

# **CANCELLED: How the FTC’s Click to Cancel Policy Impacts Predatory Subscriptions**

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## **Introduction**

Have you ever torn your hair out while cancelling a subscription service? You scour the website, fill out the proper forms, and spend hours on the phone until you are left cursing at the wind. Millions of Americans face this frustrating scenario, but the Federal Trade Commission (FTC) has come up with an elegant solution: Click-to-Cancel. This article will give an overview of the new Click-to-Cancel initiative. We begin with the why we have a need for such a regulation and providing a summary of the new FTC rule requiring simple transparent procedures to cancel web based services. This article discusses the initial public reactions to the rule and how businesses can comply. Finally, it will discuss the present legal status of the rule. With a new presidential administration bringing an FTC Chairperson who previously voted against Click-to-Cancel, the regulation is a powerful tool but has an unclear future.

## **Status Quo for Cancelling Subscriptions**

In the internet age, one would think it is easy to unsubscribe from services since it can often be done with the click of a button. However, companies find ways to mislead their customers into continuing their subscription. Back in 2023 the FTC took action against Amazon for “enrolling consumers in Amazon Prime without consent and sabotaging their attempts to cancel.”<sup>1</sup> This included practices such as presenting consumers with many chances to subscribe

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<sup>1</sup> F.T.C., FTC TAKES ACTION AGAINST AMAZON FOR ENROLLING CONSUMERS IN AMAZON PRIME WITHOUT CONSENT AND SABOTAGING THEIR ATTEMPTS TO CANCEL (2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>.

to Amazon Prime, but deliberately making the unsubscribe button difficult to locate.<sup>2</sup> Sometimes when consumers clicked to purchase items in their shopping cart, “the button presented to consumers to complete their transaction did not clearly state that in choosing that option they were also agreeing to join Prime for a recurring subscription.”<sup>3</sup> Another Amazon Prime example is Amazon giving consumers multiple steps to cancel, including locating a mysteriously hidden “cancellation flow” that redirected you to additional pages with discounted subscription offers.<sup>4</sup>

These complaints are not unique to Amazon. Over the last five years the number of complaints has gradually grown.<sup>5</sup> According to the FTC, “...in 2024 the Commission received nearly 70 consumer complaints per day on average, up from 42 per day in 2021.”<sup>6</sup> Click to cancel’s regulatory history though actually dates back even further, all the way to 1973’s Negative Option Rule.<sup>7</sup> Negative Options are when companies assume that a consumer does nothing or is silent they have accepted an offer.<sup>8</sup> The FTC’s 1973 Negative Option Rule previously regulated plans where sellers occasionally notified customers offering products, and then charged customers unless the customer specifically acted to decline the offer.<sup>9</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> F.T.C., FEDERAL TRADE COMMISSION ANNOUNCES FINAL “CLICK-TO-CANCEL” RULE MAKING IT EASIER FOR CONSUMERS TO END RECURRING SUBSCRIPTIONS AND MEMBERSHIPS (2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurring>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Michele Floyd, Amanda M. Witt, & X. Diego Wu Min, *The FTC Expands its Negative Option Rule to Reach Autorenewal and Other Programs*, KILPATRICK TOWNSEND (Oct. 18, 2024), <https://ktslaw.com/en/Insights/Alert/2024/10/The-FTC-Expands-its-Negative-Option-Rule-to-Reach-Autorenewal-and-Other-Programs#:~:text=The%20FTC's%201973%20Negative%20Option.action%20to%20decline%20the%20offer.>

<sup>9</sup> *Id.*

The rule has now been modernized to keep pace with modern technology such as recurring subscriptions and memberships.<sup>10</sup> When the FTC proposed the preliminary rule in March of 2023, there was immediate widespread interest.<sup>11</sup> According to the FTC, the Commission received “16,000 comments from consumers, federal and state government agencies, consumer groups, and trade associations.”<sup>12</sup> Upon evaluating these comments, the FTC voted to adopt the rule with a 3-2 vote.<sup>13</sup> Commissioners Melissa Holyoak and Andrew N. Ferguson voted no, while Commissioner Rebecca Kelly Slaughter issued a separate statement.<sup>14</sup>

