

In the Matter of Amazon.com, Inc.

Complaint and Request for Investigation, Injunction, and Other Relief

Submitted by

The Electronic Privacy Information Center (EPIC)

I. Summary

1. This complaint concerns Amazon.com, Inc. (“Amazon”)’s use of an unfair and deceptive user interface that makes it prohibitively difficult for consumers to terminate their Amazon Prime subscriptions. As set out in a recent report by the Norwegian Consumer Council (Forbrukerrådet), Amazon uses dark patterns—“design techniques that push users toward making choices that benefit the service provider”—to manipulate Amazon Prime users into continuing their subscriptions, even when they intend to cancel.¹ As a result, Amazon inhibits many consumers from exiting a contractual relationship with the company; charges those consumers recurring fees; and continues to collect, retain, and use the personal data of misdirected Amazon Prime subscribers.² Amazon’s use of dark patterns constitutes an unfair and deceptive trade practice in violation of the D.C. Consumer Protection Procedures Act (“DCCPPA”) and the Federal Trade Commission (“FTC”) Act. For the reasons set out below, the Office of the Attorney General should open an investigation, enjoin the offending practices, and provide such other relief as EPIC has proposed or the Attorney General finds necessary and appropriate.

¹ Forbrukerrådet, *You Can Log Out, but You Can Never Leave* 27 (Jan. 14, 2021), <https://fil.forbrukerradet.no/wp-content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf>; *see also* Letter from Pub. Citizen et al. to Joseph J. Simons, Chairman, Fed. Trade Comm’n (Jan. 14, 2021), <https://www.citizen.org/wp-content/uploads/Amazon-Dark-Patterns-FTC-letter.pdf>.

² *See* Leo Kelion, *Why Amazon knows so much about you*, BBC News (Feb. 2020), <https://www.bbc.co.uk/news/extra/CLQYZENMBI/amazon-data> (“‘They happen to sell products, but they are a data company,’ says James Thomson, one of the former [Amazon] executives interviewed. ‘Each opportunity to interact with a customer is another opportunity to collect data.’”).

II. Parties

2. The Electronic Privacy Information Center (“EPIC”) is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age. EPIC has played a leading role in developing the authority of state and federal regulators to safeguard the rights of consumers, ensure the protection of personal data, and address privacy violations.³
3. Amazon.com, Inc., is a Delaware corporation headquartered in Seattle, Washington. Amazon is the world’s largest retailer.⁴ Amazon’s products and services include Amazon.com, Amazon Web Services, Amazon devices, and Amazon entertainment products.⁵ Amazon has several online and brick-and-mortar stores including Amazon.com, Amazon Go, Amazon Go Grocery, Amazon Fresh, Amazon 4-star, Amazon Books, and Whole Foods Market.⁶ Amazon also offers a premium membership, Amazon Prime, for a recurring subscription fee.⁷ On information and belief, thousands of District of Columbia residents are Amazon Prime subscribers.⁸

³ See, e.g., Complaint of EPIC, *In re Online Test Proctoring Companies* (Dec. 9, 2020), <https://epic.org/privacy/dccppa/online-test-proctoring/EPIC-complaint-in-re-online-test-proctoring-companies-12-09-20.pdf>; Complaint of EPIC, *In re Airbnb* (Feb. 26, 2020), https://epic.org/privacy/ftc/airbnb/EPIC_FTC_Airbnb_Complaint_Feb2020.pdf; Petition of EPIC, *In re Petition for Rulemaking Concerning Use of Artificial Intelligence in Commerce* (Feb. 3, 2020), <https://epic.org/privacy/ftc/ai/epic-ai-rulemaking-petition/>; Complaint of EPIC, *In re HireVue* (Nov. 6, 2019), https://epic.org/privacy/ftc/hirevue/EPIC_FTC_HireVue_Complaint.pdf; Comments of EPIC, *In re Unrollme, Inc.*, FTC File No. 172-3139 (Sep. 19, 2019), <https://epic.org/apa/comments/EPIC-FTC-Unrollme-Sept2019.pdf>; Comments of EPIC, *In re Aleksandr Kogan and Alexander Nix*, FTC File Nos. 182-3106 & 182-3107 (Sep. 3, 2019), <https://epic.org/apa/comments/EPIC-FTC-CambridgeAnalytica-Sept2019.pdf>; EPIC, Comments on Standards for Safeguarding Customer Information (Aug. 1, 2019), <https://epic.org/apa/comments/EPIC-FTC-Safeguards-Aug2019.pdf>; Complaint of EPIC, *In re Zoom Video Commc'ns, Inc.* (July 11, 2019), <https://epic.org/privacy/ftc/zoom/EPIC-FTC-Complaint-In-re-Zoom-7-19.pdf>; Comments of EPIC, *In re Uber Technologies, Inc.*, FTC File No. 152-3054 (May 14, 2018), <https://epic.org/apa/comments/EPIC-FTC-Revised-Uber-Settlement.pdf>; Comments of EPIC, *In re Paypal, Inc.* FTC File No. 162-3102, (Mar. 29, 2018), <https://epic.org/apa/comments/EPIC-FTC-PayPal-ConsentOrder.pdf>.

