extra likes, followers, and pageviews to your accounts and posts. In that context, the business uses fake accounts. These recommendations therefore do not reflect the actual experiences of real consumers. They are fake recommendations. This is misleading and is therefore not allowed.

4.2.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)

4.2.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

4.2.6 Enforcement

- 🔗 [ACM imposed an order subject to periodic penalty payments on an influencer.](#) The influencer had bought fake likes and fake followers to promote their products.

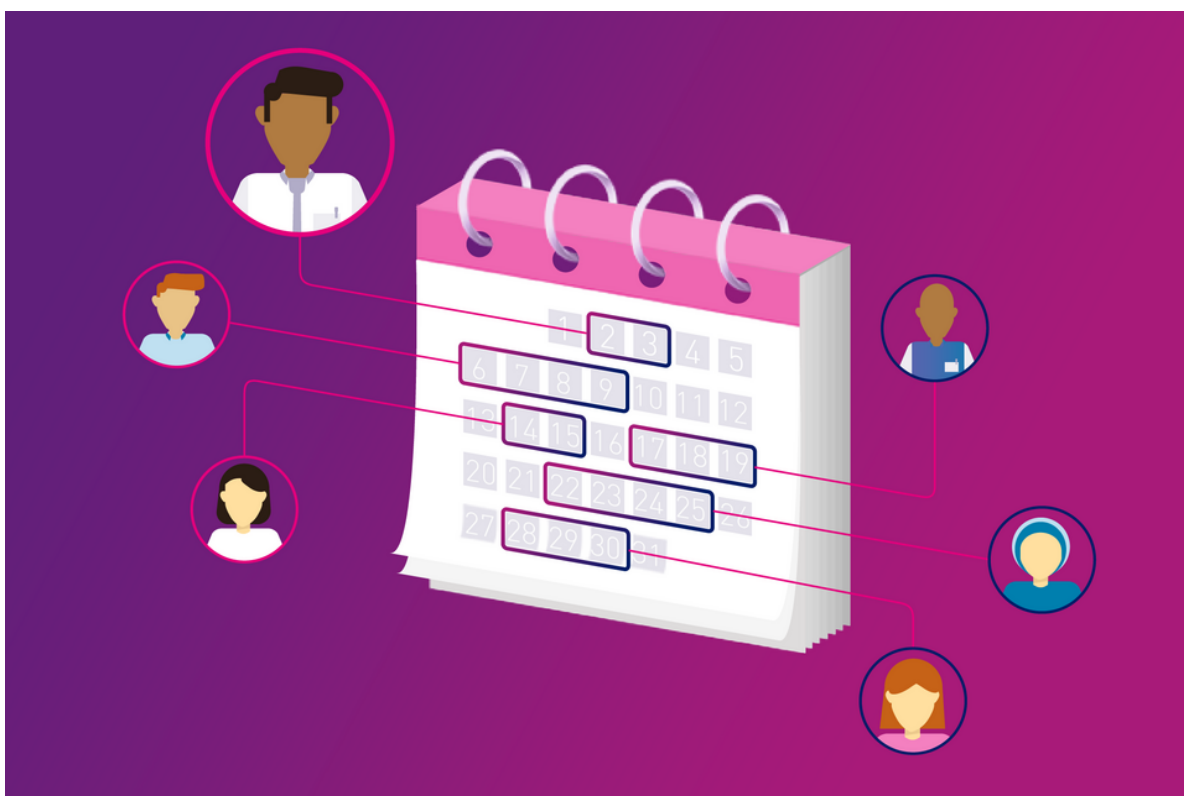
- 🔗 [ACM warned businesses and influencers to stop using fake likes and fake followers.](https://www.acm.nl/nl/publicaties/influencers-stoppen-met-neplikes-en-nepvolgers-na-waarschuwing-acm)<https://www.acm.nl/nl/publicaties/influencers-stoppen-met-neplikes-en-nepvolgers-na-waarschuwing-acm>

4.2.7 More information: links and footnotes

- [Abdul Talib, Yurita Yakimin & Mat Saat, Rafeah. \(2017\). Social proof in social media shopping: An experimental design research. SHS Web of Conferences. 34. 02005. 10.1051/shsconf/20173402005](#)

4.3 Notifications regarding the behavior of other consumers

Consumers that wish to make a purchase often pay attention to the behavior of other consumers. If many consumers have bought or viewed the product, or already have it in their shopping carts, other consumers are more likely to buy it as well. Consumers must therefore be able to rely on the accuracy of these notifications. You cannot use such notifications to mislead consumers into making a purchase.



Businesses can indicate online what other consumers are doing or have done. Notifications about the behavior of other consumers can be presented in various ways. For example:

- Notifications telling that other consumers just bought a product. For example: 'Noortje and Joris just bought this headset'.
- Notifications telling how many consumers have a certain item in their shopping carts. For example: '46 people currently have this dress in their shopping carts'.
- Notifications telling how many people are currently on the website, for example: 'This website currently has 287 visitors'.
- Notifications telling how many consumers are currently looking at a certain product, for example: '12 people are currently looking at this hotel'.
- Notifications telling how many consumers have bought a particular product, for example: 'Over 3,000 of this product have been sold', or more in the abstract: 'This is the best-selling product on this website'.

Such notifications may influence the behavior of consumers. Consumers may be inclined to copy others' choices, especially when they are in doubt. They believe a business or product is good if others believe

that too. That is why this is also called ‘social proof’. Businesses also use these kinds of notifications to capitalize on a sense of scarcity. For example, they give the impression that the product is popular among other consumers, or that the product will be sold out soon if consumers do not take action fast enough.

As a result, consumers may take a less critical look at a product and may be less inclined to compare products. They will choose and buy something much sooner. That is why it is important that consumers are able to rely on notifications about the actions of other consumers. Such notifications cannot be used to mislead consumers into making a purchase. That is why certain rules apply if you use such notifications.

4.3.1 What is required and what is not allowed?

- ✓ Only use notifications about actions by other consumers if they are complete and true. For example, if a consumer is checking the availability of a hotel room, make sure that the notification about the actions of other consumers is about the same hotel and the same date.
- ✗ Do not give a false impression about the popularity of a product, for example by suggesting that 300 people are viewing the same product at the same time, while, in reality, those 300 people are just the total number of website visitors at that moment.

4.3.2 Tips

- Test whether your notifications are fully understood by consumers and that consumers do not feel pressured into making a purchase.

4.3.3 Examples

4.3.3.1 Example: leaving out important information

A consumer looks for an airline ticket. He enters a date and time of the flight on a website with airline tickets. Next to one of the search results, the website adds the following notification: ‘76 people are currently looking at this flight’.

The notification gives the impression that the flight for that particular date and time is viewed by 76 people, whereas those 76 people are looking at flights on all possible dates and all possible times. The notification is thus misleading and is not allowed.

4.3.3.2 Example: randomly generated notifications

A toy store hires a business to increase the conversion rate on its website. The business adds a functionality on its website, which adds random notifications about the actions of others to products. For example, the following notification is added to a toy: ‘15 people are currently looking at this item’.

That is not true, however. No one else was looking at that item at that moment. This is misleading and is therefore not allowed.

4.3.3.3 Example: incomplete notifications

A business offers hotel rooms online. On the website, a consumer enters the dates when they need a hotel room. The options they see are available on those dates. The following notification is added to those options: ‘6 people are currently looking at this hotel room’.

This wrongfully gives the impression that many people are looking at the hotel room on the dates that the consumer has entered. However, the notification concerns the total number of people that are looking at the hotel room, regardless of the dates. This is thus a misleading notification, and is not allowed.

4.3.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)

4.3.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

4.3.6 More information: links and footnotes

- [Abdul Talib, Yurita Yakimin & Mat Saat, Rafeah. \(2017\). Social proof in social media shopping: An experimental design research. SHS Web of Conferences. 34. 02005. 10.1051/shsconf/20173402005](#)

5 Advertising

Rules on online advertising

Ads are everywhere. It is impossible to imagine the online world without ads. They help you sell your products. However, consumers need to know when a message is actually an ad, because you cannot mislead them into making a purchase.

Ads can be found on websites, in apps, and increasingly even in games. However, with some ads, it is not always clear that they are ads, for example when familiar faces are hired to promote certain brands or products. Such promoters are called 'influencers'. It is important that consumers are able to recognize when certain messages are in fact ads. That is because it is prohibited to mislead consumers. Therefore, make it clear when you use advertising.

If you mislead consumers with advertising, it may constitute an unfair commercial practice. And unfair commercial practices are prohibited. ACM enforces compliance with these consumer protection rules.

There are rules you need to comply with if you advertise something or if you have something advertised. In addition, in all ads in which you mention prices, you must also comply with the rules on prices.

Furthermore, the rules laid down in the [Dutch Advertising Code](#) apply to all ads in general, as well as to their content. If your ads also target children, you must also comply with the [Code for advertising directed at children and young people](#). The Dutch Advertising Code Committee enforces compliance with these advertising rules.

5.1 What is required and what is not allowed?

- ✓ With ads, it must be clear that these contain sponsored content. With each product, it must be mentioned who has paid, and that it is sponsored content. These rules also apply if advertising occurs during streams (including livestreams), for example by influencers.
- ✓ If you recommend products or brands of a third party, you must clearly tell consumers if you do so as part of a partnership with that third party, such as with online product placement.
- ✓ With editorial content, it must be clear if this is sponsored content.
- ✗ Do not advertise if it is unclear that it is advertising. In addition, do not advertise if it is not mentioned who has paid for the ad.
- ✗ Do not recommend products or brands of a third party without clearly telling consumers if such recommendations are part of a partnership with that third party, such as with online product placement.
- ✗ Do not hire influencers to advertise if it is not clear that these individuals have been paid to do so, and by whom.

5.2 Tips

- Make sure that the target audience of the ads understand that they are watching advertising. Be sure to adjust your messages when targeting special target audiences such as children.
- Check whether influencers with whom you collaborate comply with the rules. Confront them with the rules if it turns out that they ignore them. And stop working with influencers that flout the rules.

5.3 Examples

5.3.1 Example: advertising in lobby while waiting for the next game

A particular videogame contains a gameplay mode where players wait in a lobby for a sufficient number of players to log in to play in the next game. While waiting, the players' avatars enter the 3D in-game lobby. In the lobby, players can walk around and see other players. As soon as enough players have entered the lobby, a countdown timer starts counting down to zero, and the next game will begin. In the 3D lobby, there is a giant screen. On that screen, real-world products are advertised. What is not mentioned is that these billboards are part of a partnership with another company. That is not allowed. It must be mentioned if any paid content or partnership is involved, for example by flagging the video. This means that the video is clearly marked as sponsored content. And it must be mentioned who has paid for it.

5.3.2 Example: advertising in a livestream

Some influencers record themselves while gaming so that others are able to watch. Such influencers are called 'streamers'. While playing a particular game, a popular streamer buys a 'skin' and recommends it. Viewers are subsequently able to open the game and buy that same skin. If they buy it using the streamer's 'creator code', 5 percent of the revenues go to that streamer. It must be clear to viewers that this is sponsored content. The streamer must tell viewers that this is an ad.