Commissioner Holyoak’s dissent stated that the FTC was exceeding its authority as a regulatory agency by amending the Negative Option Rule, and that these substantive changes were better done by Congress.<sup>15</sup> Commissioner Holyoak felt that this amendment was being rushed due to political interests supporting the majority’s favored presidential candidate with an election one month away in November of 2024, and may have voted differently given more time for revisions.<sup>16</sup> While Commissioner Slaughter voted yes to the final amendments, she wanted to explain the reasoning for why the FTC initially proposed but did not finalize a modification which “would have required annual reminders of subscriptions that do not involve the delivery of physical goods.”<sup>17</sup> The FTC felt this proposal exceeded their authority, as reminders would be better regulated by Congress and state legislatures who have plenary authority.<sup>18</sup>

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<sup>10</sup> F.T.C., FEDERAL TRADE COMMISSION ANNOUNCES FINAL “CLICK-TO-CANCEL” RULE MAKING IT EASIER FOR CONSUMERS TO END RECURRING SUBSCRIPTIONS AND MEMBERSHIPS (2024).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> F.T.C., DISSENTING STATEMENT OF COMMISSIONER MELISSA HOLYOAK RE NEGATIVE OPTION RULE (2024).

<sup>16</sup> *Id.*

<sup>17</sup> F.T.C., STATEMENT OF COMMISSIONER REBECCA KELLY SLAUGHTER REGARDING THE FINAL TRADE REGULATION RULE CONCERNING RECURRING SUBSCRIPTIONS AND OTHER NEGATIVE OPTION PROGRAMS (2024).

<sup>18</sup> *Id.*

## What is the Click to Cancel Rule?

In a world increasingly driven by subscription-based services, from streaming platforms to meal delivery plans, consumers often find themselves entangled in unwanted recurring charges due to opaque and burdensome cancellation processes.<sup>19</sup> To address this issue, the Federal Trade Commission (“FTC”) introduced the Click-to-Cancel Rule (“the Rule”), an enhancement to its existing Negative Option Rule.<sup>20</sup> The Rule applies to businesses across industries that offer variations of billing arrangements, such as subscription-based services and memberships.<sup>21</sup> This Rule has a broad scope, affecting meal delivery plans, gym memberships, online streaming services, and delivery subscription boxes, among others that utilize this type of recurring billing structure.<sup>22</sup> This scope revolves around the use of negative option marketing, where continued billing will occur based on a customer’s inaction (for example, if a customer signs up for a billed monthly delivery service, the business will continue to bill the customer once a month without the customer giving authorization each time).<sup>23</sup> The Rule covers businesses that utilize this negative option marketing regardless of medium, digital or physical.<sup>24</sup> Businesses that fail to

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<sup>19</sup> *FTC to Ramp Up Enforcement Against Illegal Dark Patterns That Trick or Trap Consumers into Subscriptions*, FTC (Oct. 28, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/10/ftc-ramp-enforcement-against-illegal-dark-patterns-trick-or-trap-consumers-subscriptions>.

<sup>20</sup> *FTC Finalizes Click to Cancel Provision, Making It Easier for Consumers to End Recurring Subscriptions*, FTC (Mar. 23, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-finalizes-click-cancel-provision-making-it-easier-consumers-end-recurring-subscriptions>.

<sup>21</sup> *Federal Trade Commission Announces Final “Click to Cancel” Rule, Making It Easier for Consumers to End Recurring Subscriptions*, FTC (Oct. 2024), <https://www.ftc.gov/news-events/news/press-releases/2024/10/federal-trade-commission-announces-final-click-cancel-rule-making-it-easier-consumers-end-recurri>

<sup>22</sup> *Id.*

<sup>23</sup> *Federal Trade Commission, Negative Options: Federal Trade Commission Workshop on Analyzing Negative Option Marketing*, FTC STAFF REPORT (July 2004), <https://www.ftc.gov/sites/default/files/documents/reports/negative-options-federal-trade-commission-workshop-analyzing-negative-option-marketing-report-staff/p064202negativeoptionreport.pdf>.

<sup>24</sup> Brian J. Goodrich, Benjamin A. Genn, & Ceijenja J. Cornelius, *The New Cancel Culture: The FTC’s “Click to Cancel” Rule*, HOLLAND & KNIGHT (Oct. 30, 2024), <https://www.hklaw.com/en/insights/publications/2024/10/the-new-cancel-culture-the-ftcs-click-to-cancel-rule#:~:text=The%20Rule%20requires%20all%20businesses,used%20to%20initiate%20the%20transaction.>

adhere to the Rule's requirements, regardless of their size or industry, may face enforcement actions by the FTC.<sup>25</sup>

