

Did we really consent to this? Terms & Conditions and young people's data



Reset.
AUSTRALIA

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July 2021

Executive Summary



THIS REPORT DESCRIBES HOW YOUNG PEOPLE EXPERIENCE THE SIGN-UP PROCESS AND TERMS AND CONDITIONS OF SOME POPULAR DIGITAL PLATFORMS.

While they are easy to skip over, terms and conditions (T&Cs) are important because they outline what young people consent to when they join a service, especially around data collection and use. This report asks if T&Cs actually enable meaningful, informed consent about this data use and collection for young people aged 13-17.

It finds that ten of the most popular digital services accessed by Australia's young people do not appear to present T&Cs in accessible ways that promote meaningful consent. The T&Cs are lengthy and complex, and do not adopt evidenced based approaches to maximising engagement nor understanding. Troublingly, they also seem to employ design techniques that actively nudge users to act against their own best interests ('dark patterns'). Given the heavy investment in design, copy and user experience across every other aspect of these platforms and services, it's hard not to be cynical about this.

It is no wonder young people in Australia overwhelmingly do not feel like they understand T&Cs. Working with YouGov, we polled 400 16 and 17 year olds and found only 7% of young people are confident they understood the terms and conditions they have 'accepted', and only 4% read them all the time. Their reasons for confusion and avoiding them were largely due to the documents themselves, such as the length of T&Cs, the sheer number of document pages they are presented across and disengaging layout.

This raises questions about the relationship between T&Cs and meaningful, informed consent. When most young people state they do not frequently read T&Cs, do they actually enable meaningful informed consent? When less than a third of young users say they understand T&Cs, have young people meaningfully consented to the ways their data is currently collected and used by digital platforms?

So what needs to happen? Terms & Conditions need to be presented in ways that enable children and young people to offer meaningful, informed consent about the collection and use of their data. Reset Australia is calling for a data code for children and young people under 18-years-old, so that their data is only collected and processed in ways that are in their best interests. Deceptive data collection gathered under unclear T&Cs is not in children's best interests.

A strong code that protects children's data would create requirements for service providers to ensure data isn't used without clear consent, so T&Cs would have to be easy to read and understand. A similar data code has already been passed in the UK, and is on its way in Ireland.

We think young Australians deserve the same, if not better, protections.

Terms and Conditions are not accessible to young people who use these platforms

- ◆ Many T&Cs are not shown during sign up, which means young people have to actively hunt for them to find out what they've agreed to.
- ◆ 9 of 10 platforms require a Tertiary degree to understand them. Only one scored at a 'Late high school' reading age. All of these services allow 13 year olds to join.
- ◆ It takes 1 hour and 46 minutes to read the average T&Cs. TikTok's clocked in at 5 hours and 25 minutes.

Platforms do not present their Terms and Conditions in ways that could help improve understanding

- ◆ Platforms do not use the most effective techniques to promote understanding of T&Cs. Experimental research has demonstrated 'what works' in increasing understanding about T&Cs (for example, presenting them as Frequently Asked Questions or using graphics and icons). Of the five techniques investigated in this research, three techniques were not used consistently by any platform, with only one or two platforms using the other two proven techniques.
- ◆ 8 of the 10 platforms used dark patterns in their sign-up process, which nudge young people into accepting the T&Cs that may not be in their best interest. For example six platforms inferred consent when users click next, and six present 'data maximising options' as the best user experience.

Terms and conditions are not widely understood by young people

- ◆ Only 4% of 16 and 17 year olds always read the T&Cs, 13% read them most of the time, 38% read them some of the time while 45% of young people never read T&Cs.
- ◆ Only 7% of 16 and 17 year olds are confident they understood everything they agreed to in the T&Cs, 21% are quite confident, 41% are only a little bit confident and 20% of young people say they don't understand any of it. The other 10% don't even know.

Platforms vary in their approach to terms and conditions, and the use of design principles and patterns.

Analysing their use of language, good designs and dark patterns, we scored each platform out of 5 stars. Five stars would represent Terms and Conditions that were appropriate for a 13 year old to read, employ all the good design principles analysed and deploy no dark patterns. Zero would indicate long, age inappropriate T&Cs, that employ none of the good design principles analysed and deploy every dark pattern. Shockingly, the highest score was 2.5 stars out of 5, with two platforms scoring 0.

Instagram	0.3	★☆☆☆☆
Snapchat	1	★☆☆☆☆
Twitch	0.3	★☆☆☆☆
Twitter	1.7	★★☆☆☆
Google	1.8	★★☆☆☆
Reddit	1.8	★★☆☆☆
Epic Games	2.5	★★★☆☆
Stream	1.7	★★☆☆☆
TikTok	0	☆☆☆☆☆
Spotify	0	☆☆☆☆☆

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01. Foreword

TODAY, ONE IN THREE INTERNET USERS IS A CHILD, BUT THEY ARE USING A DIGITAL ENVIRONMENT THAT WAS NOT DESIGNED WITH THEM IN MIND¹.

Indeed, rather than being designed to protect children, many service providers design their digital platforms specifically to gather as much data as possible about their users, even when they are children, in order to do two things: First, to encourage users to spend ever increasing amounts of time on their platforms and, second, to serve users surveillance based advertising. This creates a situation where, it is estimated that, by the time the average child reaches 13 years old the online data collection ecosystem has already gathered an astonishing 72 million data points on them².

Most data protection legislation around the world emphasises the need for platforms and digital service providers to seek their users' consent before collecting data. However, in the EU and UK we have seen how a superficial reliance on consent can place too much of a burden on individuals, especially children, to manage the protection of their own data. Most people, especially children, not only find it difficult to understand the various providers' terms and conditions (when they engage

with them), they generally ignore them altogether and just click "accept".

Relying on users to read and understand the multitude of terms and conditions that we accept (often without full consideration) on a day-to-day basis is unrealistic, unproductive, and uneconomic. To take one example, if all two billion people who have installed TikTok to date³, the seventh most popular global platform, read TikTok's full terms and conditions, it would have consumed 1.24 million person-years of effort⁴. Imagine how that figure would scale if we took into account all the digital terms and conditions that we enter into every day.

The significant challenges with the way that consent is sought, and the enormous effort required of users to engage with the terms of such consent, is then compounded by service providers using design techniques that can result in users not acting in their own best interests. Such design techniques can include boxes being pre-ticked or service providers treating the user's failure to select an option before clicking "next" as signifying consent.

1 Sonia Livingstone, Jasmina Byrne & John Carr 2016 One in three: Internet governance and children's rights. Unicef. <https://www.unicef-irc.org/publications/795-one-in-three-internet-governance-and-childrens-rights.html>

2 Dylan Collins 2017 'How much data do adtech companies collect on kids before they turn 13' SuperAwesome <https://www.superawesome.com/blog/how-much-data-do-adtech-companies-collect-on-kids-before-they-turn-13>

3 Craig Chappel 'TikTok Crosses 2 Billion Downloads After Best Quarter for Any App Ever' Sense Tower <https://sensortower.com/blog/tiktok-downloads-2-billion>

4 Based on average time to read TikTok's T&Cs of 5 hours 25 minutes, found in the core of the report

Even with strong laws in place that mandate the provision of explicit consent, as in the UK and EU, there is mounting evidence that many platforms and service providers are not meeting these requirements, particularly for under 13-year-olds. In a personal capacity I recently launched the case of *McCann v Google*⁵, which will be the first major case to test the notion of consent as the legal basis for processing children’s data. The case alleges that the YouTube platform, which is owned and operated by Google, does not receive meaningful consent from either its child users or their legal guardians before systematically collecting such child users’ data.

Children everywhere deserve to have their data protected through a clear code, that is enforceable in the courts and that ensures that service providers cannot collect their data without prior receipt of clear and informed consent. This will require a radical overhaul in how terms and conditions are presented to users, particularly children, to ensure that they are easy to read and understand.

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5 *McCann v Google*. (n.d.). *McCann v Google* <https://www.youtubedataclaim.co.uk/Home/Faq>



02.

Introduction

THIS REPORT RAISES QUESTIONS ABOUT CONSENT AND CHILDREN AND YOUNG PEOPLE'S DATA. IN THIS CASE, DO THE TERMS AND CONDITIONS (T&CS) THAT TECH COMPANIES PROVIDE ENABLE MEANINGFUL, INFORMED CONSENT TO DATA COLLECTION AND USE, ESPECIALLY FOR YOUNG USERS?

