

# CONSENT

## Is A Grant Of Permission

### Elements of valid consent\*

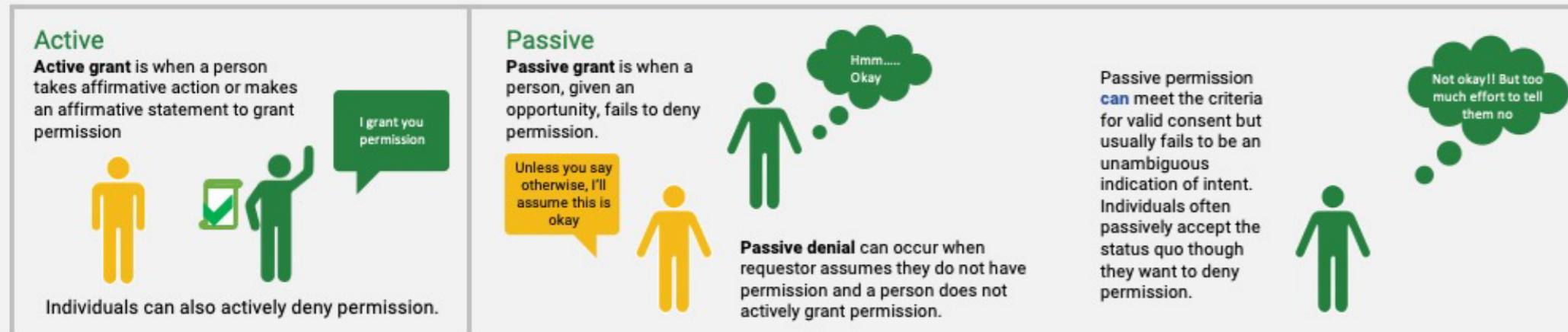
**Freely Given** Unencumbered by decision influences, whether within the control of the organization seeking permission or outside

**Specific** Limited in scope

**Informed** The scope and implications are understandable and known to the grantor

**Unambiguous** Clear indication of intent by the grantor

### ACTIVE VERSUS PASSIVE PERMISSION OF PERMISSION



**Deceptive/Manipulative Designs (sometimes called Dark Patterns)**  
Often involve use of psychological techniques to nudge, manipulate, coerce, browbeat or otherwise claim that permission has been obtained. Usually takes advantage of or increases imbalances of time, information or power between the grantee and the potential grantor of permission.

### Related Terms

You may hear these term related to consent, sometimes used inarticulately. For clarity

- Explicit Consent** – a form of active grant that involves specific affirmative action on the part of the grantor (e.g. a person says “You may sell my pictures”)
- Implicit Consent** – a form of active grant that involves affirmative action on the part of the grantor, but heavily influenced by context (e.g. a person uploads a picture of themselves to a forum for free stock photos)
- Implied Consent** – a form of passive grant where the context suggests permission (e.g. a celebrity walking the red carpet to a premiere of a movie)
- Opt-In** – a form of active grant that involves approval of a request for permission
- Opt-Out** – a form of active denial that involves denial of an assumption of permission
- Double Opt-In** – a form of active grant that involves a confirmation of a prior grant of permission. Double-Opt-Ins often serve two purposes, to confirm a prior grant of permission and to validate something, such as the grantor’s access to an email address.

### Do you really need to seek consent?

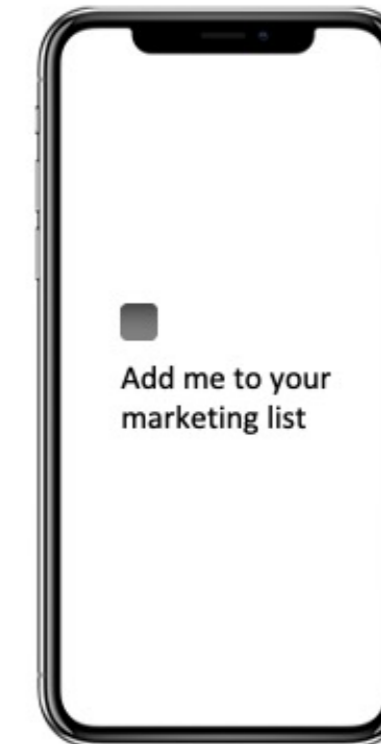
Often times consent is sought when it's not needed

- You're asking a **preference** not seeking permission (see panel at right)
- You want the person to **acknowledge** your privacy notice (see panel below)
- You have a obligation to comply with the law, such as filing tax information
- You have an obligation to the person, such as fulfilling a contract
- You have a legitimate interest in your action, such as preventing fraud