5.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 3 \(information obligations for distance contracts\) \(in Dutch\)](#)
- [Dutch Advertising Code](#)
- [Code for advertising directed at children and young people](#)
- [Dutch Media Act \(in Dutch\)](#)

5.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

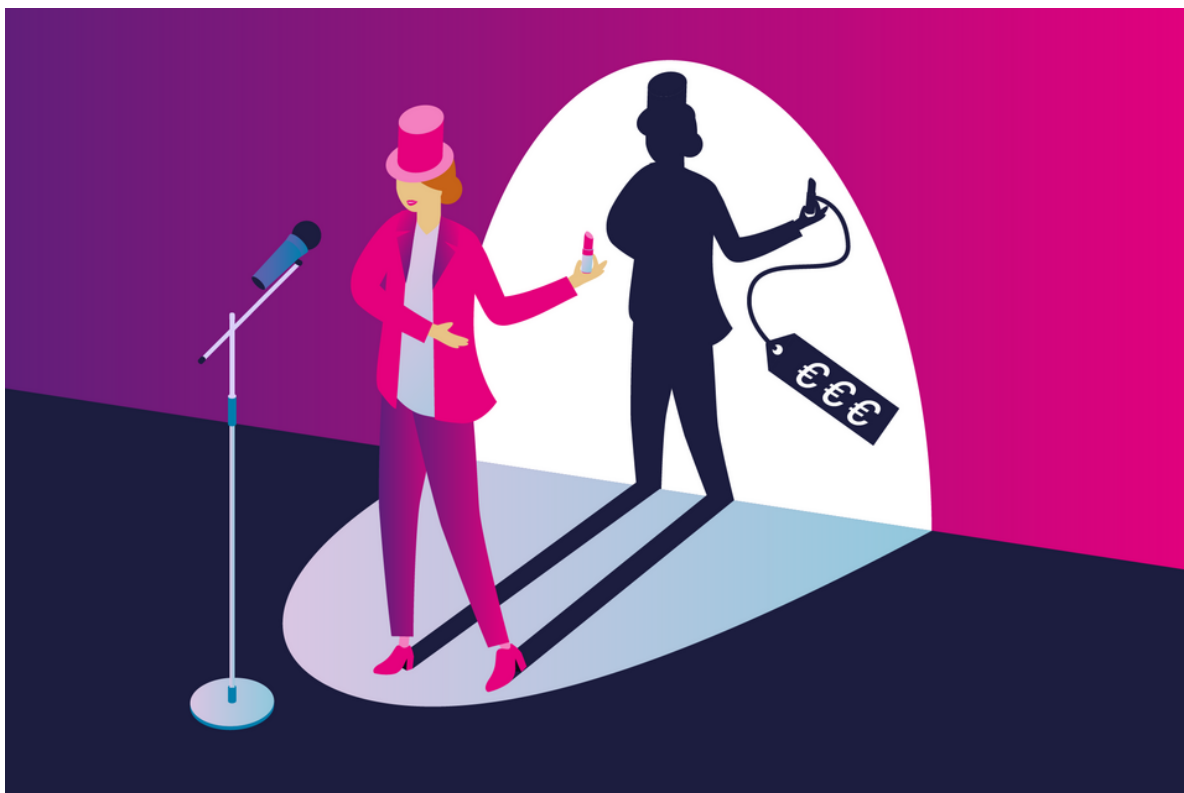
5.6 More info: links and footnotes

- Visit the [website of DDMA, the Dutch association for data-driven marketing, sales and service \(in Dutch\)](#), for the rules for influencers
- See the [Advertising Code for Social Media & Influencer Marketing \(RSM\)](#)

6 Advertising by influencers

Rules regarding the use of influencers

If influencers receive any form of compensation for recommendations, it is considered advertising. It must be clear to consumers when influencers are advertising, otherwise consumers are misled. Misleading practices are prohibited under consumer rules. Both influencers and the businesses that hire them must comply with those rules.



An influencer is a natural or virtual person that has many followers on social media. On their social media channels, the influencer shares content, such as videos, photos, and posts, or they are active in other ways, such as through likes, tweets, or tags. In their online content, influencers recommend products or businesses. They share, for example, a promotional code or a link with their followers, or they like, tag, or tweet about a particular business.

If an influencer recommends something, their recommendation will create a positive image among their followers. They will be more likely to buy it. As a result, the influencer wields influence over a certain target audience and its purchasing behavior. We call this form of advertising 'influencer marketing'.

Influencers mix their commercial advertisements with non-commercial posts. As a result, consumers sometimes have a hard time recognizing advertisements. If an influencer receives any form of compensation for a recommendation, it is considered advertising. Compensation does not necessarily mean just monetary compensation. Compensations may also include other benefits the influencer receives from businesses, such as discounts, partnerships, affiliated links, free products, trips, or invitations to events. It does not matter if there is an actual agreement between the influencer and the business. Even without an agreement, certain practices may constitute advertising.

Advertising must be recognizable as such. Consumers must therefore know if something is a commercial message. They cannot be misled or unduly influenced into purchasing something. This is the influencer's

own responsibility, but also the responsibility of the business that hires an influencer. Misleading practices are unfair commercial practices. Unfair commercial practices are prohibited under consumer protection rules. These rules are enforced by ACM.

In addition to consumer protection rules, rules for video uploaders also apply to influencers. These latter rules are enforced by the Dutch Media Authority (CvdM).

6.1 What is required and what is not allowed?

- ✓ Consumers must be able to understand clearly from the content, images, or sounds that a message is actually advertising.
- ✓ Make sure that the influencer that you hire does not mislead consumers, does not exercise undue influence, or does not, in any other way, engage in unfair commercial practices.
- ✗ Influencers cannot advertise something if they do not clarify that their message is advertising. It must be clear to consumers straight away that certain messages constitute advertising. And it must be clear what exactly it is that influencers are advertising.
- ✗ Do not simply tag the business in a post. Such tags make it insufficiently clear that they are considered advertising.

6.2 Tips

- ➔ Make sure that the ad's target audience understands that the message is advertising. So adjust your message when targeting special target audiences such as children.
- ➔ Check whether influencers that you hire comply with the rules. Confront them if they fail to do so, and do not collaborate with influencers that do not follow the rules.

6.3 Examples

6.3.1 Example: unclear that something is advertised in a video

A business hires an influencer for recommending a product. The influencer shows the product several times in a video. While doing so, she keeps saying that it is an amazing product. However, the video does not make it clear that this is advertising or sponsoring. This is misleading and is not allowed.

6.4 Relevant regulations

- [Dutch Advertising Code Foundation – Dutch Advertising Code](#)
- [2022 Policy rule regarding advertising by commercial media organizations \(in Dutch\)](#)
- [Dutch Media Authority \(CvdM\) – 2022 Policy rule regarding sponsoring by commercial media organizations \(in Dutch\)](#)
- [Dutch Media Authority \(CvdM\) – 2022 Policy rule regarding product placement by commercial media organizations \(in Dutch\)](#)
- [Dutch Media Act 2008 \(in Dutch\)](#)
- [Directive 2010/13/EU \(Audiovisual Media Services Directive – consolidated version\)](#)

6.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)
- [Dutch Media Authority \(CvdM\) - Rules for video uploaders \(in Dutch\)](#)

FAIR DESIGN

What rules apply to the design of your online environment?

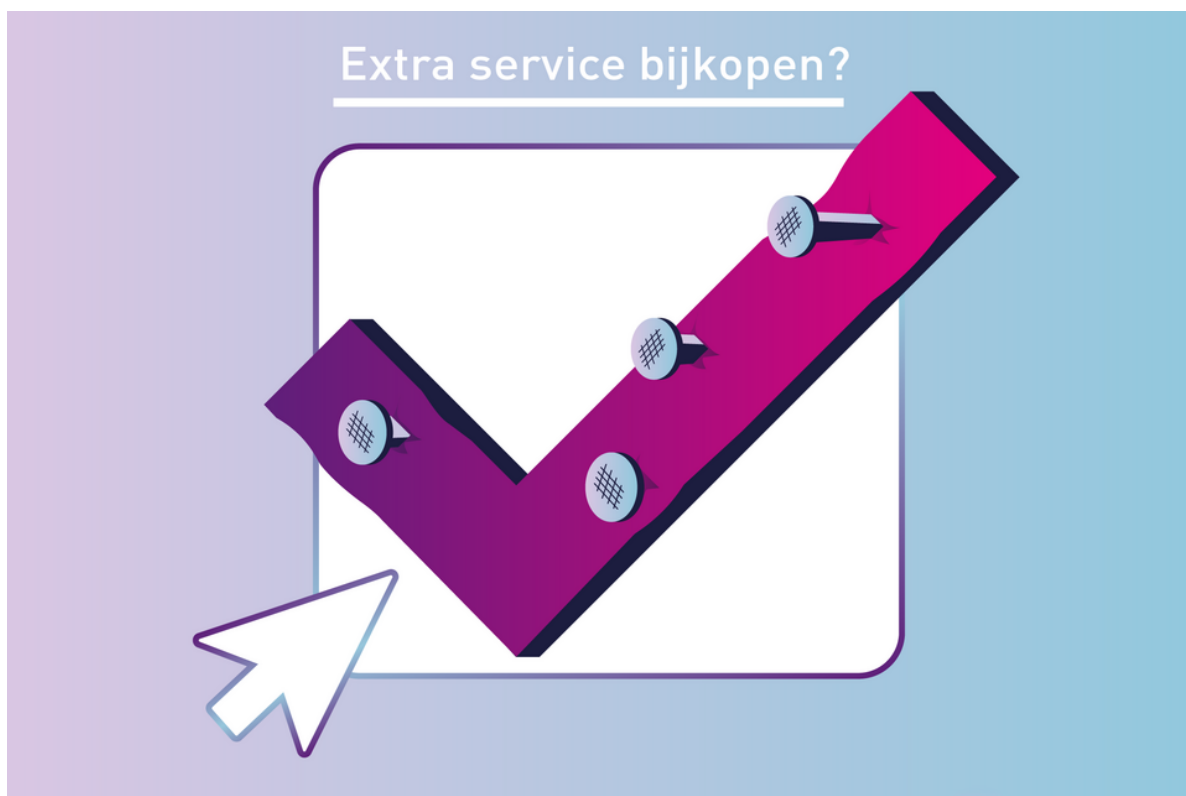
You cannot mislead consumers with your design into making a purchase, giving your their consent, or consenting to a renewal. It is important that consumers are able to trust online environments. In the section *Fair Design*, you can see what rules apply to specific topics:

- 7. Default settings
- 8. Ranking of search results
- 9. Cancelling your contracts
- 10. Unconscious clicking behavior

7 Default settings

Rules regarding online default settings

Perhaps you use default settings on your website or app. If you do, you determine those settings for consumers in advance. Make sure that consumers are not misled into buying something or giving their consent as a result of your default settings. It is important that consumers are able to have confidence in online environments. That is why there are rules in place regarding the use of default settings, such as rules regarding the design of your online environment.



With the way you have set up the default settings, you might try and nudge consumers towards a particular choice. Consumers might benefit from that choice, but it could also be a less favorable choice. Consumers are highly likely to go along with your choice, since most consumers do not change the settings or choices that have already been made for them.

Is the default setting of the options on your app or website a setting that is less favorable to consumers? If so, note that this is very likely an unfair commercial practice. Unfair commercial practices are prohibited. Consumers must be able to have confidence in online environments, and cannot be misled. So be sure to comply with the rules when designing your online environment. ACM enforces compliance with these rules.

One example of unfavorable default settings is the use of pre-ticked boxes. This means that, in ordering processes, one or several of the extra options have been pre-selected for consumers. As such, consumers must consciously unselect the box to exclude the extra option. As a result, consumers may unwittingly agree to additional options or products (for example, unsolicited follow-up shipments, also known as subscription traps). Another example is smartphones on which the default privacy settings are unfavorable to users, or subscriptions that are automatically renewed after the subscription period has ended. These are examples of default settings that can be harmful to consumers.

If you also process personal data as a result of the default settings, you also need to comply with the [General Data Protection Regulation \(GDPR\)](#), such as with the rules on [privacy-by-design and privacy-by-default \(in Dutch\)](#). The Dutch Data Protection Authority (AP) enforces compliance with the GDPR.

7.1 What is required and what is not allowed?

- ✓ Do you offer additional options or products when consumers place orders? If so, let consumers decide for themselves what to buy. For example, make sure that consumers themselves must consciously choose what products they want to add.
- ✓ Make sure that consumers can easily change the default settings. For example, make sure that consumers do not need to click multiple times or make sure that selecting one option is just as easy as selecting another option.
- ✓ Do you automatically renew subscriptions after the subscription periods have ended? You can only do so under certain conditions. Before consumers take out a subscription, you must clearly inform them about the duration of the subscription, and about the fact that you automatically renew them when the initial period has ended. Such automatic renewals mean that fixed-term subscriptions can only be converted into monthly rolling subscriptions. Consumers can thus cancel their subscriptions at any moment with a notice period of one month. Different rules apply to magazines and newspapers. [Read more about the rules regarding subscriptions \(in Dutch\)](#).
- ✓ Do you use a pre-ticked box for the question of whether consumers would like to receive a newsletter about your products? You can only send newsletters if consumers have previously bought something from you ('an existing customer'). In addition, you must offer the option of opting out. This means that consumers are able to untick the box if they do not wish to receive a newsletter. In addition, include a clear 'unsubscribe' link in every newsletter. [Read more about the rules regarding sending commercial messages \(in Dutch\)](#).
- ✓ Have you configured your default settings in such a way that personal data is collected? If so, you will also need to comply with the GDPR. In that context, check if your online environment also complies with the principles of [privacy-by-design and privacy-by-default \(in Dutch\)](#).
- ✗ When consumers place orders, do not, by default, pre-tick boxes for extra options or products that consumers have not consciously chosen themselves.
- ✗ Do not pre-tick the box for accepting cookies.
- ✗ Do not pre-tick the box for accepting a newsletter, unless the consumers are paying customers. [Read more about the rules regarding sending commercial messages \(in Dutch\)](#).
- ✗ Do not use default settings that are at odds with specific rules and regulations such as the GDPR. For example, you cannot, by default, share consumers' location details. Ask for the consumers' explicit consent in advance.
- ✗ Do not, by default, pre-tick the box for accepting the general terms and conditions. Make sure that consumers are able to read your general terms and conditions before signing the agreement. For example, in the ordering process, include a link to a downloadable version of your general terms and conditions. Include important information in the ordering process itself, such as the characteristics and price of the product. [Read more about informing about important characteristics and about the rules when using general terms and conditions \(in Dutch\)](#).
- ✗ Do not, by default, pre-tick the box for consenting to receiving third-party messages. You can, however, use boxes that consumers can tick themselves ('opt-in').
- ✗ Make sure that consumers do not unnecessarily need to take a multitude of steps just to be able to change the default settings. Keep to a minimum the steps that consumers have to take in order to change the settings.