With a relatively short text, the Rule provides clear critical provisions outlining prohibitions and requirements for businesses to comply.<sup>26</sup> At the beginning of the consumer relations process, covered businesses must provide clear and conspicuous disclosures of subscription terms.<sup>27</sup> Disclosures can include information regarding cancellation policies, costs, and renewal intervals, all of which must be presented prominently to the consumer before the consumer is able to make a decision about whether to enroll in the business service or not.<sup>28</sup> This follows the FTC's general philosophy of ensuring that the consumer is given all pertinent information before making a decision to transact with a business, especially in the case of a business utilizing negative option marketing.<sup>29</sup>

The heart of these new requirements require cancellation parity.<sup>30</sup> Under this requirement, covered businesses must make it easy for a consumer to cancel the subscription service they have signed up for, specifically mirroring the same method the consumer used to originally sign up.<sup>31</sup> For example, if a consumer signed up for the subscription service completely online, the consumer must also be able to cancel their subscription online without

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<sup>25</sup> *Id.*

<sup>26</sup> *Click to Cancel Rule*, 16 C.F.R. § 425 (2024).

<sup>27</sup> *Click to Cancel Rule*, 16 C.F.R. § 425.3 (2024).

<sup>28</sup> *Id.*

<sup>29</sup> Daniel Kaufman & Linda A. Goldstein, *What the FTC's New 'Click-to-Cancel Rule' Means for Your Business*, BAKERHOSTETLER (Oct. 18, 2024), <https://www.adventures-in-law.com/blogs/what-the-ftcs-new-click-to-cancel-rule-means-for-your-business/>.

<sup>30</sup> *Click to Cancel Rule*, *supra* note 21.

<sup>31</sup> *Id.*

having to complete any additional steps, such as calling a customer service representative or sending physical mail confirmation.<sup>32</sup>

In a similar fashion, the Rule requires immediate and straightforward mechanisms for consumers to cancel provided services through clear and accessible options.<sup>33</sup> These options must be displayed prominently, such as putting a cancellation button for consumers to utilize.<sup>34</sup> The Rule makes clear that companies are allowed to provide discounts, special deals, or other incentives to persuade customers not to cancel their subscription or membership services.<sup>35</sup> These incentives must not obstruct or delay the cancellation process.<sup>36</sup> The consumer must be able to decline the offer and proceed to cancel their subscription directly in the same manner as when they signed up for the service.<sup>37</sup>

The Rule also requires that businesses utilizing negative option marketing cannot make price increases or changes in service offerings and continue to bill the consumer without consent. Consumers must give pre-approval for subscription changes, and the business must receive explicit consent to continue billing despite these changes.<sup>38</sup> Assuming that a customer's inaction or silence is enough to allow for continued billing directly violates the Rule.<sup>39</sup>

The penalties for non-compliance with the FTC's Click-to-Cancel Rule can be significant and are designed to ensure strict adherence to the regulation. Businesses that violate the Click-to-Cancel Rule can face civil monetary penalties of up to \$50,120 per violation, with fines annually

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<sup>32</sup> *What the FTC's Click to Cancel Rule Means for Subscription Services*, LERMANSENTER (Oct. 28, 2024), <https://www.lermansenter.com/what-the-ftcs-click-to-cancel-rule-means-for-subscription-services/>.

<sup>33</sup> *Click to Cancel Rule*, 16 C.F.R. § 425.6 (2024).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

adjusted for inflation.<sup>40</sup> The FTC can also seek injunctive relief, ordering the violating practices to be ceased immediately until compliance is achieved with the Rule.<sup>41</sup>

The Rule further allows the FTC to order specific consumer redress, including issuing refunds to consumers affected by the violating business practices (for example, if they were charged inappropriately or were unable to cancel their subscriptions).<sup>42</sup> Along with these potential penalties, non-compliance can lead to significant reputational harm, especially when the FTC publicly announces enforcement actions.<sup>43</sup>

In addition to FTC enforcement, state attorneys general may take action against businesses that violate state consumer protection laws that align with or exceed the Rule's requirements.<sup>44</sup> This could result in additional fines or legal consequences at the state level.