Although they are often skipped, T&Cs are important. They set the rules of engagement that govern how we can use digital platforms and services, and in turn how platforms and services can use us and our data. But too often we are in the dark about how digital platforms and services use our data.

T&Cs are filled with legal jargon, are excessively long and just feel 'click through'⁶. Young people have often pointed out that the presentation of T&Cs can render them meaningless⁷, and that T&Cs seem to actively discourage reading⁸ let alone comprehension and meaningful consent⁹.

Meaningless T&Cs are a real problem when it comes to children and young people's data. Children and young people are now datafied from birth, from apps collecting health data about them in utero, to educational platforms collecting learner data in schools.

One estimate suggests more than 72 million data points are collected about children by advertisers before they turn 13¹⁰. Children and young people (and their parents) are often unaware this data exists, let alone how they consented to its collection and use.

T&Cs are meant to be the mechanism through which children and young people (and their parents) consent to this data being legitimately collected and used. This report flags critical problems with T&Cs. It suggests that given the problems with T&Cs, it is unclear if current data collection practices are underpinned by meaningful, informed consent. This raises important questions about the right of services and platforms to collect and use children and young people's data as they currently do.

6 Victoria Plaut & Robert Bartlett 2011 'Blind Consent? A social psychological investigation on non-readership of click-through agreements' Law and Human Behaviour , p. 1-23

7 5Rights Foundation 2017 The Internet On Our Own Terms <https://5rightsfoundation.com/uploads/internet-on-our-own-terms-a4.pdf>

8 Victoria Plaut & Robert Bartlett 2011 'Blind Consent? A social psychological investigation on non-readership of click-through agreements' Law and Human Behaviour , p. 1-23

9 Ewa Luger, Stuart Moran & Tom Rodden 2013 'Consent for All: Revealing the Hidden Complexity of Terms and Conditions' Proceedings of SIGCHI Conference on Human Factors in Computing Systems, pp. 2678-96

10 Dylan Collins 2017 'How much data do adtech companies collect on kids before they turn 13' SuperAwesome <https://www.superawesome.com/blog/how-much-data-do-adtech-companies-collect-on-kids-before-they-turn-13/>

Given these concerns, T&Cs are urgently in need of regulatory oversight to ensure they are presented in ways that do demonstrate meaningful consent. Internationally, the General Comment on Children's Rights in Relation to the Digital Environment requires all signatories - including Australia - to regulate for:

“businesses to maintain high standards of transparency and accountability and encourage them to take measures to innovate in the best interests of the child. They should also require the provision of age-appropriate explanations to children, or to parents and caregivers for very young children, of their terms of service”¹¹

Other countries are taking heed. In the UK, the *Age Appropriate Design Code*¹² makes it a requirement for any digital service likely to be accessed by children to present T&Cs in ways that are:

“clear and accessible... In every case you should provide information that is accurate and does not promise protections or standards that are not routinely upheld. This should help children or their parents make properly informed decisions about whether to provide the information required to access or sign up to your service in the first place, and to continue to use it. If you believe that you need to draft your terms and conditions in a certain way in order to make them legally robust, then you can provide child-friendly explanations to sit alongside the legal drafting.”

Likewise Ireland's draft *Fundamentals for a Child-Oriented Approach to Data Processing*¹³ will make it a regulatory requirement for:

“individuals (to) be given certain key pieces of information about the use of their personal data by an organisation and that this information must be provided in a concise, transparent, intelligible and easily accessible form, using clear and plain language. The clarity of this information is particularly required where it is being provided to a child”

Australian young people deserve the same, if not better, protections.

Reset Australia is calling for the introduction of a data code for children and young people under 18-years-old, that puts children (and parents) in control of their data. This code would mean children's data could only be collected and processed where meaningful consent was obtained, and would require T&Cs to be clear and transparent.

11 UN Committee on the Rights of the Child 2020 Draft General Comment on Children's Rights in relation to the Digital Environment <https://www.ohchr.org/EN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>, section 139, emphasis added

12 Information Commissioner's Office (UK) 2020 Age Appropriate Design Code: A code of practice for online services <https://ico.org.uk/media/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services-2-1.pdf>, section 4

13 Data Protection Commission (Ireland) 2020 'Fundamentals for Child Oriented Approach to Data Collection' https://www.dataprotection.ie/sites/default/files/uploads/2020-12/Fundamentals%20for%20a%20Child-Oriented%20Approach%20to%20Data%20Processing_Draft%20Version%20for%20Consultation_EN.pdf

03.

Research Questions

IN MAY 2021, RESET AUSTRALIA CONDUCTED AN AUDIT OF TERMS & CONDITIONS (T&CS) AND OTHER IMPORTANT DOCUMENTS OF POPULAR DIGITAL PLATFORMS USED BY YOUNG PEOPLE.

OUR KEY RESEARCH QUESTIONS WERE:

1. Are digital platforms applying best practice design principles to help young people aged 13-17 understand the T&Cs presented to them?
2. Do young people read and understand the T&Cs presented to them, in ways that generate meaningful and informed consent?



04. Methodology

THE RESEARCH INVOLVED THE FOLLOWING SEQUENTIAL STEPS:

1. SELECT POPULAR DIGITAL SERVICES

To limit the scope of this research we selected 10 digital services that covered a range of different product types. These include music streaming, video streaming, online gaming, messaging, and social media platforms that are popular and used by Australians aged 13-17 years old.

2. CREATE ACCOUNTS AND DOCUMENT THE PROCESS

To see how the important documents are presented to the user during the sign up process, a new account was created for each of the 10 digital services. The process was documented using screenshots of each stage.

3. ANALYSE THE LANGUAGE OF TERMS AND CONDITIONS

To determine if a young person would be able to reasonably understand the documents we ran a content analysis of the documents using Reable.com. The content analysis allowed us to determine the Flesch reading ease score, the total word count, and the estimated reading time for each document.



4. ANALYSE THE DESIGN OF TERMS AND CONDITIONS

To standardise how we compared the documents across platforms and mimic the user journey, we assessed how the documents were presented to users during the signup process. We recorded which of the service's important documents were displayed to the user during this process and which were not.

Where possible, we completed the sign up on mobile apps to reflect the increasing use of mobiles among young people¹⁴.

To evaluate positive design features, we assessed each platform against five criteria identified in previous research on what helps users understand terms and conditions¹⁵:

1. Are key terms presented as frequently asked questions?
2. Are icons used to illustrate key terms?
3. Are the T&Cs shown directly on the sign up page?
4. Is the information provided in short chunks?
5. Do they use comics or illustrations?

To evaluate negative design features, we reviewed the process to identify dark patterns or persuasive design features deployed in the sign up process that may encourage young users to hand over more data than they need to.

5. POLL YOUNG PEOPLE TO ASSESS IF THEY UNDERSTAND TERMS AND CONDITIONS

To understand if young Australians read and comprehend the T&Cs they are presented with, we worked with YouGov to poll 400 16 and 17 year olds from around the country.

Limitations of this methodology

- ◆ Digital services are engaged in an ongoing performance optimization process. This process likely involves testing of different sign up forms for different users. We were only able to analyse the version of this that we collected during our scrape of the different platforms.
- ◆ It is possible the digital platforms are using design features that increase or decrease user understanding that have not been publicly researched, so could not be accounted for in this research.
- ◆ The estimated reading speed analysis uses an average reading time for adult users. This may not be reflective of the true time it would take a young person to read the documents.

14 ACMA 2020 'Kids and Mobiles' <https://app.powerbi.com/view?r=eyJrjoiNzgwYjA5YzktOTBIZS00ZWNiLTgwOWQtYTYyNGZiZWZjM-TU3liwidCI6IjBkYWw3ZjM5LWQyMGMtNGU3MS04YWYzLTcxZWU3ZTI2OGEyYjJ9>

15 Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf> and Marietje Botes, 2017. 'Using Comics to Communicate Legal Contract Cancellation'. The Comics Grid: Journal of Comics Scholarship 7(0) p. 14

05.

