



How to Navigate the Tangled Web of Laws and Requirements Surrounding Automatic Renewal Programs in 2023

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Current Landscape

1. Continuing, aggressive law enforcement to protect consumers who are unwittingly enrolled in a subscription program and/or have difficulty getting out of one
2. Ongoing onslaught of class action lawsuits to enforce state laws that are subject to varying interpretations by the courts
3. Close linkage of automatic renewal law enforcement with newer regulatory priorities including “dark patterns” and “junk fees” or “surprise fees”
4. New state laws targeting specific areas of concern, for example:
 - Specifying that consumers who enroll online must be able to cancel online and without requiring the consumer to engage in further steps that obstruct or delay immediate cancellation
 - Requirements to send renewal notices, particularly for longer-term subscription periods
5. Various state law requirements cropping up
6. FTC using ROSCA in novel ways to obtain monetary relief

Today's Agenda

- Federal and State Laws
- Requirements for Automatic Renewal Programs
 - Clear and Conspicuous Disclosures
 - Express, Informed Affirmative Consent
 - Post-Order Acknowledgment
 - Simple Cancellation Mechanism
 - Renewal Reminders
 - Material Changes
- Ways to Reduce Risk
- Questions and Closing Comments

Federal Law

- Restore Online Shoppers' Confidence Act (ROSCA) applies to sale transactions with a negative option feature effected over the Internet
- Telephone sales covered by Federal Trade Commission's Telemarketing Sales Rule
- Section 5 of the FTC Act prohibits unfair or deceptive sales practices
- Electronic Funds Transfer Act imposes requirements for recurring debit card payments
- Consumer Financial Protection Act (applies to consumer financial products and services)
- Violations punishable by injunctive relief, monetary relief (refunds, disgorgement, rescission of contracts, statutory penalties of \$50,120 per violation).

Restore Online Shoppers' Confidence Act (ROSCA)

ROSCA prohibits any person from charging any consumer for goods or services sold in an Internet-based transaction through a negative option feature unless the person:

1. Provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;
2. Obtains a consumer's express informed consent before obtaining the consumer's credit card, debit card, bank account, or other financial account for products or services sold through such transaction; and,
3. Provides a simple mechanism for a consumer to stop recurring charges from being placed on the consumer's credit card, debit card, bank account, or other financial account.

ROSCA provides a compliance framework for ALL negative option offers.

Federal Law Guidance

- [FTC Enforcement Policy regarding Negative Option Marketing](#) (October 2021)
- [Consumer Financial Protection Bureau Circular regarding Unlawful Negative Option Practices](#) (January 2023)
- [FTC Staff Report: *Bringing Dark Patterns to Light*](#) (September 2022)
- Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) settlements and consent orders
- Court decisions interpreting applicable laws and guidance

State Law

- Laws passed in over 20 states
- Offers made through all channels (online, telephone, in-person, etc.)
- Significant laws with technical requirements that are highly litigated in California and New York
- Consumers file lawsuits under state laws prohibiting unfair and deceptive acts and practices
- Injunctive relief, monetary penalties of refunds and statutory penalties (for example, \$2,500 per violation in California plus costs and fees in some circumstances)

State Laws Address the Details

- Specific disclosures: what constitutes a material term
- How to disclose: “Clear and conspicuous” standard for disclosures
- Order confirmations: When to send them, what must in in them
- Cancellation policies and mechanisms
- Notices of renewal
- Notice of material changes

Summary

Clear and Conspicuous Disclosures

Affirmative Consent

Order Confirmation

Simple Cancellation Mechanism

Renewal Reminders

Material Changes to the Offer

Clear and Conspicuous Disclosures

Disclosures

What to Disclose:

1. That the subscription agreement will continue until the consumer cancels
2. The description of the cancellation policy that applies to the offer, including the deadline by which to cancel
3. The amount of recurring charges, including that if the price will change after a trial offer, the amount that will be charged when the trial ends
4. The payment method that will be used for charges
5. The length of the subscription term (e.g., weekly, monthly, annually, etc.)
6. Minimum purchase obligation, if any
7. Other material terms: for example, disclosure of an early termination fee

How to Disclose:

- In a clear and conspicuous manner before obtaining the consumer's billing information
- Vermont: For subscriptions with an initial term of 1 year or more, disclosures must appear in **boldface** type.

What Does “Clear and Conspicuous” Mean?

- Before obtaining card or payments information
- Make it unavoidably noticeable:
 - Larger type than surrounding text, or
 - In contrasting type, font, or color to the surrounding text of the same size, or
 - Set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language
- Not just buried in long-form Terms and Conditions / Program Terms
- If audio disclosure (telephone, in-person):
 - In a volume and cadence sufficient to be readily audible and understandable
 - In temporal proximity to the request for consent

FTC v. Vonage (Nov. 3, 2022)

- \$100 Million Settlement
- Failure to disclose clearly and conspicuously that an “Early Termination Fee” would apply, which appeared only in small print.
- FTC is expanding what terms it considers “material.”



If the consumer notices and clicks the “View Offer Terms” link, the consumer would next see the screen:



FTC v. Vonage (Nov. 3, 2022)

The screenshot displays the Vonage checkout interface. At the top, the Vonage logo and 'Checkout' are visible. A progress bar shows 'Account', 'Payment', and 'Review' steps, with 'Account' being the current step. The form is divided into several sections: 'Contact details' with fields for First Name, Last Name, Email, and Main Company Number; 'Service address' with fields for Address line 1, Address line 2 (optional), State, City, and Zip Code; and 'Company address' with a checked checkbox for 'Company address same as Service address'. A 'Continue to payment' button is at the bottom. On the right, a 'Your order details' panel shows a table of fees and discounts. The 'MONTHLY FEES' section lists Premium Plan at \$29.99, Included Local Company Number at \$0.00, and Taxes at -. The 'DISCOUNTS' section shows a 30% Off Monthly Plan Fee for -\$9.00. Below this, the 'First bill' is \$20.99 and the 'Monthly bill' is \$20.99/mo. A detailed disclaimer follows, explaining the billing cycle and terms of service. At the bottom of the order summary, a black box highlights 'Due today' for \$20.99.

MONTHLY FEES	
Premium Plan	\$29.99
Included Local Company Number	\$0.00
Taxes	-

DISCOUNTS	
30% Off Monthly Plan Fee	-\$9.00

First bill	\$20.99
Monthly bill	\$20.99/mo

Following checkout you'll receive an email with details on how to access your account portal and set up your account. Your service will fully activate and you will be charged on March 11, 2022. Vonage Business will bill on the first day of every billing cycle. This Vonage Business plan will automatically renew annually if you do not notify Vonage with your desire to terminate at least 90 days before the end of your Service Term commitment. Should you decide to terminate your service before the end of your Service Term Commitment (March 10, 2023), you will be responsible for any applicable early termination fees as outlined in the Terms of Service.

Due today	\$20.99
------------------	----------------

FTC alleged that disclosures here were inadequate and vague.

