

Advertising Law Alert

New York State Enacts New Consumer Protection Statute About Auto-Renewal Subscriptions

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New York State is more strictly regulating automatic subscription renewals effective February 11, 2021.



Many auto-renewal subscriptions services have launched quickly without legal vetting during the pandemic. Consumers have responded eagerly, seeking the ability to experiment with new online offerings and also for convenience. New York joins many other states with its new law.

Scope of New York's New Statute

New York's new statute governs any company offering goods or services to consumers through any kind of subscription plan that automatically renews. These plans include free trials, free gifts, and reduced-price trial periods, all of which convert to monthly payments automatically charged to the consumer's credit card. The statute also applies to negative option plans by which, if a consumer does not reject the goods or services by a date certain, the consumer will have purchased them. The charges will again show up automatically on the consumer's credit card.

New York legislators were particularly concerned that consumers do not always understand they are signing up for auto-renewing charges. The statute requires marketers to do a better job informing consumers. In addition, the legislators were looking to protect consumers who do not know how to cancel these auto-renewing charges. The [New York Senate's press release](#) remarked that "convoluted renewals have created a public health hazard for New Yorkers during the pandemic, including some who were told they had to visit their gyms in person to cancel memberships."

New York's New Requirements

New York's new statute provides a variety of mandates for clear and conspicuous disclosures before enrollment. While the statute reminds marketers they must obtain affirmative consent, it does not mandate how to obtain that consent. We do have some guidance from settlements and other states' statutes for a best practice. A double opt-in, one to the program, and a separate one to the auto-renewing charges, may be the safest option. Marketers who do not wish to adopt the double opt-in may want to work carefully with their legal teams to ensure affirmative consent has been achieved.

The biggest change for auto-renewing subscriptions under the new statute concerns cancellation. Picking up on a trend that started in California, the law requires an easy online cancellation mechanism if the consumer signs up for the auto-renewing service online. In addition, there are statutory mandates for how to communicate the existence of the methodology for cancellations.

Enforcement around the Country

New York is not alone in its concerns about auto-renewing subscriptions. Over half the states have similar consumer protection laws. In recent years, California, Oregon, Vermont, and the District of Columbia have beefed up the statutory requirements. California is particularly aggressive in enforcing its requirements. In February 2020, for example, Box.com, a cloud storage provider, had to pay \$274,000 in penalties, costs, and restitution for violating the law. If New York follows suit, we could see financial penalties similar to those in California. While there is no private right of action under the New York statute, New York's Attorney General can impose civil penalties and injunctive relief.

In addition, the FTC has guidance regulating auto-renewing subscriptions. It also acts against deceptive plans under the federal Restore Online Shoppers Confidence Act. In September 2020, the FTC reached a \$10 million settlement with ABCmouse. The chief allegation was that ABCmouse had failed to make sufficient disclosures in connection with its remote learning platform. Parents ended up with automatically renewing charges without giving their informed consent. The FTC also alleged that cancellation was difficult and often not implemented.

Class action lawyers are also watching auto-renewal subscriptions closely. In summer 2020, a purported class sued Ancestry.com for violations of California's statute. The plaintiffs seek over \$ 250 million and injunctive relief because of lack of clarity around free trial and auto-renewal practices. The case is currently heading to arbitration. Regardless of the outcome, the case is important in underscoring the importance of a well-written arbitration clause in the auto-renewing subscription contract.

Next Steps

If a brand has been diligent in recent years to be alert to statutory changes on auto-renewals, it is possible that its programs may require minimal changes, mostly centering around offering an online cancellation option. On the other hand, if a company has not done due diligence on its subscription services in some time, now is undoubtedly the time to do so. Legal vetting should include all auto-renewal subscriptions, processes, notifications, and marketing materials.

For more information about legal issues surrounding implementation of auto-renewing subscriptions, contact [Kyle-Beth Hilfer](#) or your CLL attorney.

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Kyle-Beth Hilfer has over thirty years' experience providing legal counsel to advertising, marketing, promotions, intellectual property, and new media clients. Leveraging her deep understanding of branding, Kyle-Beth ensures regulatory compliance for her clients' advertising and marketing campaigns.