⁴ Lauren Debter, *Amazon Surpasses Walmart As The World’s Largest Retailer*, Forbes (May 15, 2019), <https://www.forbes.com/sites/laurendebter/2019/05/15/worlds-largest-retailers-2019-amazon-walmart-alibaba/>; Nina Angelovska, *Top 5 Online Retailers: “Electronics And Media” Is The Star Of Ecommerce Worldwide*, Forbes (Mar. 20, 2019), <https://www.forbes.com/sites/ninaangelovska/2019/05/20/top-5-online-retailers-electronics-and-media-is-the-star-of-e-commerce-worldwide/>.

⁵ *What We Do*, Amazon (2021), <https://www.aboutamazon.com/what-we-do>.

⁶ *Amazon Store*, Amazon (2021), <https://www.aboutamazon.com/what-we-do/amazon-store>.

⁷ *Amazon Prime*, Amazon (2021), <https://www.amazon.com/amazonprime/>.

⁸ See Cameron Faulkner, *Amazon Now Has More Than 150 Million Prime Members After Huge Holiday Season*, The Verge (Jan. 30, 2020), <https://www.theverge.com/2020/1/30/21115823/amazon-q4-19-earnings-prime-membership-fresh-one-day-shipping>.

III. Factual Background

4. Amazon uses a series of manipulative design techniques, or dark patterns, to frustrate the intentions of users who intend to cancel their Amazon Prime subscriptions. Through “complicated navigation menus, skewed wording, confusing choices, and repeated nudging,” Amazon repeatedly steers users away from cancelling their paid subscriber status.⁹
5. Using methods derived from behavioral psychology, “dark patterns” are user interface and/or design features that exploit cognitive biases to influence and manipulate consumer choices.¹⁰ One common example of a dark pattern is when a vendor makes its preferred outcome prominent and easy for the user to select while making the user’s most likely choice obscure or burdensome.¹¹
6. As FTC Commissioner Rohit Chopra recently explained, “Dark patterns are design features used to deceive, steer, or manipulate users into behavior that is profitable for an online service, but often harmful to users or contrary to their intent Dark pattern tricks involve an online sleight of hand using visual misdirection, confusing language, hidden alternatives, or fake urgency to steer people toward or away from certain choices. This could include using buttons with the same style but different language, a checkbox with double negative language, disguised ads, or time pressure designed to dupe users into clicking, subscribing, consenting, or buying.”¹²
7. Dark patterns are woven through the Amazon Prime cancellation process. At every step, Amazon discourages users from unsubscribing and repeatedly nudges consumers into continuing to pay for a membership.¹³
8. Although setting up an Amazon.com account is free, Amazon offers the option of a paid subscription to its online premium service—Amazon Prime—with benefits that include free shipping, discounts, and access to certain Amazon services.¹⁴

⁹ Forbrukerrådet, *supra* note 1, at 3.

¹⁰ *Id.* at 6 (“Nudges and dark patterns work by exploiting pre-existing cognitive biases in consumers and are, therefore, often fundamentally manipulative. Such cognitive biases may include choosing small, short-term rewards instead of larger, long-term benefits, or the tendency to choose the path of least resistance.”).

¹¹ *Id.* at 27.

¹² Rohit Chopra, *Statement of Commissioner Rohit Chopra Regarding Dark Patterns in the Matter of Age of Learning, Inc.*, FTC File No. 1723186 (Sep. 2, 2020), https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf; *see also* Harry Brignull, *What Are Dark Patterns?*, Dark Patterns (2018), <https://darkpatterns.org/> (“Dark patterns exist across the internet. Online services employ user experience designers who optimize design to ensure that sign-up flows are easy.”).

¹³ Forbrukerrådet, *supra* note 1, at 7; *see also* Richard H. Thaler, *Nudge, Not Sludge*, *Science* (Aug. 3, 2018), <https://science.sciencemag.org/content/361/6401/431> (“‘Nudging’ is often used in a positive sense in the academic literature. However, throughout this report, the nudging we observed takes the form of negative manipulation. Negative nudges has also been described as ‘sludging.’”).