### **Legal Challenges to the Rule**

Many lawsuits have been filed challenging the FTC. According to law firm Holland & Knight, "Lawsuits have already been filed in the U.S. Court of Appeals for the Fifth, Eleventh and Sixth Circuits by various industry groups and associations. A challenge could halt enforcement of the new rule nationwide, as with the FTC's rule banning non-competes."<sup>45</sup> The Fifth Circuit challenge comes from industry groups and trade associations representing security,

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<sup>40</sup> *Click to Cancel Rule*, *supra* note 26.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Kirk J. Nahra, et al., *FTC Continues to Bring Enforcement Actions Against Data Brokers*, WILMERHALE (Dec. 16, 2024), <https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20241216-ftp-continues-to-bring-enforcement-actions-against-data-brokers>.

<sup>44</sup> Merrit M. Jones, et al., *Are You Preparing to Comply With the FTC "Click-To-Cancel" Rule?* (Nov. 19, 2024), <https://www.bclplaw.com/en-US/events-insights-news/are-you-preparing-to-comply-with-the-ftc-click-to-cancel-rule.html>.

<sup>45</sup> Brian J. Goodrich et. al, *The New Cancel Culture: The FTC's "Click to Cancel" Rule*, HOLLAND & KNIGHT (Oct. 30, 2024), <https://www.hklaw.com/en/insights/publications/2024/10/the-new-cancel-culture-the-ftcs-click-to-cancel-rule>.

advertising, and television firms.<sup>46</sup> In January of 2025, the Eighth Circuit Court of Appeals, in a 2-1 order, rejected an initial challenge to the rule in a request to stay the Rule from taking effect pending litigation.<sup>47</sup>

Meanwhile in the nonprofit sector, there is ambiguity as to whether these regulations would apply or not.<sup>48</sup> But according to FTC Spokesman Mitchell Katz in *The NonProfit Times*, “nonprofits are not covered, as they are not under the FTC’s statutory jurisdiction...we’re not a regulatory agency, although we do develop and implement regulations. So, we don’t ‘clear off’ or approve any particular companies or industries.”<sup>49</sup>

Some organizations like the Contributor Development Partnership (CDP) though who work with public media organizations on fundraising efforts though are still advising nonprofit organizations to comply with click to cancel regardless of whether they have to or not.<sup>50</sup> This can develop trust with existing supporters and the transparency has been shown to increase donor retention.<sup>51</sup>

## **How Can Businesses Comply?**

The good news about the Rule is that it provides a practical interpretation of how businesses can comply with its provisions. The Rule does not prohibit businesses from utilizing subscription and membership services or negative option marketing; it merely sets guidelines on

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<sup>46</sup> Electronic Security Association v. Federal Trade Commission, (2024),

<https://storage.courtlistener.com/recap/gov.uscourts.ca5.221571/gov.uscourts.ca5.221571.1.2.pdf>.

<sup>47</sup> Rothermel et. al, *Fast VAST Update: Federal Court Declines to Stay FTC Negative Option Rule During Challenge*, VENABLE (Jan. 22, 2025), <https://www.venable.com/insights/publications/2025/01/fast-vast-update-federal-court-declines-to-stay>.

<sup>48</sup> Paul Clolery, *Updated: New FTC Rules Could Aid Donors In Opting Out*, THE NONPROFIT TIMES (Oct. 21, 2024), [https://thenonproffitimes.com/npt\\_articles/new-ftc-rules-could-aid-donors-in-opting-out/](https://thenonproffitimes.com/npt_articles/new-ftc-rules-could-aid-donors-in-opting-out/).

<sup>49</sup> *Id.*

<sup>50</sup> Frank Auer, *Fear Not: Why the FTC’s New “Click to Cancel” Rule Could Be Great News for your PMO*, CDP COMMUNITY (Oct. 18, 2024), <https://www.cdpcommunity.org/blog/ftc-easy-cancellation>.

<sup>51</sup> *Id.*

how these practices can be done. In order to satisfy FTC requirements with regard to ease of cancellation for the consumer, companies need to ensure a “click-to-cancel” approach is available on their website/app. This means that a consumer should be able to log into their account, go to subscriptions, and successfully cancel their subscription within a few clicks (not multiple steps via having to call and speak to a customer service rep).

The cancellation option must not be buried and require long pathways for consumers to find it. The option must be in visible places where consumers might search for such an option, like account settings, customer service/support, and subscription pages/features. Companies can ease this with proper buttons/drop downs or even an entire page in one’s account.

