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FTC Issues Enforcement Statement on Recurring Subscription Programs and Dark Patterns



Key Takeaways:

- The FTC's new Enforcement Policy Statement provides a roadmap for how the FTC may enforce against allegedly unfair and deceptive practices related to automatically recurring subscriptions.
- The Enforcement Policy Statement may indicate a more aggressive approach by the FTC toward recurring billing and subscription programs.

The Federal Trade Commission (FTC) recently issued an [Enforcement Policy Statement Regarding Negative Option Marketing](#) (Statement). The Statement lays out how the FTC might enforce against unfair and deceptive practices related to recurring billing and subscription programs. The FTC's issuance of the Statement on the heels of Notice of Penalty Offense letters on other consumer protection topics is another indicator that the FTC is looking to take a more aggressive approach when it comes to unfair or deceptive advertising. The Statement reiterates certain requirements under the Restore Online Shoppers' Confidence Act (ROSCA) and the key aspects of any recurring billing or subscription program, including:

- **Clearly and conspicuously disclose material terms of the transaction** such as the amount that consumers will be charged, the frequency of any recurring charges, any deadlines by which consumers must take actions to prevent the charges, and information necessary to cancel the contract.
- **Obtain consumers' express, informed consent** before charging the consumer.
- **Provide simple and easy cancellation methods** that are as easy to use as the method the consumer used to sign up for the subscription.

However, the Statement also suggests that the FTC is looking for brands to take actions above and beyond what is required by ROSCA. For example, the FTC suggests that material terms be disclosed in all advertising related to the subscription (rather than just at point-of-sale) and that disclosures be "unavoidable." The Statement also recommends that brands obtain acceptance to recurring subscriptions "separately from any other portion of the

entire transaction," which could indicate that the FTC prefers that brands use a separate mechanism (e.g., a check box) for agreement to auto-renewal terms. And, similar to many state auto-renewal laws, the Statement states that consumers should have the ability to cancel using the same medium (such as website or mobile application) that they used to consent to the subscription. Given some of the more aggressive aspects of the Enforcement Policy Statement, it will be important to carefully monitor FTC enforcements related to recurring subscription programs in the new year and beyond. Regardless, brands should carefully review any recurring billing or subscription programs in light of the FTC's ongoing focus on this issue. In addition, several states have updated or added automatic renewal laws. For an overview of the most recent update to California's automatic renewal law, [click here](#).

Authors

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