

# COMPLAINT

Against Google Ireland Ltd. regarding violation of Art. 38, 27(3), 25 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/ED (Digital Services Act).

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## **A. Introduction**

We hereby submit a complaint against YouTube, operated by Google LLC [hereinafter “Google” shall be understood as referencing the company itself] regarding the violation of Arts. 38, 27(3), 25 of the Digital Services Act (“DSA”) by making the option to choose a recommender system that is not based on profiling counter-intuitive and difficult to access. Therefore, Google deprives its end users of a directly and easily accessible alternative, thus violating article Arts. 38, 27(3), 25 DSA.

European Digital Rights AISBL (EDRi) is a members-based, international non-profit organisation based in Brussels, properly constituted as in accordance with Belgian law. According to its statutory objectives, EDRi’s purpose is to promote, protect and uphold civil and human rights in the field of information and communication technology.

## **B. Legal Background**

### **I. Non-profiling-based recommender system, Art. 38 DSA**

Most major social media platforms rely on recommender systems, which are algorithms designed to determine the content that users encounter and the order in which it appears. For instance, when a user opens the YouTube app, the recommender system organises the videos displayed in their feed or on the landing page. These algorithms, by prioritising certain content over others, significantly influence which content is amplified as well as which content is deemed less relevant. Most recommender systems employed by Very Large Online Platforms (VLOPs) are based on user profiling.

Recognising the implications of profiling-based algorithms, the European Union introduced an obligation within Art. 38 DSA requiring VLOPs to provide an alternative recommender system that is not reliant on profiling. A non-profiling-based system ensures that the content a user sees, and the order in which it is displayed, is not determined by the collection, processing, and automated analysis of their personal data such as online behaviour.

### **II. Accessibility, Art. 27(3) DSA**

Article 27(3) DSA stipulates that if multiple options for recommender systems are available, online platform providers must offer a feature that allows users to select and modify their preferred option at any time. This feature must be “directly and easily accessible” in the section of the platform’s interface where content is primarily displayed.

The explicit reference in Article 38 DSA (“In addition to the requirements set out in Article 27”) makes it clear that this requirement also applies to the selection of the non-algorithmic option mandated by Article 38 DSA.

The setting must be accessible in a user-friendly manner, relative to the specific section of the online platform's interface where information is prioritised. User-friendliness aims to ensure that users can easily access the settings from the point where their interaction typically begins—such as the

top of a content window or news feed, where information is primarily displayed. It is not adequate if users must search through numerous settings to find the function.<sup>1</sup>

### III. Online interface design and organisation, Art. 25 DSA

Art. 25 DSA sets out requirements regarding a platform's online interface design, which – in essence – prohibits harmful design.

The DSA defines such harmful design (referred to as “Dark Patterns”) in Recital 67 as “practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions. Those practices can be used to persuade the recipients of the service to engage in unwanted behaviours or into undesired decisions which have negative consequences for them.

Providers of online platforms should therefore be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design, or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of online platforms, but which may not be in the recipients' interests, presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision.”

#### 1. What are harmful design patterns?

Harmful design patterns, often called manipulative design patterns, “dark” patterns or deceptive design patterns, are design patterns that unintentionally or intentionally confuse, manipulate, design or obstruct users from making their intended choices, choices not in their best interests, or choices that benefit the company over the user.

Harmful design patterns are a subset of design patterns, but unlike typical design patterns, which are intended to benefit users and create usable and accessible products, harmful design patterns have the opposite effect. Design patterns are “reusable/recurring components which designers use to solve common problems in user interface (UI) design,” such as navigation menus for webpages or mobile devices.<sup>2</sup>

According to harmful design scholars, harmful design can impact users in various important ways. Legal scholar and privacy expert Professor Ryan Calo has noted three major categories of harms

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1 The question of the accessibility of different recommender systems under the DSA has been subject to a court decision by the Amsterdam District Court in *Bits of Freedom v Meta*, where the court ruled that the interface design of Facebook and Instagram “run counter to the purpose of the DSA, namely to ensure that users genuinely have autonomy, freedom of choice, and control over how information is presented to them.” The court concluded that the way Meta designed its platforms constitutes a “serious infringement of the autonomy of Facebook and Instagram users.” The ruling is available at <https://www.bitsoffreedom.nl/wp-content/uploads/2025/10/20251002-vonnis-kort-geleding.pdf>, last accessed on 18 February 2026.

2 Interaction Design Foundation: “User Interface (UI) Design Patterns”, available at <https://www.interaction-design.org/literature/topics/ui-design-patterns>, last accessed on 14 April 2025.

within harmful design: privacy harms, economic harms, and autonomy harms<sup>3</sup>, while Mathur et al. similarly note privacy and economic harms, but also identify the ‘cognitive burden’ harmful design patterns place on users within decision-making.<sup>4</sup> Common harms from harmful design patterns can be:

- Financial loss (from difficult to unsubscribe or hidden subscription traps, unintended purchases ‘sneak into baskets’ or other harms),<sup>5</sup>
- Privacy harms (such as tricks that encourage consumers to disclose personal information, like email or phone numbers, or to accept cookies), or
- Cognitive burden (such as the design causing the consumer to expend unnecessary time, energy, or attention etc.).<sup>6</sup>

Whereas harmless design patterns are created to benefit users by centring design principles such as minimalism, consistency, efficiency within a product, minimal cognitive burden, or simplicity.<sup>7</sup> For example, online interfaces should reduce users’ cognitive load: “the amount of mental resources that is required to operate the system” and make it easy to use a product.<sup>8</sup> Ideally, design patterns reduce unnecessary friction and asymmetry and make it easier and faster for users to use products or engage in a particular task or action. Harmless or pro-user patterns can help limit or ease the cognitive burden of engaging with a product.

Harmful design patterns can be categorised as: defaults, sensory manipulation and or sludges, interface interference, pre-selection, hinder and mislead. Defaults: the UK’s Competition and Markets Authority (CMA) defines defaults as the designs, action, or choice architecture “[applying] a pre-defined setting that the consumer must take active steps to change.”<sup>9</sup>

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3 Ryan Calo: “Digital Market Manipulation”, available at [https://www.gwlr.org/wp-content/uploads/2014/10/Calo\\_82\\_41.pdf](https://www.gwlr.org/wp-content/uploads/2014/10/Calo_82_41.pdf), last accessed on 14 April 2025.

4 Arunesh Mathur et al: “What Makes a Dark Pattern Dark? Design Attributes, Normative Considerations, and Measurement Methods”, available at <https://arxiv.org/pdf/2101.04843.pdf>, last accessed on 14 April 2025.

5 While “designers” (e.g., visual designers or engineers) may be the individuals who actually implement harmful design patterns in practice, the term is a proxy for whomever or whatever is benefitting from their use. For a discussion of the user’s best interest see Gray, C. M., Kou, Y., Battles, B., Hoggatt, J., & Toombs, A. L.: “The Dark (Patterns) Side of UX Design”, in CHI’18: Proceedings of the 2018 CHI Conference on Human Factors in Computing Systems (Paper No. 534). New York, NY: ACM Press, available at <https://doi.org/10.1145/3173574.3174108>, last accessed on 14 April 2025. Also, see generally: <https://darkpatterns.uxp2.com>.

6 European Commission: “Behavioural study on unfair commercial practices in the digital environment. Dark patterns and manipulative personalisation : final report”, 2022, available at <https://op.europa.eu/en/publication-detail/-/publication/606365bc-d58b-11ec-a95f-01aa75ed71a1/language-en/format-PDF/source-257599418>, last accessed on 14 April 2025.

7 Jacob Nielsen: “10 Usability Heuristics for User Interface Design”, available at <https://www.nngroup.com/articles/ten-usability-heuristics>, last accessed on 14 April 2025.

8 Kathryn Whitenton: “Minimise Cognitive Load to Maximize Usability”, available at <https://www.nngroup.com/articles/minimize-cognitive-load>, last accessed on 14 April 2025.