¹⁴ *Amazon Prime Benefits*, Amazon (2021) <https://www.amazon.com/gp/help/customer/display.html/>.

9. To become an Amazon Prime subscriber, a consumer need only sign up for a free Amazon.com account and activate Prime.¹⁵ The process is simple, requiring just a few clicks.

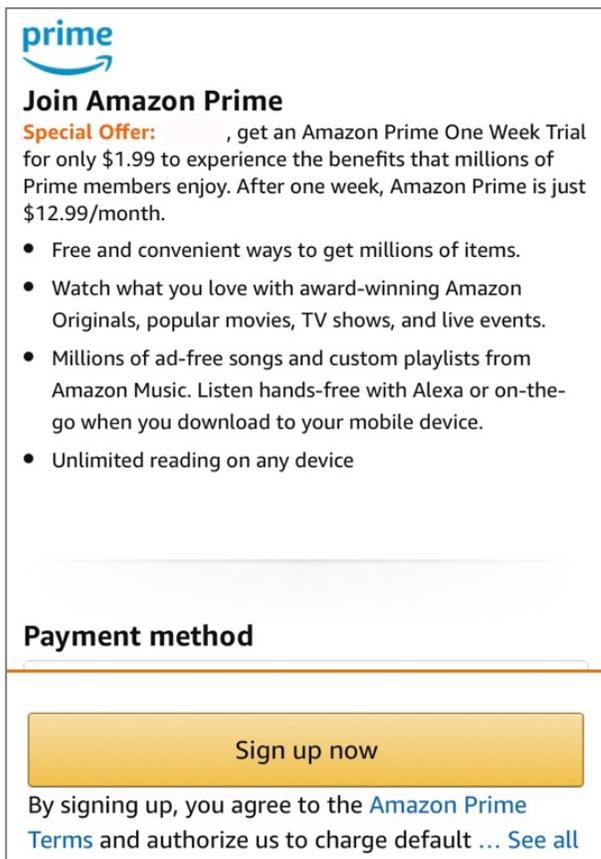


Fig. A: Sign up now¹⁶

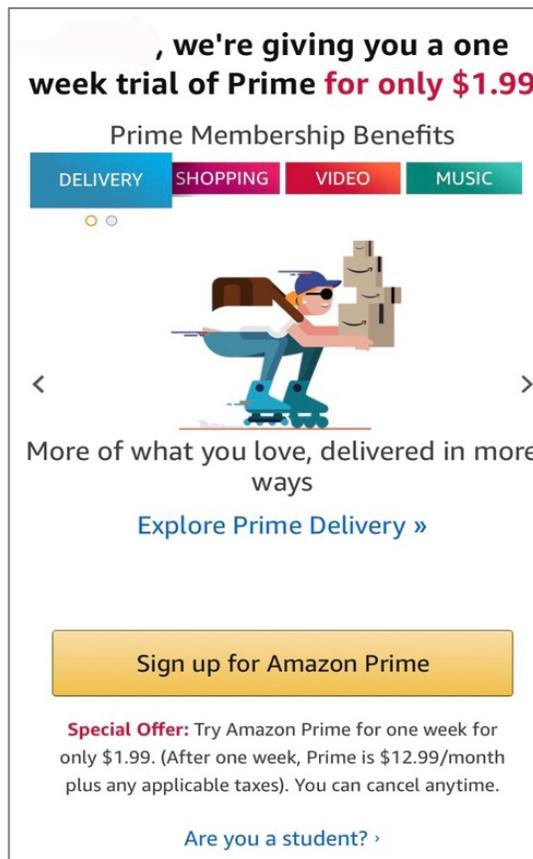


Fig. B: Sign up for Amazon Prime

10. Notably, Amazon offers new customers a free 30-day trial period of Amazon Prime.¹⁷ Amazon states that while the new customer “won't be charged for [their] free trial,” they will “be upgraded to a paid membership plan automatically at the end of the trial period.”¹⁸ Amazon’s Help & Customer Service page explains: “When your free trial or membership period ends, we'll automatically charge for the next membership period.”¹⁹

¹⁵ *Sign Up for the Amazon Prime Free Trial*, Amazon (2021), <https://www.amazon.com/gp/help/customer/display.html>.

¹⁶ Figs. A & B were captured from Amazon’s mobile website accessed via the Safari mobile browser.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *The Amazon Prime Membership Fee*, Amazon (2021), <https://www.amazon.com/gp/help/customer/display.html/>.

