

Forbrukertilsynet
Att.
Porselensvegen 32
3920 Porsgrunn

Complaint against Amazon Prime

With this complaint, the Norwegian Consumer Council (Forbrukerrådet) requests that the Norwegian Consumer Authority (Forbrukertilsynet) makes an assessment of whether the procedure for ending a subscription to the service Amazon Prime is in breach of the Marketing Control Act provisions on unfair commercial practices. The cancellation procedure for Amazon Prime is designed in an unclear and obscure manner. It should be as easy for a consumer to get out of a contract as it was to enter the contract in the first place, which is not the case with Amazon Prime.

Amazon and Amazon Prime

Amazon.com, Inc. with its main establishment in Seattle, USA, is one of the world's largest global online shopping platforms, with localized websites for different countries and a large number of physical warehouses across the world, with Sweden being the latest country of establishment.

Amazon Prime is a digital subscription service run by Amazon. Subscribers to Amazon Prime receive customer benefits when shopping on Amazon's platform, for example discounts for Prime members. The Prime subscription also provides access to other services owned by Amazon, including for example Prime Reading, Prime Music, Prime Gaming, and Prime Video, without paying a separate sum for each of these services.

The services included in an Amazon Prime membership varies somewhat depending on the customer's country of residence, and on whether a Prime subscription has been signed up for directly or as a paying customer on the Amazon platform.



In order to sign up for an Amazon Prime membership, the consumer has to sign up for a free Amazon account. For consumers that already have an Amazon account, an Amazon Prime membership may be activated when logged in to this account.

The Amazon Prime service has more than 150 million members globally. Although we do not possess concrete numbers on Norwegian consumers who subscribe to the service, the service Amazon Prime Video, which is included in Amazon Prime, is the second largest video streaming platform in Europe by market share, only exceeded by Netflix.

The complaint is lodged against the European main establishment of Amazon being in Luxembourg. The address is: Amazon EU SARL, Société à responsabilité limitée, 38 avenue John F. Kennedy, L-1855 Luxembourg.

Briefly on the background for this complaint

The market for subscription-based digital content services is large, and includes many different types of services. For example, consumers can subscribe to movies, TV series, music, audiobooks, sports broadcasts, and video games. Consumers that subscribe to a service receive access to a wide variety of digital content. The monthly payment for each service may be small, but all the services put together may constitute a significant annual cost for the consumer.

Through previous projects, the Norwegian Consumer Council has shown how service providers / digital platforms use manipulative design in ways that are at odds with consumer privacy and data protection law. For example, a number of digital service providers use manipulative design in an attempt to make the individual consumer to share personal data with the service provider, in a circumvention of the principles of a legally valid consent. In other cases, manipulative design is used in attempts to circumvent the legal requirements for cookie consent forms.

In the report 'You Can Log Out, But You Can Never Leave' (attached), we show how Amazon uses manipulative design in the cancellation procedure for Amazon Prime. The use of manipulative design in this cancellation procedure



nudges consumers that attempt to end their Prime membership toward a decision to abandon the procedure and/ or keep their membership. This has a negative financial consequence, and consumers may be led to make a choice that they would not have made if not for the manipulative design. The manipulative design includes graphic design patterns, skewed wording, and manipulative or deceptive click flow.

Briefly on the cancellation procedure for Amazon Prime

The report shows how to end an Amazon Prime membership on an iPhone. The user interface varies somewhat between devices, which means that there may be minor differences to the procedure. However, regardless of the device or platform used, the process includes manipulative design to a significant degree. We believe that there is reason to question whether this use of manipulative design complies with consumer law.

In order to end a membership/ subscription to Amazon Prime, the consumer first has to log in to their Amazon account, then open the menu in the corner and click 'Your Account', and then click 'Prime membership'. Subsequently, the consumer has to click and scroll through six different pages and make a number of choices, until receiving a final confirmation that the membership has ended, with the text "Cancellation confirmed". We refer to the attached report, where the process is described in chapter 3.

Unfair commercial practices

The Marketing Control Act provides a framework for what marketing, commercial practices and terms of service the service providers are allowed to use in different markets. The law implements the Unfair Commercial Practices Directive (UCPD), and therefore the Directive is an important factor when interpreting the law. The Marketing Control Act section 6 implements the general clause in Article 5 of the Directive which states that an unfair commercial practice is banned. What constitutes an unfair commercial practice is defined in the second paragraph of section 6, which states that a commercial practice is unfair if it breaches "good business practices" toward consumers, and is able to significantly alter a consumer's financial conduct, so that the consumer makes a decision that they would not otherwise have made.



A commercial practice shall always be considered unfair if it is misleading pursuant to section 7 or 8, cf. section 6 third paragraph. The Marketing Control Act section 8 implements the UCPD Article 7, and is particularly relevant in this case. According to the Marketing Control Act section 8, a commercial practice is misleading if it, in its concrete context and after an overall assessment, leaves out or obscures significant information that the consumer requires in context in order to make an informed financial decision.

Pursuant to the first paragraph:

“A commercial practice shall be considered misleading if, in its specific context and pursuant to an overall evaluation, it omits or hides material information that consumers require in the context to be able to make an informed economic decision, or if it presents the information in an unclear, unintelligible, ambiguous or unsuitable manner. In the assessment of whether information has been omitted, account shall be taken of limitations of space or time on the medium used to communicate the commercial practice, and of any measures implemented by the trader to make the information available to consumers by other means.”