9 Competition and Markets Authority (CMA): “Online Choice Architecture How digital design can harm competition and consumers”, April 2022, available at [https://assets.publishing.service.gov.uk/media/624c27c68fa8f527710aaf58/Online\\_choice\\_architecture\\_discussion\\_paper.pdf](https://assets.publishing.service.gov.uk/media/624c27c68fa8f527710aaf58/Online_choice_architecture_discussion_paper.pdf), last accessed on 14 April 2025.

- Sludges: the UK’s Competition and Markets Authority (CMA) defines sludges as designs, actions, or choice architecture “[that] makes it hard for consumers to act in their interests (such as adding friction to cancellation processes).”<sup>10</sup>
- Interface interference: the European Commission’s report “Behavioural study on unfair commercial practices in the digital environment: Dark patterns and manipulative personalisation” created a combined taxonomy of experts’ harmful design patterns definitions. Different examples of harmful design patterns had subsets of types and kinds. In this taxonomy, two subsets of interface interference represented the harmful design patterns and friction uncovered in YouTube:<sup>11</sup>
  - Hidden information or False Hierarchy: information visually obscured or ordered in a way to promote a specific option (Gray, Mathur)
  - Preselection (default): Preselected default option that is in the company’s interest (Bosch, Gray)
  - Hindering or obstruction: Gray et al. define obstruction as “impeding a task flow, making an interaction more difficult than it inherently needs to be with the intent to dissuade an action.”<sup>12</sup> The European Data Protection Board refers to this action as ‘hindering’, which it defines as “an obstruction or blocking of users in their process of getting informed or managing their data by making the action hard or impossible to achieve.”<sup>13</sup> Throughout the report, the EDPB gives examples of hindering such as ‘taking longer than necessary’, giving ‘misleading information’, and ‘creating a dead end’. Legal scholar Luisa Jarovsky defines ‘hinder’ as practices that “delay, hide, or make it difficult for the consumer to adopt privacy protective actions.”<sup>14</sup> Jarovsky’s definition goes further, defining hinder to include design practices that have: difficult rejection, difficult settings, difficult deletion, privacy invasive defaults, and hidden settings.

The question of harmful design patterns that reduce or impede the accessibility of different recommender systems under the DSA has also been subject to a recent court decision by the Amsterdam District Court in *Bits of Freedom v Meta*, where the court ruled that the interface designs of Facebook and Instagram “run counter to the purpose of the DSA, namely to ensure that users genuinely have autonomy, freedom of choice, and control over how information is presented to them.” The court concluded that the way Meta designed its platforms constitutes a “serious infringement of the autonomy of Facebook and Instagram users.”<sup>15</sup>

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10 European Commission, 2022.

11 Gray, C. M., Kou, Y., Battles, B., Hoggatt, J., & Toombs, A. L., 2018.

12 European Data Protection Board: “Guidelines 3/2022 on Dark patterns in social media platform interfaces: How to recognise and avoid them”, March 2022, available at [https://edpb.europa.eu/system/files/2022-03/edpb\\_03-2022\\_guidelines\\_on\\_dark\\_patterns\\_in\\_social\\_media\\_platform\\_interfaces\\_en.pdf](https://edpb.europa.eu/system/files/2022-03/edpb_03-2022_guidelines_on_dark_patterns_in_social_media_platform_interfaces_en.pdf), last accessed on 14 April 2025.

13 Luisa Jarovsky: “Dark Patterns in Personal Data Collection: Definition, Taxonomy and Lawfulness”, 1 March 2022, at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4048582](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4048582), last accessed on 14 April 2025.

14 Vulnerable refers to older users or those navigating the internet in a second, third or fourth language.

15 *Bits of Freedom v Meta*, Rechtsbank Amsterdam, Zaaknummer: C/13/774725 / KG ZA 25-687 MK/JD, available at <https://www.bitsoffreedom.nl/wp-content/uploads/2025/10/20251002-vonnis-kort-geding.pdf>, last accessed on 18 February 2026.

## 2. Harmful design in Context for This Response

While a significant portion of harmful design patterns definitions are contextualised for financial harmful design, a joint paper between the UK regulators, the ICO and the CMA, has shown that these harmful design patterns types can be easily reinterpreted in data protection and privacy contexts alongside financial or trade context and regulation. In this joint paper, the ICO described how harmful design nudges and sludges can “create asymmetric friction between different choices discourages users from more conscious consideration of their decisions, particularly in situations where they wish to access content quickly or otherwise do not have the time or expertise to go through more detailed settings.”<sup>16</sup>

A European Commission report<sup>17</sup> highlights the disproportionate effects of harmful design patterns on vulnerable users, who were found to make inconsistent choices 50.89% of the time compared to 47.24% for average users. Additionally, users with prior knowledge of harmful design patterns or experience in user interface design were better equipped to identify and navigate these barriers. This underscores the inequitable impact of such patterns, further illustrating how YouTube’s design fails to align with the DSA’s goal of empowering users with meaningful, accessible choices.

Lastly, it is important to emphasise that harmful design patterns are not solely identifiable by the ‘exact’ visual elements or the kind of graphical user interface, but rather by the (intended) effect as described in Art. 25 DSA. YouTube benefits from users engaging with its profiling-based recommender system, which captures attention and maximises time spent on the platform. More time on the platform means more ads seen, directly boosting Google’s revenue. In contrast, a recommendation system that is not based on profiling could reduce user engagement and, consequently, ad revenue. While Google is required by the DSA to introduce an option not based on profiling for its on-line platforms, the company has a clear commercial incentive to keep users on its algorithmic feed instead. This could motivate Google to employ design patterns that subtly discourage users from switching away from the profiling-based algorithm and to push them back to it where they did make that choice.

## C. Evidence

In compliance with Art. 38 DSA, VLOPs began implementing an alternative non-algorithmic timeline in the summer of 2023. While some VLOPs complied by introducing a chronological feed of the accounts someone is following as an alternative to the profiling-based recommender system, YouTube decided to artificially bind its alternative recommender system to another important platform functionality: YouTube History. The YouTube History is a functionality that saves a list of users’ previously watched videos and lets them revisit and find back things they have watched.

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16 Digital Regulation Cooperation Forum: “Harmful design in digital markets: How Online Choice Architecture practices can undermine consumer choice and control over personal information”, available at <https://www.drcof.org.uk/siteassets/drcof/pdf-files/harmful-design-in-digital-markets-ico-cma-joint-position-paper.pdf>, last accessed on 14 April 2025.

17 European Commission, 2022.

In February 2026, we analysed YouTube’s web interface and mobile apps, along with the user journey people have to click through in order to access the functions that are mandatory to be provided by VLOPs under the DSA.

Based on our research, we found that YouTube users wishing to access the recommender system that is not based on profiling, can only do so by switching off YouTube History and losing all historical watching data in their Google account.

During account setup (when a user creates a new YouTube account), YouTube presents people with various choices about data use, including the option to not save YouTube History, but nowhere do the setup screens mention that this is the only way to access the alternative recommender system that is not based on profiling, or that such an alternative exists at all.

Instead, YouTube’s account setup screen discourages users to access the alternative recommender system by reminding them that switching off YouTube History will also negatively impact “tailored recommendations when using (...) other Google products such as articles, apps, YouTube homepage recommendations,” etc. In other words, in order to access an alternative recommender system that is not based on profiling, as prescribed by Article 38 DSA, YouTube users must give up not only their YouTube History but a whole range of other, entirely unrelated functions across other Google platforms that they might use.

Relatedly, alongside the user interface design, the user experience design and the user flow of opting out of YouTube’s profiling-based recommender systems which creates friction and harmful designs throughout the user flows, the labelling and descriptions of YouTube’s features within these flows are also harmful design patterns: A lack of clear descriptions and descriptive labels for user interfaces and products can confuse users. Similar to *Bits of Freedom v Meta*<sup>18</sup>, in which the naming of Facebook’s non-profiling recommender system was labelled “Feeds” and offered no further description defining or explaining to users what “Feeds” were, the naming and lack of descriptions in YouTube’s “Turn off Watch History” flow do not adequately explain or contextualise to users the entirety of what the flow achieves.