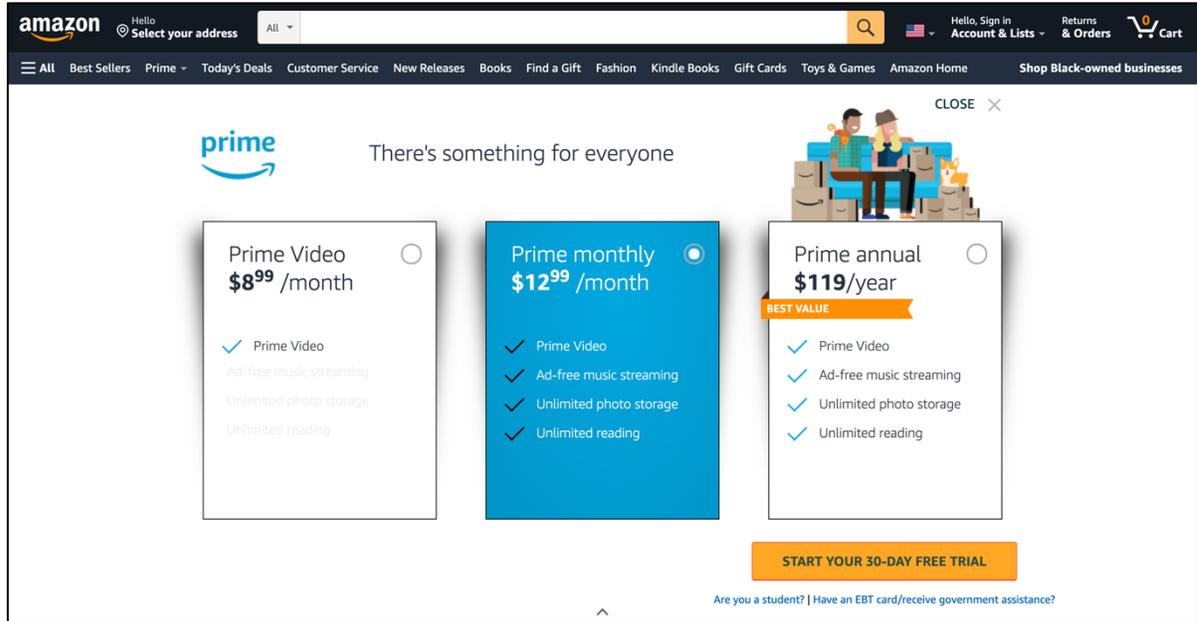


Fig. C: “There’s something for everyone: Start Your 30-Day Free Trial”²⁰

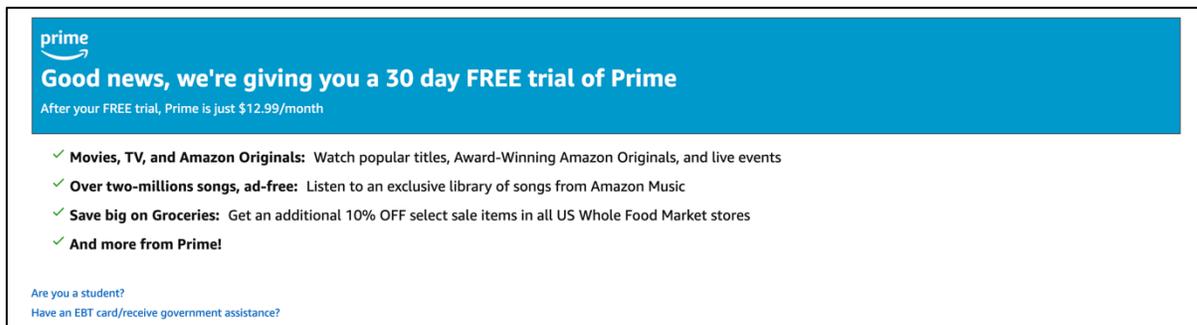


Fig. D: “Good news, we’re giving you a 30 day FREE trial of Prime”

11. In contrast to the process for activating Amazon Prime, the process for canceling a Prime membership is cumbersome and manipulative. The company uses dark patterns to discourage users from completing the cancellation of their Prime subscription.
12. To terminate an Amazon Prime subscription—provided the consumer remembers that they are enrolled in the first place—the consumer must log into their Amazon account and navigate through several layers of menus to locate the option to unsubscribe. The consumer then must click through as many as six different pages, repeatedly confirming their intention to unsubscribe, before finally receiving a cancellation confirmation.²¹

²⁰ Figs. C & D were captured from Amazon’s desktop website accessed via the Google Chrome browser.

