OK Alert | Understanding the FTC's New "Click-to-Cancel" Rule

November 4, 2024
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Businesses that automatically charge their customers on a recurring basis may have to update their practices to comply with new consumer protection regulations.

The Federal Trade Commission (FTC) has introduced a new "click-to-cancel" rule that places stricter requirements on *negative option programs*—business models that require customers to actively cancel or opt out to stop recurring charges. Common iterations of negative option programs include free trials that roll into paid subscriptions, recurring delivery services, automatic renewals, and similar continuous service agreements.

While these programs offer convenience for consumers and predictable revenue for businesses, the new rule comes as a response to persistent consumer allegations of unfair and deceptive practices in some negative option programs.

The FTC's new "click-to-cancel" rule requires:

1. **Transparency**: All program terms (billing frequency, total costs, how to cancel, etc.) must be disclosed clearly and conspicuously. Businesses cannot bury this information in fine print or hard-to-find sections of their websites or agreements.
2. **Consent**: Businesses must obtain explicit, informed consent from consumers before collecting billing information and should retain these consent records for at least three years.
3. **Ease of cancellation**: Canceling must be as easy as signing up, with no hidden barriers or cumbersome processes.

In short, this rule aims to ensure consumers know what they are signing up for. Businesses must now clearly disclose the program terms, secure consumer consent before billing, and make it straightforward to cancel.

When to comply:

Exact dates for compliance have not been announced yet. The rule will begin to take effect 60 days after it is published in the Federal Register. Various provisions will also have staggered compliance dates, making the timeline more complex. Additionally, there are lawsuits challenging the rule that could lead to potential delays or pauses in implementation, adding further uncertainty. It may be advisable to consult with a lawyer on your specific compliance needs.

Insights and best practices:

Even if the rule is delayed or does not take effect, there are business advantages to proactive compliance. The practices defined in the "click-to-cancel" rule—clear terms, consent, and an easy cancellation process—address common consumer frustrations. Implementing transparent business practices can help you build consumer trust and goodwill, a quantifiable business asset.

More information:

The FTC announced the “click-to-cancel” rule in a press release on October 16, 2024. The full proposed text for the final “click-to-cancel” rule can be found here: Final Rule Concerning Recurring Subscriptions and Other Negative Option Programs, 16 CFR part 425.

The following week, industry groups began challenging the FTC’s new “click-to-cancel” rule in the U.S. Courts of Appeals. On October 22, 2024, Electronic Security Association v. FTC (24-60542) was filed in the 5th Circuit and Michigan Press Association v. FTC (24-3912) was filed in the 6th Circuit.

Offit Kurman will continue monitoring developments surrounding this new rule.