Pursuant to the second paragraph, the practice shall only be regarded as misleading if it is likely to cause consumers to make an economic decision that they would not otherwise have made. This, however, does not require that the consumer actually takes such a decision, according to preparatory works. In the cancellation process of Amazon Prime, elements such as text, colour and graphic design is used to confuse and prevent consumers from ending terminating the service. The consumer is nudged toward keeping their membership on each individual page in the process, and if this happens it will have clear financial consequences for the consumer.

The trader should provide all the information needed to make an informed decision, and an overall assessment should be made in order to determine whether an omission or unclear presentation of information is misleading. What information should be considered “material“ must be seen in light of what service one is looking at. In this case, it regards the cancellation procedure of a subscription to a digital service. At the entering of an agreement, the price will normally be regarded as material. In this case, we are in the opposite end of the lifespan of the agreement. Price is normally regarded as an important term of the agreement that must be provided before the agreement is entered into,



and at the end of the agreement it will be equally necessary to provide clear and unambiguous information on how the agreement can be ended. Therefore, one should demand that each individual step or page of the cancellation process provides clear information and leads the consumer a step closer to ending the service.

The cancellation procedure is long, and consists of six separate pages. On each separate page, the consumer is nudged toward keeping their Prime membership, even though they have begun a procedure to end the agreement. This nudging toward continuing the membership is done through text about how “your Prime benefits” will be affected by cancelling, and visually through yellow warning triangles with an exclamation point inside. This is a powerful signal, and creates uncertainty for consumers who started the process to cancel their Prime membership. This uncertainty is further strengthened by having to scroll through the page, which is full of text and graphics to show how cancelling the membership will mean the loss of many benefits, with the first eye-catching button containing the text “Use your benefits today”. The next three buttons are yellow, and contain the text “Keep my benefits”, “Cancel my Benefits”, and “Remind me later”. In order to continue the cancellation process, the consumer has to click “Cancel my Benefits”.

Here, unambiguous text to take the consumer to the next step to cancel the membership is left out, and the provided information creates uncertainty about whether the consumer is actually in the process of cancelling the membership. As mentioned above, the consumer first has to log in to their Amazon account, then choose ‘Your Account’ in the corner menu. Then the consumer has to scroll down to the headline ‘Account settings’, to find the ‘Prime membership’ setting. When clicking the ‘Prime membership’ link, a new page is opened, where it is not visually or textually unambiguous for the consumer which button they must click if they want to end their membership, as described above. Later in the cancellation process, after the consumer has clicked the ‘End membership’ button, yellow warning triangles with exclamation marks appear again, repeating that ‘Prime benefits’ will be affected by a cancellation. Clicking any text to see which benefits will be affected, ends the cancellation process. Throughout the cancellation procedure, the consumer is faced with the warning triangle four separate times, and is warned about losing Prime benefits six separate times.



When assessing whether information has been left out according to the Marketing Control Act section 8, account shall be taken of limitations of space or time on the medium used to communicate the commercial practice, and of any measures implemented by the trader to make the information available to consumers by other means. In this case, the service provider fully controls how information is presented, and such considerations are not applicable even if the medium is a mobile phone.

There is a floating transition between being unfair commercial, through being incorrect, insufficiently guiding, or aggressive, and several provisions may therefore be applicable to the same practices.

We point out that this is applicable in this case. The Marketing Control Act section 9 on aggressive commercial practices, implementing Article 8 and 9 in the UCPD. According to section 9 first paragraph, a commercial practice is aggressive

“if it, in its specific context and pursuant to an overall evaluation, by harassment, coercion, including the use of physical force, or undue influence, is likely significantly to impair the freedom of choice or conduct of consumers with regard to a product. «Undue influence» shall mean exploiting a position of power in relation to consumers so as to apply pressure, even without using or threatening to use physical force, in a way which significantly reduces the ability of consumers to make an informed decision.”

The second paragraph of section 9 lists elements that should be taken into consideration in an assessment of whether a commercial practice is aggressive, and in this case we find it relevant to point to section 9 second paragraph letter d), which states that in the assessment of whether a commercial practice is aggressive, it must be taken into account

“onerous or disproportionate non-contractual barriers imposed by the trader where consumers wish to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader,”



Amazon is the professional part in the contract relationship, and thus sets all the premises for the formation of the cancellation procedure. In our view, this procedure is formed in such a way that it constitutes 'onerous and disproportionate obstacles' to a consumer wanting to end his or her membership.

Request for consideration of the case

In the report, 'You Can Log Out, But You Can Never Leave', the Norwegian Consumer Council has shown that the cancellation procedure for Amazon Prime is complicated, quite long, and features continuous and extensive uses of manipulative design. We ask the Consumer Authority to assess whether the cancellation procedure for Amazon Prime constitutes an unfair commercial practice pursuant to the Marketing Control Act section 6 cf. Section 8 and 9.

We look forward to the Consumer Authority's consideration of the matter, and are available for contact if further information is required.

Best regards

Forbrukerrådet

Finn Lützow-Holm Myrstad

Director of digital policy