7.2 Tips

- Check whether your online environment complies with the principle of fairness-by-design. This means that, when designing an online environment, you make sure that people are able to make choices in a fair manner.

- Assess whether your default settings help consumers make decisions that have been made in a fair manner, with the right information, and without any pressure.
- You can also protect consumers with your default settings, for example, by always asking for consent each time consumers wish to make an in-app purchase. In that case, you ask consumers, by default, to enter their passwords or to perform another action for identity verification purposes. This prevents unwanted purchases.
- You can remind consumers in a timely manner that their subscriptions are about to expire, and that these will be renewed soon. In that context, explain how consumers are able to cancel their subscriptions. In that way, you prevent consumers from being stuck with subscriptions they actually do not want.

7.3 Examples

7.3.1 Example: Including an opt-out in a newsletter

A consumer just placed an online order with a particular business. The box for receiving the seller's newsletter had been pre-ticked. That is only allowed if the newsletter is about products similar to what the consumer ordered. The business is allowed to send commercial emails about such products to its customers. This is one of the few cases in which a pre-ticked box is allowed.

However, it would have been better here too, if this box had not been pre-ticked. The business must give the consumer an opportunity to unsubscribe during the ordering process and in every commercial email. Unsubscribing must be as easy as subscribing.

7.3.2 Example: a pre-ticked box for an extra product

A consumer orders an airline ticket. In the booking process, a box saying 'Yes, I would like to add travel insurance' has been pre-ticked by default. That is not allowed. The consumer must consciously agree to an extra product such as travel insurance. You can use a box that is not pre-ticked.

7.4 Relevant regulations

- [Title 5, section 2B of the Dutch Civil Code, Book 6 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#), see Section 6:230g through 6:230z of the Dutch Civil Code.
- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#), see Section 6:139a through 6:193j of the Dutch Civil Code.
- [Title 3, section 3 of the Dutch Civil Code, Book 6 \(General conditions\)](#), see Sections 6:231 through 6:247 of the Dutch Civil Code.
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Directive 2011/83/EU \(Consumer Rights Directive\)](#)
- [Directive 93/13/EEC on unfair terms in consumer contracts](#)
- [Dutch Telecommunications Act, see Section 11.7 \(in Dutch\)](#) for rules on unsolicited communications. For consent, the Dutch Telecommunications Act refers to [Article 4, part 11 of the General Data Protection Regulation \(GDPR\)](#), see also Article 7(3) of the GDPR about withdrawing consent.
- [General Data Protection Regulation \(GDPR\)](#), see Article 25 (Data protection by design and by default)
- [Regulation \(EU\) 2022/2065 \(Digital Services Act\)](#).

7.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive, Section 5.2.6 \(search engines\)](#)

- [Guidance on the interpretation and application of the Consumer Rights Directive](#)
- [Guidance on the interpretation and application of the Unfair Contract Terms Directive](#)

7.6 Enforcement

- 🔗 ACM: [Consumer-friendly default settings for purchases in app stores](#)
In 2015, ACM, together with other European regulators, assessed well-known app stores regarding the risk of unwanted purchases made by children. In part because of pressure exerted by ACM, the default settings in the app stores for making purchases were adjusted. Before, consumers were asked to re-enter their passwords 15 or 30 minutes after the last purchase when making a new purchase. Now, consumers are explicitly asked which payment setting they prefer: entering a password for each purchase, once every 15 minutes, or blocking purchases altogether.
- 🔗 ACM: [Fine imposed on airline for using misleading default settings \(in Dutch\)](#)
In 2015, ACM imposed a fine on an airline. One of the reasons was that the airline offered additional travel insurance in a misleading manner. The default setting was that consumers had to take out travel insurance. In order not to take out travel insurance, consumers had to tick the option 'do not insure me'. Moreover, this option was presented in an unusual location. Consumers had to click on a drop-down menu labeled 'select your country of residence'. Among the countries was the option 'do not insure me'. The airline filed an objection and appeal against the fine. The court ruled in ACM's favor.

7.7 More information: links and footnotes

- European Commission, Directorate-General for Justice and Consumers, Lupiáñez-Villanueva, F., Boluda, A., Bogliacino, F., et al., [Behavioural study on unfair commercial practices in the digital environment](#): dark patterns and manipulative personalisation: final report, Publications Office of the European Union, 2022.
- [Read about how you can prevent spam \(unsolicited communication\) \(in Dutch\)](#)

8 Ranking of search results

Rules regarding the ranking of search results

When searching or comparing products online, consumers must be able to have confidence in the results. If you change the ranking of search results, consumers will need to know on the basis of what factors you do so, because you cannot mislead consumers. If information about the ranking is missing or unclear, it is considered a misleading practice.



Are consumers on your website able to search for products or able to compare products from different companies or consumers? If so, you might present the search results or comparison results in a certain order. That order is called 'ranking'. Your ranking may consist of 'natural' or 'organic' search results. These are search results that have not been paid for and that are on the basis of relevance to the consumer. Consumers expect these 'natural' results when performing a search on your website. You may also include products in your ranking or place certain products higher or more prominently in your ranking because a business paid you to do so ('paid inclusion' and 'paid ranking').

The ranking can greatly affect the decisions of consumers. Consumers often click on one of the first search results without paying any attention to the quality or relevance of that result. Also, they seldom change the ranking of the results. If you use paid inclusion or paid ranking, consumers might make different choices than they would have made with rankings that are not influenced (or only partially so) by paid inclusion or paid ranking.

That is why you need to explain clearly how you sort search results and comparison results, and whether they include any paid offers, so that consumers know what they are clicking on and that they are not being misled. The information that you give must be transparent. In that context, your language and the way you present information are important, for example the location and design of the information.

8.1 What is required and what is not allowed?

- ✓ Present paid results in a significantly different manner than the ‘natural’ search results. In that context, think of colors, shapes, fonts, texts, images, sizes, and other layout choices. In addition, state clearly that businesses paid to be the top search result or to get a special spot in the search results. You can do so by using a label with a text that clearly explains that someone paid for this spot, for example ‘advertisement’ or ‘paid position’.
- ✓ Do you offer consumers the option of searching for products from different businesses or private sellers? If so, inform consumers clearly about how that order is determined. Explain what the most important factors (‘parameters’) are on the basis of which the ranking of the search results or comparison results is made. In addition, inform consumers about how the different factors relate to each other, for example which ones are more important. Make sure that this information can be accessed directly and easily on the page where the search results and comparison results are presented, for example by placing a link next to the offers, which leads directly to the information page. That information must also be included in the general terms and conditions.
- ✓ Present search results in an order that corresponds with the parameters that you communicated to the consumer.
- ✓ Has a consumer entered a search query using a certain sorting selection or filters? If so, present your search results on the basis of the sorting selection and filters that were used.
- ✓ Do you label certain search results, for example with labels like ‘Best buy’ or ‘Sustainable choice’? Make sure that such labels are true. Inform consumers on what basis such products have been labelled as ‘Best buy’ or ‘Sustainable choice’. For more information on sustainability claims, see the [Guidelines regarding Sustainability claims](#).
- ✗ Do not offer any paid search results without making clear what they are. This means that it needs to be clear to consumers if someone paid to give an ad a higher or more prominent position in the search results.
- ✗ Do not leave out any search results that are relevant to the consumer’s search. In addition, do not place search results that are relevant to the consumer further down the list.
- ✗ Did the consumer use sorting selections and filters? Respect those sorting selections and filters. Do not present any search results that do not correspond with the sorting selections and filters.
- ✗ Do not hide any paid results in the natural search results.
- ✗ Do not abuse A/B-tests by using them to decide how to inform consumers in a way that has the least effect on conversion. This harms consumers, because the goal of providing information is making sure that consumers actually see and understand the information, so that they are able to make a well-informed decision about whether or not to purchase a product.
- ✗ Do not use misleading names for sorting selection options for search results, for example by using ‘sort by relevance’ or ‘sort by popularity’ while you actually sort by, for example, the payments for the paid results.

8.2 Tips

- Test whether consumers immediately recognize the difference between natural and paid results.
- Test what label for paid results or paid ranking is the clearest and easiest-to-understand for consumers.
- Are certain products temporarily not available? If so, you may let consumers decide whether or not they want to see those results. In this way, consumers can decide, for example, to wait until the inventory has been restocked. Have the products been discontinued? In that case, leaving those out of the search results will be clearer.
- You can ask consumers in advance if they want to see general or personalized search results. In that way, you offer consumers a neutral and free choice. Please note: if you offer personalized search results, you also have to inform consumers on what basis you personalize such search results.

8.3 Examples

8.3.1 Example: Information about paid ranking

A company runs a real estate website. On this website, real estate listings of a realtor association are placed higher in the search results than listings that are not offered through that association's realtors. The company receives a fee from the realtor association for doing so. This practice is not explained with the search results. It is therefore a misleading practice.

In this case, the company must clearly explain that the top search results only concern homes that are listed by certain realtors that have paid for it. The company can do so by adding a label that clarifies and explains that those higher rankings have been paid for.

Moreover, information regarding the most important parameters of the ranking of the real estate listings must be directly and easily accessible from the page on which the listings are presented.

8.3.2 Example: Sorting by relevance

A booking website for holiday accommodations offers the sorting option of 'relevance'. However, in the results that were sorted using this option, 'paid' results are still placed higher. This practice is misleading. When sorting results by the sorting option of 'relevance', the company cannot take into account the factor of getting paid for boosting certain accommodations.

8.4 Relevant regulations

- [Title 5, section 2B of the Dutch Civil Code, Book 6 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#), for example, see Section 6:230m of the Dutch Civil Code, paragraph 3, under a: precontractual information requirements for online marketplaces.
- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#), for example, see [Section 6:139e of the Dutch Civil Code, paragraph 2 \(in Dutch\)](#); essential information when ranking search results, and [Section 6:139g of the Dutch Civil Code, paragraph x \(in Dutch\)](#), informing unclearly or failing to inform at all about the fact that the ad has been paid for, or that a business has paid for a higher position in the ranking, is a misleading practice under all circumstances.
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Directive 2011/83/EU \(Consumer Rights Directive\)](#)
- [Regulation \(EU\) 2019 \(Platform 2 Business\)](#), see Article 5 for the requirements with regard to ranking that specifically apply to online intermediation service providers and online search engines.
- [Regulation \(EU\) 2022/2065 \(Digital Services Act\)](#). The Digital Services Act sets boundaries to and imposes rules on the use of ads (personalized or otherwise) and recommender systems by online platforms. For example, see Article 24 on transparency obligations regarding online advertising.

8.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive, Section 5.2.6 \(search engines\)](#)
- [Guidance on the interpretation and application of the Consumer Rights Directive](#)
- [Guidance on the interpretation and application of the Unfair Contract Terms Directive](#)

8.6 Enforcement

- 🔗 ACM: Websites for booking holiday accommodations now inform consumers better about the ranking of their offers
- ACM, together with the other European consumer authorities and the European Commission, confronted holiday platforms about, among other aspects, information regarding the ranking of the offers on their websites. The companies have changed their websites, and now inform clearly about:
- The selection process behind the search results;
 - Certain search results are given a higher ranking because the providers offering them have paid for that higher ranking;
 - The total price of the accommodation includes all unavoidable costs;
 - The availability of rooms on certain dates: no more suggestions of artificial scarcity;
 - Deals must be genuine deals;
 - Prices, for example, a price cannot be presented as a discount if that is not the case;
 - If the host is a professional or a private person.