Dark Patterns and User Interfaces

- What are “Dark Patterns”?
 - Manipulative tactics that induce consumers to complete an action they would not have otherwise completed if they understood what they were acting on at the time
 - Drive unwitting consumers to purchase items, share information, and agree to legal terms without intending to do so

Bringing Dark Patterns to Light – FTC Staff Report, September 2022

1. Design Elements that Induce False Beliefs
2. **Design Elements that Hide or Delay Disclosure of Material Information**
3. **Design Elements that Lead to Unauthorized Charges**
4. Design Elements that Obscure or Subvert Privacy Choices

CFPB v. TransUnion (N.D. Illinois 2022)

- In a 2017 settlement, TransUnion agreed to pay \$13.9 million for alleged deceptive marketing practices, as well as \$3 million in civil penalties. The credit reporting agency also agreed to warn consumers that lenders are likely not using the exact scores TransUnion provided the consumers.
 - TransUnion agreed to get consumers' informed consent before they sign up for recurring payments for subscription services and provide them an easy way to opt out of such services.
- CFPB filed a lawsuit alleging that the company violated the order and “**deceived customers through digital dark patterns.**”
- CFPB challenged TransUnion with violating the Consumer Financial Protection Act, the Fair Credit Reporting Act, and the Electronic Fund Transfer Act.

TransUnion: Disclosure Allegations

- TransUnion used “an array of dark patterns to trick people into recurring payments”
- TransUnion asked consumers to provide credit card information that appeared to be part of an identity verification process to receive free annual credit report
- TransUnion then “integrated deceptive buttons into the online interface that gave the impression the consumer could also access a free credit score in addition to viewing their free report,” but clicking the button signed the consumer up for recurring monthly charges
- Only disclosures about the automatic renewal offer was in a “fine print, low contrast disclosure, located off to the side of the enrollment form”
 - Disclosure was inside an image that could take up to 30 seconds longer to load
- Substantial allegations regarding affiliate marketers and their deficiencies (shown on next slides)

Apply **1**
Verify **2**
View **3**

Let's Get Started

See your Free Credit Score & \$1 Credit Report in minutes

First Name

Street Address

State Select one...

Email

Social Security Number
Last 4 Digits

Last Name

Zip

City

Phone


Date of Birth
 Month Day Year

Have you lived here for more than 6 months? Yes No

Do you have a credit card or debit card? Yes No

Submit & Continue


By clicking "Submit & Continue" above, I have read and agree to GOFreeCredit.com's Privacy Policy & Terms of Use and to receive marketing communications via an automated telephone dialing system, pre-recorded calls, text messages, and emails from GOFreeCredit.com and its marketing partners at the info I have provided above. I understand that my consent is not a condition of my receipt of products and/or services, and that alternatively I may email info@GOFreeCredit.com.



GOFreeCredit.com

Privacy Policy & Terms of Use | Security | Advertiser Disclosure | Contact Us

Did you know?



It never hurts to check your score.

Monitoring your Credit Score and understanding your financial history will help you when it's time to apply for a loan or credit card, buy a car or rent a home. It's easy to track changes in your score. Checking your own credit will not impact your Credit Score.



Offer Details



Your FREE TransUnion credit score & \$1 Credit Report are available as part of a 7-day trial of our subscription-based credit monitoring service. You may cancel at any time during the trial period. At the end of your 7-day trial, you will be billed at a low cost of only \$24.95 per month (plus tax where applicable).

VantageScore 3.0

There are various types of credit scores, and lenders use a variety of different types of credit scores to make lending decisions. The credit score you receive is based on the VantageScore 3.0 model and may not be the credit score model used by your lender.

Featured On:

Be in the know with TransUnion® - see your credit score NOW

TransUnion Secure Server

Step 1 Tell us about yourself Step 2 Create your account Step 3 Verify your identity

Already a member? [Login Now](#)

MORE THAN 12 MILLION MEMBERS SERVED

What you'll instantly receive:

Score: **832**
Sample score

You have chosen:

Credit Monitoring for \$24.95/month (plus tax where applicable)

You'll soon enjoy:

- UNLIMITED Score & Report access - updates available daily
- CreditCompass™, which helps you point your score in the right direction
- Your Credit Story, a personalized video exploring what impacts your credit score
- Email updates of critical changes for ALL 3 bureaus
- INSTANT email alerts sent as soon as TransUnion finds out someone's applied for credit in your name
- Lock and Unlock your TransUnion and Equifax Credit Reports
- Personalized Debt Analysis & Credit Score Trending
- UNLIMITED toll-free access to ID theft specialists
- Up to \$1,000,000 ID theft insurance

What you need to know:

There are various types of credit scores, and lenders use a variety of different types of credit scores to make lending decisions. The credit score you receive is based on the VantageScore 3.0 model and may not be the credit score model used by your lender.

There's nothing you need to do to have your membership continue without interruption. If you'd like to get more information about cancellation, simply [contact us here](#) anytime.

By clicking on the "Submit & Continue to Step 2" button below, I acknowledge that I have read the [Terms of Service](#) and [Privacy Policy](#), and that I agree to their terms. I understand that the Terms of Service contain an [Arbitration Clause](#).

SUBMIT & CONTINUE TO STEP 2

Member login About us Support Terms of Service Privacy

Information for Good.

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You have chosen:

Credit Monitoring for \$24.95/month (plus tax where applicable)

You'll soon enjoy:

- UNLIMITED Score & Report access - updates available daily
- CreditCompass™, which helps you point your score in the right direction
- Your Credit Story, a personalized video exploring what impacts your credit score
- Email updates of critical changes for ALL 3 bureaus
- INSTANT email alerts sent as soon as TransUnion finds out someone's applied for credit in your name
- Lock and Unlock your TransUnion and Equifax Credit Reports
- Personalized Debt Analysis & Credit Score Trending
- UNLIMITED toll-free access to ID theft specialists
- Up to \$1,000,000 ID theft insurance

What you need to know

There are various types of credit scores, and lenders use a variety of different types of credit scores to make lending decisions. The credit score you receive is based on the VantageScore 3.0 model and may not be the credit score model used by your lender.

There's nothing you need to do to have your membership continue without interruption. If you'd like to get more information about cancellation, simply [contact us here](#) anytime.

