

DARK PATTERNS: TRANSPARENCY OBLIGATIONS AGAINST DECEPTION IN VIRTUAL INFLUENCER MARKETING

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EXTENDED ABSTRACT

‘Dark patterns’ is an emerging phenomenon in the contemporary attention economy [Davenport (2001), Zuboff (2019)]. The online environment is populated by internet companies exploiting users’ psychological vulnerabilities thanks to the use of AI, by coercing, nagging, or deceiving them into making decisions that, if fully informed, they might not make, to maximise profits.

Dark patterns are an umbrella term for manipulative interface design choices that negatively impact the user’s decision making, leading the user to act against their interests (e.g., subscribing to a service, purchasing unwanted items, giving away more data than intended). Such practices can amount to consumer [BEUC (2022)] and data protection law violations [EDPB (2022)], e.g., by deceiving users into accepting cookie consent, unwanted purchases or subscriptions, other financial harms, as well as increasing levels of anxiety due to time limits and social pressure.

Given the growing use of dark patterns and the ease with which they can be added to platforms (i.e., dark patterns as a service), the research agenda is strongly focus on the understanding of these practices, consequent harms, and potential countermeasures.

The proposed paper aims to study a phenomenon that the scientific literature does not really address as a dark pattern, but actually has a very similar influence on the end-users from legal and socio-ethical perspectives.

User experience design (UX design) and user interface design are conceptual design disciplines focusing on the interaction between users and machine to design systems and computer interfaces that address the user’s experience when using a platform [Dove (2017)]. Good UX revolves around the idea of providing people with interactions that are seamless, enjoyable, and intuitive. To achieve this, a designer should focus on satisfying a user’s needs above everything else. However, UX is a tool that could be used for good, or for evil. One such category of evil design is “dark patterns.”

The proposed paper shall be focused on another output of UX design, recently taking an even growing stage in the digital environment: the creation of realistic and visually appealing virtual influencer.

Marketing research defines influencers as content creators, who attract the interest of large numbers of consumers on social media platforms. Traditionally, brands collaborate with real-life influencers (i.e., humans living in a physical world) who can make their own decisions regarding sponsored collaborations with brands and form opinions about the products and services they promote.

With recent technological developments, brands increasingly started to work with virtual influencers. Virtual influencers are as non-human digitally created characters sharing social media content and engaging in interactive communications with an aim to obtain influential status among consumers. Within this wide category, experts are used to distinguish between influencers that are created with computer-generated imagery technology (CGI influencers) and AI influencer that rely on artificial intelligence technologies in creating content and interacting with consumers.

Virtual influencers can take different forms and shapes ranging from unimaginable characters that look like simple drawings to hyper-realistic characters that can be nearly impossible to distinguish from real-life (human) influencers. In September, Meta launched 28 AI-powered chatbots featuring avatars of celebrities like Kendall Jenner (Billie), Paris Hilton (Amber), and Snoop Dogg (Dungeon Master). Currently, they are only available for testing in the United States but AI shall make celebrities, in the near future, omnipresent, since they can penetrate every market and formats at any time.

Even though virtual influencers do not exist in 'real' life, several studies showed they are perceived as authentic and 'real' as social media influencers. Consequently, it is not surprising that virtual influencers are capable of being preferred to human.

While virtual influencers have many attractive characteristics for brands, they also raise some concerns. As hyper-realistic virtual humans are designed to have human-like features and behaviours and appear in the physical world, at, for example, real-life restaurants and events, these influencers might be particularly difficult for consumers to distinguish from real-life influencers. Much like deepfakes, the rise of virtual influencers highlights our inability to distinguish reality from fabrications.

Many warn of the serious consequences coming if we can no longer trust any of the information we consume. One day, the prevalence of fake presences may eradicate our sense of reality in the virtual realm.

This risk gets higher and higher when influencers are involved in marketing activities. Here, virtual influencer marketing might suspend consumer's abilities to identify and critically evaluate persuasive marketing tactics. Indeed, there is a danger that owners of virtual influencers withhold information, making consumers falsely believe that they are engaged in communications with humans.

This information is valuable for consumers which pay attention not only to the content that they share but also to who influencers are as individuals. Research shows that consumers are more likely to rely on recommendations from individuals that have views and beliefs similar to their own. Highly anthropomorphic digital characters tend to be perceived as more competent and persuasive as well as to be more successful in developing relationships with consumers.

While there has been some initial research on virtual influencers in law and ethics, such studies are largely descriptive in nature, mostly documenting the existence of these practices.

The main objective of the paper is to address the gap and design a legal and ethical benchmark that would support a clear understanding of the lawful or unlawful nature of virtual influencers marketing and would set the ethical and legal limits to the scope and use of virtual influencer for advertising purposes.

Based on the literature review and evaluation of the applicable hard and soft law, we suggest that brands need to be transparent about using digital characters in their communications through disclaimers. Finally, we advise that when opting to cooperate with virtual influencers, brands should do not engage in marketing communications referring to any testimonial or endorsement of products that would be per se no genuine. The robot's endorsement of the product is in no way based upon its bona fide use, nor is it based upon personal opinions, beliefs, or experiences.

Habermas' theory of communicative action and the Kantian categorical imperative support this opinion.

The proposed paper particularly fits with the "Marketing and Smart Ethics in the digital world" track because virtual influencers are marketing strategies that may be controversial from a legal and ethical standpoint. All in all, the proposed paper will provide a deeper understanding of the phenomenon, often operating in a blurred area between legitimate attempts at persuasion and illegitimate manipulation techniques.

KEYWORDS: Digital marketing, dark patterns, virtual influencer, unfair commercial practices, transparency, ethics.

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