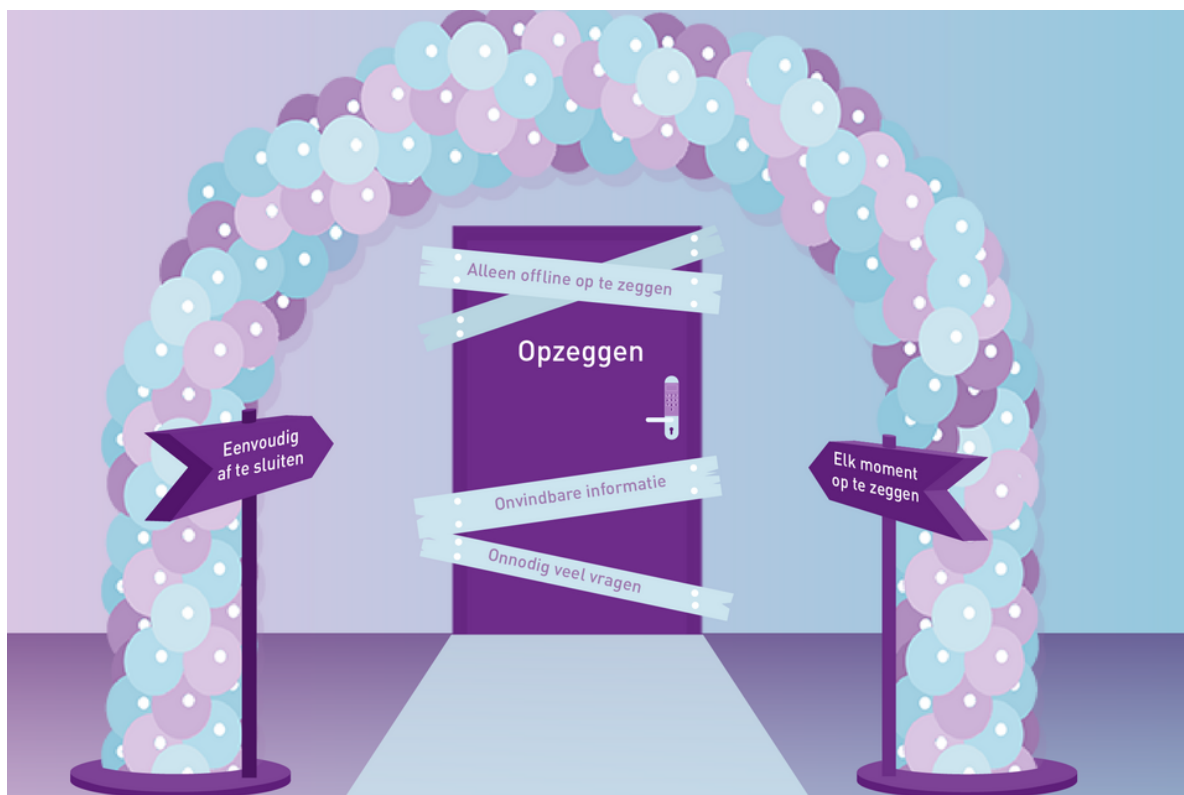
8.7 More information: links and footnotes

- [Sponsored ranking: effects on consumer welfare](#)
- European Commission, Directorate-General for Justice and Consumers, Lupiáñez-Villanueva, F., Boluda, A., Bogliacino, F., et al., [Behavioural study on unfair commercial practices in the digital environment: dark patterns and manipulative personalisation : final report](#), Publications Office of the European Union, 2022
- The information in the introduction of this chapter is based on the following studies and articles: L. Marable, '[Consumer reaction to learning the truth about how search engines work](#)', April 16, 2003 (consumerreports.org)

9 Cancelling your contracts

Rules for cancelling your contracts online

For consumers, it is often very easy to take out a fixed-term subscription, membership or any other contract online. Conversely however, is it just as easy to cancel such contracts? If you make it harder for consumers to cancel their contracts, consumers might be stuck with contracts they actually do not want (or not anymore). This is not allowed.



It is important that consumers are able to cancel their subscriptions in an easy and clear manner. That is why there are rules in place if you offer subscriptions, memberships or similar products. These rules ensure that consumers are able to make informed choices. An informed choice is a choice that has been made in a fair manner, with correct information, and without any pressure.

If you make it hard for consumers to cancel their contracts, it might constitute an unfair commercial practice. Unfair commercial practices are prohibited. Read more about the [rules on subscriptions, memberships, and supply contracts \(in Dutch\)](#).

9.1 What is required and what is not allowed?

- ✓ Inform consumers clearly about how and under what conditions they are able to cancel the agreement. Do so already before they sign the contract. Make sure that you present that information in a striking manner. In addition, make sure that consumers are able to find that information easily on your website at any other time. That means presenting that information in a logical place, behind a link with a logical name.
- ✓ Make sure that, for consumers, cancelling the agreement is just as easy as taking one out. For example, in the main menu, include a separate, striking button with the text 'Cancel subscription'.

- ✗ Do not make cancelling the agreement harder than taking one out. Do not create any unnecessary barriers, for example by making consumers click more than twice in order to be able to cancel or by making them answer a long list of questions first.
- ✗ Do not require consumers to cancel their agreements by regular mail or over the phone, if they had been able to take them out online. Cancelling an agreement must be possible in the same way as it was taken out.

9.2 Tips

- Check whether consumers are easily able to find the instructions on how to cancel.

9.3 Examples

9.3.1 Example: if consumers took out a subscription online, they must be able to cancel it online as well

An online store selling beauty products offers subscriptions. Every month, subscribers get a surprise package containing six beauty products, delivered to their homes. Consumers can take out this subscription by filling out a form on the website. Information about cancellations is only mentioned in the general terms and conditions on the website. According to these terms, consumers can only cancel subscriptions over the phone. This is not allowed.

The information on how to cancel subscriptions must be easy to find, for example, by clicking on a link called 'cancellations' on the homepage. In addition, since consumers are able to take out subscriptions using an online form, they also must be able to cancel their subscriptions using an online form.

9.3.2 Example: Not easy to cancel

A company offers a digital service. In order to cancel that service, consumers need to perform many online searches and illogical steps. The company asks consumers multiple times whether they really want to cancel their service. It uses emotional messages in that context, for example "We're sad to see you leave" or "These are the benefits you'll lose". This is a persuasion technique also known as 'nagging'. This is not allowed. The company influences consumers inappropriately, which is not in the consumers' interests.

9.3.3 Example: A clear choice menu with a cancellation button

An app offers a choice menu. This menu is clearly visible and easy-to-access from the app's homepage. The choice menu also includes a button "Cancel your subscription". This is good for consumers. In that way, consumers do not need to click multiple times unnecessarily in order to cancel their subscriptions.

9.3.4 Example: Not easy to unsubscribe from newsletter

An online retailer sends its customers a newsletter. In this newsletter, customers need to click on a link (using a small, light gray font) in order to unsubscribe from the newsletter. In addition, the retailer uses striking pictures that stimulate consumers to continue using the service instead of unsubscribing from it. With these design techniques, the online retailer influences consumers. This is called 'visual interference'. The combination of an unassuming link for unsubscribing from the newsletter and the striking pictures used for promoting the service constitutes inappropriate persuasion. That is not allowed.

9.4 Relevant regulations

- [Title 3, Section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 3 of the Dutch Civil Code, Book 6 \(General terms and conditions\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Directive 2011/83/EU \(Consumer Rights Directive\)](#)

- [Regulation \(EU\) 2022/2065 \(Digital Services Act\)](#).

9.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive, Section 5.2.6 \(search engines\)](#)
- [Guidance on the interpretation and application of the Consumer Rights Directive](#)
- [Guidance on the interpretation and application of the Unfair Contract Terms Directive](#)

9.6 Enforcement

- [ACM: consumers should be able to cancel online any subscriptions that have been taken out online](#)

Consumers must be able to cancel their subscriptions in the same way in which they took them out. So if you took out a subscription online, you must be able to cancel it online as well. With certain online subscriptions to newspapers, magazines, and lotteries, ACM observed that this was not the case. Consumers experienced high barriers to cancel, and, when talking to these companies over the phone, they felt pressured not to cancel their subscriptions or to agree to a new offer. ACM reminded businesses of the rules. These businesses have adjusted their practices.

- [Users must be able to cancel their subscriptions with two clicks](#)

A major e-commerce platform offers a premium service for deliveries and also a streaming service for series and films. It was easy for consumers to take out subscriptions, but it was extremely cumbersome to cancel them. For example, users had to scroll through dozens of pages, and click away warnings. The European Commission and European consumer authorities confronted the platform with their findings. Users of the service are now able to cancel their subscriptions with two clicks.

- [Germany: a cancellation button for subscription services \(in German\)](#)

Since July 1, 2022, in Germany, it is mandatory for online providers of subscription services to offer a cancellation button. Consumers must be able to cancel their subscriptions with no more than two clicks. Providers must place a button on their website with the text (in German) 'Click here to cancel your agreement' or words to the same effect. If providers do not offer this button (or not clearly), the agreement with the consumer will be invalid.

The cancellation button must directly lead to a cancellation page. On that page, consumers must enter information to cancel their subscriptions, and indicate from what date they wish to cancel them. On that page, providers must also place a button with the text (in German) 'Cancel now' or words to the same effect. Consumers can then submit the cancellation form. Businesses must subsequently actually terminate the agreement. This means they cannot require consumers to take any follow-up steps for the cancellation to take place, such as logging in or confirming by email or app.

Disclaimer: this rule does not, as yet, apply in the Netherlands. However, ACM does recommend introducing this rule.

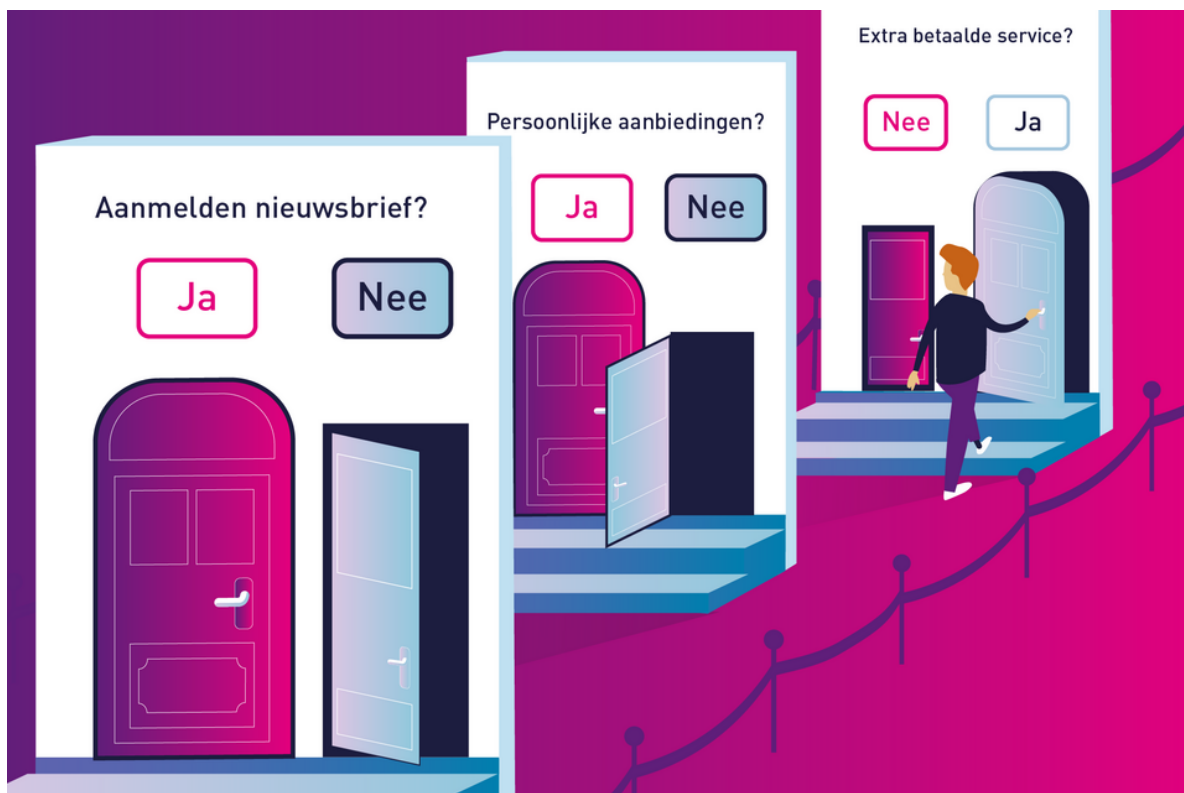
9.7 More info: links and footnotes

- European Commission, Directorate-General for Justice and Consumers, Lupiáñez-Villanueva, F., Boluda, A., Bogliacino, F., et al., [Behavioural study on unfair commercial practices in the digital environment: dark patterns and manipulative personalisation : final report](#), Publications Office of the European Union, 2022
- Read more about the German obligation to offer a two-click cancellation button: [Gesetz für Faire Verbraucherverträge \(in German\)](#)

10 Unconscious clicking behavior

Preventing misleading practices in unconscious clicking behavior

Much of consumer behavior takes place unconsciously. For example, consumers click on the most striking button on a website or in an app. It is important that consumers are able to have confidence in online environments. You cannot mislead consumers by having them unconsciously make an unwanted choice. Therefore, keep that in mind when designing your website or app, especially with buttons and choice menus.



