

Global Regulation of Recurring Charge Contracts

Prentiss Cox
Professor of Law
University of Minnesota Law School

Overview

- 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 →

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

October 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	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						

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Contract Origination

October 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	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					

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→ *Contract Renews Absent Consumer Action to Reject*

(a/k/a/ evergreen)

Term Contract Renews for Another Term

Consumer Protection Problem

Source of Deception

Burden shift to consumer:

Traditional Contract:

Burden of Solicitation of
Consent to Renewal on Seller

Autorenew Contract:

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

Compliance Principles for Anti-virus Software Autorenew

- “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



UK Competition and Markets Authority

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