Cooley

Click to Cancel Just Got Cancelled: Eighth Circuit Vacates Entirety of FTC's Negative Option Rule

July 11, 2025

On July 8, the US Court of Appeals for the Eighth Circuit vacated the entirety of the Federal Trade Commission's new Negative Option Rule – popularly known as the Click-to-Cancel Rule (rule) – just days before it was scheduled to take full effect. While the rule has been vacated, the FTC can still police unfair and deceptive subscription practices under existing statutory authority. Companies also must continue to comply with the complex and evolving patchwork of state automatic renewal laws (ARLs), many of which impose prescriptive requirements governing point-of-sale disclosures, collection of affirmative consent to negative option features and design of cancellation mechanisms that overlap with many of the features of the now defunct Click-to-Cancel Rule. Accordingly, companies that were scrambling to complete changes to the designs of their sign-up flows and cancellation mechanisms in anticipation of the rule's effective date should think twice before abandoning those efforts, and companies that were just starting to come to grips with the rule's implications should continue to evaluate their compliance posture against the larger framework of federal and state ARLs. Although the Click-to-Cancel Rule appears to be dead for now, many of its key principles and requirements will live on in different forms that create materially similar compliance challenges and legal risks for businesses.

Background and the Eighth Circuit's decision

In October 2024, the FTC finalized the rule, which would have codified requirements imposing significant burdens on businesses using subscription models. Among other things, the rule would have mandated that companies obtain consent for negative option features separately from other aspects of a transaction via a checkbox or similar affirmative act, and required a simple "click-to-cancel" mechanism for all online subscriptions. In early May 2024, the FTC voted unanimously to delay enforcement of most portions of the rule until July 14, 2025.

However, the Eighth Circuit held that the FTC's rulemaking process was procedurally defective and resulted in prejudicial error. As a result, and notwithstanding the presence of a severability provision, the court vacated the Click-to-Cancel Rule in its entirety. It therefore cannot be enforced – unless the FTC successfully reverses the decision either through the Eighth Circuit sitting en banc or the US Supreme Court.

What this means for businesses

While the Click-to-Cancel Rule has been vacated, other state and federal regulations continue to apply to companies offering subscriptions.

1. **State laws and regulations are in effect and continue to evolve**

A growing number of states, including California and New York, have their own robust ARLs or regulations that require clear disclosures, affirmative consent and easy cancellation methods, and state regulators have been increasingly active in enforcing them. Massachusetts recently enacted a regulation governing automatically renewing agreements that will take effect on September 2, 2025. As the rule would have, the Massachusetts regulation requires, among other things, that the simple cancellation mechanism be at least as easy to access and use as the method the consumer used to initiate the negative option feature, and that the simple cancellation method be available through the same medium the consumer used to initiate the negative option feature. California's most recent amendments to its law took effect on July 1, and they impose requirements similar to several provisions of the vacated FTC rule.

2. **ROSCA remains in force**

The federal Restore Online Shoppers' Confidence Act (ROSCA) continues to apply to online subscriptions. For

auto-renewing subscriptions and other negative option transactions completed online, that law requires clear disclosures of automatic renewal terms prior to the collection of billing information, express consent and a simple means of cancellation. The FTC has been highly active in enforcing ROSCA and has obtained significant civil penalties in an ongoing string of settlements. State regulators also have the power to enforce ROSCA.

3. **The FTC's enforcement policy statement contains similar requirements**

The Click-to-Cancel Rule was based in part on the FTC's nonbinding Enforcement Policy Statement Regarding Negative Option Marketing, which describes how the FTC staff interprets relevant authorities, such as ROSCA and the Telemarketing Sales Rule (TSR). The enforcement policy statement remains in place for now.

4. **Section 5 of the FTC Act**

The FTC likely will continue to use its authority under Section 5 of the FTC Act to bring enforcement actions against companies it believes are engaging in unfair or deceptive subscription practices, including those that make material misrepresentations regarding their practices or that engage in "dark patterns" to deceive consumers into signing up for subscriptions they did not want or pursuant to terms they likely did not see or understand. For example, the current FTC has alleged in a complaint that a company violated the FTC Act when it represented that a subscription could be cancelled "at any time," but in fact, a cancellation could not be easily effectuated by a consumer in the days immediately before a renewal charge was to be processed. In another case, the FTC under prior commissioners alleged in a complaint that a company violated Section 5 by unfairly charging consumers for a subscription without their express informed consent.

What's next?

The FTC has not yet indicated whether it might appeal the decision. Assuming the FTC does not mount a successful appeal, it would need to abandon the rule or re-start the rulemaking process to put the Click-to-Cancel Rule (or a version thereof) back into force. This is unlikely because such a process can be very protracted – the original rulemaking took approximately two years – and the current commissioners likely are not as supportive of the rule. Though the current FTC defended the rule against the Eighth Circuit challenge, Chairman Andrew Ferguson and Commissioner Melissa Holyoak originally voted against the rule. To the extent this FTC pursues a new version of the rule, it would likely be significantly pared back.

While this ruling eliminates certain highly prescriptive aspects of the rule, many of its requirements exist elsewhere, and companies should continue to take measures to ensure compliance with both ROSCA and state ARL laws. Cooley is well versed in the laws and regulations governing negative option features and can help companies navigate these requirements. If you have questions about how the federal and state requirements may impact your business, please contact any member of the Cooley team listed below.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Scott Dailard San Diego	sdailard@cooley.com +1 858 550 6062
Travis LeBlanc Washington, DC	tleblanc@cooley.com +1 202 728 7018
Teresa Michaud Los Angeles	tmichaud@cooley.com +1 213 561 3241
Max Bernstein San Francisco	mbernstein@cooley.com +1 415 693 2052
Brett R. Weinstein New York	bweinstein@cooley.com +1 212 479 6306
Dana N. Levin New York	dlevin@cooley.com +1 212 479 6192

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.