Our evidence shows that YouTube’s user flow does not explain that this flow will also effect a user’s recommender system by removing profiling aspects. It does mention that it might impact how YouTube provides the user recommendations, but this is not the same thing. If the user flow, user interface design and user experience design of YouTube’s “Turn watch off history” is what provides an alternative recommender system that is not based on profiling, then the system needs to be labelled according for users to meaningfully understand what that flow does and can accomplish. If the flow does not clearly or adequately explain what it does, then a user cannot enact meaningful agency, autonomy or decision making in regards to this flow or to accessing a non-profiling feed.

Similar to the account setup phase, in order to select a recommender system other than the profiling-based default, users with existing accounts must already know that this is possible by switching off YouTube History because nowhere does the user interface inform users about the option. For

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18 *Bits of Freedom v Meta*, Rechtsbank Amsterdam, Zaaknummer: C/13/774725 / KG ZA 25-687 MK/JD, available at <https://www.bitsoffreedom.nl/wp-content/uploads/2025/10/20251002-vonnis-kort-geeding.pdf>, last accessed on 18 February 2026.

those users who do know, the process then still requires a minimum of five steps via the YouTube account settings, none of which mentions the fact that a non-profiling-based recommender system even exists on YouTube. Again, some of those steps include language designed to discourage users from continuing.

These are the steps that need to be taken for users with existing accounts:

#### Turning off YouTube's Profiling

##### Recommender System: Turn off History

- Visit YouTube Website
- Click on Profile and select "Your data in YouTube"
- Click "turn off" button under YouTube History
- Click on gray arrow near the blue circle with a check mark next to "On" underneath "YouTube Watch History"
- In the pop up interstitial, underneath "Pause YouTube History", click the blue button "Pause"
- User is sent to YouTube homepage, with the conformation box that says "Your Watch History is Off" with a large gray button underneath labeled "settings"

#### Turn on YouTube Watch History

- Visit YouTube Website, and user is greeted by a prominent box labeled "Make YouTube your own" with two gray buttons underneath labeled "Leave history off" and "Turn History on"
- User clicks on "Turn History on"
- A interstitial pops up, labeled "Turn on watch history" with buttons labeled "Cancel" (in black) and "Turn on" (in blue).

All web interface screenshots can be found as additional evidence in the Annex.

We also analysed the user journey in YouTube's mobile app for Android, which requires users to go through not five but seven steps to switch off the profiling-based recommender system. The wording slightly varies from the YouTube web interface but the functioning is rather similar: nowhere does the interface mention an option or even the existence of a recommender system that is not based on profiling on YouTube. Instead, users need to deactivate YouTube History, which is well hidden inside the settings menu and the action to "pause" it is accompanied by the same warning screen as in the web interface.

#### Turning off YouTube's Profiling

##### Recommender System: Turn off History Mobile

- Open YouTube App
- Click on Profile and select "Settings"
- Click "History & privacy"
- Click on "Manage all activity"
- Click on "Saving your watch history"
- Under "YouTube History", click button "TURN OFF"
- Under "Pause YouTube History", click the blue button "Pause"

#### Turn on YouTube Watch History Mobile

- Open YouTube app, and user is greeted by a prominent box labeled "Your watch history is off" with one gray button underneath labeled "Update setting"
- User clicks "Update setting"
- A interstitial pops up, labeled "Turn on watch history?" with buttons labeled "Cancel" (in blue) and "Turn on" (in blue)

All mobile app screenshots can be found as additional evidence in the Annex.

Note how, for users who happen to know that switching off YouTube History will also provide them with an alternative recommender system, the setting is only ever “paused,” but never switched off, giving it an impression of inherent temporariness.

Once a user has succeeded to find their way through that jungle of settings and scare screens, YouTube’s landing page still does not present them with an alternative recommender system but instead with a blank screen that prominently and permanently nudges them to switch the profiling back on.

In contrast, turning the profiling-based default recommender system back on requires only two simple clicks that are prominently and permanently accessible on the YouTube landing page.

Interestingly, YouTube clearly shows that a recommender system not based on profiling is possible: Once a user who has opted to turn off YouTube History plays a video, that video is accompanied by recommendations in the playlist bar that are (presumably) not based on profiling and are shown on the right-hand side in the web interface and underneath in the Android app.

## **D. Legal Assessment**

### **I. Respondent as a provider of a very large online platform**

The respondent is subject to the obligations under Art. 38 DSA in conjunction with Art. 27 DSA.

The provision applies to providers of Very Large Online Platforms and Very Large Online Search Engines. By its decision of 25 April 2023, the Commission designated YouTube as such platforms in accordance with Art. 33(4) DSA.<sup>19</sup>

### **II. YouTube’s harmful design as a violation of the provisions of the DSA**

Google violates Art. 38 DSA in conjunction with Art. 27 (3) and Art. 25 (1) DSA.

YouTube has established an algorithmic feed based on profiling as the default, and while alternative recommender systems for videos seem to be available, they are not easily accessible but instead buried deeply in the YouTube settings, both on the web interface and—even deeper—on the YouTube mobile app for Android.

Google’s design choices hinder direct and easy accessibility by using harmful design patterns. These patterns introduce unnecessary friction for users, limiting their choice and agency. This includes:

- Hiding the existence of a non-profiling recommender system setting from YouTube users;

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<sup>19</sup> European Commission: “Designation decisions for the first set of Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs)”, available at <https://digital-strategy.ec.europa.eu/en/library/designation-decisions-first-set-very-large-online-platforms-vlops-and-very-large-online-search>, last accessed on 14 April 2025.

- Unnecessarily bundling this option with another popular functionality—the YouTube History;
- Removing any and all recommendations from the YouTube landing page of users who chose the non-profiling recommender system; and
- Using unclear or misleading language as part of the YouTube interface to make it unnecessarily difficult for users to understand what the option does.

Although the possibility to set the non-profiling recommender system as the default is not directly and explicitly required in the text of the DSA, it can be derived from a reasonable interpretation of the obligations in Art. 27(3) DSA and the prohibition of harmful design patterns in Art. 25 DSA.

#### **a) Art. 27(3) DSA**

YouTube’s design is in violation of Art. 27(3) DSA, which requires that alternative recommender systems must be “directly and easily accessible from the specific section of the online platform’s online interface where the information is being prioritised.”

From the evidence we collected and outlined above, it becomes clear that on YouTube this is not the case. Google’s design on YouTube involves too many intermediate steps and the process is lengthy and counter-intuitive. Users wishing to access a recommender system that is not based on profiling as required by Art. 38 DSA, need to know that this option exists, and then navigate through five (web interface) or even seven (mobile app) levels of submenus in order to reach the option. None of the submenus’ names or descriptions give any indication that they lead to that option.

In addition, Google chose to not provide the non-profiling recommender system prescribed by Art. 38 DSA as a stand-alone option but to make it depended on its popular YouTube History functionality. Users wishing to use the alternative option are therefore forced to also switch off their entire YouTube History, although that is not technically necessary. YouTube’s design choices therefore make it actively and unnecessarily difficult for users to access the non-profiling recommender system.

Direct and easy access, as required by Art. 27(3) DSA, should minimise the number of actions needed to reach a user’s preferred feed. Google could have chosen to add a switch between profiling-based and non-profiling recommendation right into the first menu level, or even more intuitively: As a tab or drop-down option at the top of the landing page, a solution implemented by other VLOPs such as LinkedIn.

YouTube’s design therefore violates Art. 27(3) DSA, in particular regarding the “direct” and “easy” requirements.

#### **b) Art. 25 DSA**

The way Google has implemented the default algorithmic recommender system on YouTube constitutes a harmful design pattern under Article 25 DSA as it creates unnecessary friction and limits user control over their content preferences. As defined above, harmful design patterns involve fea-

tures that manipulate or restrict user decisions in a way that undermines user agency, often through mechanisms like “interface interference,” “pre-selection,” “defaults,” or “difficult settings.” In this case, the algorithmic recommender system is not only set as the default, but YouTube also makes it unnecessarily difficult for users to find—or even know about—the option that is not based on profiling.

Article 25(1) DSA states that providers of online platforms “shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.”

