

Position Statement for W3C Workshop on Permissions and User Consent

Consumer Reports is interested in attending this workshop and in presenting on how to *test and evaluate* user interfaces as part of CR's ratings of products and services for privacy and security under the Digital Standard [<https://www.thedigitalstandard.org/>].

Consumer Reports is the world's largest independent product-testing organization. Using its dozens of labs, auto test center, and survey research department, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million members and publishes its magazine, website, and other publications.

Last year, Consumer Reports announced its Digital Standard initiative — a project to begin to incorporate newer features such as privacy, security, ownership, and governance into our product and service testing protocols. The Digital Standard itself is an open source collaboration led by Consumer Reports, Ranking Digital Rights, Disconnect, and the Cyber Independent Testing Lab.

CR's first evaluation under the Digital Standard was on smart televisions [<https://www.consumerreports.org/televisions/samsung-roku-smart-tvs-vulnerable-to-hacking-consumer-reports-finds/>]. As part of this evaluation, we looked at how smart television interfaces requested permission to conduct *automated content recognition* in order to monitor what content users watched. We did not ultimately assign scores to these results, in part because of the difficulty in determining subjective scores and ratings for user interfaces. We did present general results of our investigation to the public, and have since presented on the pros and cons of various interfaces — including to the Federal Trade Commission at its PrivacyCon workshop. [https://www.ftc.gov/system/files/documents/public_events/1223263/panel019_smarttvs_privacy.pdf] Last week, we published our first ratings under the Digital Standard for the privacy and security aspects of peer-to-peer payment applications, which included some assessment of user interfaces. [<https://www.consumerreports.org/digital-payments/mobile-p2p-payment-services-review/>]

We are interested in presenting on and discussing the challenges of providing definitive, repeatable, and reliable evaluations of user interfaces for consumer consent. While the Digital Standard includes criteria for elements such as privacy-by-default and user controls, it does not yet provide a clear framework to determining the quality and fairness of how particular choices are presented to consumers. We believe there needs to be a better understanding of what best and worst practices are in order for us and similar testing organization to hold companies accountable for how they treat their customers.

We are also interested in discussing the policy aspects of consent and design at this workshop. In addition to our ratings and journalism, Consumer Reports also works on policy and legislation through its advocacy division, Consumers Union. Our team engages with federal and state policymakers in support of strengthening legal privacy and security protections. While there has

been dramatically increased interest in new legislation in the wake of Cambridge Analytica — as well as new privacy law in Europe and California — how to prescribe design and user choice is a core, unsolved challenge for lawmakers. Europe's GDPR expressly moved to a model more centered around user consent, but companies responded by forcing customers to agree to boilerplate license agreements, or coercing consent through questionable dark patterns.

[<https://fil.forbrukerradet.no/wp-content/uploads/2018/06/2018-06-27-deceived-by-design-final.pdf>] We are interested in exploring how legislation and policy can incentivize better design practices without regulators issuing overly prescriptive and potentially ungrounded guidance on how users should be presented with choices and controls over their personal information.