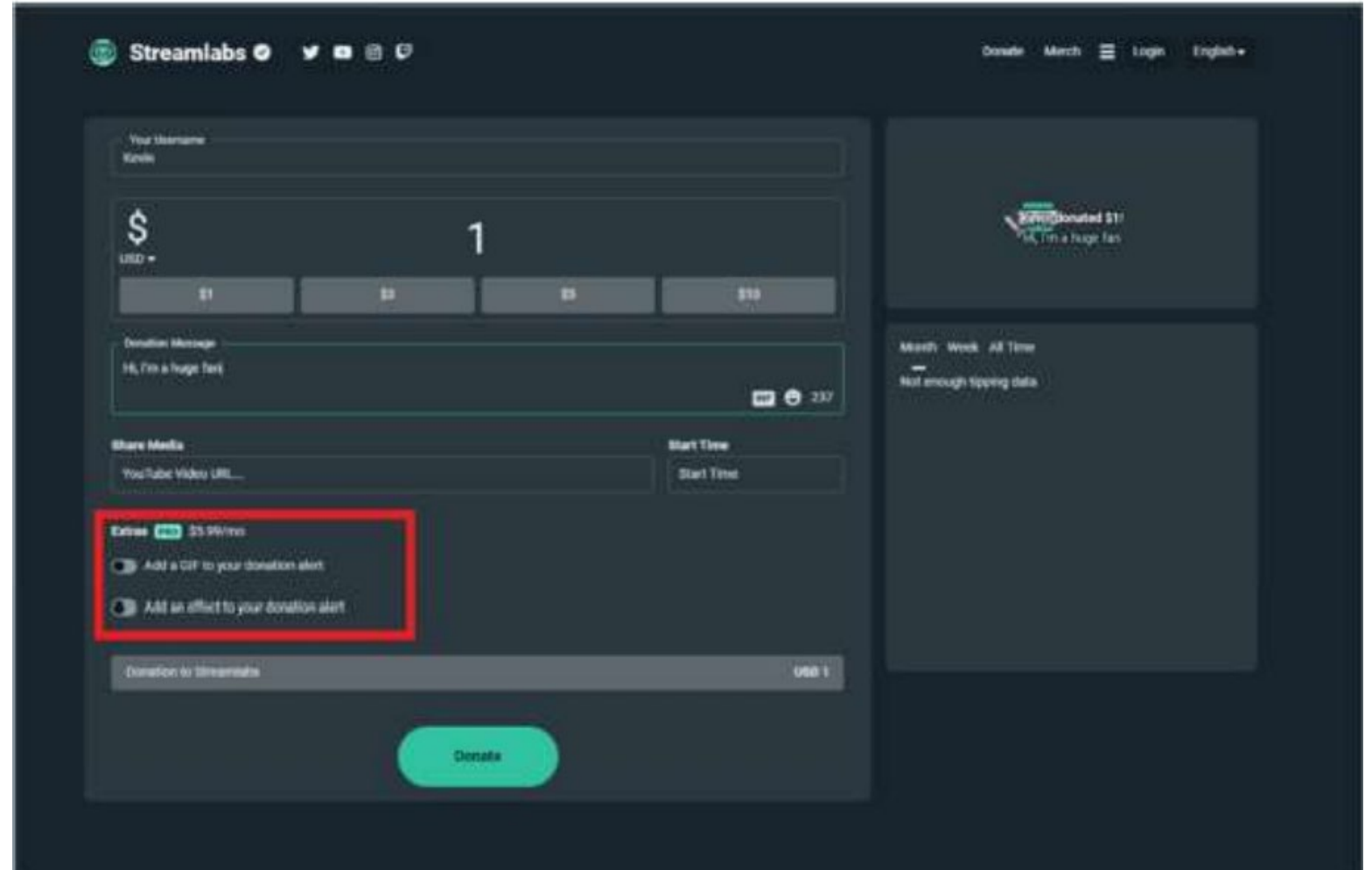
CFPB v. TransUnion (N.D. Illinois 2022) (Complaint)

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Leventhal v. Streamlabs (N.D. Cal. 2022)

The plaintiff alleged that Streamlabs' website was misleading because consumers who add a GIF or effect were enrolled in Streamlabs Pro for \$5.99 per month.

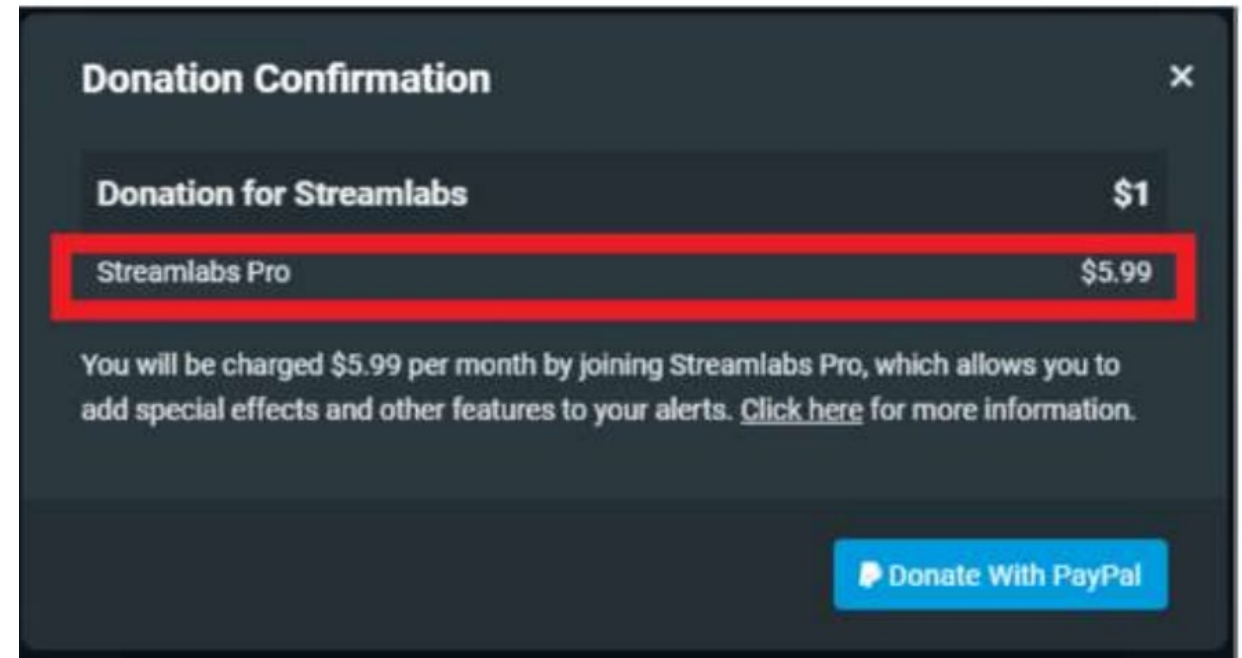
Plaintiff alleged that the website suggested that it was a one-time fee and did not disclose that the \$5.99 monthly fee would renew automatically



Leventhal v. Streamlabs (N.D. Cal. 2022)

Plaintiff alleged:

- The \$5.99 charge and the notice have a font that is smaller in size and lighter in color than the bolded font used for the donation amount.
- The page does not say that the Streamlabs Pro subscription and the \$5.99 monthly charge are renewed automatically each month until the viewer cancels the subscription.
- If viewers click “[Click here](#) for more information,” a Streamlabs Pro page pops up.
- It “explains the benefits, monthly cost, [and] cancellation and refund policy of Streamlabs Pro subscription[s],” but it does not “disclose that Streamlabs will keep charging Streamlabs Pro subscribers \$5.99 per month on their credit or debit cards until the subscribers cancel