Research Findings

Terms and conditions documents on popular digital services

Ten popular digital products are reviewed in this research, all of which allow 13-17 year olds to create accounts:

- 1. TikTok** - A social media app for sharing short videos
- 2. Instagram** - A social media app for sharing photos and videos (Instagram is owned by Facebook)
- 3. Snapchat** - A social media app for sending disappearing photos and videos
- 4. Spotify** - A music streaming service (only allows access for users ages 16+)
- 5. Twitter** - A social media app for sharing short form content
- 6. Google/YouTube** - A search engine and a platform for sharing videos
- 7. Reddit** - A news aggregation and text based forum service
- 8. Twitch** - A video game streaming service
- 9. Epic Games** - A video game platform
- 10. Steam** - A video game platform



ACROSS THESE DIGITAL SERVICES 69 DIFFERENT PRODUCT DOCUMENTS (TERMS AND CONDITIONS) WERE IDENTIFIED.

Platform	Prompted to review on joining	Hidden on joining
TikTok 8 documents in total	<ul style="list-style-type: none"> ◆ Terms of Service ◆ Privacy Policy 	<ul style="list-style-type: none"> ◆ TikTok Platform Cookies Policy ◆ Privacy Policy for Younger Users ◆ Open Source Software Notices ◆ Virtual Items Policy ◆ Law Enforcement Data Request Guidelines ◆ Intellectual Property Policy
Instagram 7 documents in total	<ul style="list-style-type: none"> ◆ Data Policy ◆ Terms of Use ◆ About Cookies 	<ul style="list-style-type: none"> ◆ Community Guidelines ◆ Platform Terms ◆ Community Payment Terms ◆ Instagram Purchase Protection Terms
Snapchat 4 documents in total	<ul style="list-style-type: none"> ◆ Terms of Service ◆ Privacy Policy 	<ul style="list-style-type: none"> ◆ Community Guidelines ◆ Cookie Policy
Spotify 4 documents in total	<ul style="list-style-type: none"> ◆ Terms and Conditions ◆ Privacy Policy 	<ul style="list-style-type: none"> ◆ Copyright Policy ◆ Cookie Policy
Twitter 3 documents in total	<ul style="list-style-type: none"> ◆ Cookies ◆ Terms ◆ Privacy 	<ul style="list-style-type: none"> ◆ None
Google 10 documents in total	<ul style="list-style-type: none"> ◆ Privacy Policy ◆ Terms of Service 	<ul style="list-style-type: none"> ◆ Cookies ◆ Ads ◆ Partner Sites ◆ Pattern Recognition ◆ Location Data ◆ Wallet ◆ Voice ◆ Retention
Reddit 4 documents in total	<ul style="list-style-type: none"> ◆ Privacy Policy ◆ User Agreement 	<ul style="list-style-type: none"> ◆ Content Policy ◆ Moderator Guidelines

<p>Twitch 21 documents in total</p>	<ul style="list-style-type: none"> ◆ Terms of Service ◆ Privacy Notice 	<ul style="list-style-type: none"> ◆ Community Guidelines ◆ Privacy Choices ◆ California Privacy Disclosure ◆ DMCA Guidelines ◆ Trademark Policy ◆ Trademark Guidelines ◆ Terms of Sale ◆ Developer Agreement ◆ Twitch Affiliate Agreement ◆ Supplemental Fees ◆ Ad Choices ◆ Channel Points Acceptable Use Policy ◆ Bits Acceptable Use Policy ◆ Cookie Notice ◆ Seizure Warning ◆ Predictions Terms and Conditions ◆ Events Code of Conduct ◆ Accessibility Statement ◆ Transparency Report
<p>Epic Games 4 documents in total</p>	<ul style="list-style-type: none"> ◆ Terms of Service ◆ Privacy Policy 	<ul style="list-style-type: none"> ◆ Fan Content Policy ◆ Store Refund Policy
<p>Steam 4 documents in total</p>	<ul style="list-style-type: none"> ◆ Privacy Policy ◆ Subscriber Agreement 	<ul style="list-style-type: none"> ◆ Refunds ◆ Video Policy

Fig 1: What documents are presented during the sign up process?

Of these 69 terms and conditions documents, only 22 were displayed on sign up. The remaining documents were found by following links contained within those documents.

The language used in terms and conditions

The complexity of the language used in terms and condition documents makes it difficult to see how a young user could meaningfully understand them. Using the 'Flesch reading ease' score, which estimates the level of education that would likely be required to understand a document, we can see that nine of the 10 popular services used by young people would require a tertiary degree to fully comprehend.

Platform	Flesch Reading Ease Score, where 0 is hard and 100 is easy	Reading Age
TikTok	41.73	Tertiary Level - Difficult to read
Instagram	47.18	Tertiary Level - Difficult to read
Snapchat	47.2	Tertiary Level - Difficult to read
Spotify	44.70	Tertiary Level - Difficult to read
Twitter	43.54	Tertiary Level - Difficult to read
Google	47.11	Tertiary Level - Difficult to read
Reddit	43.43	Tertiary Level - Difficult to read
Twitch	40.42	Tertiary Level - Difficult to read
Epic Games	49.28	Tertiary Level - Difficult to read
Steam	51.70	Late high school - Fairly difficult to read

Fig 2: Reading ease score and reading age of the documents on each service

Despite requiring a tertiary or late high school level education to comprehend, all of these services are actively promoted to and used by young people aged 13 and above, or for Spotify 16 and above.

Beyond the complicated language used, the length of T&Cs is problematic. They take on average one hour and 46 min to read but at most would take five hours and 24 minutes 'cover to cover'.

Platform	Word Count	Estimated Reading Time (Min:Sec)
TikTok	73,101	324:50
Instagram	21,480	95:24
Snapchat	15,378	68:19
Spotify	14,501	64:25
Twitter	12,123	53:52
Google	19,123	84:55
Reddit	8,608	38:13
Twitch	48,479	215:16
Epic Games	11,544	51:17
Steam	13,745	61:04
Total	238,082 words	17 hours and 37 minutes
Average	23,808 words	1 hour and 46 minutes

Fig 3: Total word count and estimated reading time for all important documents on each platform

This is a lot of required reading, especially considering most of these services are accessible to young people at age 13 (year 7). For comparison the average length of a novel recommended for Year 7 English class by the NSW board of studies¹⁶ is around 39,200 words¹⁷, and the NSW Board of Education recommends 6 books or more are studied over that year¹⁸.

TikTok's terms alone are just shy of two high school English novels, but collectively these terms and conditions would fill six 'average' year 7 novels. For young people joining social media platforms for the first time at age 13, these platforms potentially ask them to read as much as their English teacher.

16 NSW Board of Studies 2017 Suggested texts for the English K-10 Syllabus <https://syllabus.nesa.nsw.edu.au/assets/global/files/english-k10-suggested-texts.pdf>

17 39,212 words. Calculated based on a random sample of 15 books

18 NSW Government Education 2019 'Key Learning Areas, Stages 4&5' <https://education.nsw.gov.au/teaching-and-learning/curriculum/key-learning-areas/english/Stages-4-and-5>



The presentation of terms and conditions

Beyond the sheer length and complexity, there are also questions about the presentation of Terms and Conditions (T&Cs). There are design tools and techniques that maximise comprehension and understanding about what users are agreeing to, but there are also designs that can undermine understanding.

Firstly, looking at ways that might improve young people's understanding of T&Cs, experimental research outlines five design features shown significantly increased the comprehension of the terms of service¹⁹:

- ◆ Displaying key terms as frequently asked questions
- ◆ Using icons to illustrate key terms
- ◆ Showing customers your terms in a scrollable text box instead of requiring a click to view them
- ◆ Providing information in short chunks at the right time
- ◆ Using illustrations and comics

DO OUR PLATFORMS USE THESE COMMON DESIGN FEATURES?

HELPFUL DESIGN FEATURE

Present terms as Frequently Asked Questions

Adding a summary of key terms in a question-and-answer format increased customers' understanding by 36%²⁰.

FINDING

None of the platforms audited presented T&Cs as frequently asked questions as a part of their sign up process.

However, on Twitter, if a user navigates away from the registration to the Privacy Policy on its unique page then the platform does then present the terms as frequently asked questions.

¹⁹ Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf> and Marietjie Botes, 2017. 'Using Comics to Communicate Legal Contract Cancellation'. The Comics Grid: Journal of Comics Scholarship 7(0) p. 1

²⁰ Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf>

HELPFUL DESIGN FEATURE

Use icons to illustrate key terms

Including explanatory icons increases understanding of the key points by 34%²¹.

FINDING

None of the digital platforms consistently used explanatory icons to help communicate the key terms in the registration process.

Although Google used this technique in one instance to help explain how the platform plans to use the users' phone number, it was not used to help explain any of the other important information that the user must agree to.