### Consent versus Preference

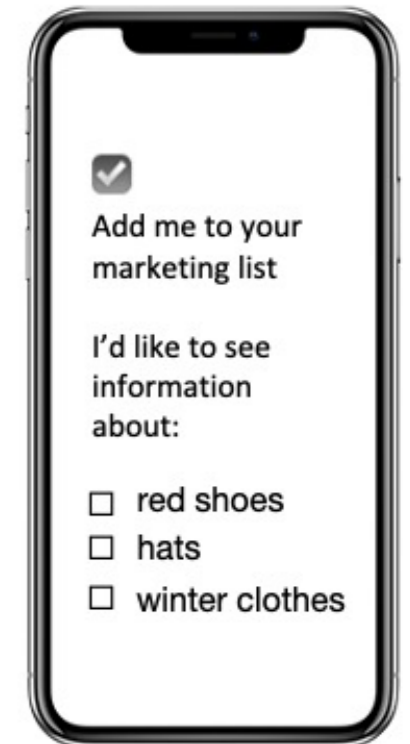
When someone gives you *permission* to do something, they have *consented* for you to do that thing. When someone states a preference they are just giving an indication of their desired course of action.

#### Consent



This App is asking for permission to send marketing messages to the user.

#### Preference

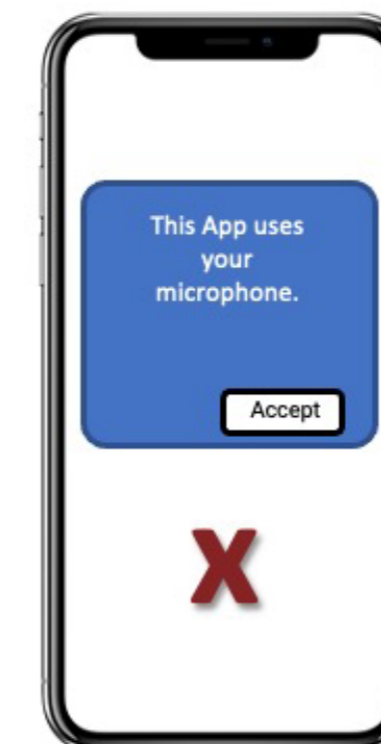


This App is allowing the user to state a desired preference for the types of marketing messages. It doesn't mean the organization can't send messages about blue shoes, but the user prefers information about red shoes.

### Consent versus Acknowledgement

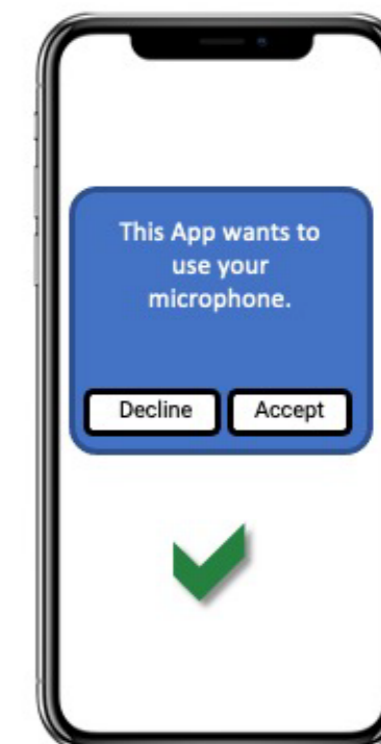
When you require *permission* to do something, you must obtain *consent* to do that thing. If you are **NOT** seeking permission, you are not seeking consent – you are seeking *acknowledgment* of your actions.

#### Invalid Consent



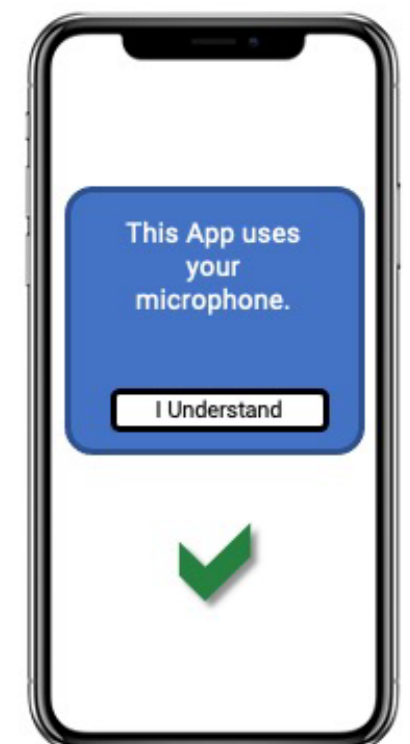
This App is informing the user that it is collecting information from a microphone. However, there is no choice here. The user is not presented an option to decline. Presenting them an I Accept button would not be consent.

#### Consent



This App is asking for permission to use the microphone. The user is presented with the option to grant or deny permission.

#### Notice



This App is informing the user that it is collecting information from a microphone and wants the user to acknowledge that they have read the notice, not that they agree with it.