And that is exactly what YouTube’s interface does: By hiding the option to use an alternative recommender system deep in its menu structure and by bundling it with another, unrelated feature—YouTube History—Google actively impairs users’ ability to make a free and informed decision with regard to how videos on YouTube are being recommended to them. Users are not only not informed but actively misled in order to make it as unlikely as possible that any substantial number of users would find and use the alternative recommender system prescribed by Art. 38 DSA.

It should not be significantly harder to access the alternative to the profiling-based recommender system;<sup>20</sup> to ensure user agency and protect user consent, all such options should be treated similarly in terms of visual design, access, and hierarchy. Instead, the current setup on YouTube creates a clear asymmetry between the default and the alternative options, which are buried in additional navigation layers. While it is common for settings to be a few clicks away in an app’s architecture or interface, YouTube’s design separates the alternative recommender system into an obscure section, creating an imbalance that strongly favours the default option. This asymmetry constitutes “sludge,” “hindering,” “obstruction” and “interface interference,” as users face added complexity in accessing non-algorithmic options. By comparison, the default recommendation system requires no action, emphasising the disparity.

Marginalised, vulnerable, or disabled users are especially impacted by this added friction, as even minor interface barriers can significantly hinder accessibility.

Google also chose to employ selective language on YouTube’s interface, where the profiling-based recommendation default is consistently presented as more desirable and the alternative option as inferior:

- **Turning on** profiling-based recommendation (and thereby YouTube History) is being described to “make your recently-watched videos on YouTube easy to find and improve recommendations in YouTube and other Google products.”
- **Turning off** profiling-based recommendation (and thereby YouTube History), if users were to find this possibility, is being accompanied by the pop-up warning that it “may limit or disable more personalised experiences across Google services.”

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20 Regarding the example of subscription cancellation, see for example “How companies make it difficult to unsubscribe”, available at <https://pudding.cool/2023/05/dark-patterns>, last accessed on 14 April 2025.

Neither action is accompanied by any information about the availability of an alternative recommender system not based on profiling.

Art. 25(3) DSA empowers the European Commission to issue guidelines with regard to specific practices, notably that of providers “repeatedly requesting that the recipient of the service make a choice where that choice has already been made.” The explicit mention of this practice in the provision suggests legislators considered that repeatedly requesting users to make a choice they already made to be fundamentally incompatible with Art. 25’s prohibition of deceptive or manipulative on-line platform interfaces.

As described in our evidence, we found that Google has prominently placed a permanently visible nudge to reactivate the profiling default right in the middle of YouTube’s landing page of users who have selected the non-profiling recommender system. This design undermines the user’s choice and autonomy by repeatedly—as in every time YouTube is being used—they are presented with that choice again, overriding previously and unambiguously given user preferences.

What is more, contrary to when users wish to select the non-profiling recommendation, Google makes it incredibly easy and quick for YouTube users to give in to the nudging and go back to the profiling default preferred by the VLOP.

### **c) Art. 38 DSA**

The evidence we collected shows that while YouTube does seem to offer a recommender system that is not based on profiling, its recommendations are only visible alongside a video that is currently being played by the given user. The crucial place where recommendations are not being shown is YouTube’s landing page: As soon as a user makes the choice for the alternative recommendation, their landing page goes blank and only contains the nudging direct access to change their choice back to YouTube profiling-based system.

This design choice by Google makes the alternative system visually appear substantially less attractive and artificially reduces the ability of users to find interesting content on YouTube.

Google could have chosen to fill the YouTube landing page with a curated selection of popular videos that is not based on profiling. It could also have filled it with videos being most watched by other users, either currently, or in the past hour, day, or week. Ideally, Google could also provide an easily accessible switch to users enabling them to select either of those options.

The fact that Google decided to remove video recommendations from the landing page entirely for users who prefer to not see recommendations based on profiling can be seen as a violation of Art. 38 DSA, as the recommender systems which is not based on profiling is not provided “for each of their recommender systems.” The one on the landing page is missing.

### **d) Art. 65(2) DSA**

As this case involves a potential violation of Section 5, Chapter III, we propose requesting the European Commission, under Art. 65(2) DSA, to examine the matter, as there are indications that the respondent, as a VLOP, may have breached Art. 38 in conjunction with Art. 27(3) and Art. 25

DSA. The explicit reference in Art. 38 DSA underscores that the provision of an alternative which is not based on profiling is only adequate if its accessibility aligns with the requirements set out in Art. 27 and Art. 25 DSA.

## **E. Suggestions**

The complainants suggest that Google changes its interface designs. Google has to allow for true user agency, choice, and decision-making for users being able to select their true preference for all places where recommendation algorithms appear across YouTube. Opting for the non-profiling-based system should be a real and informed choice, and it should not unnecessarily deprive users of unrelated functionality such as YouTube History. This requires the implementation of the following suggestions on the YouTube web interface and in its mobile apps.

### **1. Make recommender system choice directly accessible**

In order to comply with Article 27(3) DSA, Google should make the choice of recommender system directly accessible on the YouTube landing page. This could be in the form of small dropdown box underneath or next to the search bar, or less optimally as part of the first menu level.

Google should also unbundle this choice from the YouTube History settings, so that people can choose independently whether they would like to save their watch history without making it automatically the basis for video recommendations across YouTube and other Google services.

This selection should always be “sticky,” i.e. once taken it should apply permanently and across devices and apps until the user changes their preference.

### **2. Provide non-profiling recommendations on the landing page**

In order to comply with Art. 38 DSA, Google should enable recommendations on the YouTube landing page also for users who selected the non-profiling-based recommender system. The recommendations could for example be based on a pre-curated list of popular videos, or on a selection of videos most watched by other users—either currently, or in the past hour, day, or week.

Google could even provide actual added value by offering an easily accessible switch to users that allows them to select their preferred way of receiving recommendations that are not based on profiling.

### **3. Stop nudging users back to company preferences**

In order to comply with Article 25(3) DSA, Google should remove the constant reminder for people to switch back to the profiling-based recommendations preferred by the company. A neutral switch as described in section E.1 is entirely sufficient.

## 4. Use clear and unambiguous language

The language, naming, and descriptions of settings should be clear and legible. Users should be able to find the recommendation system settings and understand what the setting choices are via understandable and legible names and descriptions.

An example of clear language, naming and legible descriptions with settings easier to find and with sticky setting choices, can be seen on Microsoft’s online platform LinkedIn (as of February 18th, 2026), which provides users with the clear choice at the top of the feed for a “Feed View” either based on “Most relevant first” or “Most recent first.”

Another example is the way users can permanently curate their content on the open source video platform Peertube<sup>21</sup>: While Peertube does not offer any profiling-based recommender system, the interface clearly distinguishes between options to view video content based on what is:

1. Recently added (to this specific PeerTube server)
2. “Trending” (i.e. most popular among all users)
3. Most “liked”

Peertube features many more filtering and sorting options that provide fine-grained control of what users wish to see. Peertube has no steering or nudging that favours any particular way of recommending content and can thereby serve as industry standard for DSA-compliant video recommendations.