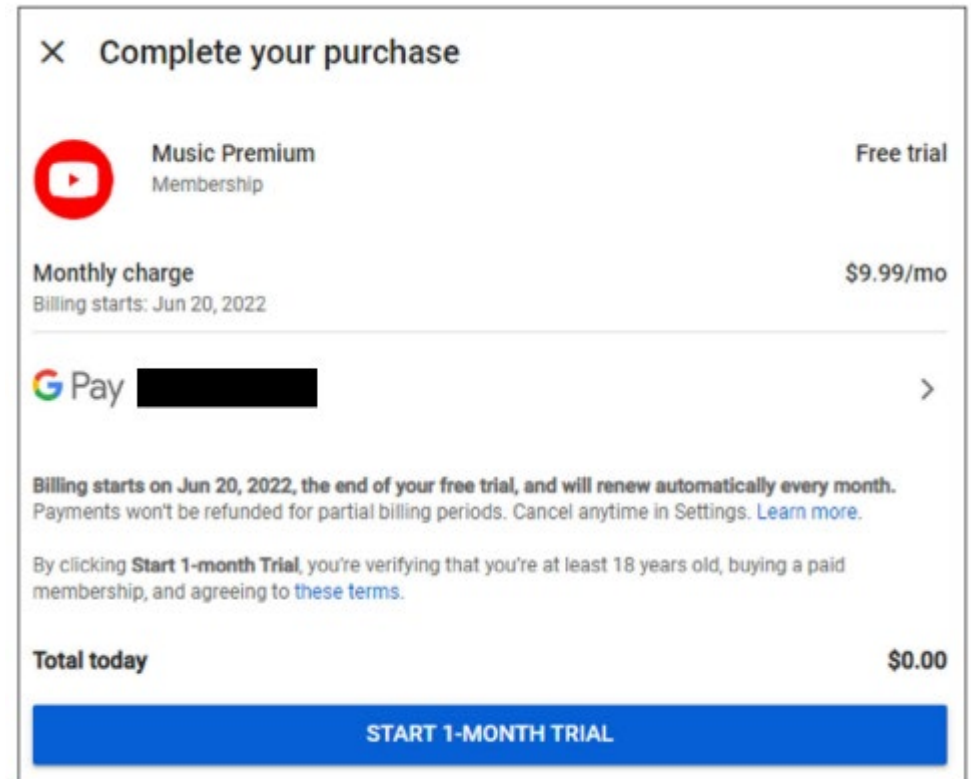
Leventhal v. Streamlabs (N.D. Cal. 2022)

- The plaintiff alleged:
 - The “representations about Streamlabs Pro were motivated by an intent to deceive, and to lure Donators into unknowingly signing up for the membership.” It knew from complaints customers’ “unknowing enrollment in Streamlabs Pro” and still maintained its deceptive practice of not disclosing the automatic-renewal feature. Evidence of its intent to deceive also is shown by the font size on the Donation Confirmation page: the \$5.99 charge and the notice have a font that is smaller in size and lighter in color than the bolded font used for the donation amount.
- The court denied defendant’s motion to dismiss:
 - “It is plausible that a reasonable consumer (including tech-savvy consumers) could be deceived by the [signup] process ... and conclude that the \$5.99 per month fee was a one-time fee. The disclosures did not say that the fee was an automatic monthly fee. There is evidence of actual consumer confusion, by the plaintiff and the consumer reviews. Similarly, for the standalone fraud claims, the allegations are sufficiently specific that Streamlabs’ process misled consumers that the \$5.99 per month fee was a one-time donation, not an automatic monthly fee.”
 - ***“Some may parrot the ARL, but they are at core fact allegations about Streamlabs’ processes and the resulting consumer confusion”***

Sims v. YouTube (Cal. Super. 2023)

Plaintiff alleges:

- The Checkout Page states that “billing starts on [DATE], the end of your free trial, and will renew automatically every month,” but that statement is unclear about whether formal cancellation is required in order to stop automatic charges (i.e., that “the subscription or purchasing agreement will continue until the consumer cancels”)
- The relevant portion of the Checkout Page does not adequately disclose the recurring amount to be charged because the “Total Today” (\$0.00) does not place consumers on notice of the recurring price.
- Although the Checkout Page states the amount to be charged to the consumer’s Payment Method for the first renewal period of the consumer’s paid Subscription, that term appears near the top of the Checkout Page, which is not in “Visual proximity” to the request for consent.



***Sims v. YouTube* (Cal. Super. 2023)**

(Plaintiff's allegations, cont.)

- The disclosure fails to present complete a description of the cancellation policy that applies to the offer. Although it states “Cancel anytime in settings,” the Checkout Pages contain no explanation of how to cancel. For instance, the Checkout Pages do not mention that, in order to cancel, subscribers must “click[] cancel within the app or contact support
- The website does not disclose that to avoid any charges, subscribers must cancel before the end of the trial period.
- The Checkout Pages fail to place subscribers on notice that, to receive refund upon cancellation, the customer must have not commenced using the relevant subscription ordered and make the request no later than 7 business days after the order.
- The checkout page does not provide any contact method that the consumer can use to reach out and affect cancellation, such as toll-free phone number or an email address. These undisclosed terms constitute material aspects of Defendants’ cancellation policy. Thus, prior to checkout, Defendants were obligated by law to place consumers on notice of these aspects of Defendants’ cancellation.
- The Checkout Page fails to adequately disclose the length of the automatic renewal term associated with the subscriptions,
 - Although the Checkout Pages shown above state that consumer’s Subscription “Will renew automatically every month,” based on that statement, the precise date of given month or billing period that the consumer will be charged in connection with the Subscriptions is unclear.
 - For instance, it is not clear whether “month” refers to the precise calendar date of the consumer’s initial enrollment, in which case the Subscriptions would renew every 28-31 days depending on the length of the given month, or refers to four-week intervals, in which case the Subscription would renew every 28 days Without regard to the calendar date or exception. Thus, the exact length of each renewal term is ambiguous in terms of start and end date from month-to-month or year-to-year.

Gershfeld v. Teamviewer (9th Cir. 2023)

- District court found the disclosure on the “checkout summary” sufficient.
 - Directly above the “Continue to Payment” button, the disclosure stated (partially in bold): “Your **subscription will automatically renew** every 12 months, unless you terminate your contract at least 28 days before the end of the initial term or any renewal term.”
- Ninth Circuit affirmed:
 - “Gershfeld was put on notice, both initially and thereafter, of the automatic renewal and the terms thereof; he was informed of the software subscription price, the price increase upon renewal, the cancellation policy, and the cancellation process”

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Product Choice





Quantity		Price / month	Price / year
1	TeamViewer Business Subscription Contract period: 05-Jan-2021 - 04-Jan-2022	US\$ 49.00	US\$ 588.00
	Net price		US\$ 588.00
	0% Sales Tax		US\$ 0.00
	Invoice Total		US\$ 588.00


Your **subscription will automatically renew** every 12 months, unless you terminate your contract at least 28 days before the end of the initial term or any renewal term.

[Continue to Payment](#)

Payment Method


PayPal (What is PayPal?) 

Credit Card    

Invoice 

You will receive your licenses immediately after purchase and can start working with TeamViewer right away.

I order according to the [TeamViewer End-User License Agreement](#).

