

EXPERTS EXPRESS CONCERNS WITH FTC'S COMPLAINT AGAINST AMAZON PRIME

The FTC recently filed a lawsuit against Amazon because it considers four pages and six clicks is too many steps to cancel Prime. Experts reacted saying that:

- The FTC's case is out of touch with reality because Prime is very easy to cancel compared to other subscriptions and, in any event, is a very popular service that customers love.
- Amazon makes it clear to customers when they sign up to Prime, and easy for them to cancel online. The FTC is trying to micromanage User Interface decisions by inventing a new type of bad behavior with what it calls "dark patterns" that trick consumers, but it has provided no guidance on what these are. Ironically it claims dark patterns are currently illegal while pursuing a controversial rulemaking to make them illegal.
- The due process and procedural shortcomings in this matter are severe and unprecedented -- and they reflect a broader pattern of problematic behavior by the agency's current leadership.

1. THE FTC'S CASE IS OUT OF TOUCH

Prime is easy to cancel vs other subscriptions

Reason Magazine, [It Takes 6 Clicks To Cancel Amazon Prime and the FTC's New Lawsuit Says That's Too Many](#)

"Maybe the ideal number of clicks to cancel an online subscription is four or five instead of six—but it seems unlikely that a federal court is the best venue to determine that sort of thing. Indeed, it seems absurd for the FTC to act as if this is a situation that requires government action at all."

NetChoice, [Prime Time: Lina Khan Uses Chair to Pursue Vendetta Against Amazon](#)

"This lawsuit is absurd. The complaint is that Amazon encourages people to use Amazon Prime – this is like going after Kroger for promoting its rewards program or Costco for its membership club ... Ask anyone who has ever tried to cancel a Comcast subscription, and they will give you a horror story. SiriusXM tries to convince you to call them. With Amazon, canceling only takes a click of a button or a quick search."

Carl Szabo, General Counsel, [tweet](#) of a video demonstrating how easy the current cancellation flow is.

Steve Forbes, [video segment](#)

"Another allegedly nefarious practice is that if you want to cancel Prime, you must go through a six-click process. That's supposed ordeal, that it most takes, a few minutes. Allegedly keeps tens of millions of unwilling customers chained to Prime."

Springboard, [Experts Disagree With The FTC's Lawsuit That "Six Clicks" To Unsubscribe From Amazon Prime Is Too Hard](#)

"Some other retailers make customers call or go in-person to cancel their subscriptions

Costco: Speak with a team member at any warehouse membership counter and receive an immediate refund, or... Call our Member Services Center at 1-800-774-2678

Sam's Club: For immediate cancellation and refund, please visit the Membership Desk at any club. You can also call 1(888) 746-7726 to cancel your Membership and receive your refund via Sam's eGift Card*."

Computer and Communications Industry Association, [tweet](#)

The @FTC should be laser-focused on prosecuting cases with the greatest harm to consumers. It is hard to believe @amazon requiring six clicks to cancel Prime meets this test while companies requiring phone calls or in-person visits do not.

Taxpayer Protection Alliance, Patrick Hedger, [tweet](#)

"You have to GO to most gyms to cancel and FTC is suing Amazon over 6 clicks to cancel. Can't make it up. ... The canceling process I did before I read the complaint is still six clicks and not substantially different than the complaint... and again it took me less than a minute and required zero phone calls. Six. Clicks. The horror."

International Center on Law and Economics, [Prime, Pizza, and 'Dark Patterns'](#)

"That is, one or two clicks, once they've registered with Amazon and taken the time to input the required information. If you express (by clicking) an interest in cancellation, you are asked whether you mean it, presented with a pitch to change your mind, an offer of a discount, and, eventually, an effective click to cancel. To be sure, six clicks is more than two, but I wouldn't expect it to take 10 years or the death of Achilles."

Amazon is clear about the process of subscribing to Prime

Reason Magazine, [The Federal Trade Commission's Latest Frivolous Antitrust Suit Takes Aim at Amazon](#)

"During the checkout process, in some cases, "the option to purchase items on Amazon without subscribing to Prime was more difficult for consumers to locate," states the FTC press release—as if it's Amazon's fault that some consumers might be a little less observant or tech-savvy. The option is not hidden, mind you; plenty of non-Prime members find it and purchase items without joining Prime. But they may have to spend an extra second or two looking—and the government is making a federal case out of it."