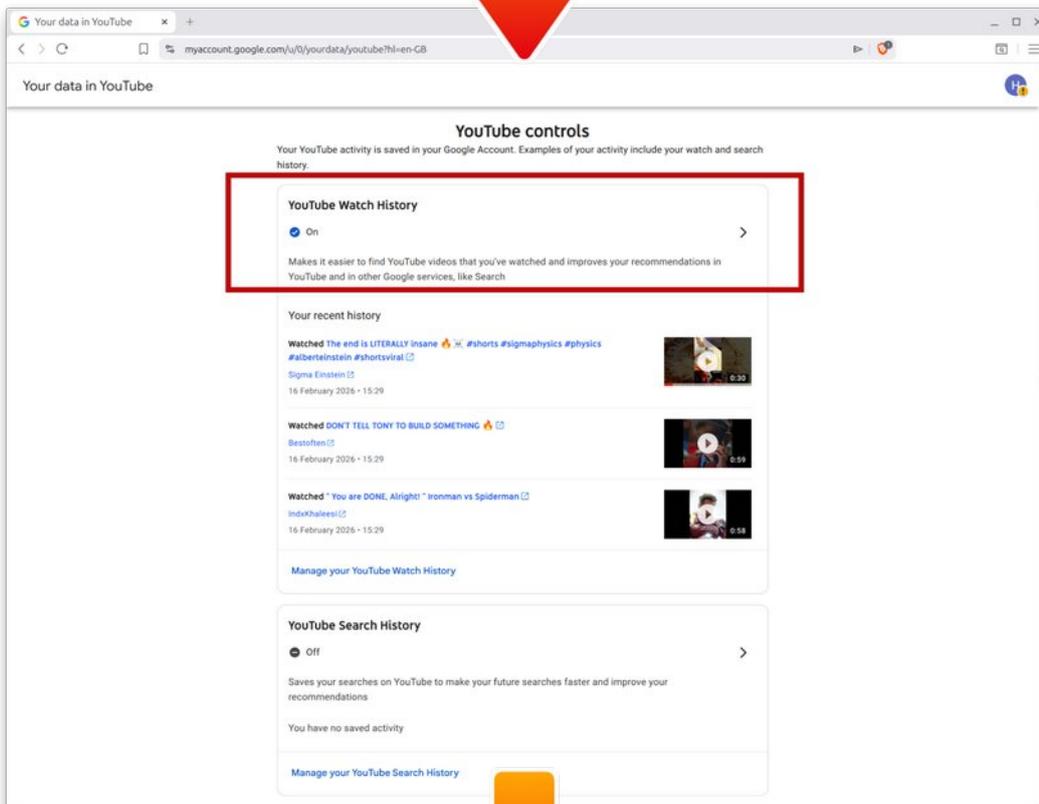
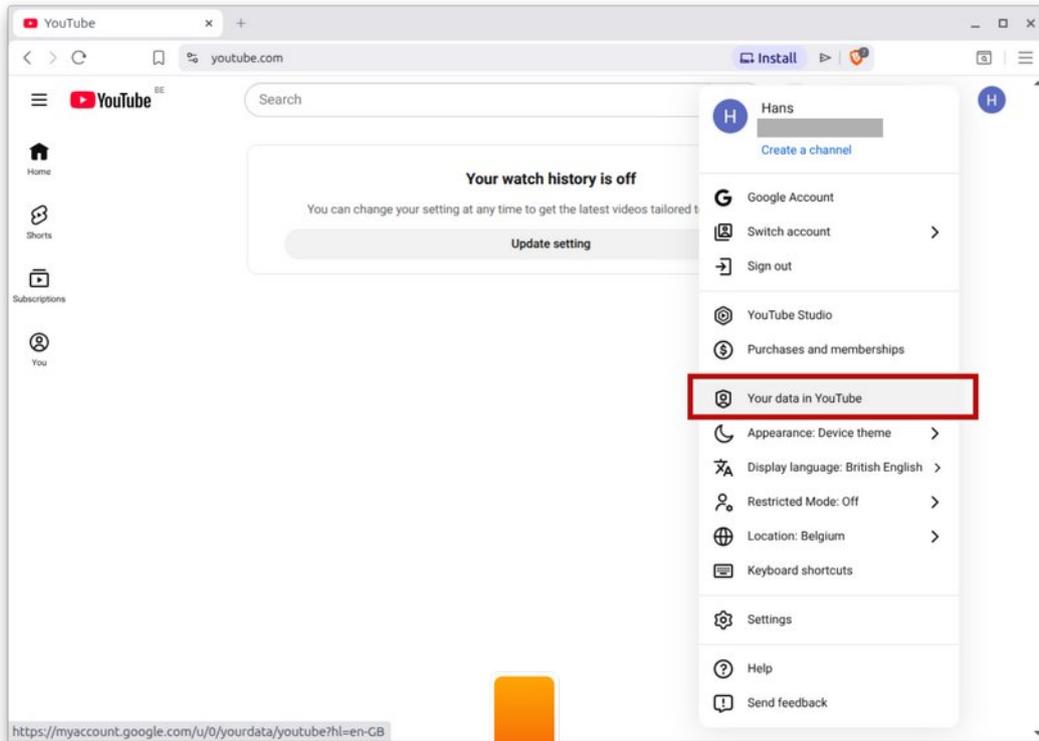
The suggestions in this chapter are a mere starting point to help create more pro-user choice architecture that centres user agency and autonomy in compliance with the DSA. However, many more changes could be made to better support users and promote consent, legibility, understanding, and accessibility within Very Large Online Platforms in general and YouTube in particular.