Compliance rests upon transparency. Companies need to let consumers know that they can cancel and how; this means alluding to cancellation fees in terms of service, parts of FAQ, and customer service assistance.<sup>52</sup> An FAQ dedicated to this or a how-to video may allow for easier access and use by the consumer. Companies should refrain from utilizing additional barriers for the consumer to cancel.<sup>53</sup> After cancellation, the company must confirm to the customer that the cancellation has been received as soon as possible.<sup>54</sup> This can be an email or text, as well as a link in their account, confirming the receipt of cancellation, including the date of cancellation, the title of the subscription that was canceled, and anything pertinent to customer rights for potential refunds.<sup>55</sup>

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<sup>52</sup> Paola Lagunes, *Everything You Need to Know About The FTC’s Click-to-Cancel Rule*, RECURLY (Jan. 29, 2025), <https://recurly.com/blog/everything-you-need-to-know-ftc-click-to-cancel-rule>.

<sup>53</sup> *Id.*

<sup>54</sup> *The FTC Click to Cancel Rule: A Merchant’s Guide*, CHARGEBACK GURUS (Dec. 10, 2024), <https://www.chargebackgurus.com/blog/the-ftc-click-to-cancel-rule-a-merchants-guide>.

<sup>55</sup> *Id.*

The company may not charge further for the subscription services already rendered, but it is also not to charge for any subsequent subscriptions due.<sup>56</sup> Once the cancellation takes place, the billing department needs to know that there will be no further recurring charges.<sup>57</sup> This means that even if a customer forgets and the next billing cycle occurs, the automated billing department should have no way to charge the customer.<sup>58</sup>

Companies should consistently assess their subscription and cancellation processes internally relative to the FTC’s Click-to-Cancel Regulation.<sup>59</sup> This means assessing its customers’ journey from start to finish, finding faults with the cancellation policy, and responding to customer feedback.<sup>60</sup> This also means taking customer feedback into account about their isolated situation to better change or adapt their cancellation options.<sup>61</sup>

### **Predicted Enforcement During the Second Trump Administration**

The Federal Trade Commission is undergoing a seismic shift in its leadership, with Andrew Ferguson assuming the mantle from Chair Lina Khan.<sup>62</sup> The FTC, while under the helm of Khan, had adopted a staunchly consumer-first attitude, including unveiling the “Click-to-Cancel” rule.<sup>63</sup> It had been designed to make it easier for people to cancel subscriptions after

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<sup>56</sup> John P. Feldman, Keri S. Bruce & Keyleigh J. Ristuben, “Click-to-Cancel”: *The FTC Releases Final Rule on Negative Option Features*, REED SMITH LLP (Oct. 29, 2024), <https://www.reedsmith.com/en/perspectives/2024/10/click-to-cancel-the-ftc-releases-final-rule-negative-option-features>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Andrew N. Ferguson Takes Over as FTC Chairman*, FTC (Jan. 22, 2025), <https://www.ftc.gov/news-events/news/press-releases/2025/01/andrew-n-ferguson-takes-over-ftc-chairman>.

<sup>63</sup> Jericho Casper, *Politically Divided FTC Adopts Click-to-Cancel Mandate*, BROADBAND BREAKFAST (Oct. 17, 2024), <https://broadbandbreakfast.com/politically-divided-ftc-adopts-click-to-cancel-mandate/>.

complaints arose that “subscription traps” were the reason consumers could not cancel subscriptions.<sup>64</sup>

In that period, Chair Khan’s FTC was quite active in challenging companies that engaged in these problematic practices, calling for more transparency and accountability.<sup>65</sup> The FTC filed lawsuits against high-profile companies, such as Amazon, accusing them of deceptive practices that made canceling subscriptions unnecessarily difficult.<sup>66</sup> These cases emphasized the importance of transparency in subscription management and held companies accountable for “dark patterns,” such as hiding cancellation options or requiring excessive steps to cancel services.<sup>67</sup>

Chair Ferguson is expected to be more business-friendly than the previous administration.<sup>68</sup> He has shown the desire to lighten the regulatory burden and foster innovation, which could mean moving away from strict enforcement.<sup>69</sup> Considering the Rule was only approved with a vote of 3-2, with Chair Ferguson voting against its approval, his approach is bound to be one of more cooperation with businesses in the way of helping them to comply.<sup>70</sup>

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<sup>64</sup> House Committee on Energy and Commerce Subcommittee on Innovation, Data, and Commerce, *Testimony of Chair Lina M. Khan*, UNITED STATES HOUSE OF REPRESENTATIVES (July 9, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/chair-khan-testimony\\_7-9-2024.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/chair-khan-testimony_7-9-2024.pdf).