"The terms *clearly* state at the start that by signing up, a customer authorizes Amazon "to charge your default payment method...or another available payment method on file after your 30-day free trial." Then, in bolded text, it states: "Your Amazon Prime membership continues until cancelled. If you do not wish to continue for \$14.99/month plus any applicable taxes, you may cancel anytime by visiting Your Account and adjusting your membership settings." Does that seem like a company trying "to trick consumers into enrolling in automatically-renewing Prime subscriptions"?"

TechDirt, Mike Masnick, [The FTC's Surprisingly Weak Case Against Amazon](#)

"... part of what surprised me is that the complaint basically admits that Amazon is pretty upfront about the deal, saying that after a free trial you have to pay a monthly fee ... A lot of what the FTC is complaining about is that the small text part of the deal is, well, in small text. But... that's been the way things have kinda always worked? Is small text now against the law? Could Amazon be even more upfront? Sure. But would it really change that much? Given the number of sneaky hidden fees we see from telcos and broadband providers and tons of other companies, it would seem like that would be a much bigger and better target for this type of action, rather than 'Amazon tells you the details, but puts it in smaller text below the offer.'"

American Enterprise Institute, Mark Jamison, [The FTC Is Attacking Dark Patterns But Missing The Biggest Abusers](#)

"A [study](#) of 11,000 shopping websites found that nearly 2,000 use dark patterns but didn't name names. A [study](#) of 105 popular online services found 2,320 instances of dark patterns and each service used at least one. Amazon Prime was an offender in the study, but so were eBay, CBS News, TikTok, and ESPN. And only 4 of the 105 online services used fewer dark pattern practices than Amazon.com. Investigating the approximately 2,000 companies examined in these studies would keep the FTC quite busy. But perhaps it could put some resources into helping the FEC pursue some of the worst offenders of all: Democrat and Republican political campaigns, parties, and PACs."

"[Research](#) at the *Guardian* found that tactics for political text messages mirror those for emails. The *Guardian* and [other sources](#) also found the manipulative email and text language feeds divisive politics. Messages weaponize guilt, include "nonexistent deadlines and false claims of donation matching," and demonize the other side. Deception in business and politics is wrong. But it seems there are bigger fish to fry than Amazon when it comes to dark patterns in marketing."

Prime is popular and consumers love it

Chamber of Progress, Adam Kovacevich, [tweet](#)

"The FTC is suing Amazon over Amazon Prime. Earlier this year we surveyed Amazon customers to see what they felt. 89% of Amazon Prime members were satisfied ... Two-day shipping was by far the most popular feature of Prime, followed by discounts ... Two-thirds of all voters are Amazon Prime members. 71% of Dem voters are Prime members; 62% of Republican voters are Prime members."

Reason Magazine, [It Takes 6 Clicks To Cancel Amazon Prime and the FTC's New Lawsuit Says That's Too Many](#)

"Likewise, there's little evidence that consumers are mad at Amazon's behavior. A recent [Morning Consult report](#) found Amazon to be the second most trusted brand in the United States, trailing only Band-Aid. In the same survey, it was reported that Amazon Prime users have a more favorable opinion of the company than the general U.S. population does."

Center for Growth and Opportunity, Niel Chilson, [tweet](#)

"Basically no one has ever tried to cancel Amazon Prime. There are literally more US subscribers than US households."

The Street, Daniel Kuhn, [FTC'S Amazon Lawsuit Is 'Silly' If Not Insulting, Analyst Says](#)

“But candidly, on its face, we find this simply silly, if not insulting to think that, quote, “Amazon duped millions of consumers into unknowingly enrolling in Amazon Prime”. Maybe the FTC should consider that consumers wanted fast, free shipping, discounts, and other benefits associated with Prime, including Prime Video.”

Steve Forbes, [video segment](#)

“As for Amazon Prime, it's achieved its size and is still growing impressively because well over 200 million people worldwide, including yours truly, like it. Analysts at J.P. Morgan estimate that for a customer to get Prime services separately, it would cost around \$1,100 a year versus \$139 annual subscription fee.”

Competitive Enterprise Institute, Jessica Melugin, DC Journal, [FTC Lawsuit Against Amazon's Prime Is Poor Use of Limited Resources](#)

“You're right if this strikes you as an odd fight for the FTC to pick. Prime has 148.6 million members. Amazon is among the highest-rated companies for favorability and trustworthiness, according to multiple polls. Last year, JPMorgan estimated the actual value of the \$14.99 monthly, or \$139 annual Prime subscription, is as much as \$1,000.”

