

Insights

“I’M NOT DEAD YET”: IS THE DEMISE OF THE FTC’S CLICK-TO-CANCEL EXAGGERATED?

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SUMMARY

The Federal Trade Commission’s 2024 amendments to the Negative Option Rule (commonly called “Click-to-Cancel”) may have been vacated by the Eighth Circuit for failing to comply with required rulemaking procedures, but the FTC is already moving to revive the rule through a new rulemaking. In practice, the rule was never entirely off the table: the FTC has continued to challenge negative option practices on a case-by-case basis under its other statutory authorities, especially the Restore Online Shoppers’ Confidence Act (ROSCA), which remains good law.

The Federal Trade Commission (FTC) has long scrutinized negative option features used in online transactions. A negative option is a billing model in which a seller treats a consumer’s inaction—such as not unchecking a box, not cancelling during a trial, or not responding to a renewal notice—as permission to continue to charge for goods or services. The FTC promulgated its original negative option rule in 1973, though it did not cover the myriad types of negative option programs available today.

In the FTC’s view, negative option subscription models may violate the FTC Act and other consumer protection laws because key terms are not disclosed clearly and conspicuously. Over the years, the FTC pursued limits on negative option practices through a mix of enforcement actions, guidance, and rulemaking.

In 2024, the FTC issued a final Click-to-Cancel Rule that required sellers to clearly disclose all material terms for a recurring negative option subscription, obtain a consumer’s express informed consent to the recurring payment before charging, and make the cancellation mechanism for any negative option subscription to be at least as simple as the enrollment mechanism. For example, under that Rule, if a company signed up a customer to a negative option subscription with the click of a single button on an app, the company had to offer customers a way to cancel the subscription with the click of a single button on an app.

But in *Custom Communications, Inc. v. Federal Trade Commission*, the Eighth Circuit vacated the Rule. *Custom Communications* held that the FTC failed to follow required procedural steps in the FTC Act—which have additional requirements beyond traditional “notice-and-comment” rulemaking under the Administrative Procedure Act—and exceeded its statutory authority by imposing broad new obligations not adequately grounded in the FTC Act. As a result, the Eighth Circuit struck down the Click-to-Cancel Rule.

Recent FTC actions, however, make clear that reports of the demise of the Click-to-Cancel Rule are exaggerated. Importantly, the Click-to-Cancel Rule was never the FTC’s only tool for policing negative option practices. ROSCA, a presently operative federal statute, authorizes the FTC to challenge online negative option transactions that fail to clearly disclose all material terms, obtain express informed consent before charging consumers, or provide a “simple” cancellation mechanism of recurring charges. (ROSCA does not define what a “simple” mechanism is.)

Although ROSCA is narrower than the vacated Click-to-Cancel Rule, the FTC has repeatedly relied on it—across administrations—to bring enforcement actions targeting negative option programs. For example, in 2023, the FTC brought an [action](#) against Amazon.com for violating ROSCA through the enrollment and cancellation processes of its Prime subscription service. Similarly, in 2025, the FTC brought a ROSCA [challenge](#) against Uber’s subscription service.

Nor is the FTC relying solely on case-by-case enforcement actions under ROSCA. The FTC is now moving to formally revive Click-to-Cancel, [issuing](#) in March 2026 an Advance Notice of Proposed Rulemaking (ANPRM) on the Negative Option Rule. This ANPRM seeks broad public input before drafting a new version of the Rule. Among other issues, the Commission is asking whether it should adopt provisions from the vacated 2024 rule. While the ANPRM is only the beginning of a years-long process, the rulemaking wheels are officially in motion.

Looking ahead, companies offering subscription or recurring-billing programs should not assume that the Eighth Circuit’s lopping off large portions of the Rule means that the Rule is dead. The FTC continues to treat negative option practices as a priority area through actively ROSCA enforcement and new rulemaking. Businesses should review their disclosure, consent, and cancellation flows now to ensure they align with ROSCA’s requirements and anticipate that a revised Negative Option Rule is on the medium-term horizon. In addition, businesses who have concerns about a revised Negative Option Rule should carefully consider commenting on the FTC’s proposal, either at the ANPRM or Notice of Proposed Rulemaking (NPRM) stages.

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