## Global Regulation of Recurring Charge Contracts

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## Types of Negative Option (Recurring Charge) Contracts

& Related Consumer Protection Problems

International Approaches
 & Regulatory Options

### **Continuous Service Contracts**



(a/k/a/ continuity or subscription) Ongoing charge until consumer cancels

### **Consumer Protection Problem**

#### Seller Incentive to Obstruct Cancellation

Burden on Consumer to Reject Renewal  $\rightarrow$ 

Incentive to Obstruct for Less Scrupulous Sellers

#### **Examples of Obstruction**

- Must use phone to cancel and hours-long hold
- Cancellation resistance through "retention" reps
- Multiple steps and confusion with online cancellation
- Lost password → no access to cancel

### **Automatic Renewal Contracts**

Sunday	Honday	Tuesday	Wednesday	Thursday	Priday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31	-					-

#### October 2021

### **Contract** Origination

#### October 2022

### → Contract Renews Absent Consumer Action to Reject

Sunday	Honday	Tuesday	Wednesday	Thursday	Priday	Saturday
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

(a/k/a/ evergreen) Term Contract Renews for Another Term

### **Consumer Protection Problem**

#### **Source of Deception**

Burden shift to consumer:

<u>Traditional Contract</u>: Burden of Solicitation of Consent to Renewal on Seller

<u>Autorenew Contract</u>: Burden to Reject Renewal on Consumer

#### **Manifestation of Problem**

- Never obtained informed consent to burden shift
- Takes advantage of consumer disadvantage in management / scale
- Special problem with vulnerable consumers (elderly; intervening stroke)

# **Regulatory Options**

- Cancellation Process
  - Access and Use Standards
  - One-Button Process Requirement
  - Prohibition on Obstructive Retention Tactics
- Disclosure and Consent at Origination
  - Contract Origination Disclosures
  - Affirmative Consent Requirement
- Pre-renewal Notice for Autorenew
- Substantive Protections for Autorenew
  - Prohibit Conversion to Term
  - Limits on Renewal Terms
  - Regulate Timing of Renewal Rejection Period
  - Extended Right to Cancel
- Prohibit Negative Option w/ No Use

## Noteworthy Regulatory Option #1: Parallel Cancellation Right

Online Origination → Online Cancellation Option
 US /New York

"A consumer who accepts an ... offer online shall be allowed to terminate ... exclusively online."

Cancellation Process As Easy as Origination
 US / Florida

consumer can "cancel the service contract in the same manner, and by the same means, as the consumer manifested...acceptance"

# Noteworthy Regulatory Option #2: Prohibit Renewal Term Contract

# Germany

Prohibits term contract on autorenew.

Renewal can be for indefinite period but must be cancellable with one month notice.

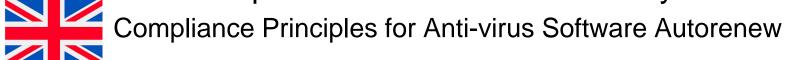
# **Noteworthy Regulatory Option #3: Extended Right to Cancel**



**U.S. Uniform Law Commission Proposal** 

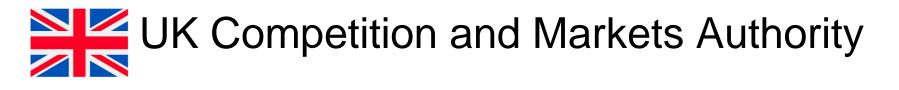
Draft model law includes a 60 day right to cancel following the charge for a renewal term.

U.K. Competition and Markets Authority



- "Likely to comply": •
  - Two week right to cancel with full refund after autorenew
  - Right to cancel with pro-rata refund for full period of renewal term

# Noteworthy Regulatory Option #4: Burden Back to Seller w/ Nonuse



Undertaking with Sony re: online gaming April 2022

12 months of inactivity → email consumer
18 months of inactivity → more urgent email
24 months of inactivity → stop recurring
charges + save use data for 6 months