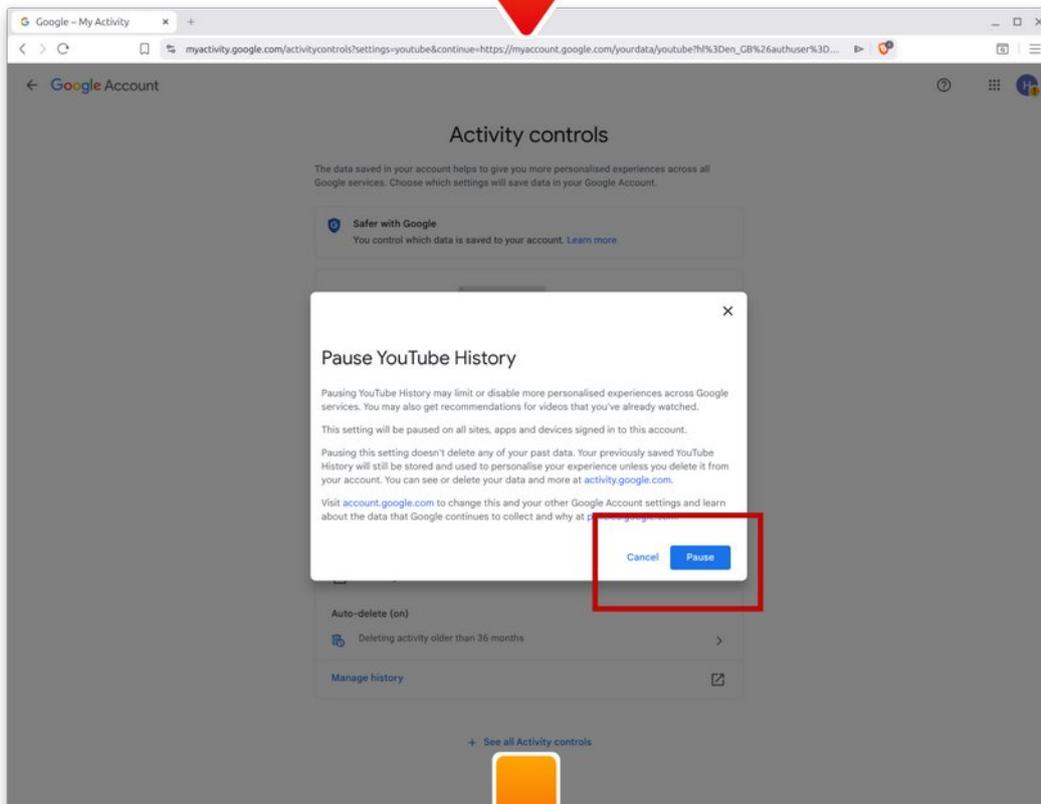
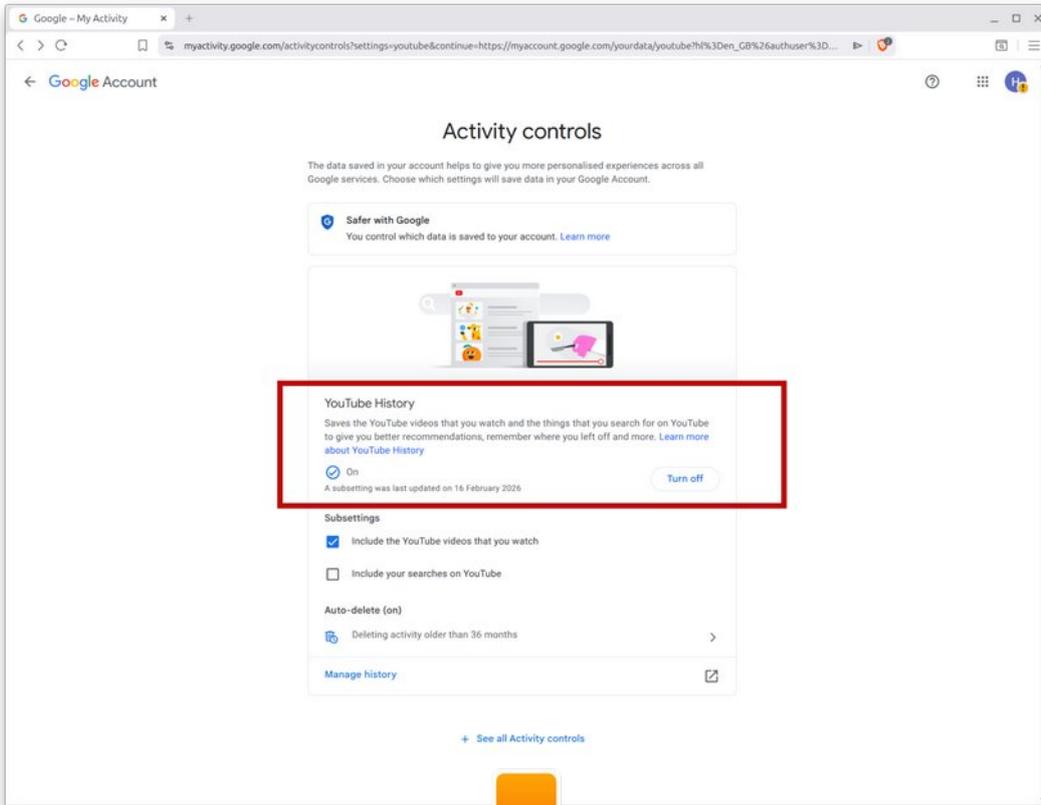
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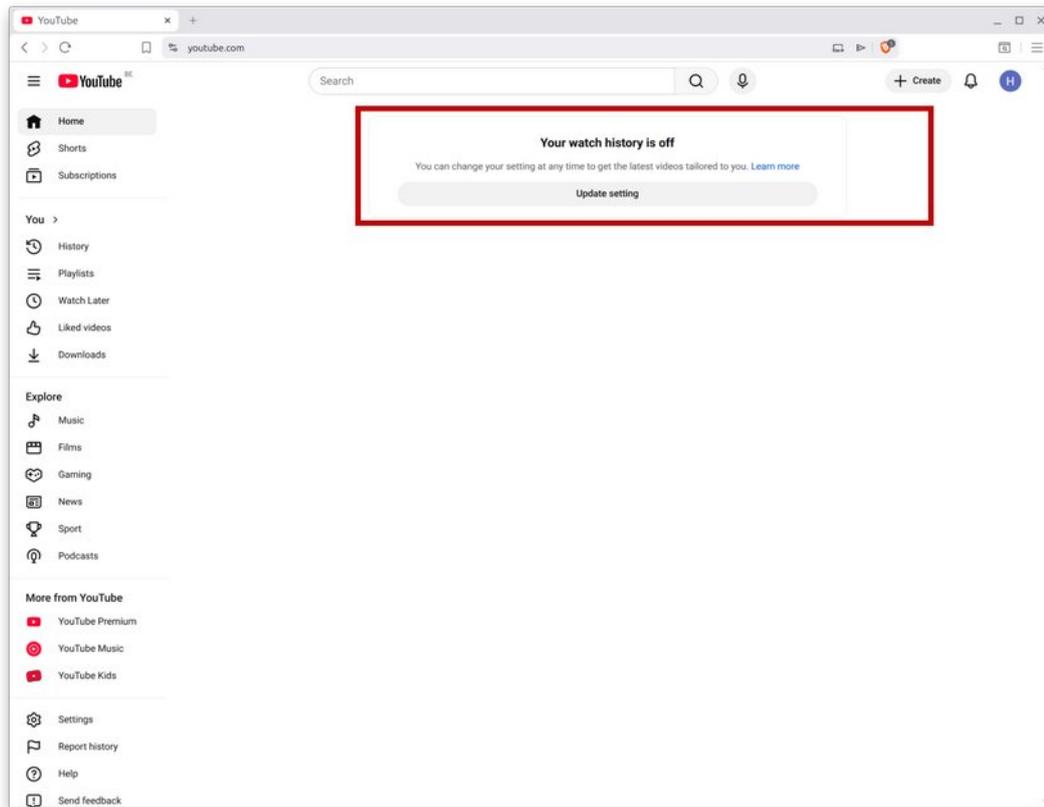
21 PeerTube is a free and open-source, decentralized, ActivityPub federated video platform. It can use peer-to-peer technology to reduce load on individual servers when videos get popular. Started in 2017, PeerTube is now supported by the French non-profit organisation Framasoft. More details at <https://joinpeertube.org>, last accessed on 18 February 2026.

# F. Annex

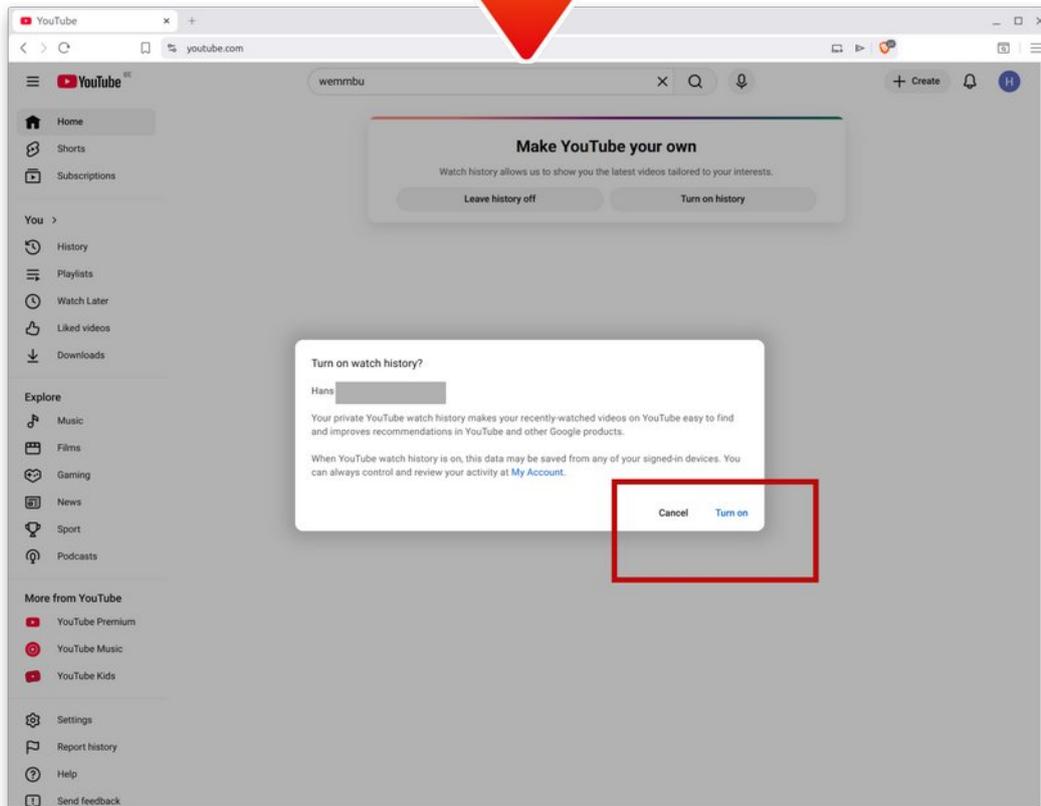
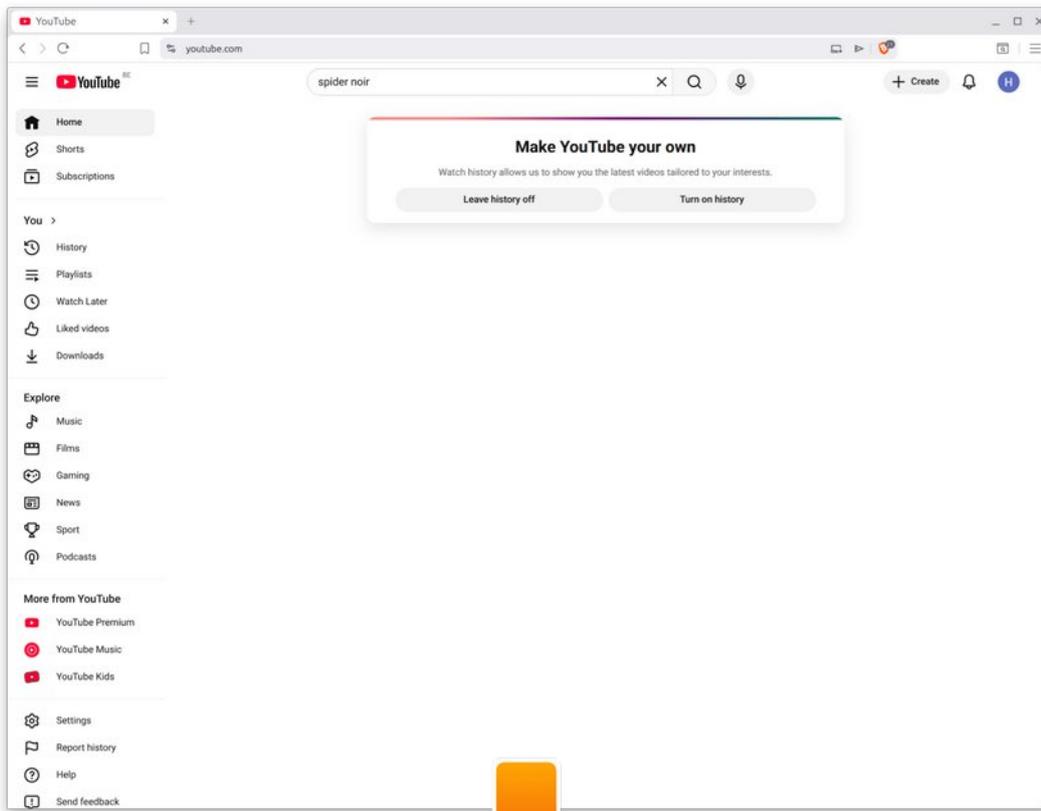
User journey to switch off the profiling-based recommender system on YouTube Web:



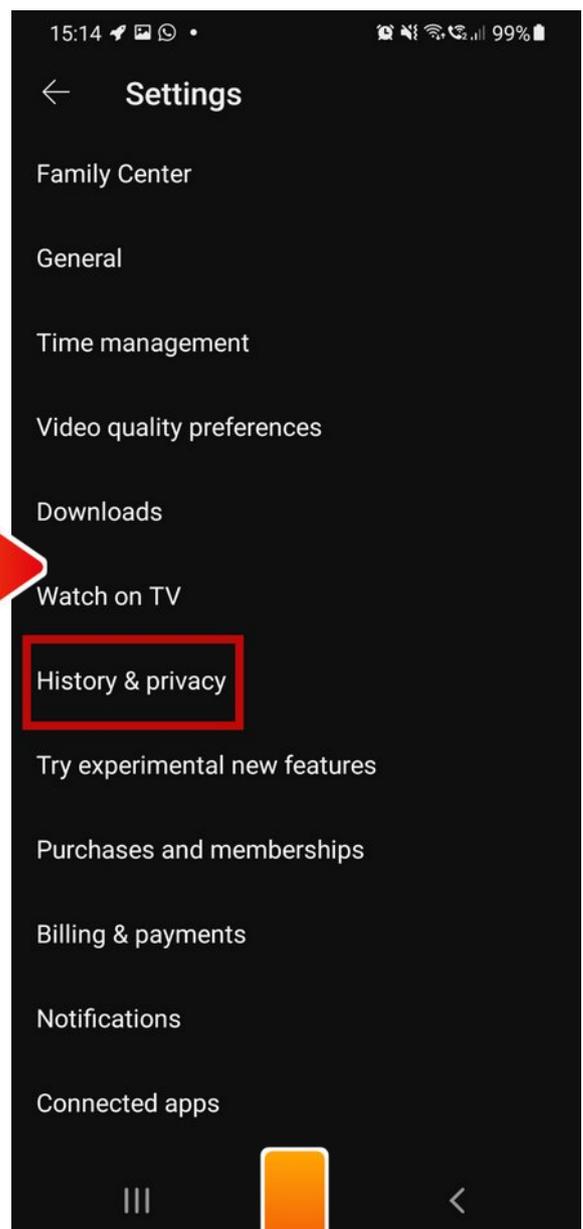
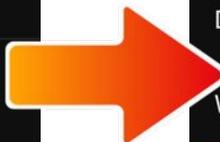
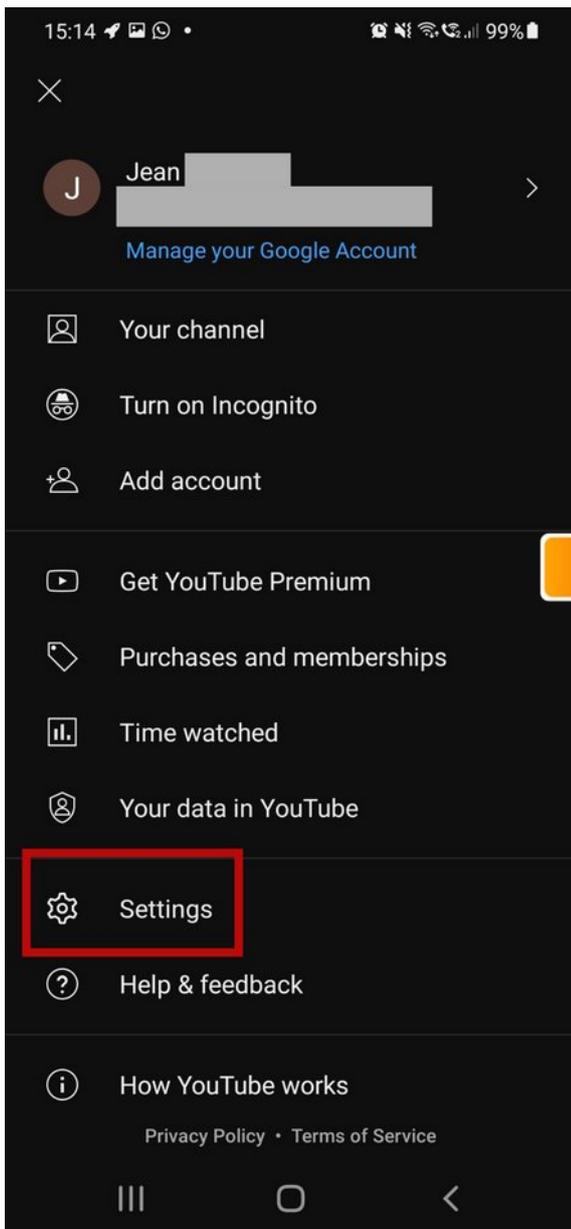