[Proceed to Checkout](#)  Your order is safe and secure

Hall v. Time (9th Cir. 2021)

- District court found the disclosure and consent sufficient and 9th Circuit agreed:
 - “The Automatic Renewal Notice is [] in ‘contrasting color’ to its surrounding text or ‘set off from the surrounding text’ with highlighting and bolded text, ‘in a manner that clearly calls attention to the language.’”
 - The “visual proximity” requirement of the ARL requires “visual proximity,” not immediate adjacency, between the “automatic renewal offer terms” and “the request for consent.”
 - The “Submit Order” button is less than forty words and one small image removed from the Automatic Renewal Notice and satisfies the “visual proximity” requirement of Section 17602(a)(1). Plaintiff cites no authority and offers no reasoning for more stringent requirements than those required by the statute’s text.

People Magazine Subscription
www.magazine.store

Automatic Renewal Notice: After your initial term, your magazine subscriptions will automatically renew annually until you tell us to stop. You will receive a reminder of the renewal approximately 30 days in advance. Your credit card or method of payment will be charged at the time of purchase, and before the start of each new annual term, at the rate stated in the notice. You can contact customer service or cancel, at any time.

SPECIAL INTRODUCTORY OFFER
Check this box to receive 1 year (6 issues) of AllRecipes® for just \$3 more!
Includes auto renewal.

REVIEW YOUR ORDER:

- 40 Issues of PEOPLE (Print) \$40.00

SUBTOTAL: \$40.00

submit order



Affirmative and Express Informed Consent

Consent: How to Obtain It

- Must obtain the customer's affirmative, express informed consent before obtaining the consumer's credit card, debit card, bank account, or other financial account
- Must be the affirmative/explicit agreement of the consumer to enroll
 - Consumers must unambiguously articulate their consent
 - Silence is not tantamount to consent, nor does an ambiguous response from a consumer equal consent
- Informed consent: Having been appropriately informed of the offer disclosures, the consumer provides consent

What is “Affirmative” Consent?

- An affirmative action opting in to the automatic renewal provision
 - Some regulators prefer a distinct method, such as a checkbox, signature, or similar method, which the consumer must affirmatively select to accept the negative option terms, and no other portion of the offer
 - Vermont law (when initial term is 1 year or longer and renewal term is 30 days or longer): opt-in mechanism must be different from the mechanism used to complete the actual purchase
 - Plaintiffs allege that the consent mechanism should be directly adjacent to the material terms of the offer (i.e., the terms must be in “*visual proximity*” to the request for consent)
 - Disclosures and checkbox should not be muddled with other disclosures; create at least paragraph separation; use headers to distinguish text

Additional Consent in Program-Specific Offers

- For a **free trial** of a good or service with a term of one month or more, where the contract automatically renews at the end of the free trial period, the seller must:
 - Notify the consumer of the automatic renewal between one and seven days before the free trial period ends, and
 - Notwithstanding the consumer's consent to the free trial, obtain the consumer's affirmative consent to the automatic renewal before charging the consumer for the automatic renewal
 - This consent **must be obtained even if the company already obtained the consumer's affirmative consent to the free trial**
- Card Brand Rules: Once the trial period expires, seller must provide disclosures and obtain explicit consent before charging the consumer again
- Annual Programs:
 - Vermont law: In addition to accepting the contract, the consumer must take an affirmative action to opt in to the automatic renewal provision


Kaplan v. The Athletic Media Company

N.D. Cal. (filed Jan. 18, 2023)

Complaint Allegations:

- “Defendant fails to adequately disclose the terms of its auto-renewal programs either before or after checkout, and it never requires the individual consumer to read or affirmatively agree to any terms of service, *i.e.*, by requiring consumers to click a checkout next to the automatic renewal offer terms before consumers complete the checkout process and submit the orders.”

1-Step Checkout



Or Add Credit Card


Name on card

Full Name

Card Number Expiry CVC

..... MM/YY ...

I'm not a robot


reCAPTCHA
Privacy · Terms

Subscribe

You will be charged a total of \$1.99 each month for the first 12 months. Your subscription will then automatically renew at \$7.99 each month thereafter until you cancel. For more details on our payment terms and how to cancel, [click here](#).

“Dark Patterns” and the FTC’s Enforcement Statement

- The FTC set forth required elements to obtain valid consent:
 - obtain the consumer’s acceptance of the negative option feature offer separately from any other portion of the entire transaction;
 - not include any information that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their express informed consent to the negative option feature;
 - obtain the consumer’s unambiguously affirmative consent to the negative option feature;
 - obtain the consumer’s unambiguously affirmative consent to the entire transaction; and
 - be able to verify the consumer’s consent
 - A “pre-checked box” does not constitute affirmative consent. In addition, the seller should clearly disclose the name of the billing entity authorized by the consumer’s consent.

New York Times Class Action Settlement (2021)

Plaintiff alleged:

- The automatic renewal terms were not presented in a clear and conspicuous manner or *in visual proximity* to the request for consent to the offer.
- Defendant charged consumers' payment method without first obtaining affirmative consent

The New York Times Need help? 855-698-8545

Account **Billing** Confirmation

Choose payment method

Pay with Credit Card

PayPal Checkout

Enter payment details

First Name Last Name

Card Number

Expiration Date Security Code

Country Zip Code

By subscribing, you agree to the [Terms of Sale](#), including the [Cancellation and Refund Policy](#). Your subscription will renew automatically, and you will be charged in advance. You may cancel at any time. The cancellation goes into effect at the start of your following billing cycle.

Purchase Subscription

Secure transaction

BASIC DIGITAL ACCESS \$4.00

Enjoy unlimited articles, podcasts, videos and more on NYTimes.com and the NYTimes app.

PAYMENT INFORMATION

Your payment method will be automatically charged \$4.00 every 4 weeks for the first year (\$1.00 per week).

It will then be automatically charged \$17.00 every 4 weeks thereafter, starting on April 5, 2021 (\$4.25 per week).

Your subscription will continue until you cancel. You can cancel anytime.

Sales tax may apply.

TOTAL: \$17.00 \$4.00

Private Class Actions:

Turnier v. Bed Bath & Beyond (S.D. Cal.)

- Plaintiff challenged Bed Bath & Beyond’s BEYOND+ membership program, including the failure to obtain affirmative consent.
- Court:
 - The autorenewal terms must be in “visual proximity . . . to the request for consent.”
 - **The terms themselves—not the access point to them—need to be in visual proximity to the request.**
 - **The required terms do not appear on the webpage that contains the request for consent.**
 - Even if “it is common to use a hyperlink to terms and conditions, and that practice is sufficient to form a valid contract. . . it does not change what is required under ARL (the disclosure of terms in a specific manner and location).”
- (NOTE: plaintiff failed to allege causation.)

Billing Address

First Name	Last Name	
Company (Optional)		
Country United States		
Street Address		
Apt/Suite/Floor (Optional)		
City	State	Zip Code


Contact Information

Phone Number, maximum 10

Terms and Conditions

I accept the [terms and conditions](#) of the program

Review

 BEYOND+ 1 Year Membership

Gershfeld v. Teamviewer (9th Cir. 2023)

- District court found consent sufficient:
 - Held that the company obtained adequate consent because the plaintiff checked a box stating that his order was subject to the company's end user license agreement (which was hyperlinked) **and** completed his purchase after being presented with the bolded automatic-renewal warning on the "Summary" page.
- Ninth Circuit affirmed.
 - “Gershfeld consented to the terms of the purchase, which were presented in a clear and conspicuous manner, and authorized TeamViewer US to renew his software subscription automatically.”
- **But**, the courts did not clarify whether either of these pages alone would constitute sufficient.


