

FTC Announces Final “Click to Cancel” Rule for Subscriptions, Memberships

The Federal Trade Commission (“FTC”) has just announced the final version of its “Click to Cancel” Rule for consumer subscriptions. The Rule will go into effect 180 days after it is published with the Federal Register. This Rule will directly apply to all SaaS, digital health, tech, and non-tech companies selling on a subscription basis to consumers.

Full Text of FTC Rule

The full text of the FTC Rule is linked [here](#), at pages 222-230.

Fact Sheet of FTC Rule

The FTC has also made available a fact sheet which briefly summarizes key provisions of the “Click to Cancel Rule,” which is attached [here](#).

Key Provisions of the FTC Rule

According to the FTC announcement, the “Click to Cancel” Rule will apply to “almost all negative option programs in any media.” The key provisions of the FTC Rule will prohibit:

- misrepresenting any material fact made while marketing goods or services with a negative option feature;
- failing to “clearly and conspicuously disclose” material terms prior to obtaining a consumer’s billing information in connection with a negative option feature;
- failing to obtain a consumer’s express informed consent to the negative option feature before charging the consumer; and

- failing to provide a simple mechanism to cancel the negative option feature and immediately stop the charges.

Revisions to Final Version of the FTC Rule

Also according to the FTC announcement, the FTC dropped from its final Rule an annual reminder requirement that would have required vendors to provide annual reminders to consumers advising them of the negative option feature of their subscription, as well as a requirement that vendors had to ask canceling consumers for approval before a vendor could tell a canceling subscriber about reasons to keep the existing agreement or of possible modifications that could be made without canceling the subscription.

Reasons for Adoption of the Rule

Why did the FTC adopt a Click to Cancel Rule? According to the FTC Announcement, the FTC was receiving 70 consumer complaints per day over negative option programs, and this number was “steadily increasing over the past five years.”

The FTC’s announcement follows a recent California enactment of a more comprehensive “Click to Cancel” law.

Does the FTC Rule Supersede California Law?

The FTC Rule should not supersede California’s more comprehensive law; in fact, the Rule specifically states in its text that the Rule will not be construed to supersede any State statute, regulation or order “except to the extent that it is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.” The expected impact of the FTC Rule is primarily to bring federal regulatory law closer to California regulatory law as it pertains to subscriptions and memberships.

What do SaaS, Digital Health, Tech, and other Companies Utilizing the Subscription Model Need to do in Response to this Announcement?

All companies utilizing a subscription model should revise consumer contracts and processes to comply with the FTC Rule over the next 180 days. Companies utilizing the subscription model with a business-focused customer base should similarly consider what changes to make to their contracts and processes as public policy will likely change regarding subscriptions generally along with the new FTC Rule and California law changes.

If you have questions or concerns about how new FTC "Click to Cancel" Rule or the new California "Click to Cancel Law" will impact your digital health company, please schedule a consultation at <https://calendly.com/prinzlawoffice>.