

June 30, 2022

The Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

RE: Investigation of Google's Account Sign-Up Process

To the Chair and Members of the Commission:

The Trans-Atlantic Consumer Dialogue (TACD) writes to encourage the Federal Trade Commission to open an investigation into Google's practices when a consumer creates a Google account. BEUC, The European Consumer Organization, has submitted a complaint to the Irish DPC against Google, claiming that the structure of the sign-up process violates the GDPR.¹ We contend that the practices identified are also a violation of Google's obligation to refrain from unfair practices within the U.S. and that these actions can and should be investigated by the Federal Trade Commission.

The BEUC complaint hinges on Google's procedure when signing up for an account in the EU. When an EU consumer signs up for a Google account, they are invited to indicate their "choices" about how their Google account will operate, including "personalization."² "Express personalization" requires only one step and allows Google to track the consumer's activities in all account settings ("Web & App Activity," "YouTube History," and "Ad Personalization").³ However, if a consumer wants to switch any of these off for better privacy protection, they must go into "manual personalization," a five step process with at least ten clicks that requires the user to wade through a series of unclear, misleading, and incomplete information.⁴ The length of time and complexity required to exercise better privacy protections on a Google account constitutes a "dark pattern" that steers consumers into consenting to extensive and invasive data collection – essentially a surveillance fast track.

We signed up for a Google account from a U.S. location to investigate the process here. While slightly different in structure (as we will describe), the key concerns remain and, in some cases, are even more hidden from consumers. In the U.S. sign-up process, several design choices are made to highlight options that would enable the most possible information collection and use. Take, for example, the attached image, which demonstrates how the process prompts users to accept multiple uses of the phone number that users were told one click previously would be used solely for account security. This is achieved by highlighting the "Yes, I'm in" button with a vivid blue outline and downplaying other options by blending them into the white background.

¹ "European consumer groups take action against Google for pushing users toward its surveillance system," BEUC (June 30, 2022), <https://www.beuc.eu/publications/european-consumer-groups-take-action-against-google-pushing-users-towards-its/html>.

² See Fast Track to Surveillance: How Google Makes Privacy the Hard Choice, BEUC (June 2022).

³ *Id.*

⁴ *Id.*



Get more from your number

If you like, you can add your phone number to your account for use across Google services. [Learn more](#)

For example, your number will be used to

Receive video calls & messages

Make Google services, including ads, more relevant to you

[More options](#)

[Back](#)

[Skip](#)

[Yes, I'm in](#)

In order to make modifications (such as selecting the “Add my number for account security only” or “Add my number for account security and video calls, but don’t use my number for other Google services like relevant ads” options), users must click on “More options” and make those modifications in a separate screen.

In an even worse display of manipulative design, the Privacy and Terms that a user must agree to in order to create the account hide all personalization options for web and app activity tracking, personalized ad tracking, and YouTube history under a by default minimized “more options” heading. The “more options” text is the same size as the text of the Privacy and Terms body, placed just before the “I agree” button and set apart solely by the blue hyperlink color, which is present in several other places throughout the text. Only by clicking and expanding those options does the user see that they have been automatically opted in to tracking for web and app activity, ad personalization, and YouTube history. Opting out of tracking not only takes several additional steps for the user, making it more difficult to reject personal data collection and use than to accept it, but is hidden from users unless they fully explore all links present through the sign-up process, even where those links are clearly minimized in favor of highlighted options that allow for more tracking.

More options ^

Customize your Google experience by confirming your personalization settings and the data stored with your account.

You can always learn more about these options, adjust them, and review your activity in your Google Account (account.google.com).

 **Web & App Activity**

Saves your activity on Google sites and apps, including searches and associated info like location. Also saves activity from sites, apps, and devices that use Google services, including Chrome history. This helps Google provide better search results, suggestions, and personalization across Google services. Activity older than 18 months will be automatically deleted. You can change your auto-delete option, stop saving activity, or delete it manually at account.google.com.

Save my Web & App Activity in my Google Account

Don't save my Web & App Activity in my Google Account

[Learn more about Web & App Activity](#)

Ad personalization

Google can show you ads based on your activity on Google services (such as Search or YouTube), and on websites and apps that partner with Google.

Show me personalized ads

Show me ads that aren't personalized

 **YouTube History**

Saves the YouTube videos you watch and the things you search for on YouTube. This helps Google give you better recommendations, remember where you left off, and more. Activity older than 36 months will be automatically deleted. You can change your auto-delete option, stop saving activity, or delete it manually at account.google.com.

Save my YouTube History in my Google Account

Don't save my YouTube History in my Google Account

These settings apply wherever you are signed in to your new Google Account.

Send me occasional reminders about these settings

[Cancel](#)

[I agree](#)

The account sign-up process fails to meet the conditions required for informed consent. In both the EU and the U.S. examples above, personalization options contain vague, missing, hidden, or delayed information about data processing portions and the options available to a user.⁵ In addition, privacy friendly options are often framed as causing the consumer to “miss out” on advantages or as making the services less helpful to the user.⁶ These factors combined prevent the consumer from making fully informed decisions or from providing fully informed consent to the data collection and processing. The vague and incomplete descriptions may also point to a lack of purpose limitation and irresponsible practices regarding data.

⁵ *Id.*

⁶ *Id.*

Google’s data collection and data processing practices have frequently come under scrutiny, both in previous actions under the GDPR⁷ and previous FTC enforcement actions.⁸ Lawmakers have recently pushed the FTC to investigate Google over mobile tracking, ad practices, and more.⁹ An investigation into Google’s account sign-up practices would be perfectly in line with the consumer protection stance taken in previous actions.

Google is a massive corporation whose practices affect millions. Where those practices do not proactively protect privacy rights, they can actively harm individuals globally and negatively shape the global privacy ecosystem. We urge the Federal Trade Commission to take these concerns into consideration and open an investigation into Google’s practices to ensure that US consumer privacy rights are protected.

Sincerely,

Center for Digital Democracy

Center for Economic Justice

Consumer Action

Consumer Federation of America

The Electronic Privacy Information Center (EPIC)

Fairplay

National Association of Consumer Advocates

Privacy Rights Clearinghouse

Public Citizen

U.S. PIRG

⁷ See e.g. “Consumer Groups Across Europe File Complaints Against Google for Breach of GDPR, BEUC (November 27, 2018), <https://www.beuc.eu/publications/consumer-groups-across-europe-file-complaints-against-google-breach-gdpr/html>.

⁸ See FTC Settlement, Google LLC and YouTube LLC (September 4, 2019), <https://www.ftc.gov/legal-library/browse/cases-proceedings/172-3083-google-llc-youtube-llc>.

⁹ See e.g. Brian Fung, *Apple and Google Should Face FTC Probe Over Practices that Could End Up Harming Abortion-Seekers, US Lawmakers Say*, CNN Business (June 24, 2022), <https://www.cnn.com/2022/06/24/tech/apple-google-ftc-probe-abortion-ads/index.html>; Patience Haggin, *Lawmakers Want FTC to Investigate Apple, Google Over Mobile Tracking*, Wall Street Journal (June 24, 2022), <https://www.wsj.com/articles/lawmakers-want-ftc-to-investigate-apple-google-over-mobile-tracking-11656077945>.