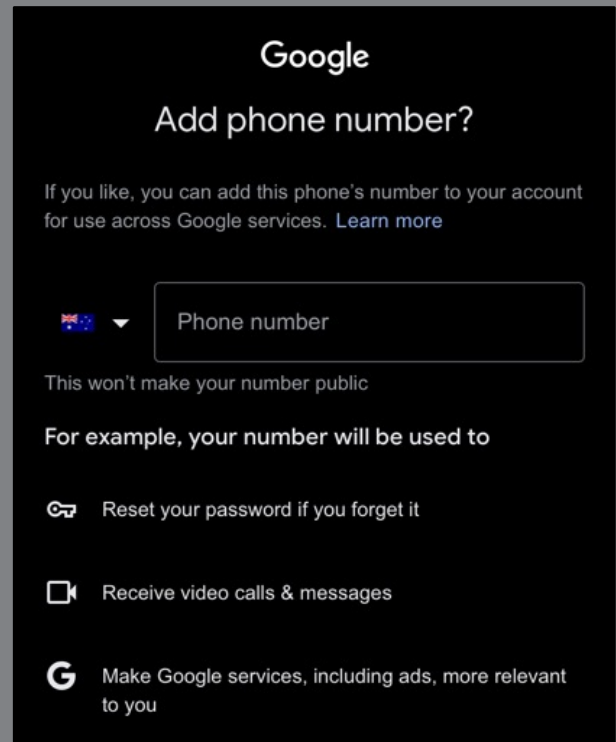


Fig 4: Google displaying explanatory icons during the sign-up process.

21 Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf>

HELPFUL DESIGN FEATURE

Present key terms directly in the sign up process

Putting the terms directly within the registration form, in a scrollable format if necessary, so the user isn't required to navigate away improves user comprehension by 26%²².

FINDING

We found only one product did this. Google provided a summary for their Privacy Policy, but not of their Terms of Service on this page. All the other platforms required the user to navigate away to read any of the important documents.

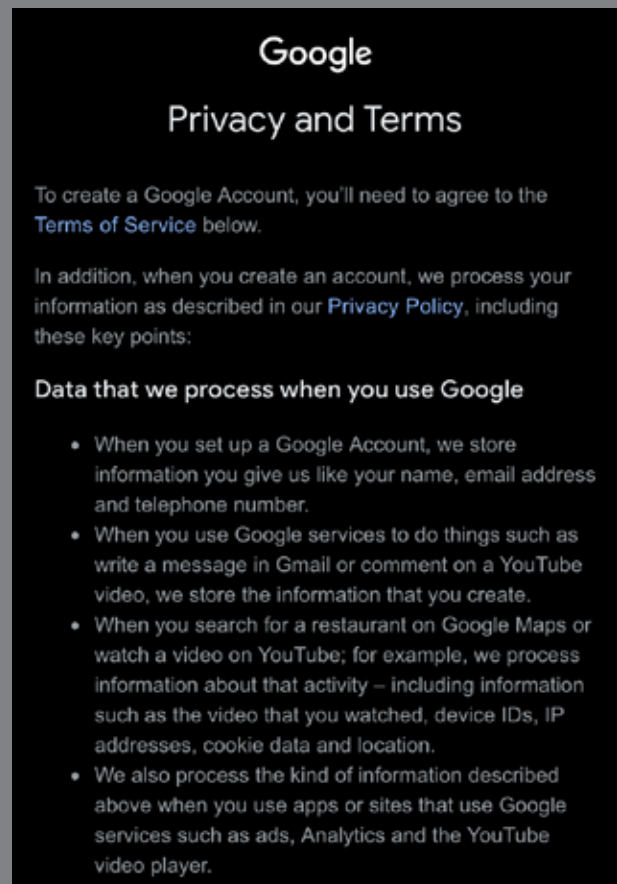


Fig 5: Google placing a key summary of the user agreement in the sign up process without navigating away.

22 Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf>

HELPFUL DESIGN FEATURE

Provide short bits of text at relevant times

For example, explaining why a digital service needs to know your date of birth next to any form field that asks for that information.

Understanding about how terms of service apply increase 9% when short and relevant parts of the terms and conditions are presented at relevant times²³.

FINDING

We found only two services did this. Firstly, Google provides this information for only one of the steps in the sign up process. It outlines why a user should provide their phone number, and explains how it will be used by them in the future (see fig 4). This practice is not followed through on other steps such as email address, name, or date of birth.

Secondly, Twitter explains why a user should sync their phone's contact book with the app and opt in to third party app tracking (which increases the amount of data collected by Twitter).



Fig 6: Twitter explaining how they will track users across the web, and why they do it.

²³ Behavioural Insights Team 2019 Best practice guide for Improving consumer understanding of contractual terms and privacy policies <https://www.bi.team/wp-content/uploads/2019/07/Final-TCs-Best-Practice-Guide-July-2019-compressed.pdf>

HELPFUL DESIGN FEATURE**Use illustrations and comics**

Research²⁴ has suggested that using comics or illustrations to outline terms can improve correct recall of information about terms and conditions by 11%.

FINDING

No service used illustrations or comics that we found.

Not all designs and layouts help young people better understand the T&Cs that they are agreeing to. Some features, often referred to as 'dark patterns', are specifically designed to nudge users away from actions that align with their best interests and towards actions that are in the platform's interest²⁵.

Examples of common dark patterns include hiding important information, requiring registration before viewing content, and inferring agreement to important documents based on unrelated actions²⁶.

WE IDENTIFIED SEVERAL DARK PATTERNS THAT WERE COMMON ACROSS THE DIFFERENT DIGITAL SERVICES WE REVIEWED, ALL OF WHICH MADE IT HARDER TO REDUCE DATA COLLECTION.

24 Marietjie Botes, 2017. 'Using Comics to Communicate Legal Contract Cancellation'. The Comics Grid: Journal of Comics Scholarship, 7(0) p. 14

25 Arunesh Mathur et al 2019 'Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites' Proceedings of the ACM on Human-Computer Interaction November, pp. 81

26 Ari Waldman 2020 'Cognitive biases, dark patterns, and the 'privacy paradox' Current Opinion in Psychology, 31, February pp. 105-109

DARK PATTERN

Inferring consent by clicking next

For example buttons that say 'next' or 'sign up now' with small text underneath that says 'by clicking this you agree to our terms and conditions'.

FINDING

Six of the 10 platforms inferred consent from seemingly 'unrelated actions' in the registration process.

For example, active agreement to the T&Cs was linked to the 'next' navigation button.

It was not always transparent that by clicking 'next' you agreed to the T&Cs. For example, on Instagram the text that informed users the 'Sign Up' button also acted as the consent button was at the very bottom of the screen in a small font.

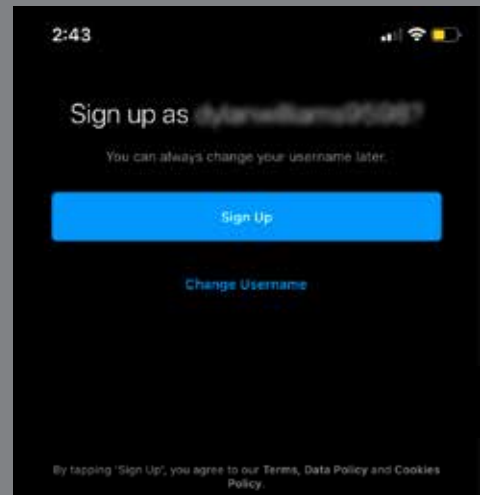


Fig 7: Instagram gaining consent from users for their important documents

FINDING

Other services provided more transparency. For example, Snapchat included text within the actual button to gain active consent to the documents.

Three others explicitly had fields designed to gain explicit and active consent during the registration process.

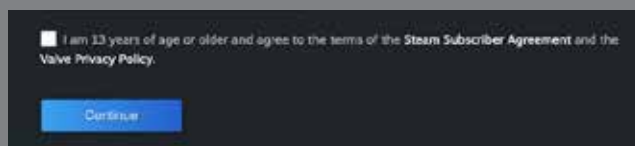


Fig 8: Steam requiring the user to tick a box to specifically agree to their important documents.

