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Time to Renew Your Interest in Automatic Subscription Renewal Laws

The subscription economy exploded during the pandemic and is expected to grow to [\\$1.5 trillion by 2025](#). Subscriptions to streaming services passed [1 billion](#) worldwide in the middle of 2020. More than [two-thirds](#) of Americans now use a subscription service for everyday household items from food and beverages to home goods and personal-care products. [Subscription boxes](#) have made a comeback in beauty, wellness, and apparel.

Subscriptions that are set up to renew automatically provide media and gaming companies, as well as a growing number of retail and direct-to-consumer businesses, with predictable, recurring revenue streams along with an opportunity to build enduring brand loyalty. For consumers, subscriptions offer convenience and even a sense of [connection and community](#). The popularity of this business model and the potential for its abuse, however, have made subscription practices the subject of [increasing regulatory](#) and class action focus. Earlier this year, in the largest-ever cash settlement for claims related to automatically renewing subscriptions, the popular weight-loss app Noom agreed to pay \$56 million in cash and provide an additional \$6 million in free credits to [settle a class action lawsuit](#) alleging Noom engaged in predatory subscription practices.

In this blog post, we highlight some of the many sources of regulations governing automatically renewing subscriptions and what businesses should think about when managing their subscription programs.

Federal Regulation of Subscriptions

At the federal level, the [Restore Online Shoppers' Confidence Act \(ROSCA\)](#) prohibits merchants from charging consumers for online subscriptions unless the merchant (1) clearly discloses all material terms of a transaction, (2) obtains the consumer's express informed consent to the charge, and (3) provides a simple mechanism to allow the consumer to cancel the subscription.

The recent [Enforcement Policy Statement Regarding Negative Option Marketing](#) issued by the Federal Trade Commission (FTC) reiterates the ROSCA requirements. The statement suggests, however, that the FTC will take a more holistic look at the fairness of subscription practices, including how subscription programs are advertised, such that a subscription offering could still be found to be unfair or deceptive despite compliance with ROSCA.

State Regulation of Subscriptions

Most states have laws regulating practices related to automatically renewing subscriptions, with Colorado, Delaware, and Illinois all having new or updated laws that went into effect in January 2022 and California having an updated law that went into effect earlier this July.

These state laws generally require that (1) an initial notice be provided to consumers during the sign-up process with information about the subscription, (2) an acknowledgment be sent to consumers after they sign up for a subscription, (3) a renewal reminder be sent to certain customers prior to their subscription renewing, and (4) additional steps be taken when a free trial is offered that will convert automatically into a paid subscription at the end of the trial period. State laws are also increasingly imposing requirements to allow for easy online cancellation of automatically renewing subscriptions enrolled in over the internet.

International Regulation of Subscriptions

Automatically renewing subscriptions are also receiving increased scrutiny in Europe. As of March, the [German Fair Consumer Contracts Act \(FCCA\)](#) limits initial subscription periods to a maximum of two years. During any

subsequent renewal period, unless a subscriber has explicitly consented to a longer renewal period, subscriptions must be cancelable on no more than one month's notice. This means, for example, that if a merchant does not obtain explicit consent from a subscriber to have their annual subscription renew for a second year, then the subscriber must be permitted to cancel the subscription at any time during the renewal term on no more than one month's notice. In effect, this requires all subscriptions to be offered on a month-to-month basis after the initial term unless the subscriber expressly agrees to renew.

Beginning in July, the FCCA also requires businesses that allow consumers to enroll in subscriptions over the internet to implement a "cancellation button" to allow for easy termination of subscriptions.

Media, gaming, and other industries that rely on the subscription model for their businesses will increasingly face a host of legal, regulatory, and enforcement policy changes. With inflation and economic uncertainty on the rise, consumers may become more vigilant about their household spending and more vocal about any [unanticipated](#) subscription renewals. Companies participating in the subscription economy should review their subscription programs to ensure compliance with these ever-changing disclosure, consent, and cancellation requirements at the state, federal, and international levels.

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