With the knowledge that consumers often make unconscious decisions online, you can also help consumers, for example by designing websites or apps in such a way that consumers can go through the ordering process with ease. Prevent situations where you nudge consumers towards a choice they do not approve of or that is not in their interest.

That is why it is good if you constantly check what techniques you use for influencing the choices of consumers. In that context, it is good if you test how those techniques influence consumers. The more different techniques you combine, the likelier it becomes that you use unfair commercial practices. Unfair commercial practices are prohibited.

10.1 What is required and what is not allowed?

- ✓ Make sure that it is clear to consumers what they click on. So think about using a clear design. This means presenting buttons, choice menus, and click sequences in a logical and neutral manner. Think about using buttons of similar sizes and with similar colors for “Yes” and “No”, for example when asking for confirmation or consent.
- ✓ Make sure that consumers cannot make any unwanted choices when they are relying on habits and routines. So think about using a clear and logical design. Present icons, colors, texts and pictures on the website in a way that is customary.

- ✓ At the end of the ordering process, place a clear button in a logical place, which clearly indicates that the consumer is ordering something, for example by using the text ‘confirm order’ on the button.
- ✗ Do not add any misleading elements to the designs of your website or app. For example, if consumers are nudged in a certain direction because of unclear menus, pictures, icons and colors, such elements may be considered misleading. Is it, as a consequence, possible that consumers will purchase something they would not have purchased otherwise? If so, it is considered a misleading practice. And misleading practices are not allowed.
- ✗ Do not automatically nudge consumers towards a choice that benefits you, for example, by only making the “Yes” button bigger and more noticeable, so that you obtain the consumer’s consent.
- ✗ Do not unexpectedly change click sequences. In ordering processes involving click sequences, consumers often go through such sequences by clicking on instinct. That is because the average consumer expects the order of the click sequence to remain the same. Changing the click sequence may thus be a misleading practice.

10.2 Tips

- ➔ Test whether your online choice process is clear to consumers. Do they understand what choices they make, and what the consequences are of those choices?

10.3 Examples

10.3.1 Example: A click sequence that changes mid-way

A consumer is browsing gift ideas in an online store. During the ordering process, the consumer gets to see multiple pop-up screens: do you wish to stay informed about similar offers? Do you want to sign up for the newsletter? Can we use your data to personalize our offers? The consumer must always answer “yes” or “no”. Halfway through the click sequence, the “yes” and “no” buttons suddenly switch places. The consumer clicks on “no” several times, but inadvertently clicks on “yes” because the buttons had switched places. As a consequence, the company has obtained the consumer’s consent to a newsletter subscription, although the consumer did not want it. This is not allowed.

10.3.2 Example: X buttons that do not close the windows

A consumer is visiting a website to buy new shoes. During the search process, an ad with an offer suddenly appears. At the top of the ad window, there is a red X, which the consumer thinks is how to close that ad. It turns out that is not the case. If the consumer clicks on the X, the ad’s ordering process will appear. That is not allowed.

10.3.3 Example: age verification combined with consent to ads

A social-media app asks its users for consent using pop-up screens. In the pop-up screen, the app asks: “Can you confirm that you are 18 years or over, and that you consent to personalized ads?”. This is a misleading practice. It is not clear to consumers that they both confirm their age as well as give their consent to personalized ads. Consumers are inclined to confirm quickly they are 18 years or over in order to proceed on the website or app. As a result, they tend to miss the second part of the question. The app must ask two different questions: one for age-verification purposes, and the other for consent to personalized ads.

10.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#), see Sections 6:193a through 6:193j of the Dutch Civil Code.
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Regulation \(EU\) 2022/2065 \(Digital Services Act\)](#)

10.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

10.6 More information: links and footnotes

- European Commission, Directorate-General for Justice and Consumers, Lupiáñez-Villanueva, F., Boluda, A., Bogliacino, F., et al., [Behavioural study on unfair commercial practices in the digital environment: dark patterns and manipulative personalisation : final report](#), Publications Office of the European Union, 2022.
- BEUC, “DARK PATTERNS” AND THE EU CONSUMER LAW ACQUIS Recommendations for better enforcement and reform, see [beuc-x-2022-013_dark_patterns_paper.pdf](#)

FREE CHOICE

How do you offer consumers a free and fair choice to buy or use something online?

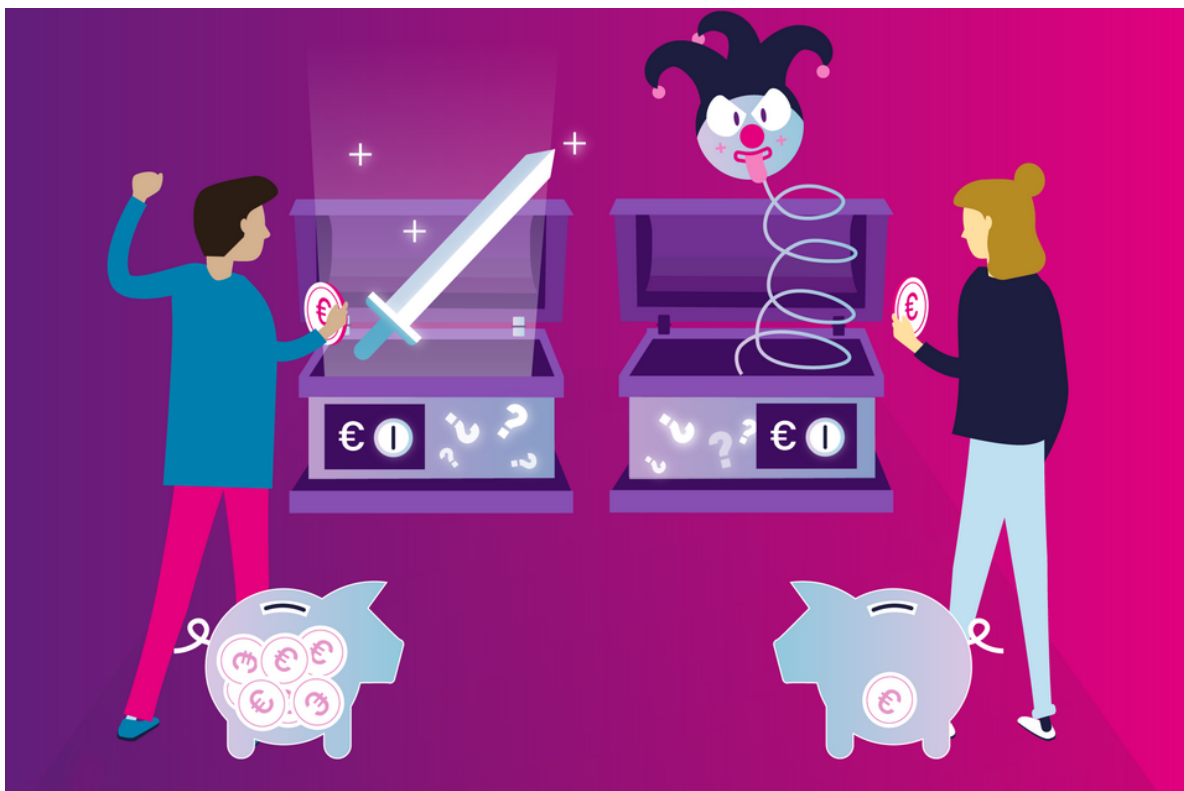
Do not pressure consumers, and provide honest information. In the section *Free Choice*, you can see what rules apply to specific topics:

- 11. In-game purchases
- 12. Personalization
- 13. Promoting more and more-active use
- 14. Emphasizing limited availability

11 In-game purchases

Rules regarding in-game purchases

Game providers are eager to tempt players into spending money in their games. However, it is important that players are not misled into making in-game purchases. That is why there are rules in place for the use of in-game sales techniques. Aggressive and unfair commercial practices are not allowed. Consumers must be able to make well-informed decisions regarding purchases.



11.1 Business models

11.1.1 Different types of business models

There are different business models for games. The most common ones are:

Pay-to-play

In this model, players pay to play the game. Pay-to-play games include:

- Retail/Box revenue premium games: Players buy the game once, and are able to play the full game.
- Subscription: Players buy the game as a service. Players thus periodically pay a subscription fee for temporary access to the game.

Free-to-play

In this model, downloading the game does not cost any money, but the provider generates income from other purchases that players make within the game. These are not necessarily mandatory expenses.

Examples are:

- Micro-transactions: purchases that players make within the game, such as game content or add-ons. Such add-ons can be, for example, virtual items, weapons, cosmetic items, skins or currency;
- Pay-to-win: this is a micro-transaction where players pay in order to become better and to win;
- Season passes: access to temporary game modes;
- Data-driven or data-for-access: players pay (implicitly) for access by sharing their user data;
- In-game video ads;
- In-game ads and product placement.

Freemium

A subtype of the free-to-play model where players are able to make purchases is also referred to as the 'freemium' model. Since players do not pay for playing the game, the barrier to playing the game is quite low. This model has the most in-game incentives to make purchases. It is not allowed to advertise games using this business model as 'free'.

11.1.2 In-game sales techniques

Game providers really want players that are involved. That is why they stimulate players to spend money within the game. To that end, they often use different techniques, for example:

- Personalized pricing
- Micro-transactions
- Using other currencies
- Hidden advertising
- Loot boxes
- Algorithms that determine the best sales strategy
- Limited-time offers

The more time, effort and money players have put into a game, the likelier it becomes that sales techniques will have an effect on them. In that context, the 'sunk cost fallacy' also plays a role: once you have invested in a game, you are less likely to quit that game and start a new one. Moreover, people often act impulsively when playing games. They are immersed in a game, and are thus not so alert to sales techniques as consumers in a store (online or brick-and-mortar) are.

11.1.3 Rules regarding in-game sales techniques

These kinds of techniques are allowed, as long as they do not mislead players into making purchases. In addition, players cannot be put under so much pressure that they are unable to make a well-informed decision. If you sell items or services within a game, you must comply with certain rules. Aggressive and unfair commercial practices are not allowed.

That is the case, for example, if games exploit the vulnerabilities of players, for example, by matching players with different skill levels. Novice players will then want to make more purchases in order to progress within the game.

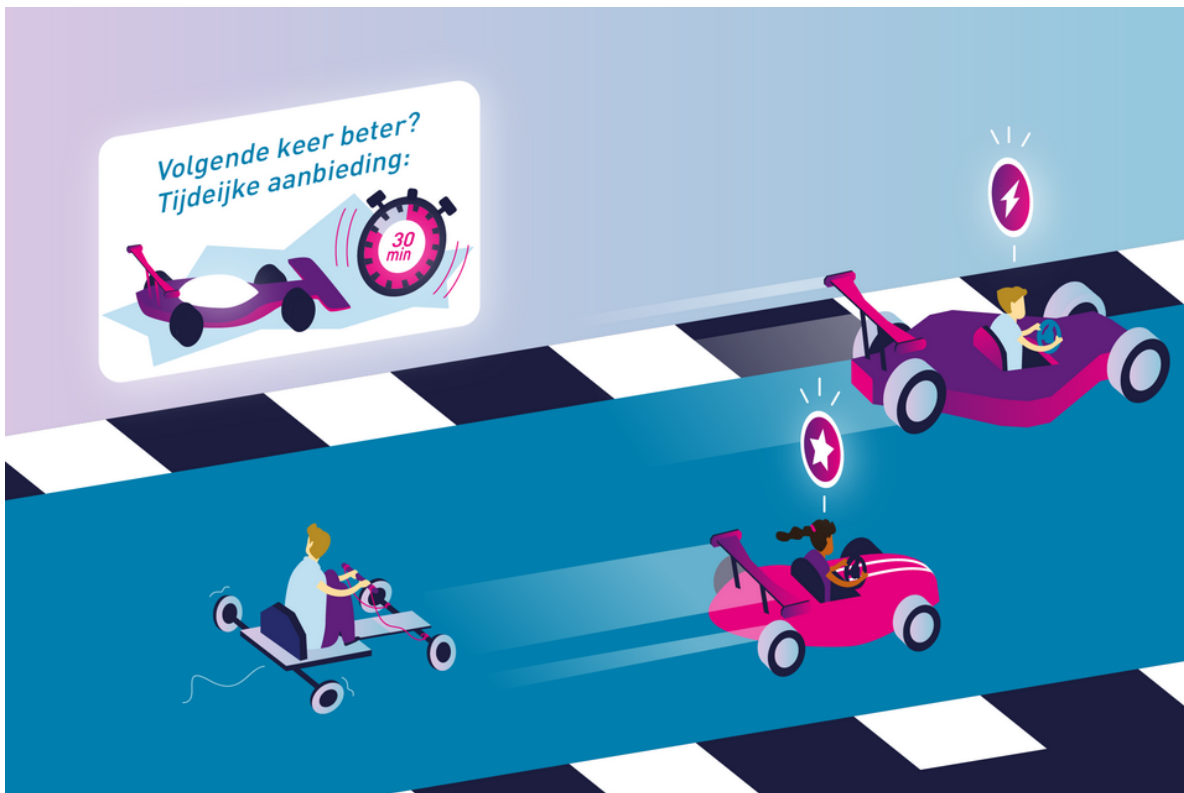
What exactly constitutes an aggressive or unfair practice may vary in each situation. For example, ACM is very strict when assessing practices involving minors (17 or younger). They are often more sensitive to persuasion techniques. And they are often also prone to FOMO (fear of missing out), which is a very strong incentive to deciding to make in-game purchases. Game providers cannot directly encourage minors to make in-game purchases.