The agency is failing to tackle real fraud and abuse

Computer and Communications Industry Association, Matt Schruers, [statement](#)

“Amid many pressing issues that greatly affect Americans consumers, the FTC is focused on redesigning online menus of a wildly popular retailer. At a time when the public faces rising prices on necessities, they can shop online for competitive offers a few clicks away, enjoying features like fast, free shipping.”

Mercatus Center, Alden Abbott (former FTC general counsel), [twitter](#)

“FTC has an important role in going after fraud and unfairness that clearly harms consumers, it should focus its resources on those cases”

Americans for Tax Reform, [FTC Chair Khan Doubles Down on Use of Unethical Tactics To File Another Politically Motivated Lawsuit](#)

Ultimately, this lawsuit is an absurd waste of taxpayer resources that is designed to burnish Khan's progressive credentials, not to solve any real problems or address any consumer complaints.

Consumer Choice Center, [FTC Sues Amazon Prime for being too affordable and too convenient for consumers](#)

“That the FTC would waste their resources going after an innovative company that consistently offers value for consumers reveals more about the agency's political grudge than any perceived harm to consumers. Consumers have overwhelmingly had their welfare increased because of Amazon's products and services.”

Consumer Technology Association, Michael Petricone, [tweet](#)

“Dear FTC, I subscribe to Prime because I'm elated to get fast shipping, video streaming, ad-free music, photo storage, <http://Twitch.TV>, Audible books and grocery discounts, all for \$15/month. I don't need to be coerced. Please focus on actual consumer fraud and abuse.”

2. THE FTC'S CASE IS LEGALLY FLAWED

“Dark patterns” are a made up concept

Information Technology Industry Foundation, [FTC's Using Bait-and-Switch Tactics With “Dark Patterns” Accusations](#)

“the FTC seems primarily concerned with accusing Amazon of violating its ill-defined objections to “dark patterns”—a vague term it uses to describe any user interface design that it believes manipulates consumers. The FTC keeps claiming companies are engaging in dark patterns because it never has to substantiate these claims. These claims are entirely subjective, which makes disapproving the accusations nearly impossible for companies. After all, almost any design decision can be construed as manipulating consumers, such as the size or color of a button on a website, and while some sites might have poor design, that poor design is not always criminal.”

Information Technology Industry Foundation, [The FTC's Efforts to Label Practices “Dark Patterns” Is an Attempt at Regulatory Overreach That Will Ultimately Hurt Consumers](#)

“Moreover, organizations from virtually all sectors, including private sector businesses, non-profit organizations, political campaigns, and government agencies, use behavioral insights to design and refine the [user interface](#) (UI) and [user experience](#) (UX) design of their apps, websites, and services.”

Nicholas Petit, European University Institute, [tweet](#)

“Yesterday's complaint is focused on behavior, not structure. @amazon

allegedly takes active - and 'dark' - steps to steer users to Prime, and to keep them in ... There are two teachings to this: 1) if dark patterns are necessary to attract and retain users, then it means that multi homing is the general rule in the market, and that user lock in is weak. 2) all firms, including those without market power can use 'dark patterns'”

Stratechery, Ben Thompson, [Amazon, Friction, and the FTC](#)

“The FTC makes two primary allegations [in its complaint](#); the first is about the use of “dark patterns” to sign up for Prime ... Are these UI decisions that are designed to make subscribing to Prime very easy? Yes, and that is a generous way to put it, to say the least! At the same time, you can be less than generous in your critique, as well. The last image, for example, complains that Amazon is lying because the customer already qualifies for free shipping, while ignoring that the free shipping on offer from Prime arrives three days earlier! That seems like a meaningful distinction.”

“Set aside all of the discussion above about the overall value of Prime and the problem of free-loaders: this specific part of the complaint is absolutely ridiculous. Amazon’s flow — at least as depicted by the FTC in their own complaint — is completely reasonable, and that’s even before you start discussing the contrast with entities that let you sign up on the web but only cancel by call. Amazon’s entry into the cancellation process is clear, the flow is clear, and it’s not a crime that they seek to educate would-be cancellers as to why they might not want to cancel.”