²¹ *Manage My Membership*, Amazon (2021), https://www.amazon.com/mc?_encoding=UTF8&ref=primenav_membership.

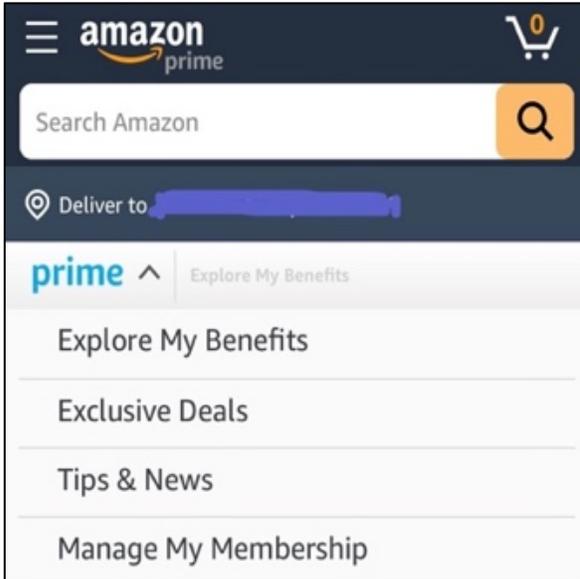


Fig. E: Step 1 – Manage My Membership²²

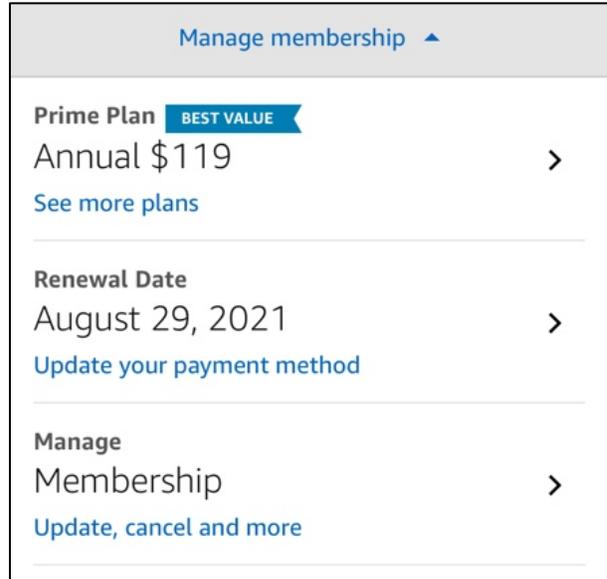


Fig. F: Step 2 – Manage Membership

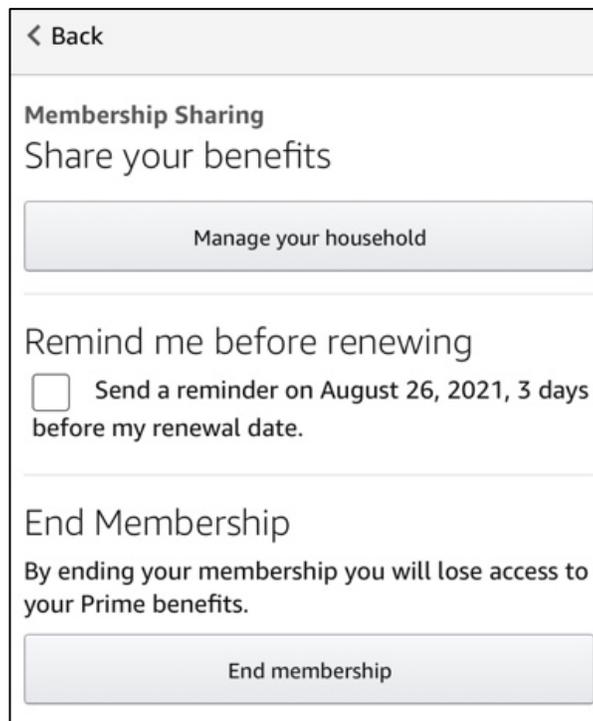


Fig. G: Step 3 – End Membership

²² Figs. E–M were captured from Amazon’s mobile website accessed via the Safari mobile browser.

, Do you still want to end your Prime benefits?

⚠ Items tied to your Prime membership will be affected if you cancel your membership.

1. By cancelling, you will no longer be eligible for your unclaimed **Prime exclusive offers**.

You still have 209 days left to enjoy your Prime benefits until the next billing cycle

Prime Delivery



Fast, FREE, and convenient ways to get millions of items, from unlimited Two-Day Delivery to Same-Day and 2-Hour Delivery in select areas

Fig. H: Step 4 – Cancel My Benefits



exclusive library of songs from Amazon Music without any ads.