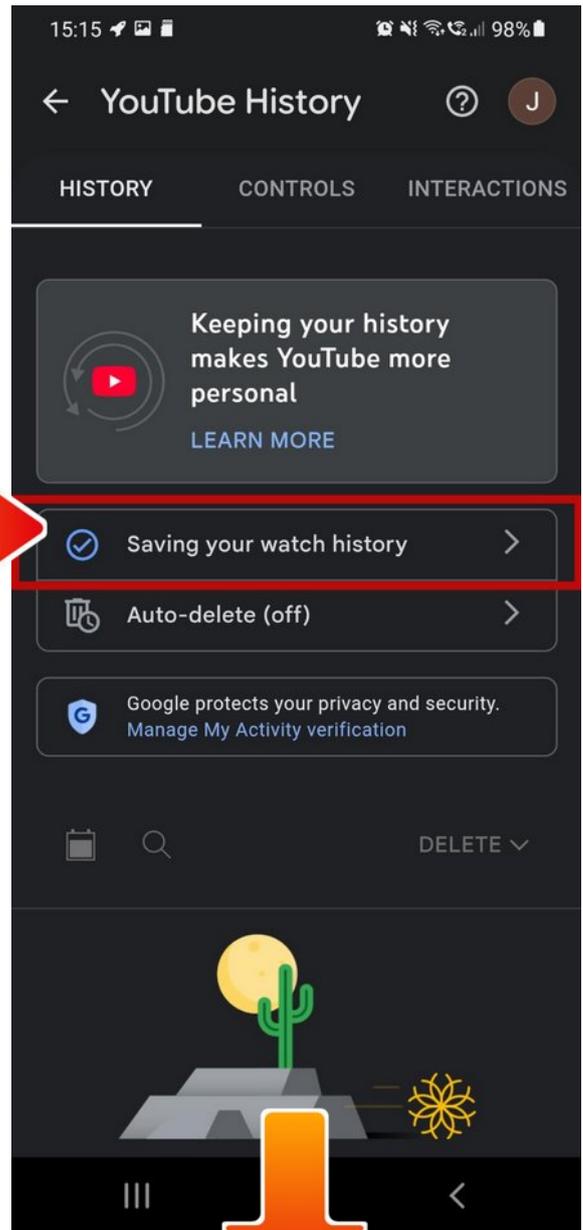
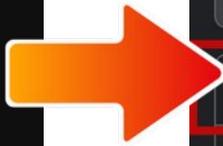
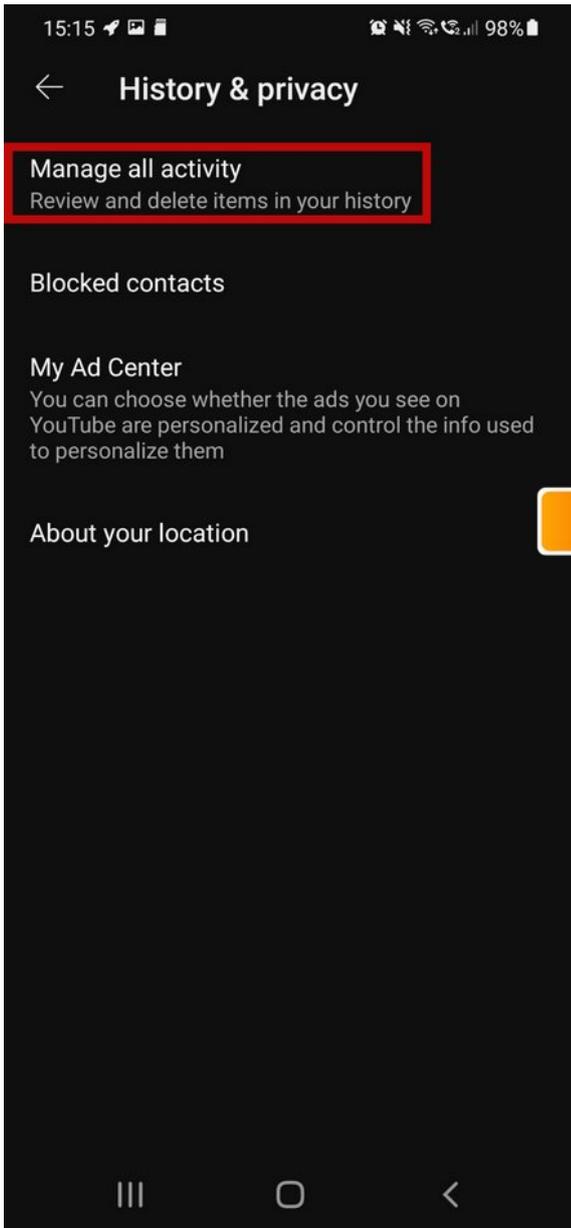


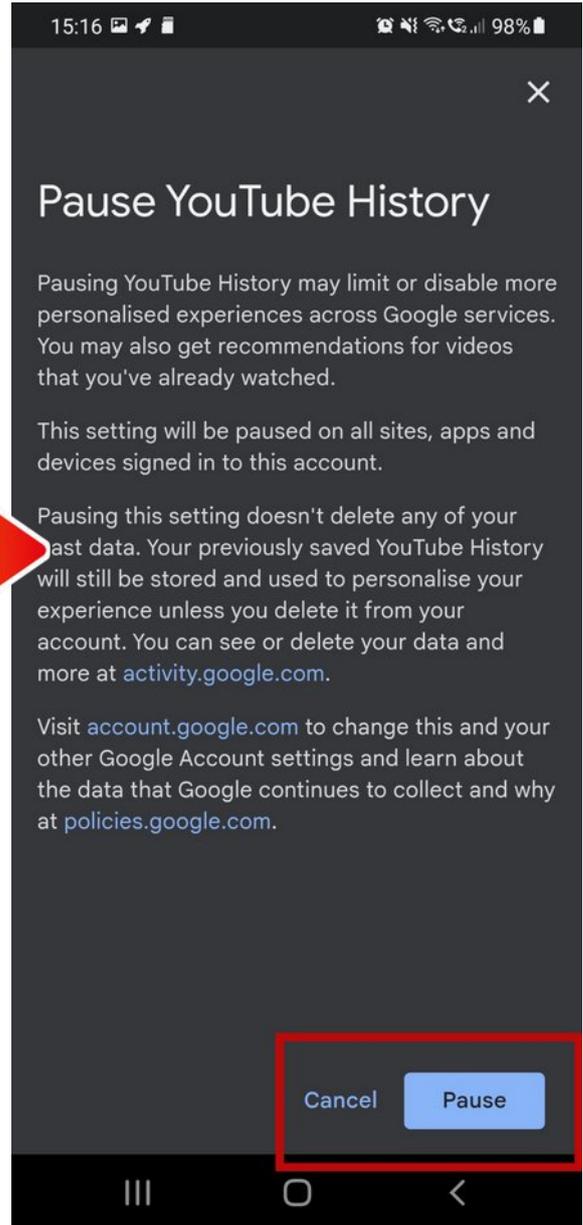
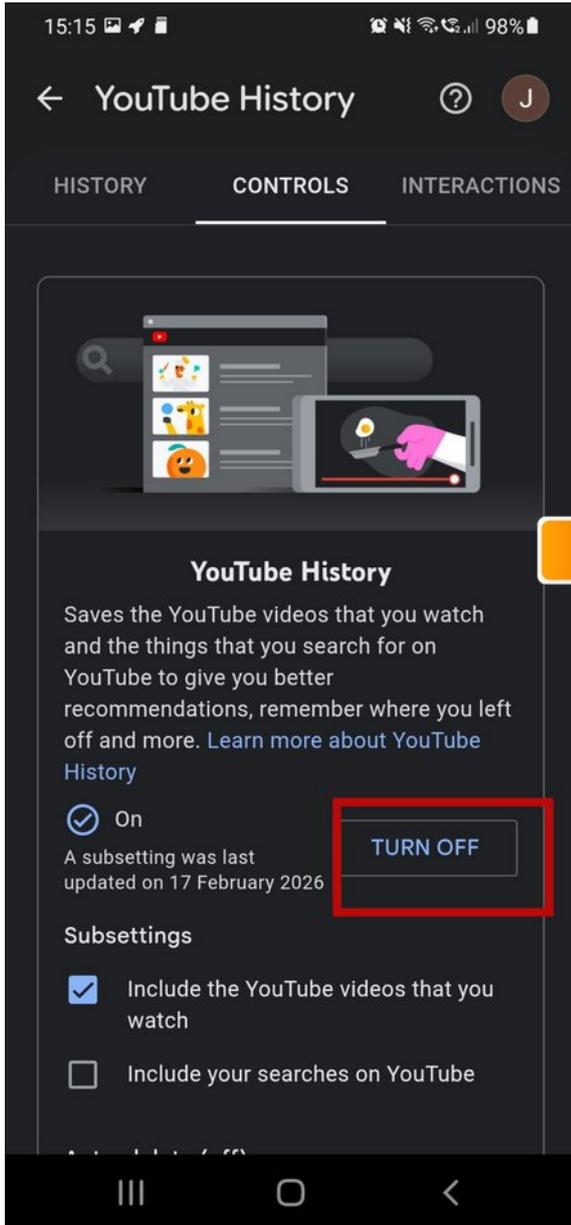
# User journey to switch back on the profiling-based recommender system on YouTube Web:



User journey to switch off the profiling-based recommender system on YouTube Mobile:







User journey to switch back on the profiling-based recommender system on YouTube Mobile:

