A user-centric perspective

Guidelines 3/2022 on Dark Patterns in social media platform interfaces

“amurabi
legal innovation by design
Introduction to the user-centric approach
Who are the humans who are going to use the Guidelines?

To maximize the impact of the Guidelines, they need to address:

- **Social media providers**: DPOs, lawyers, decision makers...

- **Designers**: they usually know little about data protection rights

- **End-users**: they have little knowledge about their rights, nor their cognitive bias or dark patterns
Why does user-centricity matter?

According to Norman, human-centered design is required to solve complex problems. Among the principles he advocates:

- **Solving the core**, root issue.
- **Focusing on people** who are affected by the problem and could be part of the solution.

“We need experts to ensure that the facts and critical attributes are addressed, but we should leave the methods to **those who are immediately affected**”

— Don Normann
What has user-centricity to do with the law?

The Guidelines contain many references to users, user experience, user interface, user testing...
But the way it is drafted and presented only talks to lawyers.

Legal documents usually lack usability, but it’s not doomed to be this way. Applying user-centricity to legal documents enables to bridge the gap between legal documents - such as the Guidelines - and its users, thus ensuring better efficiency of the Guidelines.
How might we create user-centric Guidelines?

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02. User-centric best practices & User Testing

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About Us
What does User Research in data privacy projects teach us?
The Guidelines contain many references to information design. We're sharing our main findings to apply some of the Guidelines’ recommendations.
We conducted 5 projects dedicated to minors

Those projects aimed (or are aiming) at creating model interfaces and privacy policies to empower kids and teens to understand and exercise their rights. In the case of the CNIL project, it also aimed at creating methodology toolkits for designers. Each time, we facilitated focus groups, co-creation workshops, and user testing with minors.
We conducted numerous projects for all users

We created a global **B-to-B privacy policy** (post GDPR) to be rolled-out in 26 countries, several **online B-to-C privacy policies** in various sectors, and a "GDPR Implementation Barometer", in collaboration with Data Legal Drive. Each time, we conducted **users workshops and user testing**.
Empowering designers to design legal information

Among the few designers who are aware they can (and should) design legal information, in particular to collect consent, their **main obstacles** to do so are:

- **lack of budget** within the project to design the “legal stuff”, and consequently lack of time,
- **lack of arguments** to convince their clients that it is worth for their project to design legal information such as privacy policies and
- **total lack of examples** of plain language texts relating to privacy policies*

70% of designers answered that they don’t feel legitimate to design a legal text and just copy-paste the text provided by lawyers*

*Online Survey on Oct 2020 to designers in France, in the context of a project with the CNIL (see slide 16)
The main issue is to fight against the misconceptions that designers "would not be allowed" to design legal text and that "it is compulsory for legal texts to be complex.

One way to do so is to create short video tutorials (2mn max), sharing both the obligation to make information "clear and accessible" for data privacy (to collect consent) and practical tips, illustrated by screens.
Creating toolkits for designers

To solve the issue of lack of budget and time (cf. our survey mentioned above), a solution is to create toolkits dedicated to designers. In our project with the CNIL, we created 3 different toolkits (user research, participatory design and user testing), all under a Creative Commons licence.

Toolkit for designers, Project with the CNIL
Plain language principles encourage linking information and action to empower users to make their own choices.

Behavioral science clearly shows that information overload creates a stress for the brain that terminates our learning process.
In the light of the above, Emotional Steering at the stage of the registration with a social media platform may have an even higher impact on children (i.e. provide more personal data due to lack of understanding of processing activities), considering their “vulnerable nature” as data subjects. When social media platform services are addressed to children, they should ensure that the language used, including its tone and style, is appropriate so that children, as recipients of the message, easily understand the information provided. Considering the vulnerability of children, the dark patterns may influence children to share more information, as “imperative” expressions can make them feel “obliged” to do so to “appear popular among peers”.

"They should ensure that the language used, including its tone and style, is appropriate so that children, as recipients of the message, easily understand the information provided." (Para 40)
CNIL project

- 9-month project
- Global state of the art and benchmark
- 3 Focus groups with 24 minors in France, in 3 age groups 8-10 years old, 11-14 years old, 15-17 years old
- 3 co-creation workshops (same age groups)
- 13 prototypes tested
- 20 user testing interviews with online mockup and 1 on-site user test in a classroom
- Deliverables: 3 final model interfaces & 3 toolkits for designers

Deliverables are published on the CNIL's lab's website: https://design.cnil.fr/en/case-studies/

Guidelines, Para 40 to 44
Avoiding the Emotional Steering dark pattern especially for minors
Online gaming provider, 2021

• 2-month project
• European Benchmark
• 1 co-creation workshop with users in the UK aged 13 to 17
• User recruitment through a panelist, with representativity criteria (eg socio-economic background, urban versus rural areas, gamer or not, previous interest for data privacy or not)

Guidelines, Para 40 to 44
Avoiding the Emotional Steering dark pattern especially for minors

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Video Game platform 2021

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Guidelines, Para 40 to 44
Avoiding the Emotional Steering dark pattern especially for minors
2 video games platforms

- US gaming platform: **4-month project**
- **4 interdisciplinary co-creation workshops** including designers, lawyers, members of the marketing & branding team, and members of the customer service and mediation

- US video game provider: ongoing

Guidelines, Para 40 to 44
Avoiding the Emotional Steering dark pattern especially for minors
WHAT WE RECOMMEND

Taking into account the peer pressure teens are subject to

"Train Designers to be aware about the harm caused by reward systems, in particular in a context where underage users' peers are present, e.g. in social networks. More generally, train designers on the high likelihood of teenagers to take risks."
WHAT WE RECOMMEND

Taking into account minors' vulnerability

« Explain to designers the concept of economic exploitation of children online, and give them tools to avoid it »
<table>
<thead>
<tr>
<th>Feature</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUTO-PLAY</td>
<td>Turn-off auto-play by default. If the feature is reactivated, it must be</td>
</tr>
<tr>
<td></td>
<td>disabled again by default once the child logs off or uses the internet.</td>
</tr>
<tr>
<td>DEFAULT NOTIFICATIONS</td>
<td>Turn-off default notifications and alerts, such as &quot;push&quot; messages, pings,</td>
</tr>
<tr>
<td></td>
<td>read receipts and any non-specific alerts.</td>
</tr>
<tr>
<td>TEMPORARY ABSENCE</td>
<td>Turn-on by default temporary absences, in the &quot;streaks&quot; features</td>
</tr>
<tr>
<td>AUTO-SAVE BUTTON</td>
<td>Include an &quot;Auto-Save&quot; button, so children are not forced to stay online to</td>
</tr>
<tr>
<td></td>
<td>complete a task.</td>
</tr>
<tr>
<td>EXIT AT ANYTIME</td>
<td>Give opportunities to exit the application, and display reminders of time</td>
</tr>
<tr>
<td></td>
<td>spent on the application.</td>
</tr>
<tr>
<td>NO AUTOMATIC UPDATES</td>
<td>Prevent any automatic updates that emphasize or/and reactivate persuasive</td>
</tr>
<tr>
<td></td>
<td>design features, in applications.</td>
</tr>
<tr>
<td>NO DATA COLLECTION</td>
<td>Create alternatives to data collection when entering the platform.</td>
</tr>
<tr>
<td>FIND ALTERNATIVES</td>
<td>Stop using children's data to personalize services for the only purpose of</td>
</tr>
<tr>
<td></td>
<td>increasing their usage.</td>
</tr>
</tbody>
</table>

User-centric Best Practices and User Testing Results
Taking into account the urge to play

In a vast majority of cases, underage users don’t want to pause, even if for a couple of seconds, to read anything before playing or getting on the network with their friends. In addition, the dosage of written information they are able to absorb is extremely limited. More than 2 lines is already too much.*

"Motivational language", i.e. UX writing should not be banned, but on the contrary leveraged to motivate users to read and engage with a privacy policy.

We work with neuroscience experts to find the best ways to motivate users to read in each case, also depending on our learnings through user research and user workshops.
Taking into account the urge to browse

The problem is the same for adults: most users will be bothered if they have to stop browsing to read. **Motivational language and user-centric structure of the information can be used to trigger engagement** - as long as the fairness principle is respected i.e. the motivational language reflects the reality.
Empowering kids and teens with privacy dashboard

The dashboard focuses on 3 aspects:

- **Centralising all the parameters** on data and rights related to the service, giving a fixed and easily identifiable action tool
- **Easing the interactions** with the different options to facilitate the control of the data while minimising the frictions of use;
- **Easing the exercise** of a right by means of dedicated, easy-to-fill forms.