Use your benefits today >

Keep My Benefits

Cancel My Benefits

Remind Me Later

Keep my benefits and remind me 3 days before my membership renews

Fig. I: Step 4 – Cancel My Benefits

, before you go, consider switching to monthly payments

⚠ Items tied to your Prime membership will be affected if you cancel your membership.

1. By cancelling, you will no longer be eligible for your unclaimed **Prime exclusive offers**.



Keep Prime for just \$12.99/month

Fig. J: Step 5 – Continue to Cancel

Switch to monthly payments >

Are you a student?
Receive government assistance?

By clicking "Switch to monthly payments", your current membership will continue until August 29, 2021 after which you will be charged \$12.99 plus any applicable taxes on your default credit card or another available credit card on file. Your Prime membership will continue until cancelled.

Keep My Membership

Remind Me Later

Keep my benefits and remind me 3 days before my membership renews

Continue to Cancel

Fig. K: Step 5 – Continue to Cancel

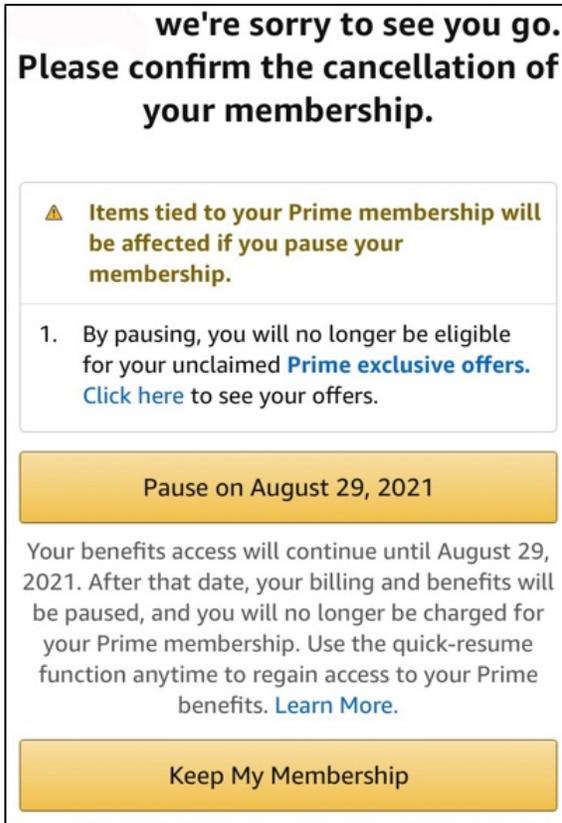


Fig. L: Step 6 – End on Date

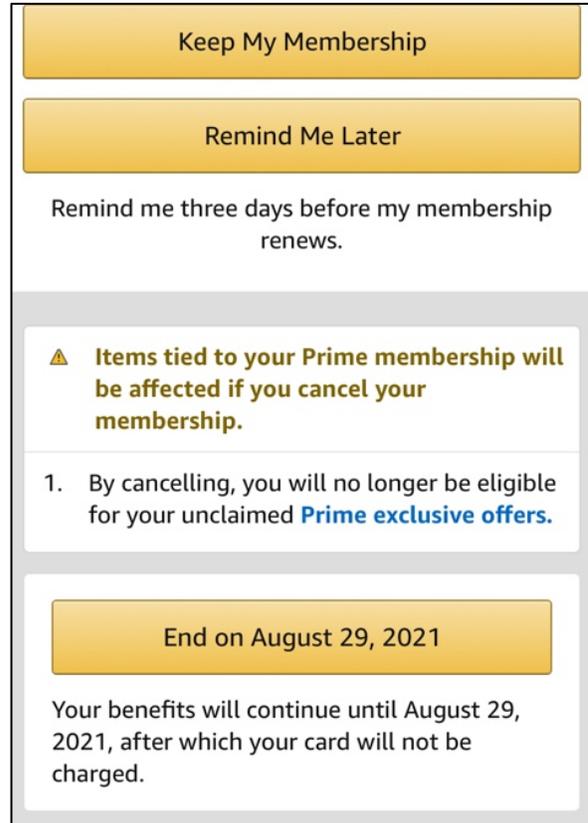


Fig. M: Step 6 – End on Date

13. The number of steps necessary to unsubscribe demonstrates that there is little chance a user would do so by accident, yet Amazon warns the user throughout the process of the consequences of unsubscribing—all while offering multiple prominent opportunities to stay enrolled.²³
14. The misdirection used by Amazon throughout the cancellation process may serve to confuse or exhaust the user and appears designed to foster uncertainty about the choice to cancel Amazon Prime.²⁴
15. Another example of misdirection in the Amazon Prime cancellation process can be seen in the shifting text used on key buttons: “End Membership” changes to “Cancel My Benefits,”

