Cancel Anytime? Best Practices for Your Auto Renewal Program Policy

Compliance and Ethics

COVID-19 has had a profound impact on multiple facets of our daily routines, including the means in which consumers obtain goods and services. Consumers are avoiding crowded stores and engaging in more online shopping. Purchasing a product or service online not only reduces the risk of

transmitting COVID-19, but also offers convenience and predictability.

Companies have taken note of the seismic shift in consumer buying habits and have bolstered online offerings. In addition, an increased number of companies are implementing subscription, or auto renewal programs (ARPs), as a method not only to adapt to the changing retail environment, but also to convert new customers into long-term customers.

Under an ARP, consumers are prompted to create a billing profile in which they enter their credit or debit card information. When the contract for products or services expires, the card in consumer's billing profile is automatically billed, and the contractual relationship between consumer and company renews.

If your company uses or is contemplating using an ARP, it should comply with the Restore Online Shopper's Confidence Act (ROSCA), follow applicable state laws, and develop best practices for ensuring compliance.

ROSCA

ROSCA requires any person charging any consumer for goods or services sold in an internet-based transaction provides:

- Clear and conspicuous disclosures of material terms of a transaction prior to collecting a consumer's billing information;
- A consumer's informed consent prior to charging the consumer's credit card, debit card, bank account, or other financial accounts; and
- Simple mechanisms for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial accounts.

State enforcement

Over 25 US states have Auto Renewal Laws (ARLs). While there is great variance in state law requirements and stipulations, most ARLs require companies to disclose renewal policies in a way that is clearly visible, and to provide customers with advanced notice prior to automatic renewal.

California's ARL, which is one of the more stringent state laws, covers all consumer contracts, while many other ARLs are limited to cover specific contracts, like home security systems or fitness club membership agreements.

Most companies offering products or services online operate in every state. The most effective way to achieve compliance with varying ARLs is to use California's ARL as a guide. Notable sections of California's ARL cover acknowledgment, cancelation rights, and change of terms, detailed below.

Acknowledgment

- ARLs must be in a format that is "capable of being retained by the consumer," and should also include "the automatic renewal or continuous service offer terms, cancelation policy, and information regarding how to cancel."
- Any cancelation policy must "provide a toll-free telephone number, electronic mail address, a postal address if the seller directly bills the consumer, or it shall provide another cost-

effective, timely, and easy to use mechanism for cancelation…”

- In addition, “If the automatic renewal offer or continuous service offer includes a free gift or trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services.”

Cancelation rights

The consumer “shall be allowed to terminate the automatic renewal or continuous service exclusively online, which may include a termination email formatted and provided by the business that a consumer can send to the business without additional information.”

The opt out mechanisms prohibits the practice of requiring cancelation by telephone or mail for consumers who accepted the auto-renewal offer online. In this respect, the CA law goes further than the ROSCA requirements.

Change of terms

The law requires businesses to provide notice to consumers of material changes to the terms. In the case of material changes, companies must:

> “Provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.”

Best practices for your company

1. Review offerings and advertising materials to ensure that they clearly and conspicuously disclose the material terms and conditions of the offer. In particular, terms and conditions should be located in close proximity to the offer and set apart in more prominent font, size, or color.
2. Obtain consumers’ affirmative consent to automatic renewal or continuous service offers.
3. Include an acknowledgment to the consumer that offers terms and cancelation policy. The acknowledgment must state the automatic renewal or continuous service offer terms, cancelation policy, and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the business shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods and services.
4. Provide a cost-effective, timely, and user-friendly mechanism for cancelation, such as a termination email.
5. Consider reminders in which your business reminds customers that contracts are about to renew.

Conclusion

If your company is already engaged in, or considering the use of an ARP, it should comply with ROSCA, adhere to applicable state laws (particularly California’s), and implement best practices for your staff to follow.

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