<sup>65</sup> *Factsheet: The FTC-For the First Time in Decades-Held Corporate America Accountable to Protect Small Businesses, Workers, and Consumers*, AMERICAN ECONOMIC LIBERTIES PROJECT (Jan. 28, 2025), <https://www.economicliberties.us/our-work/factsheet-the-ftc-is-holding-corporate-actors-accountable-protecting-small-businesses-workers-and-consumers-2/>.

<sup>66</sup> *FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel*, FTC (June 21, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their>.

<sup>67</sup> Johanna Trisnawati Gunawan, *Understanding and Regulating User Experiences: Dark Patterns as a Case Study*, NORTHEASTERN UNIVERSITY (July 2024), <https://repository.library.northeastern.edu/files/neu:ms35xp531/fulltext.pdf>.

<sup>68</sup> Andrew Ross Sorkin, et al., *The F.T.C.’s Next, More Deal-Friendly Leader*, THE NEW YORK TIMES (Dec. 11, 2024), <https://www.nytimes.com/2024/12/11/business/dealbook/ftc-trump-ferguson-khan.html>.

<sup>69</sup> *Id.*

<sup>70</sup> Andrew N. Ferguson, *Dissenting Statement of Commissioner Andrew N. Ferguson Regarding the Unfair or Deceptive Fees Rulemaking Matter Number R207011*, FTC (Dec. 17, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/ferguson-junk-fees-dissent.pdf?utm\\_source=chatgpt.com](https://www.ftc.gov/system/files/ftc_gov/pdf/ferguson-junk-fees-dissent.pdf?utm_source=chatgpt.com).

However, Chair Ferguson’s primary complaint seemed to stem from his statement that previous administration, in its final days, should refrain from enacting significant new regulations that the incoming administration would be responsible for enforcing.<sup>71</sup> Therefore, though he may support provisions of the Rule, it is fair to assume that he will be more selective with the Rule’s enforcement, maybe by extending time for implementation or issuing guidance rather than heavy fines.<sup>72</sup> This pragmatism would grant businesses greater leeway to operate yet also raise apprehensions among consumer advocates that key safeguards may be lost.

Chair Ferguson’s voting history and the things he has said publicly would suggest that he will balance consumer needs with the freedom of the marketplace.<sup>73</sup> This could result in a strategy of selective enforcement where serious violations are pursued while an attempt is made to persuade businesses to regulate themselves.<sup>74</sup> How far this shift goes may be modified by the composition of the commissioners within the FTC and the political pressures from both sides. If Chair Ferguson relies more on cooperation than on strict regulation, the effectiveness of the “Click-to-Cancel” rule may depend on how well companies voluntarily comply with the FTC’s Rules. This change in leadership is a turning point for the FTC, given that the course it now sets will have a great impact on the continued pull between regulation and consumer rights.

## **Conclusion**

For the past few year’s businesses have become increasingly aggressive with their tactics to prevent consumers from cancelling recurring subscriptions and memberships. Subsequently,

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<sup>71</sup> *Id.*

<sup>72</sup> Justin Bachman, *FTC Plots New Course on Antitrust, Big Tech Under Trump Nominees*, LEGAL DIVE (Dec. 11, 2024), <https://www.legaldive.com/news/ftc-plots-new-course-on-antitrust-big-tech-under-trump-nominees/735254/>.

<sup>73</sup> *Id.*

<sup>74</sup> James Allen, *Andrew Ferguson’s FTC Appointment Signals Increased M&A Activity in 2025*, TIP RANKS (Jan. 14, 2025), <https://www.tipranks.com/news/andrew-fergusons-ftc-appointment-signals-increased-ma-activity-in-2025>.

consumers have become increasingly annoyed at these practices, prompting the FTC to revise previous legislation to curb this behavior. The FTC's Click-to-Cancel rule is a clever attempt to relieve consumer complaints surrounding annoying subscription services that are difficult to remove. While it sounds simple with the tagline that makes businesses have their memberships "as easy to cancel as it is to sign up," there are also additional regulation requirements surrounding misrepresentation of material facts, disclosures of material terms, and obtaining a consumer's consent. There are many steps for businesses to comply with, but largely compliance rests upon transparency.

Many trade associations are already challenging these regulations at the appellate level, as businesses and nonprofits across the nation are planning their next steps. To further complicate matters, the current chair of the FTC, Andrew Ferguson, was one of the dissenting votes who voted against Click-to-Cancel. This creates questions of whether it will be enforced, revised, or even possibly revoked entirely by the eventual new Republican majority FTC.