Product Choice




Quantity		Price / month	Price / year
1	TeamViewer Business Subscription Contract period: 05-Jan-2021 - 04-Jan-2022	US\$ 49.00	US\$ 588.00
	Net price		US\$ 588.00
	0% Sales Tax		US\$ 0.00
	Invoice Total		US\$ 588.00


Your **subscription will automatically renew** every 12 months, unless you terminate your contract at least 28 days before the end of the initial term or any renewal term.

[Continue to Payment](#)

Payment Method


PayPal (What is PayPal?) 

Credit Card   

Invoice 

You will receive your licenses immediately after purchase and can start working with TeamViewer right away.

I order according to the [TeamViewer End-User License Agreement](#).

[Proceed to Checkout](#)  Your order is safe and secure

California Autorenewal Task Force's Position

- *California v. NakedWines (2022)*
 - Requires the company to obtain consent through an express act by the consumer through a check-box, signature, express consent button, or other substantially similar mechanism that the consumer must affirmatively select to give consent to the automatic renewal offer terms. The mechanism cannot relate to consent for anything other than the offer terms (such as final payment or completion of the transaction).
 - Immediately adjacent to the consent mechanism, the automatic renewal offer terms must be disclosed. The disclosure must not contain additional information and must be “clear and conspicuous.”
- *California v. Savage Fenty (2022):*
 - Requires the company to obtain affirmative consent to the automatic renewal offer terms, including any offer made at a promotional or discounted price for a limited period of time.
 - For online and written orders this consent shall include the following:
 - Consent must be obtained by an express act by the consumer through check-box, signature, express consent button, or other substantially similar mechanism that the consumer must affirmatively select
 - This mechanism must not relate to consent for anything other than the offer terms (such as final payment or completion of the transaction).
 - The language of the consent shall be: “I agree to the paid Xtra VIP Membership and the Terms Conditions of this website.” The terms paid Xtra VIP Membership and Terms Conditions will be hyperlinked. The autorenewal offer terms must also appear immediately adjacent to this language.
 - This disclosure shall contain no additional information (except for offer limitations) and shall be clear and conspicuous.



Order Confirmation

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Confirmation / Order Acknowledgment

- Some states require that merchants send an acknowledgment—“in a manner that is capable of being retained by the consumer” (CA, NY, VA, CO, others)
- Best practice everywhere
- Include:
 - Terms of offer
 - Cancellation policy
 - Information about how to cancel and hyperlink to cancel
 - If offer is a free gift or trial, disclose how to cancel before consumer begins paying

Mastercard (updated September 2022)

- Notice requirement for free or low-cost trial of digital goods (e.g., streaming service, club membership, website access, or software license) that rolls into a subscription
 - Send reminder notice 3-7 days before end of trial period that subscription will commence if cardholder doesn't cancel; provide instructions on how to cancel
- **All subscription merchants** must:
 - disclose basic terms of subscription at point of sale and capture cardholder's affirmative acceptance of term
 - Send email confirmation, with terms and cancellation instructions
 - **Send a receipt by email message (or other electronic method) after every billing that includes clear instructions for how to cancel the subscription**
 - Must provide an online or electronic cancellation mechanism

Simple Cancellation Mechanism

Online Cancellation for Online Enrollments

Simple Cancellation Mechanism

- Provide a simple, cost-effective, easy-to-use, and readily accessible mechanism for a consumer to stop recurring charges
 - Provide a toll-free telephone number, email address, postal address (if the seller directly bills the consumer), or other cost-effective, timely, and easy-to-use mechanism that the consumer can use to cancel
- Consumers who accept an automatic renewal offer online must be allowed to cancel the offer online (required in CA, CO, DC, DE, FL, IL, LA, ME, NY, NC, ND, OR, TN, VA, VT)
 - Colorado requires that businesses must provide a simple, cost-effective, timely, easy-to-use, and readily accessible mechanism for canceling an automatic renewal contract or trial period offer.
- Virginia law now requires each business making automatic renewal offers online to provide “a conspicuous online option to cancel the recurring charges.”
- Idaho law requires sellers to provide cancellation in the same manner that the consumer used to subscribe

California Cancellation Requirements

- If a consumer accepts an offer online, the consumer must be allowed to terminate exclusively online, at will, ***and without engaging any further steps that obstruct or delay the consumer's ability to terminate immediately.***
- The business must provide a method of termination online, either:
 1. In a prominently located direct link or button (which may be located within a customer account or profile) or within device or user settings; or
 2. By an immediately accessible termination email formatted and provided by the business that a consumer can send without additional information
- The business can require consumers to enter account information or otherwise authenticate their identity online before termination, but a consumer who is unwilling or unable to enter account info or otherwise authenticate online before termination shall not be precluded from authenticating or terminating using another method.

FTC and CFPB's Positions

- FTC Negative Option Enforcement Policy Statement reads requirements into ROSCA beyond those in the statute's text itself:
 - The cancellation mechanism must be “at least as easy to use [i.e., the same method] as the method the consumer used to initiate the negative option feature.” (If a business offers subscriptions online, the seller should, at a minimum, provide a simple cancellation method over the same website or web-based application the consumer used to purchase the subscription.)
 - Cancellation procedures must also be effective, and requests must be honored promptly.
 - Do not thwart or hinder consumer's cancellation efforts.
 - Avoid subjecting consumers to additional sales pitches or “save offers” if such offers impose an unreasonable delay on a consumer's cancellation efforts.
- In January 2023 the Consumer Financial Protection Bureau (“CFPB”) issued “Unlawful Negative Option Marketing Practices”:
 - Stated that sellers would likely violate the Consumer Financial Protection Act if they erect unreasonable barriers to cancellation or fail to honor cancellation requests that comply with their promised cancellation procedures.
 - Examples: hanging up on consumers who call to cancel; placing them on hold for an unreasonably long time; providing false information about how to cancel; or misrepresenting the reasons for delays in processing consumers' cancellation requests.

FTC's Position

- The FTC has challenged:
 - Multi-step “save” tactics during cancellation calls
 - Companies providing different cancellation telephone numbers for different services
 - Companies that chronically understaff call centers, hang up on customers who call to cancel, thwart cancellation efforts by rendering the website inoperable or leaving the phone line busy, make consumers wait on hold for unreasonably lengthy periods of time, disconnect calls for customers who try to cancel, never call back customers who leave messages
 - Companies that respond to customers’ cancellation requests by sending additional emails to consumers requesting information about why the consumer is canceling or to extend save offers; and failing to honor consumers’ cancellation requests unless the consumer separately responded to the company’s emails and renewed their request to cancel
- These practices are particularly risky if they prevent customers from cancelling within the cancellation period and result in the customer being charged for an additional term despite attempting to cancel.
- The FTC has challenged certain cancellation practices, even where the company provided an online cancellation method.

ROSCA Enforcement – Allegedly Inadequate Cancellation Mechanism

Ongoing lawsuit in **FTC v. Match Group Inc.**

- FTC alleged that Match.com misled consumers with a confusing and cumbersome cancellation process.
 - Multiple “save” attempts before a customer could cancel his or her membership.
- Alleges that the cancellation flow was “hard to find, tedious, and confusing. Members often think they’ve cancelled when they have not and end up with unwanted renewals. The current process takes over 6 clicks.”



FEDERAL TRADE COMMISSION'S COMPLAINT

Class Actions

- Class action plaintiffs’ attorneys have filed lawsuits challenging similar practices as the FTC, including:
 - Continuing to charge customers after they attempted to cancel
 - Failing to disclose that a customer must cancel during a certain period in advance of the next renewal for cancellation to be effective;
 - Chat bots’ inability to process plain-language requests for cancellation;
 - “Adopting complex cancellation procedures to increase the friction in the subscription cancellation process” by requiring people to navigate through a multi-step cancellation process online and refusing to honor customers’ telephonic cancellation requests.
- Providing a simple, well-disclosed, and effective cancellation mechanism can help defend claims:
 - *Debono v. Cerebral Inc.* (N.D. Cal. Jan. 18, 2023)
 - “Plaintiffs allege that Cerebral made it difficult for them to cancel their subscriptions. This unfair-business-practices theory isn't well pleaded because two of the named plaintiffs don't allege that they complied with Cerebral’s cancellation policy—which may have been the true source of their difficulties—and the third named plaintiff, who did follow the process, was promptly able to cancel. These allegations don't plausibly support that Cerebral engaged in unfair business practices.”



Renewal Reminders

Renewal Reminders

- Additional notices must be sent, depending on the contract's initial term and renewal term
 - Some states require notices if the initial term is 12 months or more, and automatically renews for a term of one month or more
 - North Dakota imposes notice requirements for automatic renewal periods of longer than six months (North Dakota prohibits automatic renewal periods of greater than 12 months)
 - Notice must include (CA standard):
 - That the automatic renewal will renew unless cancelled by the consumer
 - Length of renewal period
 - One or more methods by which the consumer can cancel
 - Contact info for the business

Renewal Reminders

- Laws vary regarding the timing of this notice, but timing is generally based upon: (a) the automatic renewal date, (b) the termination date, or (c) the deadline by which the consumer must provide notice to cancel the contract
- Should be provided in a format that is capable of being retained by the consumer
- ***Because state laws regarding timing vary, a one-size-fits-all approach might not work***

California Requirements for Notices

Renewal notice required if:

<p>Consumer accepted a free gift or trial, lasting for more than 31 days, that was included in the offer</p> <p>* Free gift does not include promotional items unrelated to the subscribed product/service</p>	<p>Consumer accepted an automatic renewal at a promotional or discounted price, and the applicability of that price was more than 31 days</p>	<p>Consumer accepted an automatic renewal offer with an initial term of one year or longer, and that automatically renews unless consumer cancels</p>
<p>Provide renewal notice at least three days before and at most 21 days before the expiration of the predetermined period of time for which the free gift or trial, or promotional or discounted price, applies</p>		<p>Provide renewal notice at least 15 days and not more than 45 days before the offer renews</p>

Colorado Requirements for Notices

- Must send a notice informing the consumer that the contract will automatically renew
- Notice must include clear and accurate information about the identity of the sender and provide the process for cancelling
- Notice must be sent by physical mail, email, or other easily accessible form of communication, such as a text message or mobile phone app, if the consumer specifically authorizes the sending of renewal notices by text

▪ When to send:

Initial Term of 12 months or longer:	Initial Term of less than 12 months:
Send at least 25 days and no more than 40 days before first automatic renewal and each renewal thereafter	Send at least once in the period between 25 and 40 days directly preceding the first automatic renewal that would extend the contract beyond a continuous 12-month period; and at least once in the period between 25 and 40 days directly preceding any automatic renewal that extends the contract beyond any additional consecutive 12-month period

Material Changes to the Offer Terms

Material Changes to the Offer

- Provide current consumers with a clear and conspicuous notice of the change and information regarding how to cancel
 - Provide in a manner that is capable of being retained by the consumer
 - Hyperlink to cancellation mechanism
- Price changes are material; significant changes to what the consumer is receiving are material
- Best practice is to obtain consumers' affirmative consent to the changes

Other Notable State Laws

- **Vermont**
 - Provide a separate opt-in mechanism for the auto-renew terms, separate from the general offer acceptance or general terms and conditions
 - If the initial term is one year or longer, disclosures must appear in **bold**
- **District of Columbia**
 - Notify the consumer between 15 and 30 days before expiration of a free trial period, and obtain consent before the end of any trial period with a renewal term of one month or more
- **Colorado:** Must provide a simple, cost-effective, timely, easy-to-use cancellation mechanism. A business complies if it offers:
 - A one-click online cancellation link on the website or available to consumers after they complete a reasonable authentication mechanism to log in to their account
 - An in-person mechanism for cancelling at a physical location where the consumer regularly uses any goods or services that are subject to the automatic renewal contract
- **North Dakota:** Prohibits automatic renewal periods of more than 12 months
- **Safe Harbor (i.e., California, Delaware):** If a business complies with the provisions in good faith, it shall not be subject to civil remedies.

Ways to Reduce Risk and Prepare a Defense

Ways to Reduce Risk

- Compliance audit: desktop, mobile “test shopping” of current offer presentation(s)
- Audit customer service policies
- Adopt a lenient cancellation policy
- Adopt a generous refund policy
- Monitor and address complaints

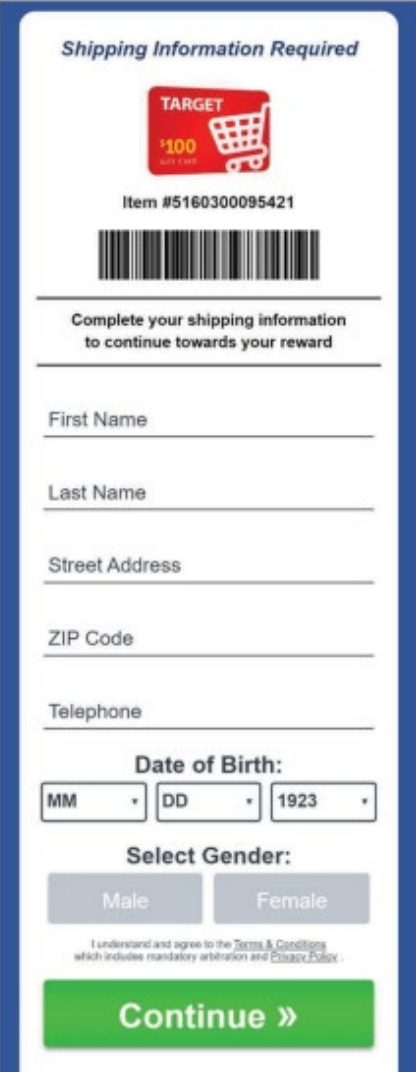
Arbitration Provision and Class Action Waiver