This dashboard was co-created with minors in our project with the CNIL. This version is intended for 11-17 years old.
Empowering kids and teens with a privacy dashboard

Further to user testing, we also created a specific version for 8-10 year olds. The dashboards obtained among the best results in user testing of the 13 prototypes:

This is the dashboard version for 8 to 10 years old, which contain one button per main right, and upon clicking, users get a form to easily exerize their rights. Further to user testing, we reduced the text to the bare minimum.
Make contact information more accessible, engaging and even fun

Here is an example of contact information made not just accessible, but engaging and actionable (clickable links), while respecting the UX on the platform.
Using accessible forms rather than links

Based on user testing, exercise of rights forms were deemed more usable than mere links. This is because most users have little knowledge about their rights, and confuse data privacy rights with commercial complaints. We also worked on translating the main data privacy rights into plain language e.g. "access right" does not mean much for most users, however "I want to know which personal data the company has about me" resonates with them and encourages them to exercise this right.
Inserting a navigation breadcrumb

Our various user workshops suggest that users respond better to navigation breadcrumb rather than to an overview of the privacy policy at the beginning.

Every single project also confirmed the importance of a welcome message at the very beginning, away from the usual "we care about your privacy", leveraging values, like an opportunity to learn, and graphic universe that resonate with users.

E.g. "Get ready to enter our Privacy Saga! The more you know and understand Data Privacy, the more your protect your information"
One data, one request

In our project with the CNIL, the co-creation workshops led to this model interface. **Control is embedded in the onboarding process itself**: the direct association between the data and its visibility to others is particularly easy for children to understand and allows them to express their preferences clearly and quickly, while being aware of the uses made of the data. The option that is most protective of the child’s privacy “Me only” is pre-selected. This prototyped obtained the highest scores for 8-10 year olds during user testing, namely 5/5 perceived utility.

The child, after entering his or her first name, can choose who will be able to see this information. “Me only” is the default option.
Our user testing shows that the dose of information children can absorb online is extremely limited. Thus, we further reduced the amount of text on each screen, associated with very explicit and visible buttons. Plain language principles were applied and tested: the wording is concrete, referring to environments and concepts known to children. Full information is also available if the child or his/her parents wish to learn more. They can click on “this information” to get more details about the data entered through an anchor link in the privacy policy that has been specifically designed to be read by children.
When all the account creation steps are done, a confirmation message is displayed.

Among 13 different prototypes, the idea of a “cute squirrel” as a data protection mascot for young children was rejected from children beta-tester. This awareness of the possible rejection by children of representations that are too childish or disconnected from the context of the service prompted the group to use illustrations that echoed the visual and graphic style of the game. This approach has the advantage of keeping the same visual reference for users, bringing an overall consistency to the user experience.
In most of our private sector projects, the digital roadmap of our clients has been a constant issue. We can usually deliver in 2 or 3 months including user testing and iteration. Our experience is that it takes 9 to 18 months for subsequent integration and translation, even if the deliverable was fully approved.

Our recommendation is to help DPOs and legal divisions creating more awareness about data protection priorities to be reflected in the digital roadmap.

Example 16:

Variation A: The social media platform is available in Croatian as the language of users’ choice (or in Spanish as the language of the country they are in), whereas all or certain information on data protection is available only in English.

Variation B: Each time users call up certain pages, such as the help pages, these automatically switch to the language of the country users are in, even if they have previously selected a different language.
Implementation of fairness principle: the design shows a cake transforming into a target, which better reflects what cookies do.

Guidelines, Para 99
Avoiding the Look Over Here dark pattern

Stick to transparency and « zero diversion »

We have seen a number of law firms newsletters about the Guidelines, saying that they ban humour. We believe this interpretation is flawed.

Humour and motivational language should be used if it helps triggering users' engagement into reading and acting upon a privacy policy. Our recommendation is to train UX designers and copywriters as regards the GDPR principles of fairness and loyalty.
Developing our user testing lab

User centricity necessarily implies user testing as an integral part of the methodology. We developed a User Testing Lab with Mathilde Da Rocha, PhD in cognitive neurosciences. Leveraging international standards, heuristic principles and models such as the acceptability model by Nielsen (1993), Temporality of Acceptance, Karapanos et al, 2(009), we developed an evaluation framework. The lab is namely based on acceptability, acceptance and usability expert audits and tests.
Evaluating the quality of a document

Considering that documents are artefacts, with which users will interact - or not - depending on the quality of the documents. In several projects for minors, we conducted expert audits with plain language experts: Frances Gordon and Karen Shriver, on top of user testing.

Guidelines, Para 74
User Testing
Testing with users

We have developed a variety of tests that we can choose depending on project:

- Usage scenario
- Interactive Mockup (Figma)
- Cloze Test
- 5 sec test
- Eye Tracking
- Lookback
- etc.