²³ *Id.*

²⁴ Forbrukerrådet, *supra* note 1, at 6; see also Daniel Kahneman, Jack L. Knetsch & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. of Econ. Perspective 193 (1991).

and then to “Continue to Cancel,” and finally to “End Now.” Meanwhile, the “Keep My Benefits” button remains constant.²⁵



Fig. N: Changing Button Text²⁶

16. The Amazon Prime cancellation process is filled with obstacles for the consumer, whereas creating a new subscription is a straightforward process. For users who regret unsubscribing, or who somehow went through the cancellation process by mistake, it only takes a single click to sign up again.
17. Amazon has a clear financial incentive to keep consumers subscribed to Amazon Prime. By deceiving users into keeping their Prime membership,²⁷ Amazon maintains a revenue stream from consumers; continues to collect valuable personal data via Prime subscribers and Prime transactions; and harms competition by locking consumers into Amazon’s products and services instead of those of competing vendors.²⁸

²⁵ *Manage My Membership*, Amazon (2021), https://www.amazon.com/mc?_encoding=UTF8&ref=primenav_membership.

²⁶ Forbrukerrådet, *supra* note 1, at 28.

²⁷ Chopra, *supra* note 11, at 2 (“Dark pattern traps use technology and design to create a situation [Harry] Brignull has described as a ‘roach motel,’ where it is easy to get in, but almost impossible to escape.”).

²⁸ Forbrukerrådet, *supra* note 1, at 28.

IV. Legal Background

A. The DCCPPA and the Federal Trade Commission Act

18. The D.C. Consumer Protection Procedures Act prohibits unfair and deceptive practices²⁹ and empowers the Attorney General for the District of Columbia to enforce the Act's prohibitions.³⁰
19. The DCCPPA prohibits misrepresentations “as to a material fact which has a tendency to mislead,” failure “to state a material fact if such failure tends to mislead,” and the “[u]se [of] innuendo or ambiguity as to a material fact, which has a tendency to mislead.”³¹
20. The DCCPPA provides that “[i]n construing the term ‘unfair or deceptive trade practice’ due consideration and weight shall be given to the interpretation by the Federal Trade Commission and the federal courts of the term ‘unfair or deceptive act or practice’” as employed in Section 5 of the FTC Act, 15 U.S.C. § 45.³²
21. Section 5 of the FTC Act, like the DCCPPA, prohibits unfair and deceptive acts and practices.³³
22. Under the FTC Act, a company engages in a deceptive trade practice if it makes “[m]isrepresentations or deceptive omissions of material fact”³⁴ or if the company “lacks a ‘reasonable basis’ to support the claims made” to consumers.³⁵
23. A trade practice is unfair if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”³⁶
24. Subjecting consumers to misleading subscription policies and processes—including hard-to-find, poorly labeled, or confusing mechanisms for cancellation—may constitute an unfair and deceptive trade practice. For example, in *FTC v. Age of Learning, Inc.*, the FTC alleged that online learning tool ABCMouse trapped consumers into a confusing and misleading negative option subscription plan that made it difficult to cancel their memberships to avoid additional

²⁹ D.C. Code § 28-3904.

³⁰ D.C. Code § 28-3909.01.

³¹ D.C. Code § 28-3904.

³² D.C. Code § 28-3901(d).

³³ 15 U.S.C. § 45(a)(1).

³⁴ *FTC v. Age of Learning, Inc.*, No. 2:20-cv-7996 (C.D. Cal. Sep. 1, 2020).

³⁵ *Daniel Chapter One v. FTC*, 405 F. App'x 505, 506 (D.C. Cir. 2010) (quoting *Thompson Med. Co., Inc. v. FTC*, 791 F.2d 189, 193 (D.C. Cir. 1986)).