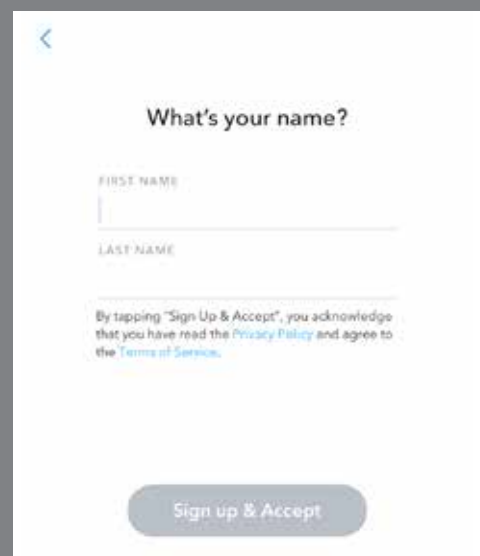


Fig 9: Snapchat combining the form navigation and the consent button.

RESEARCH FINDINGS

Six platforms allowed users some control about the amount of data they would collect by allowing them to 'opt in' to specific features of their service. This also provides the option to 'opt out' of these features - and minimise the amount data collected and used. For example, some services ask users if they would like to sync their accounts to their contacts list, which provides some choice about whether or not to agree to data collection about your contact list.

HOWEVER, THE CHOICE BETWEEN OPTIONS WASN'T ALWAYS PRESENTED EQUALLY.

DARK PATTERN

Presenting the collection and use of data as enabling a 'better user experience'
For example, claiming that tracking data unlocks the best features of the platform.

FINDING

All of the six services that allowed some degree of opting into or out of data collection and use, described the options that use the most data as in the best interests of the users.

For example, platforms described the more relevant content users would see, or how users could find friends or get great updates if they allowed more collection and use of their data.

Create an account

By continuing, you agree to our [User Agreement](#) and [Privacy Policy](#).

I agree to get emails about cool stuff on Reddit

Fig 10: Reddit asking a user to opt-in for email marketing by describing it as "cool stuff".



Fig 11: Snapchat asking users to allow the application to permanently access their phone's contact book.

DARK PATTERN**Visual promotion of options that maximise data collection or use, while demoting options that minimise data collection or use**

For example displaying options that allow data collection as large and prominent, while presenting options to skip or reject non-essential data collection in smaller and less salient fonts.

FINDING

Of the six platforms that provided some choices at sign up, five of them visually presented the option that enabled the most data collection and use as the most visually appealing. For example they used much smaller fonts or less bold colours to 'skip' or 'opt out' of these features.

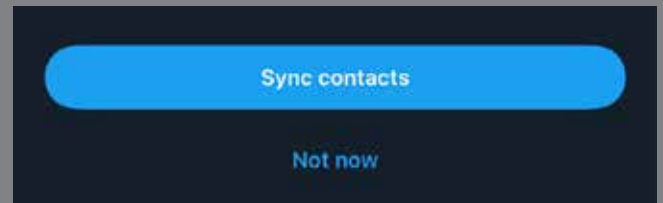


Fig 12: Twitter asking a user to 'opt in' and sync their address book with the app. The 'opt out' option is presented as a smaller 'not now' navigation button.

DARK PATTERN

Presenting options that minimise data collection as temporary

For example displaying options to skip or reject non-essential data collection as only 'not for now'.

FINDING

Of the six platforms that provided some choices at sign up, two of them presented the options that minimize data collection as a temporary, time-limited 'opt out'.

Using language like 'do this later' rather than 'don't ever do this' makes data collection and use seem inevitable.

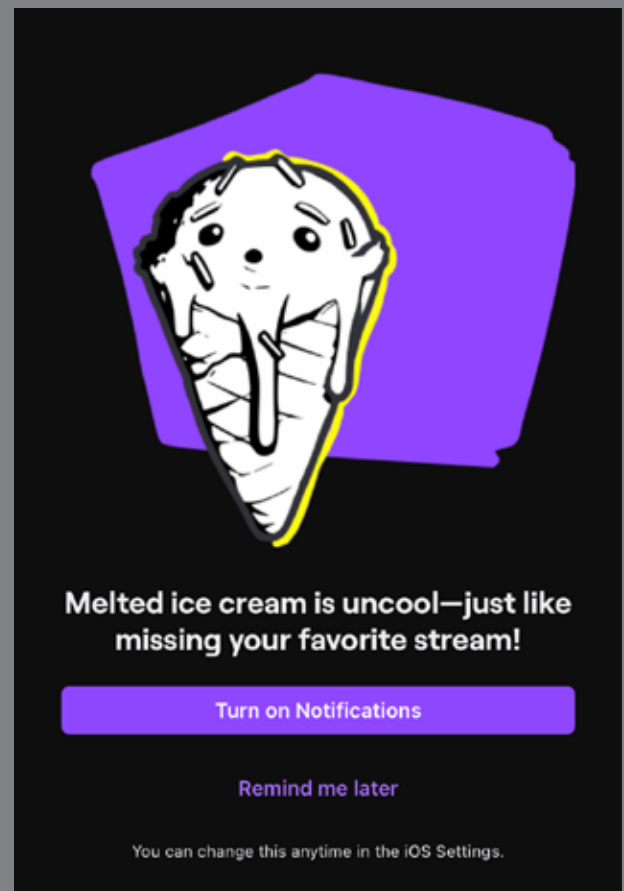


Fig 13: Twitch asking users to 'opt in' to personalised notifications. Note the smaller 'remind me later' option. There is no 'don't ever turn on notifications' option.

DARK PATTERN

Click twice for no, but only once for yes

FINDING

Of the six platforms that provided some choices at sign up, one of them required users to click twice to select the data minimising options. This adds more friction to the user journey for those who want to minimise data collection.

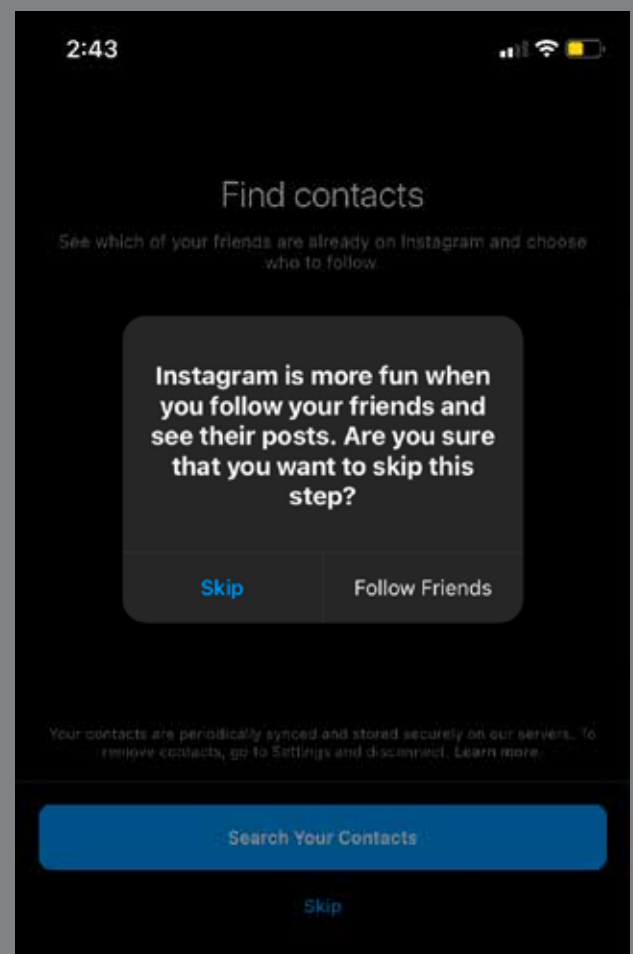


Fig 14: Instagram 'double opt-out' function. After opting out by selecting 'skip' users are asked a second time to confirm that they want to 'skip'.

Platforms' overall performance

Analysing the three elements of presentation (use of language, good designs and dark patterns) and assigning them equal weighting we scored each platform. We converted this score to a 5 stars rating system.