“To put it another way, the FTC’s complaint about dark patterns when it comes to signing up for Prime is rooted in the assumption that consumers lack knowledge and are easily tricked; the FTC’s complaint about Amazon presenting reasons to not cancel is rooted in the assumption that consumers are already fully-informed and ought to be able to accomplish their goal in a few clicks as possible. The better explanation is that the FTC is simply anti-business.”

See [Springboard summary](#) of this article

International Center on Law and Economics, [Prime, Pizza, and ‘Dark Patterns’](#)

“The complaint highlights the inherent ambiguity of “dark patterns”—much discussed, if never clearly defined, practices involving user interfaces, such as web pages. The problem is not that we cannot imagine designs that are genuinely deceptive, or misleading and harmful—of course we can. Rather, it’s that the definition seems eminently plastic. What sort of influence is manipulation? Information is limited and so are human information-processing abilities. The provision of truthful and non-misleading information might bias consumers into making choices they would not otherwise make. Advertising a special at my favorite local pizza place might cause me to order a pizza I would not otherwise have ordered (not least because it’s not normally on the menu). Maybe that’s a more expensive pizza than my usual choice. So? Is the price delta the measure of consumer harm? Is there any consumer harm?”

“With 200 million Prime members, it seems likely—perhaps a statistical “certainty”—that some non-zero number of consumers is unable to navigate cancellation. That would be true no matter what the interface, and no matter who designed it. FTC staff sometimes have trouble navigating the FTC’s own website (don’t ask me how I know).”

Competitive Enterprise Institute, Jessica Melugin, DC Journal, [FTC Lawsuit Against Amazon’s Prime Is Poor Use of Limited Resources](#)

“Dark patterns are website design elements intended to lead users toward certain choices. In this case, those preferred outcomes are subscribing to and not canceling Prime membership. To be sure, Amazon tries to persuade its users to join Prime. It also seeks to make that process easy for aspiring subscribers via website design choices, but that is far from illegal.”

“It takes six clicks to cancel a Prime subscription. Those six clicks may be performed from the comfort of your home at any time, without a fee or filing out additional forms. Furthermore, the change in your account status will be reflected immediately. You won’t receive those same conveniences when applying for a passport, obtaining a TSA pre-check or even filing comments for the FTC.”

FTC is trying to make “dark patterns” illegal via a controversial rulemaking (implies they must currently be legal)

App Association, [Small Businesses Weigh in on Negative Option Rule](#)

“Frustratingly, a few days before our ANPRM comments were due to the FTC, the Commission brought a complaint to enforce the underlying Negative Option Rule and other parts of the FTC Act against Amazon. The complaint, which alleges that requiring consumers to go through six clicks to cancel their Prime subscription is illegal under the FTC Act, effectively ignores all of the

considerations our members surface in their letter. This is a confusing turn of events for two reasons: first, because the Commission had indicated that it needed to complete the Negative Option Rule to ensure it had the legal authority to enforce the Rule in newer, digital market contexts. But just as importantly for our members is that the FTC effectively advertised an interest in small business views as to how the FTC should enforce or update the Negative Option Rule in the digital economy, but then apparently decided our input was irrelevant after all by bringing the complaint before the rulemaking process was complete.”

App Association, Morgan Reed, [tweet](#)

“Big premise of FTC negative option proposal is existing regs don’t give the needed enforcement tools in a digital economy. Yet here the FTC’s enforcing on exactly that w/ Amazon? This lawsuit tries to create new regulatory power w/o small biz or consumer benefit.”

FTC claims deception but did not bring a deception charge

Software Information Industry Association, [SIIA Expresses Concern on FTC Amazon Lawsuit](#)

“In its complaint, the FTC takes the striking position that the government may penalize a prominently placed “no thanks” button despite the fact that there is no allegation that the terms of sign up (or the benefits) are misleading.”

Reason Magazine, [The Federal Trade Commission's Latest Frivolous Antitrust Suit Takes Aim at Amazon](#)

“Unlike some traditional antitrust cases, premised on clearly deceptive or illegal behavior, the FTC's concerns in a (highly redacted) complaint about Amazon are dubious to the point of being laughable.”

