

European consumer protections for digital services users need 'significant changes,' experts warn

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European laws protecting consumers using digital services such as social media and search engines need "significant changes," experts have warned.

Rules across the continent governing terms and conditions for [social media](#), online gaming, file sharing services, file hosting services, search engines, and streaming [service](#) are not effective, researchers have said.

In future some terms and conditions should be banned, or blacklisted, while others which are unfair should be "greylisted," they have said. There should be a burden of proof on the digital service provider to show why such terms are not unfair in specific contracts.

Currently terms and conditions for online services are not always easy to find and read. Different terms are often published on different parts of the same website. Some are not easily identifiable as terms and conditions. The researchers say they should all either be found in the same place or there should be a clear table of content indicating where [consumers](#) could find all terms. Consumers should be asked for an explicit consent.

The experts say a lack of clarity on which terms and conditions should or shouldn't be used across the EU makes it hard to police breaches or bad practices, such as digital service providers collecting more private data than necessary. Currently, some member states are offering more [consumer protection](#) against unfair terms than European Union law requires as the minimum, creating an uneven level playing field. This also hinders any enforcement by national and cross-border enforcement agencies and consumer organizations.

The European Commission has proposed a new Digital Services Act, which aims to introduce new consumer rights and new obligations for digital service providers that would address the imbalance of power in the digital environment. As yet this does not tackle the potential unfairness of terms and conditions offered by digital service providers.

Professor Joasia Luzak, from the University of Exeter, and Professor

Marco Loos, from the University of Amsterdam, were asked by the European Parliament to investigate changes which could be made.

Professor Luzak said: "The Digital Services Act is being drafted this year, and will be enacted across the European Union, but this doesn't focus on issues of fairness. We hope our recommendations will influence change.

"The Unfair Contract Terms Directive was adopted in 1993, long before the technological revolution which has changed all our lives. It is too general and needs significant changes.

"If there was a blacklist of unfair terms which are banned it would make the prohibition of unfairness easier to enforce in the online environment. Currently different countries have taken it upon themselves to decide which terms shouldn't be used at all. This has led to different levels of protection across the EU, which means companies have to keep changing their terms and conditions when they conduct business in more than one member state. Consumers do not know to expect this difference in the protection level either. We need harmonization and clarity. This will mean it is easier to show a company is acting in bad faith, and easier to use harsher sanctions.

"This will hopefully mean consumers get better terms and conditions. At the moment terms and conditions favor the provider not the consumer. Protecting people in this way is important, as usually they can't use an alternative provider either due to network effects of an existing relationship with a digital service provider, or due to lack of competition on terms between different digital service providers."

The researchers have now identified 22 categories of unfair terms which should be blacklisted. This includes consumers being misled on the nature of the contract and their statutory rights, personal data being

collected for people who haven't finished signing a contract, more personal data being collected than agreed originally, and wrongly giving the impression that [digital services](#) are provided for free.

Other issues include not informing consumers of changes to terms, and giving them reasonable time to terminate their contract and suspending a contract when the consumer's behavior didn't justify this.

The experts recommend when a blacklisted term is used courts should be allowed to terminate the whole contract if this sanction is more advantageous for the consumer than merely removing the unfair term from the [contract](#). This would follow from the bad faith of the digital service provider using a clearly blacklisted term.

Companies should be obliged to draw the consumers' attention to terms and conditions and they should have the burden of proof that this has occurred.

The academics also say the current system of consumers giving tacit consent online should be banned. People should have to explicitly consent, and should be given a real opportunity to read terms and conditions.

More information: The study is published on the [European Parliament's website](#).

Provided by University of Exeter

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