Five stars would represent Terms and Conditions that used language that is appropriate for 13 year olds, employ all the good design principles analysed and deploy

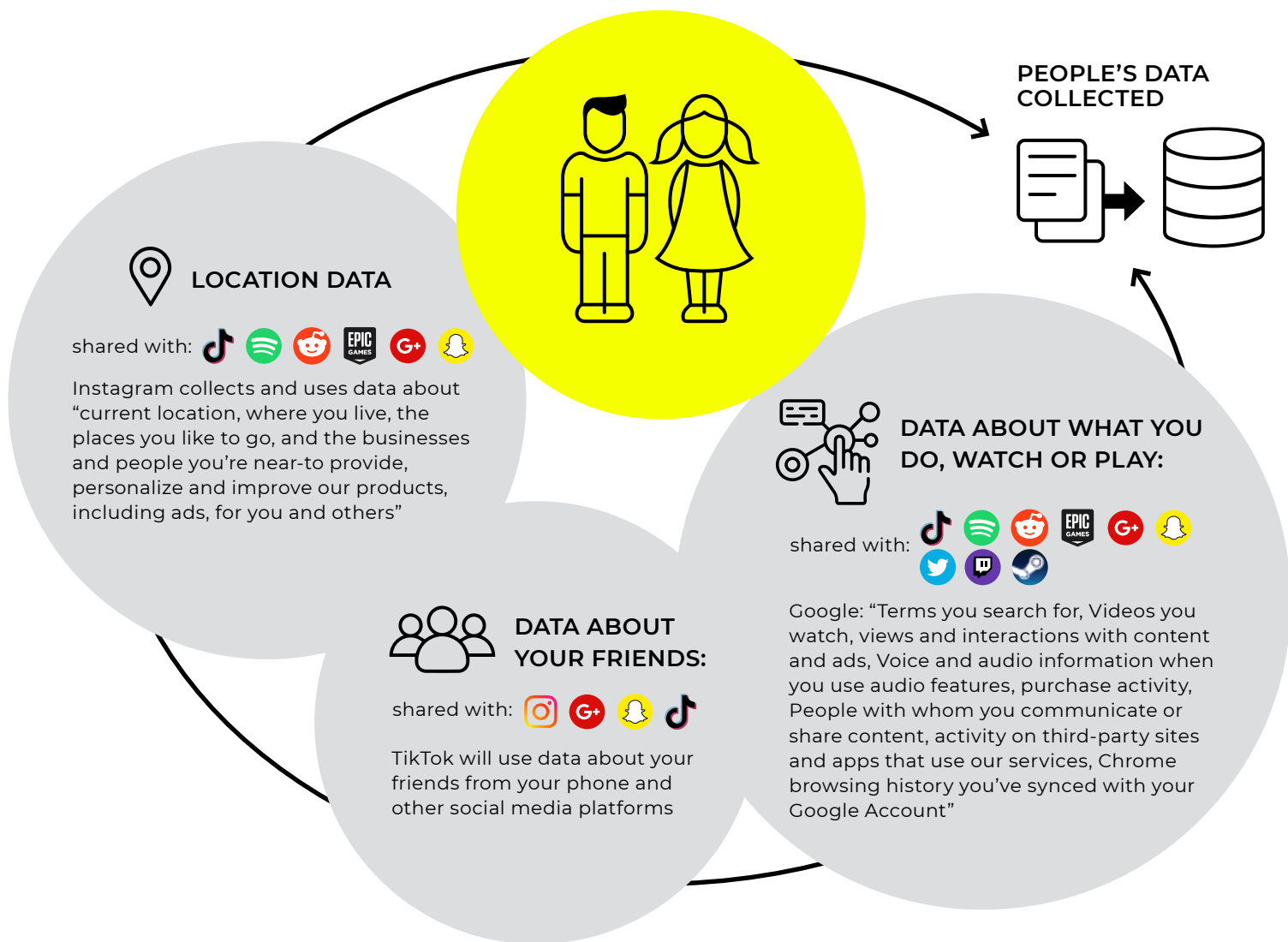
no dark patterns. Zero would indicate age inappropriate long T&Cs, that employ none of the good design principles analysed and deploy every dark pattern.

SHOCKINGLY, THE HIGHEST SCORE WAS 2.5 STARS OUT OF 5, WITH TWO PLATFORMS SCORING 0.



In the sign up process, are terms & conditions...	Instagram	Snapchat	Twitch	Twitter	Google	Reddit	Epic Games	Steam	TikTok	Spotify <small>(16-17 years)</small>
LANGUAGE ANALYSIS										
Suitable language for 13 year olds to read? <small>(16 year olds for Spotify)</small>										
Less than an hour long to read?										
USE OF GOOD DESIGN PRINCIPLES										
Presented as FAQ?										
Presented with icons to explain key points?										
Present with key terms directly in the sign up process?										
Presented with short bits of text at relevant times										
Presented in illustrations or comic formats?										
USE OF DARK PATTERNS										
Using inferred consent by clicking next?										
For services that allowed some degree of 'opt out' of data collection and use										
Describing the collection and use of data as a 'better user experience'?										
Visually promoting 'opt-ins' that maximise data collection, & demoting 'opt outs' that minimise data collection?										
Presenting 'opt-outs' that minimise data collection as temporary?										
Click twice for no, but only once for yes?										
Stars out of 5, based on equal weighting of all three elements										

IF A YOUNG PERSON USED ALL TEN OF THE PRODUCTS ADDRESSED IN THIS REPORT, CLICKING 'ACCEPT' ON THEIR TERMS AND CONDITIONS AND PROMOTED OPTIONS WOULD MEAN SHARING:



DATA YOU WOULDN'T EXPECT:

- Twitch when you "open one of our emails, we automatically record and store certain information about your system by using cookies and other types of technologies"
- Snapchat collects "pages you visited before or after navigating to our website"
- TikTok "may collect information about you from third-party services, such as advertising partners and analytics providers"
- Instagram: "a game developer could use our API to tell us what games you play, or a business could tell us about a purchase you made in its store"
- Spotify " may obtain certain data about you, such as cookie id, mobile device id, or email address, and inferences about your interests and preferences from certain advertisers and advertising partners that allow us to deliver more relevant ads"

WITH PEOPLE AND COMPANIES YOU MIGHT NOT EXPECT:

- Twitch " may make information available to our affiliates... including Amazon.com"
- TikTok are able to share all the data they collect about young people in their business dealings "We may share all of the information we collect in connection with a substantial corporate transaction, such as the sale of a website, a merger, consolidation, asset sales, or in the unlikely event of bankruptcy"
- Epic Games "reserve the right to transfer information about our users in the event we sell or transfer all or substantially all our business or assets"
- Snapchat "if involved in a merger, asset sale, financing, liquidation or bankruptcy, or acquisition of all or some portion of our business to another company, we may share your information with that company before and after the transaction closes"

Young people’s comprehension of Terms & Conditions

Terms and conditions are long and complex, and not always presented in ways that could maximise comprehension. It’s no wonder that so few young people engage with them. In May 2021, YouGov polled 400 16 and 17 year olds who used digital services (from social media like TikTok, streaming sites like Twitch to gaming platforms like Steam).

THEY FOUND THAT ONLY 4% OF RESPONDENTS READ T&CS ALL THE TIME, WHILE 45% NEVER READ THEM.

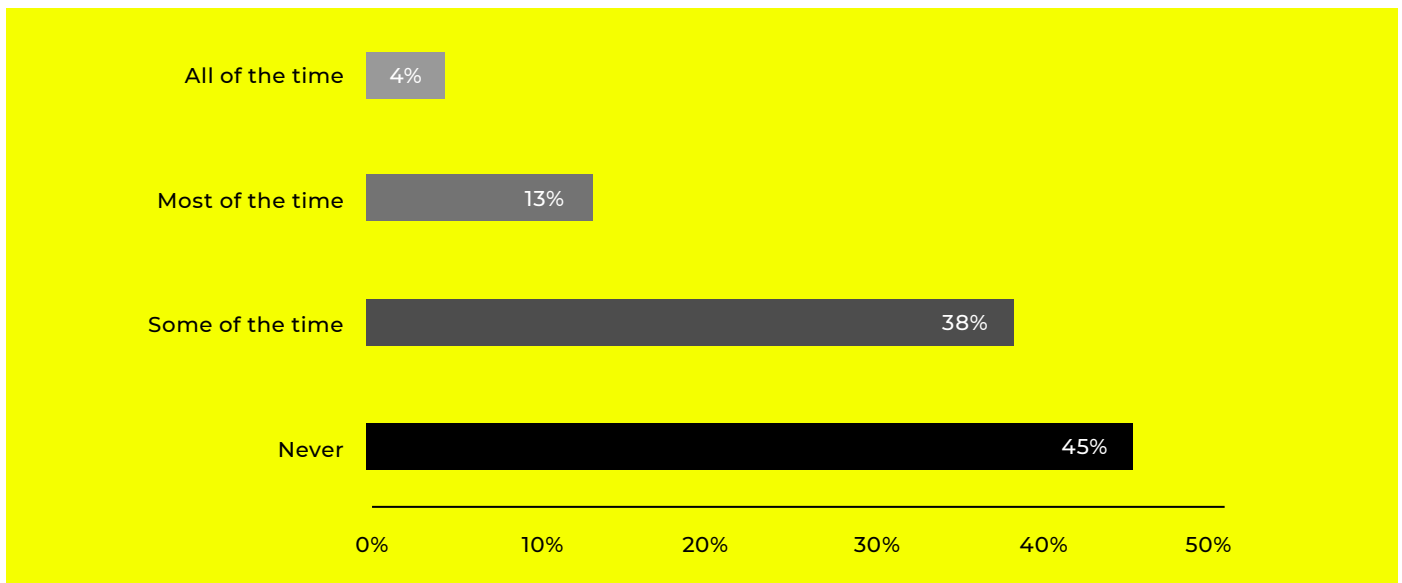


Fig 15: How often respondents read the terms and conditions of the digital services they use