11.1.4 More information: links and footnotes

- [In 2014, European regulators wrote a common position paper on the rules regarding commercial practices in in online games.](#)
- [Trimbos Instituut \(2021\). Behavioral design in video games](#)

11.2 In-game stores

Players are often able to make purchases within games. Game developers create in-game stores. If you use such an in-game store, you need to comply with certain rules. Aggressive and unfair commercial practices are not allowed, just like with any other online store. It is important that you do not mislead consumers into buying something. In addition, do not put so much pressure on players that they are no longer able to make an informed decision.



What exactly constitutes an aggressive or unfair practice may vary in each situation. Do many children (players under 18) play the game? If so, ACM will be extra strict in its assessment. That means you need to be mindful of the target audience of your game. In that context, it will help if you conduct a study into your player base, and how this group responds to any changes you make to the in-game store.

11.2.1 What is required and what is not allowed?

- ✓ When offering items in the in-game store, always display the real price in euros, even if you use an in-game currency.
- ✓ For each item that can be obtained through loot boxes, indicate the odds of a player actually getting one. You cannot put so much pressure on players that they make decisions they would not have made if they had not been pressured. Loot boxes are virtual containers that contain items or customization options that can be used in the game.
- ✓ You must take into consideration the profiles of your players. For example, if players are younger than 18, you have an extra special responsibility not to pressure them into buying items.
- ✗ Do not tempt players younger than 18 into browsing the in-game store. Children are more susceptible to persuasion techniques. They are often more prone to 'fear of missing out' (FOMO) and more susceptible to peer pressure than adults are, for example with regard to cosmetic items in multiplayer games where social aspects also play a role. As a result, they feel pressured sooner to make purchases.
- ✗ Do not exert undue pressure on players to purchase items. Pressure is considered undue if you, for example, keep repeating making a certain offer within a very short period of time or if you influence players by having them experience certain setbacks or adverse circumstances within

the game with the intention to stimulate them to buy items. Think of offering upgrades when a player has lost a match or a round or think of having players constantly play against more experienced players. The odds of losing increase, and so does the pressure to buy an upgrade that is impossible (or almost impossible) to unlock for free.

11.2.2 Tips

- When offering items in the in-game store, you can use in-game currency so long as the price of the item that is offered is also displayed in a real currency.
- You can offer loot boxes in the store so long as you do not use any unfair techniques to make players buy them. That means that you cannot exert so much pressure on players that they make a decision that they would not have made if they had not been pressured. For each item that can be obtained through loot boxes, indicate the odds of a player actually getting one, and do not mislead players.

11.2.3 Examples

11.2.3.1 Example: a player is misled into buying an item following a loss

A player plays a game where the player battles other players. In the game, players can buy items in the in-game store. With those items, the player's avatar becomes stronger, and their chances of winning go up. The player loses their next battle, and sees a pop-up screen. The text in that pop-up suggests the player to browse the in-game store. This is only allowed if the player is 18 or over.

11.2.3.2 Example: a player is pressured to buy something

A player plays a competitive online game. The game's matchmaking system should match that player with players with similar levels. In reality however, the system matches the player with higher-level players, which results in many losses. Each time the player loses, the game shows the in-game store. The store sells items that increase the player's chances of winning. This is undue pressure. That is prohibited.

11.2.4 Relevant regulations

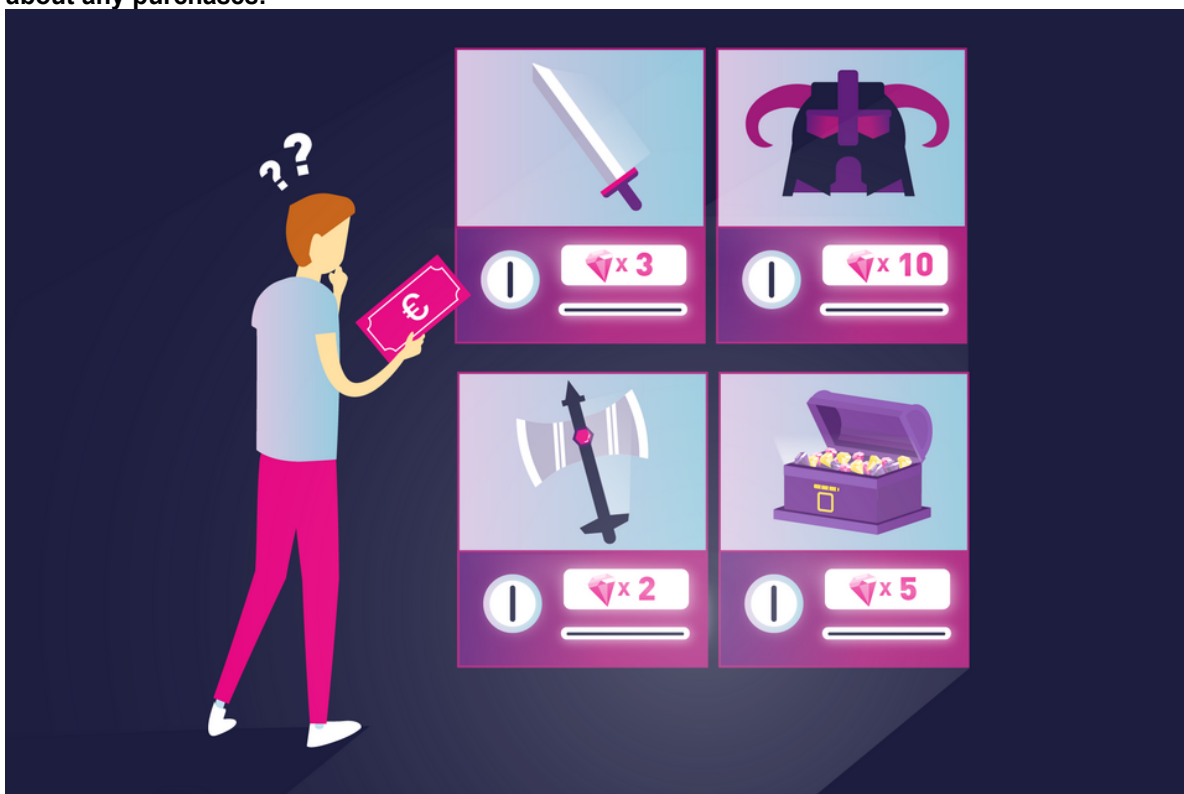
- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#), Sections 193h and 193i, in particular, concern prohibited aggressive commercial practices.

11.2.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

11.3 In-game currency

Many online stores, apps, and games use their own currency. With those currencies, players are, for example, able to buy items, take out subscriptions, or unlock additional game content. If you use in-game currency, you will need to comply with certain rules. It is important that your use of in-game currency does not mislead consumers. They must be able to make an informed decision about any purchases.



Consumers are often able to earn currency in games, for example by simply playing the game or by actually buying in-game currency with real money such as euros. Consumers are able to spend in-game currency in the game's online store or an in-game store. If consumers buy something with currencies other than euros, the connection with real money will be less strong. The threshold to spend money is thus lower.

11.3.1 What is required and what is not allowed?

- ✓ Always display the price in a real currency (euros) when offering something in your own currency. Do so prior to the transaction as well. If the price cannot reasonably be converted to a real currency, you must show how you arrive at the stated price.
- ✗ Do not use your own currency if the connection with real money is not clearly there. If you do not display the real price in euros when offering something and during the transaction, no transactions can be conducted, and you cannot sell anything with your own currency.

11.3.2 Tips

- When converting from your own currency to euros, you can, for example, use the base value for which the in-game currency is sold. The base value is the smallest possible amount of in-game currency that a player can buy. If you do, explain clearly that the displayed amounts in euros are on the basis of this conversion method.

11.3.3 Examples

11.3.3.1 Example: a player buys a new weapon with in-game currency

A player browses an in-game store. He notices that a powerful weapon is for sale. With that weapon, his avatar will become stronger, and his chances of winning the game will go up. The weapon can be purchased for 600 'in-game coins'. The player can earn in-game coins within the game or he can buy them with real money. The player buys a coin pack, with which he can buy the weapon. In the in-game store, it is clearly explained that 1,000 coins costs 5 euros. However, the price of the weapon is only given in the in-game coins: 600. It is not explained that this equals 3 euros. That is not allowed. When offering the weapon, the price must also be presented in a real currency.

11.3.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 3 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#)

11.3.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

11.3.6 Enforcement

[Joint European consumer authorities force TikTok to make changes](#)

TikTok did not comply with the rules regarding virtual in-game currency. That is why ACM, together with other European consumer authorities and the European Commission, confronted TikTok with their findings. TikTok subsequently committed to adjusting its policy. For example, TikTok would offer a cooling-off period for purchases made by players with virtual currencies. In addition, TikTok would also start adding the real-world value to the value in in-game currency.

11.4 Loot boxes

Players must be able to make informed decisions about purchases. If they cannot, it may be considered a misleading practice. That is why there are rules in place for when you offer loot boxes. Always state the price, including in a real currency. Indicate the odds of winning a specific item from a loot box, and do not pressure players into buying loot boxes.

Players can win or buy loot boxes. Loot boxes are virtual boxes that contain items and in-game customization options such as weapons or outfits for online characters. The contents of each box are only revealed after players have opened their boxes. Players often do not know the odds of winning items from loot boxes. However, you must be transparent about those odds. The gambling aspect of loot boxes (not knowing what items the loot boxes contain) exploits the vulnerabilities of players.

A loot box is often a small purchase involving a couple of euros. However, players often buy multiple loot boxes as time goes by. That can add up significantly. You must be transparent about the costs, and you must state them in a real currency. You must do so whenever a loot box is offered, and on the checkout screen of transactions, even if loot boxes can only be bought with an in-game currency.

In addition, keep in mind the time and place where you offer loot boxes. Do not pressure players by offering loot boxes when they are vulnerable, because it is important that players are able to make an informed decision about the purchase of a loot box.

11.4.1 What is required and what is not allowed?

- ✓ Always state the price of a loot box in a real currency (euros) clearly and prominently. If you state the price of the loot box in an in-game currency, you must also state the amount in euros. You must also do this when the transaction takes place.
- ✓ For each item that can be obtained through loot boxes, indicate the odds of a player actually getting one.
- ✓ You must take into consideration the profiles of your players. For example, if players are younger than 18, you have an extra special responsibility not to pressure them into buying items.
- ✗ Do not sell loot boxes without clearly stating the odds of winning specific items from the loot box.
- ✗ Do not leave out the price in a real currency when offering the loot box. If you state the price of the loot box in an in-game currency, you must also state the amount in euros.
- ✗ Do not pressure players into buying loot boxes, such as by offering the loot box at a time when players are unable to make an informed decision, for example right after losing a match. Keep this in mind.

11.4.2 Tips

- ➔ The way in which you offer loot boxes and when you offer them are important. Make sure that you do not pressure players into buying loot boxes.

11.4.3 Examples

11.4.3.1 Examples: Loot boxes

A company has developed a video game with loot boxes, which contain outfits or weapons for the consumers' avatars. Players can buy loot boxes using in-game currency. When offering the loot boxes, the company does not state the odds of obtaining a rare outfit from the loot box. In addition, the price of the loot box is not stated in euros either. That is not allowed. The real price must be clear so that the connection with real money is kept intact. Without such a connection, the threshold to spend money is lower. Furthermore, for each possible item that can be obtained from loot boxes, the company must state their odds of obtaining them when offering the loot box.

