

Alert | Marketing, Advertising, Sweepstakes & Promotions Law



May 2019

Washington, D.C. Weighs in on Auto-Renewal Programs

Washington, D.C. recently joined the list of states with laws addressing auto-renewal or “negative option” programs, where consumers sign up for service (often on a free-trial basis) and are charged automatically for renewals unless they affirmatively opt out. The D.C. law can be found [here](#).

Auto-renewal laws typically require (1) clear and conspicuous disclosure of material terms, (2) affirmative consumer consent to the terms, and (3) written reminders before the consumer is charged for the next period. These principles align generally with federal law and FTC enforcement actions against allegedly deceptive auto-renewal programs. For additional background, see our previous GT Alert [here](#).

Although D.C.’s general approach to auto-renewal programs is largely consistent with federal and other state laws, at least two specific requirements are noteworthy.

First, in the case of a contract with an initial term of 12 months or more and automatic renewal for subsequent periods of at least one month, the merchant must provide the consumer with written notice of the upcoming renewal and certain other terms 30 to 60 days before the renewal is triggered. The notice must state the material terms, including the cost for the renewal term, the deadline to cancel, and how to obtain details regarding the renewal and cancellation options. While these requirements are not unusual, the specific timing must be observed and may be different from the requirements in other states.

Second – and more surprising – in the case of a free-trial period lasting “one month or more,” the merchant must notify the consumer “between one and 7 days before the expiration of the free trial period” and obtain the consumer’s affirmative consent to be charged for the renewal before imposing any charge for the renewal. This requirement applies regardless whether the consumer previously agreed to the automatic renewal upon his/her initial enrollment in the program. In other words, for free-trial offers of “one month or more” in D.C., there is, effectively, no such thing as “automatic” renewal anymore. Instead, affirmative consent is required during the final seven days of the free-trial period before any renewal charges can apply. This is completely different from the laws in all other states, where a previously accepted automatic renewal is valid provided the consumer doesn’t opt out prior to expiration of the free-trial period.

For nationwide marketers offering free-trial periods of “one month or more,” the D.C. law poses a logistical challenge to seek a second round of consent during the final seven-day period from D.C. residents while continuing to rely solely on the initial consents from residents in all other parts of the United States. To avoid this awkward inconsistency, a national marketer might consider making its initial free-trial period less than “one month” (taking care to note the varying lengths of months and that the D.C. law doesn’t define the length of a “month” for purposes of the free-trial-consent-renewal law).

In addition to the specific new rules for D.C., companies should keep the following general principles in mind for any auto-renewal program:

- Disclose all materials terms of the offer clearly and conspicuously.
- Obtain unambiguous, affirmative consent from the consumer before any billing.
- Remind the consumer prior to any auto-renewal (check state laws for mandatory time periods for the reminders).
- Provide an easy-to-use mechanism for the consumer to cancel/opt-out.
- In D.C., for covered free-trial periods of “one month or more,” obtain affirmative consent from the consumer during the final seven days of the free-trial period before charging for any renewal.

Authors

This GT Alert was prepared by **Ed Chansky** and **Erica L. Okerberg**. Questions about this information can be directed to:

- **Ed Chansky** | +1 702.599.8016 | chanskye@gtlaw.com
- **Erica L. Okerberg** | +1 702.599.8073 | okerberge@gtlaw.com
- Or your **Greenberg Traurig** attorney

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. ⁷ Houston. Las Vegas. London. ^{*} Los Angeles. Mexico City. ⁺ Miami. Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. [∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. [^] Tokyo. ^z Warsaw. [~] Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2019 Greenberg Traurig, LLP. All rights reserved.*