Many reasons young people didn’t read T&Cs were identified in this poll, with the length of the documents and the sheer volume of document pages cited by the majority of participants as off-putting.

REASONS CITED FOR NOT READING T&CS, BY % OF YOUNG PEOPLE

They are too long	76%
There are too many terms and conditions documents	58%
They are presented in ways that are difficult to read (small type, block text, etc.)	46%
They use complex and difficult language	38%
You've got no choice anyhow, so why bother	33%
They don't appear relevant to me	18%
They change them so often, so why bother	15%
They don't stick to them anyhow, so why bother	13%
They never address what I am interested in	13%
They are too hard to find	7%
Other reasons	2%

Figure 16: Reasons young people didn't read terms and conditions

ALL OF THIS MEANS THAT LESS THAN ONE THIRD OF YOUNG PEOPLE FEEL THAT THEY UNDERSTAND TERMS AND CONDITIONS TO ANY DEGREE.

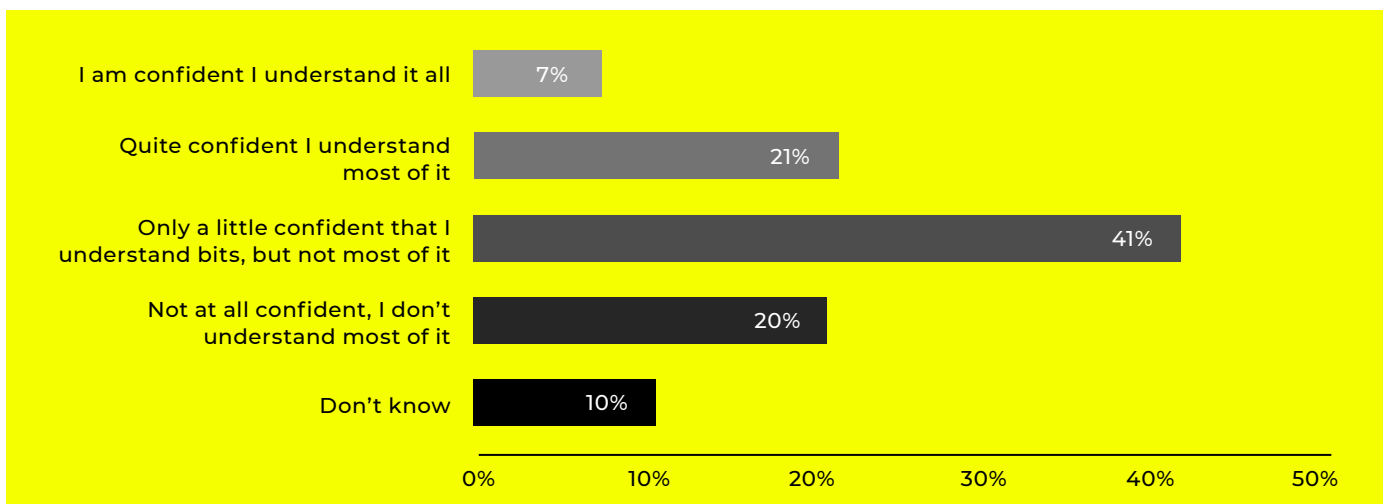
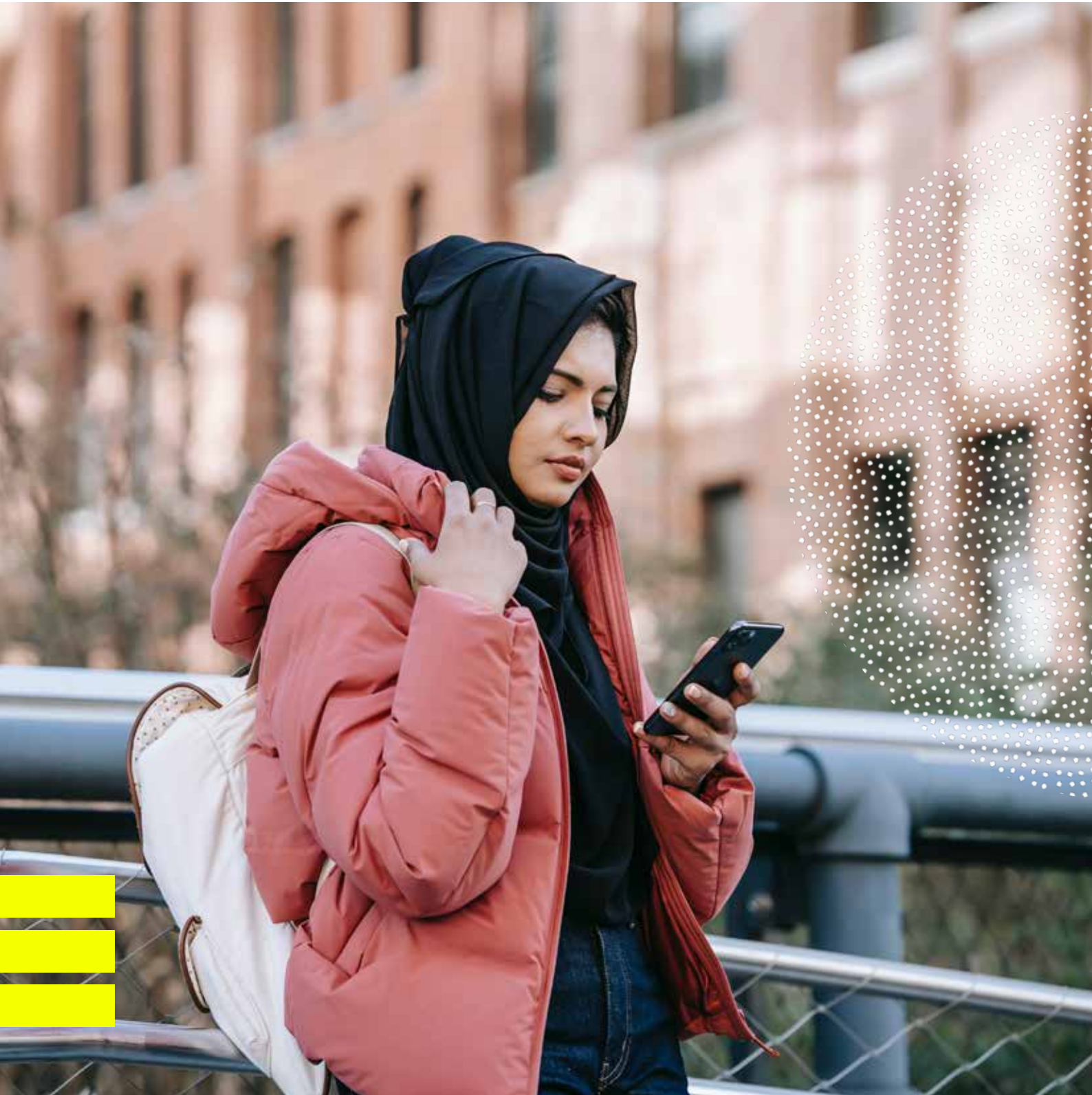


Figure 17: How many respondents felt confident that they understood the terms and conditions of the digital services they agreed to.

It is worth noting here, that this poll engaged 16 and 17 year olds only. It is possible that levels of comprehension and engagement would be even worse for younger users.