3. THE FTC’S CASE IS POLITICALLY MOTIVATED

Politization of enforcement

Americans for Tax Reform, [FTC Chair Khan Doubles Down on Use of Unethical Tactics To File Another Politically Motivated Lawsuit](#)

“Khan’s involvement in this suit raises ethical questions given Khan’s longstanding and well-documented animus towards Amazon. An explosive report from Bloomberg this week shows that Khan ignored a recommendation to recuse herself from a lawsuit against Meta due to similar public comments. ... Khan’s similar, prolific comments about Amazon is what brought her to prominence in progressive circles. Given the logic used by ethics officials advising Khan to recuse herself from investigations against Meta, it would surprise no one if FTC ethics officials felt even stronger about her recusal in this case against Amazon.”

Consumer Choice Center, [FTC Sues Amazon Prime for being too affordable and too convenient for consumers](#)

“It is well known FTC Chair Lina Khan has spent her career trying to build an antitrust lawsuit against Amazon, as is revealed in her 2017 article on “Amazon’s Antitrust Paradox”, but those efforts fall flat with consumers who benefit and appreciate their services.”

Hugh Hewitt, Commentator, [tweet](#)

“The @FTC decision to launch a jihad against the company's Prime service is pure left-wing government by regulator idiocy. Especially when you consider who the rivals to our #BigTech companies are”

Michael Schultz, Economist, **Washington Examiner** - [Biden’s FTC attack dog is in no position to go after Amazon](#)

“Now, less than a week after being exposed for her ethically questionable actions, Khan appears to be building on this precedent by going after Amazon. There is currently no evidence that the ethics officials at the FTC intend to call for Khan to recuse herself from the legal proceedings against Amazon, but there is ample evidence that she is no less biased against Amazon than she was against Meta. Since last summer alone, Khan has twice used FTC legal action to extort multimillion-dollar settlements from Amazon. Such blatantly targeted legal action unsurprisingly prompted Amazon to seek Khan’s removal as overseer of proceedings against the e-commerce giant.”

Due process and procedural shortcomings

US Chamber, Sean Heather, [What’s Going On Between the FTC and Amazon?](#)

“Why did the FTC spring the lawsuit on Amazon as a surprise? Moves to litigate by surprise are the kind of tactic used by the FTC in severe situations, often fraud cases where the agency is concerned that prior notice will result in asset dissipation and document destruction. It is wholly unnecessary in routine cases where the defendant is working in good faith to resolve the issue at hand. Further, without any forewarning of the lawsuit, Amazon was prevented from fully being able to explain itself to

the Commissioners, a fundamental due process right that is routinely afforded even to those who are being accused of engaging in hard core fraud.”

“Further issues emerge from a reading of the [complaint](#) itself. First, the Department of Justice (DOJ) is absent from the complaint. When the FTC seeks civil penalties, the FTC Act requires the agency to turn to the DOJ. The DOJ then decides whether to prosecute the case on behalf of the FTC or send the case back to the Commission. Here, the DOJ is absent. Given the FTC’s rush to litigate and avoid allowing Amazon to meet with the Commissioners, one would think the harm Amazon was purportedly causing to consumers in the market would be of serious interest to the DOJ. Yet, the DOJ for some reason appears to have taken a pass.”

Chamber of Progress, Adam Kovacevich, [tweet](#)

“Why didn't Khan try to settle this one? Apparently Amazon had already made changes to Prime signup/cancellation and FTC could have surely reached a deal w/ the company for more. But settlements are "out" under Khan. Especially for Amazon, against whom Khan made her name. The FTC has gotten results with settlements in this area because companies are generally receptive to the FTC demanding changes to their signup/cancellation flow. But Khan is more interested in testing the law than in negotiating fixes. ... A judge may say, ‘Sounds like there's plenty of room for compromise here. FTC, go work out a deal with Amazon.’”

American Action Forum, Dough Holtz-Eakin, [quote](#)

"The explicit rejection of the consumer welfare standard and the general lack of concern for consumers is why there are such reservations about Khan. She has repeatedly ignored evidence-based policy making and tried to drastically expand the regulatory state to go after every large company."

Americans for Tax Reform, Tom Hebert, [Washington Examiner](#)

The FTC just sued Amazon for allegedly making it too difficult to cancel a Prime membership despite the fact that it takes more clicks to file comments with the FTC than it does to cancel Prime. Did ethics officials advise Khan to recuse herself from the Amazon case based on her well-documented animus toward the company?

Steve Forbes, [video segment](#)

- “For instance, the FTC here bypassed a procedure that allows a target of a potential agency action to make their case before the commissioners.”