Usage scenario for CNIL Project: « You heard about a new video game. You download it and land on this page. Show us what you do and say out loud what you understand and what you don’t understand. »

Example of tests we are able to roll out:

- Cloze Test
- 5 seconds test
- Eye Tracking
- Lookback

Example of tests we are able to roll out
What would user-centric Guidelines look like?
Creating a user journey

FROM EXECUTIVE SUMMARY

TO MAPPING OUT MAIN STEPS, DARK PATTERNS RISKS, UX PRINCIPLES AND GDPR PRINCIPLES

Source: real registration process on Tik Tok, with corresponding screen shots (made on April 21).
The results of our research

There is a real need for educating designers to good practices regarding dark patterns

We conducted an online survey among UX designers in April 2022. We obtained 87 answers from UX designers:

- 78% are familiar with the term « dark pattern ». Note: the control question, asking them their own definition of dark patterns shows that overall, get the manipulation idea.
- One respondent made an interesting parallel about a fraud: a design meant to deceive users would be the design equivalent of the legal concept of "dol" under French law (i.e. wilful misconduct rendering a contract void).
Advice from experts we interviewed to complete our survey

CÉLIA HODENT
Game UX Expert - PhD in psychology, Author of the Gamer’s Brain, What UX is really about, and Psychology in Video Games

“UX is the opposite of dark patterns. UX Design is all about protecting the users' wellbeing, before considering economic stakes for companies. It can be win-win, but true UX design can never be detrimental to users.”

KARL PINEAU
Media Design Lab director at l’Ecole de Design de Nantes, and co-chairman of Designers Ethiques

“Any design is meant to orient users, i.e. in a way to manipulate them. The problem arises when design orients users towards the needs of the service, not the needs of users themselves.”

CYRIL SCHMITT
UX Specialist, CEO of äbiity Design Studio

“Deciding what's right or wrong is necessarily a complex issue, it touches upon designers' ethics, but also the companies' own ethics.”
WHAT DO YOU RECOMMEND TO AVOID DARK PATTERNS?

- Users should learn how to recognize them and to be better aware of the fact that there are specific techniques to exploit our cognitive bias.
- Companies should be more aware of the psychological impact of the pressure they put on users and should develop ethical charters.
- Shareholders should also be liable, though penalties imposed if dark patterns are used.
- Designers should be better trained from a scientific perspective: one can read many things on "dopamine shots" for example, which are not scientifically grounded. Training on dark patterns require academic and scientific precision.
- White patterns are just good UX design: UX implies the interface to be transparent, it means that users must fully understand what is done with their personal data. **UX design requires informed consent!**
KARL PINEAU

Media Design Lab director at l'Ecole de Design de Nantes, and co-chairman of Designers Ethiques

WHAT DO YOU RECOMMEND TO AVOID DARK PATTERNS?

The problem with dark patterns is the business model itself of data economy: as long as we'll have two-sided markets with a supposedly "free" side, the price to be paid by users will remain their data. Data economy triggers dark patterns.

UX designers do not think enough about users' free will, these past years they have been too preoccupied with reducing frictions.

My advice would be first to go back to the fundamental principles of UX design: interface is at the service of users, not the other way round. In addition, the solution is frugal online services.

I would also question the actual profitability of targeted advertising: few companies know the actual cost of it and thus overestimate its ROI.
WHAT DO YOU RECOMMEND TO AVOID DARK PATTERNS?

- **Train UX designers** on the various types of dark patterns
- **Make the GDPR more accessible and easier to read**: it’s a lot of good intentions, but it’s full of dark patterns itself: information overload, small print, jargon...
- **Have a clear definition** that resonates with designers, with practical examples
- The Institute for Responsible Digital Services ("Institut du Numérique Responsable") created a charter for responsible and sustainable digital services: https://institutnr.org/charte-numerique-responsable. Its a first step, but there is a strong need for a common reference framework for all UX designers.

CYRIL SCHMITT
UX Specialist, CEO of äbiity Design Studio
Appendices

About us

Bibliography
We are a legal innovation studio
We make complex information **intelligible** through **design**, **plain language** and **neurosciences**.
Ever expanding fields of action

01 Contracts 02 Processes 03 Litigation 04 Compliance & Training 05 Digital Transformation 06 Data protection 07 Public sector
Recognized expertise

Happy to be recognized as pioneers in legal design across Europe and in the US
We based our data and studies on:


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Let’s make law for humans. Now and for good.

Thank you!

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