Understandably, young people want to see action around this. Eighty three percent of young people polled want specific rules in place that make T&Cs easy to read and understand, and 85% want rules to make sure data can only be collected and used when clear consent has been obtained.

Young women, in particular wanted stronger rules to make sure T&Cs were easy to understand. 68% of young women strongly agreed that there should be rules in place to ensure T&Cs are easy to read, compared to 59% of young men.



06. Conclusion

TERMS AND CONDITIONS (T&CS) REPRESENT THE 'RULES OF ENGAGEMENT' AND SHAPE THE RELATIONSHIP BETWEEN DIGITAL SERVICES AND THEIR USERS. THEY ARE IMPORTANT DOCUMENTS THAT FORM THE BASIS OF 'CONSENT' TO USE A SERVICE, AND FOR A SERVICE TO IN TURN USE US.

But for young people, these T&Cs are troubling. They are long and complex, and not presented in ways that maximise their comprehension. The use of dark patterns in particular, suggests that many of these platforms set out to persuade young people to share more data than they need to. Considering the immense in-house expertise in copywriting, design and user experience at many of these companies, these language and design choices cannot be taken lightly.

Everything about the presentation of T&Cs appears to be geared towards the platform's commercial interests, rather than young people's best interests.

T&Cs are meant to be the way young people consent to the collection and use of their data. But this report raises questions about meaningful consent. Given the inaccessibility of T&Cs, and the poor levels of engagement we see among young people, have Australia's young people meaningfully consented to the way these services already collect and use their data?

07.

Recommendations

IT IS CLEAR THAT THE 'SELF REGULATORY MODEL' THAT ALLOWS PLATFORMS TO DECIDE HOW THEY SET OUT THEIR T&CS THEMSELVES HAS FAILED. AUSTRALIA NEEDS A REGULATORY CODE GOVERNING HOW CHILDREN AND YOUNG PEOPLE'S CONSENT CAN BE SOUGHT, AND HOW THEIR DATA CAN BE COLLECTED AND USED.

Other countries have implemented or are proposing similar codes already, including the UK's *Age Appropriate Design Code*, and Ireland's *Fundamentals for a Child-Oriented Approach to Data Processing*. Australia's young people deserve the same, if not better, protections.

This would place strict requirements on what meaningful, informed consent from young people would look like, which would place obligations on service providers to improve their T&Cs.

Reset Australia is calling for a code that:

1. CREATES THE BEST AND SAFEST DIGITAL WORLD FOR YOUNG PEOPLE.

- ◆ Put children's best interest at the heart of decision making about their data
- ◆ Put children and young people in control of their data by requiring:
 - Expressed consent - Only process data when children (and parents) have meaningfully consented, except in their best interests. This would place a requirement on digital service providers to ensure their terms and conditions

demonstrably enabled and facilitated informed consent, and they did not infer consent nor use dark patterns to solicit it, before data is collected and used.

- Transparency and accountability - Children (and parents) should know every time their data is processed, except in their best interests
- Data minimisation and restricted data sharing - Only collect the data you really need, and don't share it, except in their best interests
- ◆ Protect everyone under 18 years olds
- ◆ Cover all services children and young people may use

2. IS OVERSEEN BY A STRONG AND ENABLED REGULATOR.

- ◆ Enforced by a regulator well resourced to oversee these new responsibilities
- ◆ Can issue meaningful penalties that match the scale of any breach
- ◆ For extreme violations, there could be the option of criminal sanctions

3. ALIGNS WITH THE ONLINE SAFETY BILL AND BASIC ONLINE SAFETY EXPECTATIONS

- ◆ Australia has some world leading legislation around eSafety, takedown and moderation. A code must join up seamlessly with this legislation
- ◆ Take a similar systemic focus

07. Appendix

FULL LANGUAGE ANALYSIS RESULTS

Platform	Document name	Flesch Reading ease score	Word count	Estimated read time (M:S:MS)
Tik Tok	Terms of Service	39.8	28880	128:21:00
Tik Tok	TikTok Platform Cookies Policy	48.83	2017	8:57:00
Tik Tok	Privacy Policy for Younger Users	37.64	756	3:21:00
Tik Tok	Open Source Software Notices	39.94	16057	71:21:00
Tik Tok	Virtual Items Policy	49.15	7209	32:02:00
Tik Tok	Law Enforcement Data Request Guidelines	36.76	2352	10:27:00
Tik Tok	Privacy Policy	47.23	14528	64:34:00
Tik Tok	Intellectual Property Policy	34.46	1302	5:47:00
Instagram	Community Guidelines	47.61	1508	6:42:00
Instagram	Data Policy	45.19	4499	19:59:00
Instagram	Terms of Use	47.37	3350	14:53:00
Instagram	Platform Terms	40.89	5988	26:36:00
Instagram	About Cookies	46.43	756	3:21:00
Instagram	Community Payment Terms	47.78	4443	19:44:00
Instagram	Instagram Purchase Protection Terms	55.01	936	4:09:00
Snapchat	Terms of Service	51.4	9511	42:16:00

Snapchat	Community Guidelines	38.2	738	3:16:00
Snapchat	Privacy Policy	52.7	4395	19:32:00
Snapchat	Cookie Policy	46.5	734	3:15:00
Spotify	Terms and Conditions	36.59	7462	33:09:00
Spotify	Copyright Policy	47.77	351	1:33:00
Spotify	Privacy Policy	45.31	4595	20:25:00
Spotify	Cookie Policy	49.11	2093	9:18:00
Twitter	Cookies	45.82	1069	4:45:00
Twitter	Terms	38.02	5564	24:43:00
Twitter	Privacy	46.77	5490	24:24:00
Google	Privacy Policy	47.12	8421	37:25:00
Google	Terms of Service	49.72	3969	17:38:00
Google	Cookies	49.4	1113	4:56:00
Google	Ads	56.88	1325	5:53:00
Google	Partner Sites	51.64	867	3:51:00
Google	Pattern Recognition	55.34	500	2:13:00
Google	Location Data	53.65	1647	7:19:00
Google	Wallet	38.02	109	0:29:00
Google	Voice	21.9	146	0:38:00
Google	Retention	47.38	1026	4:33:00
Reddit	Content Policy	47.32	546	2:25:00
Reddit	Privacy Policy	39.21	4259	18:55:00
Reddit	User Agreement	42.21	3277	14:33:00
Reddit	Moderator Guidelines	44.98	526	2:20:00
Twitch	Terms of Service	36.31	6707	29:48:00
Twitch	Community Guidelines	31.85	1755	7:48:00
Twitch	Privacy Notice	36.94	3942	17:31:00
Twitch	Privacy Choices	52.42	1071	4:45:00
Twitch	California Privacy Disclosure	34.87	730	3:14:00

Twitch	DMCA Guidelines	39.83	1012	4:29:00
Twitch	Trademark Policy	43.26	637	2:49:00
Twitch	Trademark Guidelines	59.11	1119	4:58:00
Twitch	Terms of Sale	36.95	4116	18:17:00
Twitch	Developer Agreement	36.32	10319	45:51:00
Twitch	Twitch Affiliate Agreement	35.81	4841	21:30:00
Twitch	Supplemental Fees	50.14	118	0:31:00
Twitch	Ad Choices	30.33	167	0:44:00
Twitch	Channel Points Acceptable Use Policy	44.51	1938	8:36:00
Twitch	Bits Acceptable Use Policy	48.95	1149	5:06:00
Twitch	Cookie Notice	48.59	895	3:58:00
Twitch	Seizure Warning	21.9	154	0:41:00
Twitch	Predictions Terms and Conditions	48.51	1503	6:40:00
Twitch	Events Code of Conduct	27.75	952	4:13:00
Twitch	Accessibility Statement	47.01	448	1:59:00
Twitch	Transparency Report	37.53	4906	21:48:00
Epic Games	Terms of Service	39.08	5358	23:48:00
Epic Games	Privacy Policy	41.18	4605	20:28:00
Epic Games	Fan Content Policy	53.2	938	4:10:00
Epic Games	Store Refund Policy	63.66	643	2:51:00
Steam	Privacy Policy	43.61	4402	19:33:00
Steam	Refunds	62.68	1044	4:38:00
Steam	Subscriber Agreement	40.59	8055	35:48:00
Steam	Video Policy	59.91	244	1:05:00



Reset Australia is an independent organisation raising awareness and advocating for better policy to address the digital threats to Australian democracy.

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