

Regulation of Automatic Renewals Remains Key Issue for Lawmakers

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February 2, 2024

Subscription-based pricing models for the sale of all types of goods and services have become ubiquitous over the past several years, with the increasing popularity of e-commerce and online shopping driving much of this growth.

In turn, the past several years have also brought about significant development in the landscape of automatic renewal laws, as the requirements for marketers at both the state and federal levels continue to expand and change. 2023 was another year of important updates in this regard.

In addition to multiple states passing laws regulating various aspects of subscription and automatic renewals, the Federal Trade Commission (FTC) introduced a proposed rule that would significantly amend its outdated Negative Option Plan, titled the “Rule Concerning Recurring Subscriptions and Other Negative Option Plans” (“proposed rule”).

These various laws and regulations address many aspects of the consumer’s subscription journey, ranging from the specific consent required to enroll consumers in such automatically renewing contracts for repeated delivery of goods or services to requirements for marketers to notify consumers that a contract is going to automatically renew within a specified period before that customer is charged the renewal fee.

The aspect of these laws that has garnered the most attention from the various stakeholders



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more recently relates to cancellation of automatic renewals. As many states and the FTC continue down their respective legislative and rulemaking processes, it is important for affected marketers to take inventory of their existing compliance obligations, in addition to looking forward to previewing where such laws and rules are likely headed.

The FTC has solicited and received feedback on its proposed rules from many stakeholders. On Jan. 16, 2024, the FTC held an informal hearing on the proposed rule, where multiple parties read prepared statements opining on the proposed rule, both in regard to the FTC’s processes and procedures, and the substance of the proposed rule.

Looking to the substance of the proposed rule, much of the dialogue was focused on the way in which, if finalized, the obligations concerning cancellation of automatic renewals would

impact businesses. Specifically, the proposed rule imposes a “click to cancel” requirement, meaning that sellers would need to provide a simple method of cancellation.

At a minimum, cancellation would need to be offered in the same medium by which consumers can sign up for a negative option feature and with the same ease of cancellation as enrollment. Therefore, a consumer would need to be able to cancel online in the same place as where they signed up online.

Although many states, including California and New York, already require an online cancellation option where the consumer signs up online, finalizing the proposed rule would require sellers to roll out simple online cancellations in all states.

Certain marketers and their representatives have expressed that such obligations would be onerous and burdensome on businesses, asserting that the cost to business outweighs the potential benefit to consumers, particularly given the limitations on potential save opportunities.

Even if these arguments were to be credited and the proposed rule amended in a way that would not require “click to cancel” processes, as noted herein, automatic renewal laws are consistently moving through state legislatures, and many such laws are requiring online cancellation. For example, a new Illinois law that went into effect on Jan. 1, 2024, requires businesses to provide a mechanism of cancellation for automatic renewal contracts in the same manner in which the consumer commonly interacts with the business. Therefore, if the consumer interacts with the business online, they need to have the option to cancel online.

The Georgia Online Automatic Renewal Transparency Act, which also went into effect on Jan. 1, 2024, outlines the specific purpose of stopping “the practice of creating unnecessary barriers for customers who wish to cancel automatic renewal or continuous service subscriptions online, particularly when such subscriptions are offered online.”

Further, a new Kentucky law requires sellers to allow online cancellation of automatic renewals exclusively online where the contract was entered into online. The Kentucky law also has an effective date of Jan. 1, 2024.

These are just a few examples of the state laws on the books that require online cancellation of automatic renewals, and as is made clear from the very recent effective date of each of these laws, automatic renewal state laws are certainly trending toward such a requirement.

As the FTC continues to make strides toward finalizing the proposed rule, it is important for marketers to keep abreast of such developments and, if appropriate and desired, to engage in the rulemaking process. However, it is equally important for marketers to consistently monitor the ever-evolving landscape of state laws and assess the changing obligations on both a micro and macro level. That is, when evaluating these compliance obligations, it is important to not only review these laws on a provision by provision basis, but also to view the trends to get a sense as to how lawmakers and regulators are viewing certain marketing practices.

As we have identified herein, regardless of how the FTC moves through its rulemaking process to the likely finalization of the proposed rule, there is already a movement toward online cancellation, and as more states pass applicable laws, consumers are more likely to expect such options, which may ultimately shape overall expectations on marketers.

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