11.4.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 3 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#)
- [Dutch Betting and Gaming Act \(in exceptional cases\) \(in Dutch\)](#)

11.4.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

11.4.6 More information: links and footnotes

- [Consumer organizations call for a ban on loot boxes \(in Dutch\)](#)
- [Study of the Norwegian consumer authority into loot boxes](#)

11.5 Promoting games as ‘free’

It is important that players of games know what they can expect. Is a game completely free or is it possible that players need to make purchases after downloading the game for free? Be clear about such details. You cannot mislead players. It is misleading to let players believe that a game is free, when it is not. That is why you need to comply with certain rules if you promote your game as free.

Game developers often say that their games are free. However, players sometimes can or need to make in-game purchases after downloading the game for free, for example, game content or add-ons such as virtual items, weapons, cosmetic items, skins or in-game currency. Such games use a ‘free-to-play’ or ‘freemium’ business model.

Most of these purchases involve small amounts of money. That is why such purchases are also called microtransactions. Microtransactions are sometimes required in order to progress in the game, but this is not always the case. Purchases are sometimes not required, but the game does exert social pressure on players to make purchases, or the game exploits the players’ ‘fear of missing out’ (FOMO) by encouraging them to buy items. In such situations as well, games cannot be promoted as ‘free’.

Misleading practices are not allowed. Therefore, explain clearly to players what costs they can expect.

11.5.1 What is required and what is not allowed?

- ✓ The price of the game must be clear in advance. Does the game include paid elements? If so, that fact must be clear when offering the game, so before a consumer downloads the game.
- ✗ Do not promote your game as free if in-game purchases can be made, even if such purchases are optional, for example in order to progress in the game.
- ✗ Do not promote your game as a free download without explaining that in-game purchases can be made. In that context, explain what elements of the game can be purchased. Explain this when offering the game, so before a consumer downloads the game.

11.5.2 Tips

- ➔ You can promote your game as free if that is truly the case. That means that, in the entire game, no purchases can be made or that players do not need to pay for anything.
- ➔ You can promote your game as a free download if you also say that in-game purchases can be made. In that context, explain what kinds of purchases can be made, for example skins, downloadable content (DLC), or extra lives.

11.5.3 Examples

11.5.3.1 Example: Game that can be played for free with in-game purchases

You promote your game as a ‘free’ game. Prior to downloading the game, consumers are not able to see that in-game purchases are possible, for example, for extra lives, weapons, or in-game currency. They do not know that they can expect additional costs. That is not allowed.

You cannot call a product a ‘free’ product if consumers can make in-game purchases. When offering their games, businesses must indicate that in-game purchases can be made.

11.5.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 3 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#)

11.5.5 Enforcement

- [Apple and Google no longer promote games as ‘free’](#)

Apple and Google have adjusted their app stores. They no longer promote games with in-game purchases as 'free' games. As a consequence, the risk of children making unwanted purchases when playing games has been reduced. This has been the result of actions taken by ACM together with other European regulators and the European Commission.

11.5.6 More information: links and footnotes

- The example is based on the common legal position of the national authorities within CPC regarding online games in 2013.

11.6 In-game payment settings

Before making a purchase, consumers must know what they can expect. That also applies to purchases of games and within games. It is important that consumers are not misled. Therefore, make sure that the default setting in your game is that players must always give their consent to any purchase, and that this safe default setting can only be changed with their consent.

Design your game in such a way that players consciously choose to make a purchase. Present information in a logical location and in a fair manner. Furthermore, create an additional threshold in games that are played by children, which prevents children from making any purchases without their parents' consent.

11.6.1 What is required and what is not allowed?

- ✓ The default setting in your games must be that consumers give their consent to all purchases. Ask for the player's consent if you wish to set a different default setting than this safe setting.
- ✓ When asking for consent to a specific payment setting, make sure that it is clear what that setting entails, and for how long it is valid.
- ✓ Do children (younger than 18) play your game? If so, ask for a password prior to any purchase. If a player purchases multiple items at the same time, asking for a password once for making those purchases will suffice.
- ✓ Does your game's target audience include children or do children play your game? If so, use a system with parental control settings for purchases. This should ensure that children cannot make any purchases without their parents' consent.
- ✗ Do not use a setting that makes it easier for players to make purchases for a certain amount of time, for example not having to enter a password for each purchase. You can only use such a setting if you have that player's consent.
- ✗ Do not leave a player's consent to in-game purchases 'on' for a certain amount of time. You can only do so if you have that player's consent to that specific amount of time.
- ✗ If your game's target audience include children or if children play your game, do not leave out a system with parental control settings for purchases.

11.6.2 Tips

- ➔ You can use a setting making it easier for players to make in-game purchases after the player has given their consent to that.
- ➔ You can leave a player's consent to payments 'on' for an agreed upon amount of time with that player's consent. For example, it will become easier for that player to make purchases using a credit card for a specific amount of time.
- ➔ You can use microtransactions in games that are mostly played by children. However, if you do, you must ask a player's password prior to each purchase. If a player purchases multiple items at the same time, asking for a password once for making those purchases will suffice.
- ➔ You can choose not to use a system with parental control settings for purchases if your game's target audience does not include children and if they do not play your game.

11.6.3 Examples

11.6.3.1 Example: computer game with subscription that is automatically renewed

You have developed a video game that can be downloaded for free. However, players will have to pay a monthly fee if they want exclusive content. A player visits your website to purchase a season pass or purchases one from the in-game shop. At the bottom of the ordering page, a box has already been pre-ticked. It says that the player gives their consent to automatic renewals of the season pass, and that the season pass can always be cancelled at any time. This is not allowed. It is not allowed to pre-tick a box saying that players will have their subscriptions automatically renewed each month. Ask for the consumer's consent in advance.

11.6.3.2 Example: Mobile game with in-app purchases that is mostly played by children

You have developed a mobile game that can be downloaded for free. This game is mostly played by children (minors). Players are able to get extra lives and play extra levels by paying with real money. A young player plays the game on his mother's tablet. After playing for a while, he has lost all of his lives, and a pop-up screen appears, asking him if he wants to purchase extra lives. He decides to click on it. During the ordering process, no password is asked. This is because his mother had already made a previous in-game purchase for her son. The payment settings were automatically saved at that time. As a result, the boy is able to continue playing at a fee. However, that purchase was not preceded by a parent's deliberate choice. This is not allowed. You must ask for a password prior to each purchase. You can only save a player's payment settings for a certain amount of time if that player has given their explicit consent thereto.

11.6.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(unfair commercial practices\) \(in Dutch\)](#)
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 1 \(general provisions\) \(in Dutch\)](#), in particular Section 6:230j: which states that, without their explicit consent, consumers are not bound by any obligation to make an additional monetary payment for obtaining a performance that is not part of the core of the performance. Explicit consent cannot be inferred from the use of standard options that consumers must decline.
- [Title 5, section 2B of the Dutch Civil Code, Book 6, section 3 \(Provisions regarding distance-selling agreements between traders and consumers\) \(in Dutch\)](#), in particular Section 6:230m under e, which requires you to state with the product what the total price of the items or services is, including all taxes, or, if the price cannot be reasonably calculated in advance due to the nature of the item or service, the method used to calculate the price, and, if applicable, all additional shipping, delivery or postal costs and any other costs or, if these costs cannot be reasonably calculated in advance, the fact that such additional costs may be owed.
- [Title 5, section 3 of the Dutch Civil Code, Book 6 \(general conditions\) \(in Dutch\)](#)

11.6.5 Enforcement

- [Apple and Google no longer promote games as 'free'](#)
Apple and Google made changes to their app stores. They stopped promoting games as 'free'. As a result, the risk of children making unwanted purchases when playing games was reduced. This was the result of actions taken by ACM together with other European regulators and the European Commission.

12 Personalization

Rules on personalized online offers

Do you as a company personalize prices, offers, ads, the search results of third-party products, or your online environment? If so, you must be sufficiently transparent about this, and you cannot mislead consumers or exploit the vulnerabilities of consumers as a result of which they are unduly influenced. This may constitute an unfair commercial practice, which is prohibited.



Your company personalizes if you change your offers on the basis of characteristics or the behavior of a consumer or a group of consumers, for example setting a price or running an ad that depends on a consumer's postal code or order history, or the ranking or personal offers that have been adjusted on the basis of a consumer's browsing and order history. It may also involve an online environment (user interface) with personalized buttons, colors, pictures, and texts that have been adjusted on the basis of browsing history and specific information about the behavioral characteristics of consumers.

Personalization can help people. They might see products or information that they find relevant sooner. Products can also be offered at a lower price to consumers that have less to spend. However, consumers can also be unduly influenced in their purchasing and choice processes.

ACM assesses commercial practices that involve personalization from the perspective of the average member of the group of consumers that is targeted by the personalization. The more you personalize, the smaller the group of consumers will be that you are targeting, until you end up targeting an individual consumer. The question of whether a practice is misleading or involves undue influence may thus depend on the degree of personalization.

In addition to consumer protection law, other rules may also apply if you personalize. If you process personal data, you will also need to comply with the [General Data Protection Regulation \(GDPR\)](#). The [Dutch Data Protection Authority \(AP\)](#) enforces compliance with the GDPR. Also, make sure that your

personalization does not illegally discriminate within the meaning of the [Dutch General Equal Treatment Act \(AWBG\)](#). In individual cases, the [Netherlands Institute for Human Rights \(CvdRM\)](#) decides whether or not a practice constitutes illegal discrimination.

Furthermore, online platforms have to comply with the rules laid down in the [Digital Services Act](#). For example, they have to explain how personalized recommendations are created, and what criteria are used in that process. Under the DSA, online platforms cannot present personalized ads using special categories of personal data such as racial or ethnic origin, religious or philosophical beliefs, or health. Also, online platforms can no longer present personalized ads using the personal data of underage users of their service if they are aware with reasonable certainty that the user of their service is a minor. On very large online platforms, consumers also have to be able to opt for non-personalized recommendations.

12.1 What is required and what is not allowed?

- ✓ Do you personalize prices? If so, tell consumers clearly that you do so.
- ✓ Do you offer consumers the option of searching for products of third parties, and do you personalize the rankings of the search results? If so, tell consumers clearly what the key factors are on which the personalized ranking has been based. Inform them also about how factors relate to other factors, such as their relative weight. This information must be easily and directly accessible from the page on which the search results are presented.
- ✓ Make sure that all variants of your online service that can be accessed by consumers comply with the relevant rules, for example regarding A/B testing.
- ✗ Do not personalize in such a way that you exploit the vulnerabilities or characteristics of consumers as a result of which they are unduly influenced. This may be the case, for example, if financially vulnerable consumers get personalized offers to buy products on credit.
- ✗ Do not be so unclear about personalization that consumers become misled.
- ✗ Do not mislead consumers about the degree to which you take into account their behavior, preferences, or interests when personalizing.
- ✗ Do not give the false impression that a personalized offer is better than the offers to other consumers.

12.2 Tips

- Tell consumers how personalization takes place, for example by explaining on the basis of what information about consumers you personalize prices.
- Offer consumers the option of turning off personalization easily.

12.3 Examples

12.3.1 Example: the personalized price of a television

An online electronics store runs the following ad: "Create an account now so we can give you personal offers, and make it easier for you to place orders".

Consumers with accounts sometimes get offers when they log into their accounts. The company offers consumers with accounts a discount on products. Consumers without accounts do not get the discount. Consumers with accounts see the following message next to the price of a television set: "Personal offer! Original price: 299 euros. Just for you: 255 euros."

However, consumers with accounts sometimes also see a higher price for certain products than do consumers without accounts. Those prices do not clearly indicate that the price has been personalized.

This is not allowed. The company must inform consumers actively that prices have been personalized. It can do so, for example, by adding a message near the personalized price, such as: "We offer you this

product at a price that we have determined on the basis of your current location and your recent searches. This price can be different from those presented to other customers.”

12.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Section 230m of the Dutch Civil Code, Book 6 \(information obligations for distance contracts\) \(in Dutch\)](#)
- [Regulation \(EU\) 2022/2065 - Digital Services Act](#)
- [Dutch General Equal Treatment Act \(AWBG\) \(in Dutch\)](#)
- [General Data Protection Regulation \(GDPR\)](#)

12.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

12.6 Enforcement

- 🔗 [ACM took action against an online platform that failed to inform consumers clearly about price personalization](#)

13 Promoting more and more-active use

Rules if you promote the use of your online service

You are allowed to stimulate the use of your online service or that consumers use it more actively. However, you cannot mislead or unduly influence consumers into using the service more than they would otherwise. That is an unfair commercial practice. Unfair commercial practices are prohibited. That is why there are boundaries to the way in which you can design your service for boosting the use thereof.



For the use of many online services, consumers do not need to pay with money. Businesses that provide such services usually earn money from (personalized) ads. They often stimulate consumers to use the service as much as possible or to prevent them from switching to another service. For if consumers spend more time on the service (time spent) and are more active on it (engagement), that service becomes more attractive to advertisers. Businesses will then be able to charge more for the advertising space. Furthermore, that is how they collect more data about their users and their behavior. And that knowledge, too, is worth money.

Stimulating online use is allowed, but only to a certain extent. You must comply with the rules laid down in consumer protection law.

The Digital Services Act (DSA) prohibits online platforms from using 'dark patterns'. These are techniques that disrupt or limit the consumers' ability to make free and informed choices. The ban applies to practices that do not fall under the rules about unfair commercial practices or the General Data Protection Regulation (GDPR).

13.1 What is required and what is not allowed?

- ✓ Make sure that with the online environment of your service you do not mislead or unduly influence consumers into using your service more or longer than they would do so otherwise. This applies to the design, the default settings and the recommender systems, among other aspects. For example, do not use game techniques and game elements to take too much advantage of behavioral pitfalls of consumers. It becomes too much if the techniques unduly influence consumers and disrupt their decision to use (or continue to use) the service.
- ✗ Do not send any misleading messages or notifications in order to lure consumers to your service, for example by giving the impression that consumers have received a message from a friend, whereas, in reality, it is an ad.
- ✗ Do not mislead consumers by giving them a false impression of your service's popularity, for example by saying that many users are online, whereas, in reality, this is not true.
- ✗ Do not put so much pressure on consumers that the decision to use (or continue to use) the service is disrupted, for example by taking advantage of behavioral pitfalls through analyses of data (personal data or otherwise). Think of repeatedly sending personalized notifications, and which capitalize on consumers' desires with their content and frequency. If that makes consumers use the service more often or longer than they would without such pressure, it may be considered undue influence.

13.2 Tips

- When designing your online environment, keep the interests of consumers in mind. In that context, use tools to manage their time on your service better. Think of warnings in case of extended sessions or of not using certain functionalities or switching them off by default, for example functionalities such as infinite scrolling or playing the next video automatically (autoplay).
- Let consumers choose themselves whether they wish to receive notifications from the service, and if so, what notifications. Use an 'opt-in model' for notifications.

13.3 Examples

13.3.1 Example: Misleading notifications

The app of a social-media service sends notifications by default. These notifications give the impression that friends on the service are online. In reality, however, this is not the case. This is a misleading practice, and is not allowed.

13.3.2 Example: Design choices that are in the interest of consumers

A video platform service does not automatically start a new video when a video has ended. This has been a deliberate choice in the service's design. The service does not use infinite scrolling either. As a result, the service does not give the impression of an infinite supply of videos. With these design choices, the service takes into account the interests (economic or otherwise) of consumers. This is an example of a practice that ACM recommends.

13.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)
- [Regulation \(EU\) 2022/2065 - Digital Services Act](#)

13.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:52021XC1229(05))

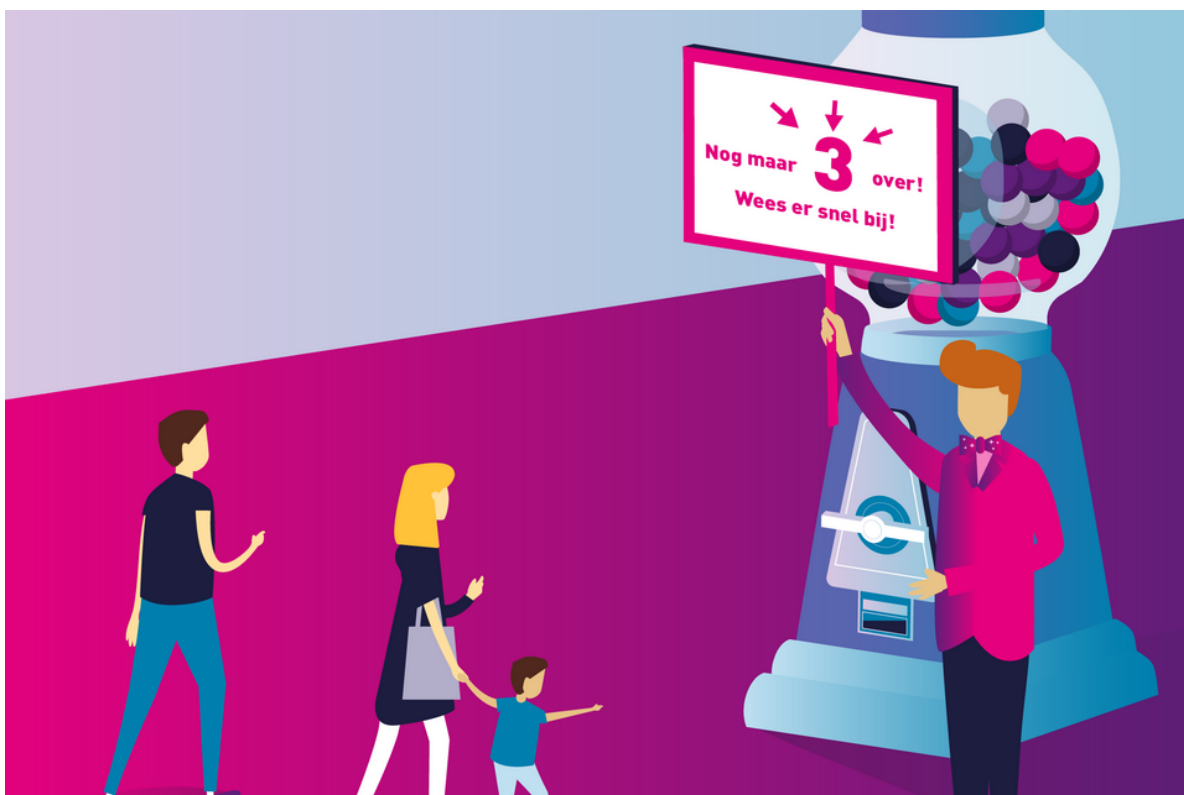
13.6 More information: links and footnotes

- European Commission, Directorate-General for Justice and Consumers, Lupiáñez-Villanueva, F., Boluda, A., Bogliacino, F., et al., [Behavioural study on unfair commercial practices in the digital environment: dark patterns and manipulative personalisation: final report](#), Publications Office of the European Union, 2022

14 Emphasizing limited availability

Rules on the use of limited-availability notifications

Do you use notifications such as: “This offer is valid for a limited time” or “Only a few items left”? Or perhaps you use other notifications in which you create a sense of scarcity among consumers? You can only do so if such notifications are true. Otherwise you mislead consumers into making a purchase. And that is not allowed.



Businesses like to create a sense of urgency among consumers when offering a special deal, discount or offer. They do so by emphasizing the limited time or stock. When seeing such notifications, consumers often make decisions sooner and they are more likely to make a purchase. There are different types of such online notifications, such as:

- **Scarcity notifications:**
These are notifications about the extent to which products are still available, for example 'Limited stock' or showing for each product how many items are still available. Or if a product is almost sold out: "Attention, only 3 items left!" or "Almost sold out!".
- **Urgency notifications:**
These are notifications that indicate how much time there is left to take advantage of the offer. Think of countdown timers that count down in seconds. This happens in online auctions, for example. It can create a strong urge among consumers to make a purchase immediately. The use of minutes, hours, days or even weeks can engender a similar sense of urgency, especially with larger or more complex purchases such as laptops or data plans.
- **Bait & Switch technique:**
These are notifications offering baits. Online stores sometimes advertise deals for a product they

only have a limited number of or even none at all. As a result, consumers are lured to the online store and are then pushed to purchase something else.

All these types of notifications can benefit consumers, but they need to be true. Is the notification not based on actual availability? Or is a notification not sufficiently specific and does it give a false impression of actual availability? If so, persuasion can turn into deception. And that is not allowed. That is why you must comply with certain rules if you use notifications about availability.

The same goes for baits. If a company knows that it only has a limited number of items of a certain product or even none at all for a certain price, or can that company reasonably suspect that? If so, luring consumers using such notifications is considered a misleading practice.

14.1 What is required and what is not allowed?

- ✓ Use limited-availability notifications only if they are actually true. Make sure that your notifications present a clear picture of actual availability. Make also clear if the last available items are through your website, or, for example, if they are truly the last available rooms of that hotel. Are there still rooms available through another site? If so, add, for example, "Last 3 available rooms on this website".
- ✓ Do you wish to show how long an offer lasts? For example, by using a countdown timer counting down until the end of the offer? If so, ensure that the remaining time that is shown is true.
- ✗ Do not use a countdown timer if the deal continues to be offered after the timer has counted down to zero. It would give the false impression that the deal is only available for the time remaining on the timer. That is a misleading practice.
- ✗ Do not continuously claim that a product is 'on sale'. If the deal is the permanent price, that claim would give a false impression about the availability of the deal for that price. That is a misleading practice.
- ✗ Do not say things that are untrue about availability. For example, you cannot say that there are only 5 items left, when this is not the case.
- ✗ Do not present incomplete information in availability notifications. For example, you cannot say there are only 5 hotel rooms left, when that availability does not concern the dates for which the consumers are searching or if there are still rooms available on another site for those dates.
- ✗ Never falsely claim that a product is available for a very limited time only or that it will be available for a very limited time under special conditions only, if this is not true. Consumers must have the opportunity and have sufficient time to make a well-informed decision. Do not pressure consumers into taking a decision quickly.

14.2 Tips

- You may extend a special offer, for example because the product is not sold out yet when the offer period expires. In that case, you may keep the product on sale, but make sure that this will not become a habit or a permanent situation. After all, that would defeat the idea of a special offer.

14.3 Examples

14.3.1 Example: The not-so-temporary offer

An online store has a large supply of a particular product as it can repeatedly reorder it at a similar price, but it acts as if it is offering these products at a temporarily reduced price. In reality, that price is not at all temporary: the product has been available at that same price for a long time. Consumers are misled about the price advantage. That is not allowed.

14.3.2 Example: False availability information

A business that sells concert and event tickets online advertises an artist's concert as follows: "Order from us the last remaining tickets for the sold-out concert for 80 euros."

However, the concert is not sold out. Tickets are still on sale through the 'official sales outlets' at 60 euros each. The business is misleading consumers about one of the main features of the product, which is its availability. It gives the impression that the concert is sold out, and that consumers can order the last few tickets through it, whereas, in reality, the concert is not sold out. That is not allowed.

14.3.3 Example: Almost sold out!

A fashion store sells online. The store has hired a firm to optimize the website and boost sales. The firm has built an algorithm that sends out the following notification for all products when they are viewed more than 200 times a day and for longer than 20 seconds but are sold less than five times: "Almost sold out!".

The firm's A/B tests show that this boosts sales of those products. However, the notification is not based on actual availability. That is a misleading practice and is therefore not allowed.

14.3.4 Example: Only three rooms left!

A hotel comparison and booking website offers hotel rooms in various hotels. When only a few rooms are left, the company posts a notification stating how many rooms remain available: "Only three rooms left! Book quickly".

In reality, the notification only concerns the availability of the rooms on this website. The company does not say that. It seems as if these are the last three rooms of that type. However, there may well be more such rooms available on other websites. The price comparison website cannot falsely claim that only a few rooms are left. This description is incomplete and therefore misleading. The comparison site thus misleads consumers about the availability of its offerings. That is not allowed.

The Dutch Advertising Code Committee clarifies that a company is allowed to issue complete and factually correct notifications about availability (in Dutch). This means that it can say "Only three rooms left on this website" or: "x number of people have looked at this hotel for the same dates", if this is true.

14.4 Relevant regulations

- [Title 3, section 3A of the Dutch Civil Code, Book 6 \(Unfair commercial practices\) \(in Dutch\)](#)
- [Directive 2005/29/EC \(Unfair Commercial Practices Directive\)](#)

14.5 Explanation of regulations

- [Guidance on the interpretation and application of the Unfair Commercial Practices Directive](#)

14.6 Enforcement

- 🔗 Following an intervention of ACM, together with other European consumer authorities, [an online booking platform will apply changes to its website](#). Clear and correct information about the availability of rooms on certain dates must be given. And no suggestions of alleged scarcity can be made.