- Include a mandatory arbitration provision and class action waiver in your terms and conditions.
- Ensure that you obtain consent to the hyperlinked terms and conditions.
 - Make the notice of the terms and conditions unavoidable.
 - Make the font sufficiently large and contrasting from the background.
 - Require consumers to click a checkbox agreeing to the terms.
 - Format hyperlinks appropriately so that people understand that they are hyperlinks (blue, underlined is best practice)
 - Label hyperlinks consistently.
- Make your terms and conditions are enforceable.
 - Comply with state laws regarding limitations of liability
 - Include procedural protections for arbitration.
- *The CFPB issued a proposed rule that would require covered companies to register their terms and conditions if they contain certain provisions, including mandatory arbitration and class action waiver.*

Arbitration Provision and Class Action Waiver

- Ensure that you obtain consent.
 - In *Berman v. Freedom Financial*, the Ninth Circuit found the disclosure insufficient to obtain consent to the mandatory arbitration provision found in the hyperlinked terms and conditions
 - The Ninth Circuit found that the plaintiffs were not on notice of the terms:
 - *“to be conspicuous in this context, a notice must be displayed in a font size and format such that the court can fairly assume that a reasonably prudent Internet user would have seen it”*
 - *“The text disclosing the existence of the terms and conditions on these websites is the antithesis of conspicuous. It is printed in a tiny gray font considerably smaller than the font used in the surrounding website elements, and indeed in a font so small that it is barely legible to the naked eye. The comparatively larger font used in all of the surrounding text naturally directs the user’s attention everywhere else.”*
 - *“while it is permissible to disclose terms and conditions through a hyperlink, the fact that a hyperlink is present must be readily apparent. . . The failure to clearly denote the hyperlinks here fails our conspicuousness test.”*

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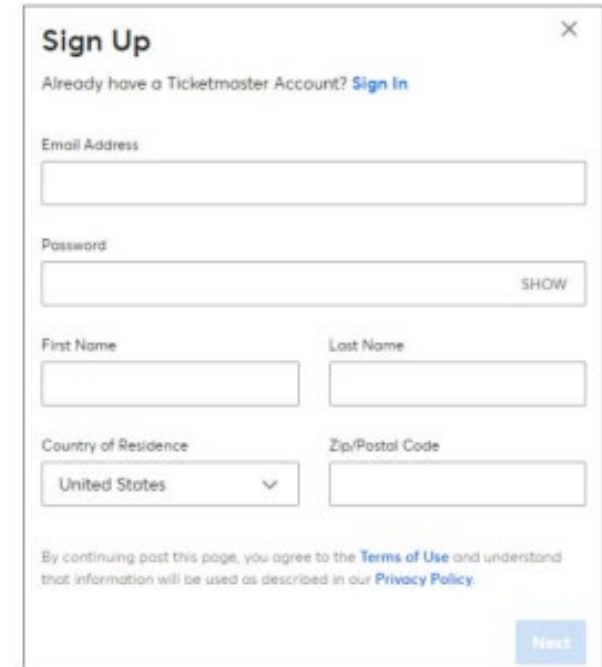


The image shows a screenshot of a Target website's shipping information form. At the top, it says "Shipping Information Required". Below that is a red Target logo with a shopping cart icon and "\$100 off" text. Underneath is the item number "Item #5160300095421" and a barcode. A horizontal line separates this from the shipping information fields. Below the line, the text "Complete your shipping information to continue towards your reward" is displayed in a very small, gray font. The shipping information fields include: First Name, Last Name, Street Address, ZIP Code, Telephone, and Date of Birth (with dropdown menus for MM, DD, and 1923). Below these is a "Select Gender:" section with "Male" and "Female" buttons. At the bottom, there is a small line of text: "I understand and agree to the Terms & Conditions which includes mandatory arbitration and Privacy Policy." and a large green "Continue »" button.

Oberstein v. LiveNation (9th Cir. 2023)

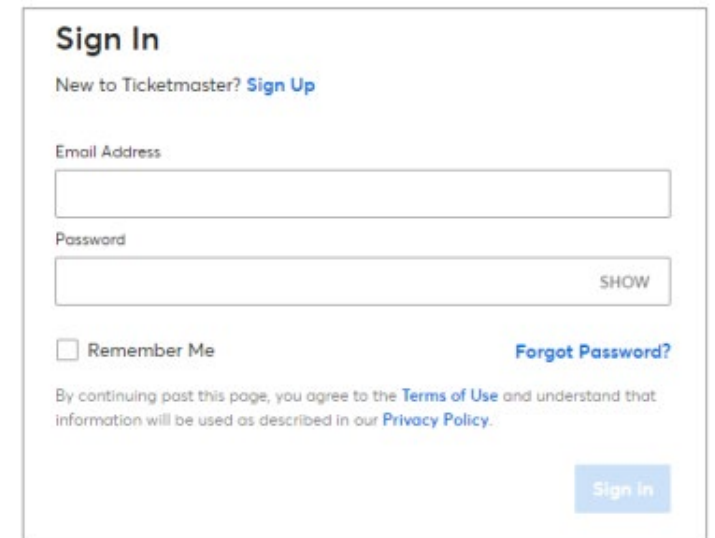
- The Ninth Circuit upheld the order compelling arbitration, finding, among other things, that the notice employed on the websites to alert users to the terms of use and arbitration provision was materially different from the “tiny gray font” that was “barely legible to the naked eye” in Berman.
- “At three independent stages—when creating an account, signing into an account, and completing a purchase— [] webpage users are presented with a confirmation button above which text informs the user that, by clicking on this button, ‘you agree to our Terms of Use.’”
- The hyperlink was “conspicuously distinguished from the surrounding text in bright blue font, making its presence readily apparent.”

Step 1:



The screenshot shows a 'Sign Up' form with a close button (X) in the top right corner. Below the title, there is a link: 'Already have a Ticketmaster Account? [Sign In](#)'. The form contains several input fields: 'Email Address', 'Password' (with a 'SHOW' button), 'First Name', 'Last Name', 'Country of Residence' (a dropdown menu showing 'United States'), and 'Zip/Postal Code'. At the bottom, there is a 'Next' button and a disclaimer: 'By continuing past this page, you agree to the [Terms of Use](#) and understand that information will be used as described in our [Privacy Policy](#).'

Step 2:



The screenshot shows a 'Sign In' form with a close button (X) in the top right corner. Below the title, there is a link: 'New to Ticketmaster? [Sign Up](#)'. The form contains several input fields: 'Email Address', 'Password' (with a 'SHOW' button), and a checkbox for 'Remember Me'. There is also a link: '[Forgot Password?](#)'. At the bottom, there is a 'Sign In' button and a disclaimer: 'By continuing past this page, you agree to the [Terms of Use](#) and understand that information will be used as described in our [Privacy Policy](#).'

Oberstein v. LiveNation (9th Cir. 2023)

Step 3:

* Selection Required

Yes, protect my ticket purchase to Dave Matthews Band on 16-Jul-21. (Highly Recommended)

No, do not protect my ticket purchase. I understand this decision may put my \$135.40 spent on Dave Matthews Band tickets at risk.

243 people protected their tickets in the last 3 days

All Sales Final - No Refunds
By continuing past this page and clicking "Place Order", you agree to our [Terms of Use](#).

Order Details
^ \$135.40

Place Order

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