³⁶ 15 U.S.C. § 45(n).

charges.³⁷ As part of a settlement with the FTC, ABCMouse paid \$10 million and made significant changes in its business practices.³⁸

25. The FTC specifically advises companies to “employ cancellation procedures that allow consumers to effectively cancel negative option plans. Marketers should not engage in practices that make cancellation burdensome for consumers, such as requiring consumers to wait on hold for unreasonably long periods of time[.]”³⁹

B. The Restore Online Shoppers’ Confidence Act

26. The Restore Online Shoppers’ Confidence Act (“ROSCA”) prohibits a seller from charging any consumer “for any goods or services sold in a transaction effected on the Internet through a negative option feature . . . unless the person—(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information; (2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and (3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.”⁴⁰
27. The FTC defines a “negative option feature” as “an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.”⁴¹
28. Free-to-pay conversion offer plans are a form of negative option marketing.⁴² In these plans, the seller offers consumers goods or services for free for a trial period. After the trial period, “sellers automatically begin charging a fee (or higher fee) unless consumers affirmatively cancel or return the goods or services.”⁴³
29. ROSCA empowers the Attorney General for the District of Columbia to enforce the Act’s prohibitions.⁴⁴

³⁷ Complaint, *Age of Learning, Inc.*, No. 2:20-cv-7996 (C.D. Cal. Sep. 1, 2020), available at <https://www.ftc.gov/system/files/documents/cases/1723086abcmousecomplaint.pdf>.

³⁸ Stipulated Order, *Age of Learning, Inc.*, No. 2:20-cv-7996 (C.D. Cal. Sep. 1, 2020), available at <https://www.ftc.gov/system/files/documents/cases/1723086abcmouse-proposedstipulatedorder.pdf>.

³⁹ Fed. Trade Comm’n, *Negative Options* 9 (Jan. 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

⁴⁰ 15 U.S.C. § 8403.

⁴¹ 16 CFR § 310.2(w).

⁴² *Negative Options*, Fed. Trade Comm’n 5 (Jan. 2009), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

⁴³ *Id.*

⁴⁴ 15 U.S.C. § 8405.

V. Legal Analysis

A. The Amazon Prime Cancellation Interface Is Unfair and Deceptive

30. As set forth above, canceling an Amazon Prime subscription requires a user to navigate a complicated and manipulative interface that employs skewed wording, confusing choices, and repeated nudging. The tactics used in this process are deceptive because they tend to mislead users who wish to terminate their Prime subscriptions by steering consumers away from their intended outcome.
31. These measures frustrate users' intentions by obstructing the path to cancellation and diverting the users' attention toward Amazon's preferred result: a continued Amazon Prime subscription.
32. While attempting to cancel an Amazon Prime subscription, a user cannot reasonably avoid Amazon's use of dark patterns and manipulative interface design.
33. Amazon has also failed to identify benefits to consumers or competition that would outweigh the significant financial and privacy injuries suffered by users who are coerced into continuing their subscriptions through dark patterns and manipulative design.
34. Amazon's use of dark patterns is "unfair" because they "caus[e] or [are] likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition."⁴⁵
35. Amazon has engaged in an unfair and deceptive trade practice in violation of D.C. Code § 28-3904 and 15 U.S.C. § 45(a)(1).

B. Amazon Prime Violates ROSCA

36. Amazon relies on a negative option feature⁴⁶ to sign up Amazon Prime users: Amazon offers free trials of Prime to customers but automatically charges users at the end of the free-trial period.
37. Amazon employs a cumbersome interface that unreasonably burdens a user who seeks to cancel an Amazon Prime subscription.
38. Amazon fails to provide simple mechanisms for a user to stop recurring Amazon Prime subscription charges.
39. Amazon has therefore violated ROSCA's prohibition against online negative options that lack a simple mechanism for the consumer to stop recurring charges.

⁴⁵ 15 U.S.C. § 45(n).

⁴⁶ 16 CFR § 310.2(w).

VI. Prayer for Relief

40. EPIC urges the Office of the Attorney General for the District of Columbia to begin an investigation of Amazon and to find that Amazon's use of dark patterns and manipulative interface design constitute unfair and deceptive trade practices under D.C. Code § 28-3904.
41. EPIC further urges the Office of the Attorney General to:
- a. Halt Amazon's use of dark patterns to inhibit consumers from cancelling Amazon Prime subscriptions;
 - b. Ensure that the process for cancelling an Amazon Prime subscription is as simple as the enrollment process;
 - c. Require Amazon to pay a monetary penalty commensurate with the harms caused to D.C. consumers by its unfair and deceptive use of dark patterns;
 - d. Require Amazon to submit to annual audits of its interface design practices by an independent third party, the results of which should be publicly reported;
 - e. Provide such other relief as the Attorney General finds necessary and appropriate.

Respectfully Submitted,

/s/ Alan Butler

Alan Butler
EPIC Interim Executive Director and
General Counsel

/s/ Caitriona Fitzgerald

EPIC Interim Associate Director and
Policy Director

/s/ John Davisson

EPIC Senior Counsel

/s/ Sara Geoghegan

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