

NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

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Councilmember Charles Allen
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

November 6, 2018

RE: Opposition to Title II of B22-20, the Consumer Disclosure Act of 2017

Dear Councilmember Allen,

We ask that you not advance Title II of B22-20 unless amended (amendments below) as it will create significant problems for citizens across the District who have come to rely on auto-renewing agreements.

The growing use of auto-renewing agreements is helping citizens across the District easily pay for the services they enjoy. As a parent with two kids, knowing that my subscriptions auto-renew provides me with more time to spend with my family and eliminates the need to worry that my services will suddenly discontinue.

Like every other user of renewing agreements, I opted into this feature. I did so because of the convenience it affords me. And I am not alone. Thousands of residents across the District make use of auto-renewing agreements. This is what makes Title II of B22-20 so disconcerting.

Since Title II of B22-20 requires residents to again opt-in to auto-renewing contracts over one-year, Title II of B22-20 essentially eliminates many automatic renewals for consumers. This means that if a resident misses an annual communication to re-opt-in, services could stop.

No other state requires such opt-in provisions. Nor does any other state require the free trial provisions of Title II of B22-20.

Limiting the availability of long-term auto-renewing will expose DC residents to unexpected terminations of service. Moreover, many services have policies to auto-delete content when users miss payments.

- Crashplan's policy deletes customer backups of computer files when contracts expire.¹
- GoDaddy allows website domain registrations to expire when payments are missed.²

¹ https://support.crashplan.com/Subscriptions/Backup_Retention_Policy_For_Expired_Subscriptions_And_Trials

² <https://www.godaddy.com/help/renewing-my-expired-domain-name-609>

- QuickBooks deletes stored data 90-days after accounts are canceled.³

In essence, without auto-renewing agreements, DC residents could see their backups deleted, their file-syncing stop, their web domain registrations expire, and their financial data deleted.

Fortunately, DC residents are already protected today by the “Restore Online Shoppers’ Confidence Act (ROSCA).” ROSCA already requires online companies to provide customers with clear and conspicuous notice when a customer signs up to receive auto-renewing services. ROSCA also requires these companies to disclose the material terms and conditions of the contract renewal in a clear. Finally, ROSCA requires these companies obtain informed opt-in consent from consumers before charging them for the services.

In the event the council decides to move forward with Title II of B22-20, we suggest the amendments below that will alleviate some of the harms caused by the current version of this bill.

We appreciate your thoughtful consideration of our concerns. For the reasons outlined in this letter, we urge against moving forward with Title II of B22-20 without incorporating the amendments below.

We welcome the opportunity to work with this committee more as it considers a better approach for DC residents.

Sincerely,

Carl Szabo

Vice President and General Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org

Proposed Amendments:

Sec 203. Automatic renewal provisions; notice; penalties.

...

(b)...

(B) Disclose clearly and conspicuously:

(i) That unless the consumer cancels the contract, it will

(ii) The cost of the goods or services for the term of the renewal;

(iii) The deadline by which the consumer must cancel the contract to prevent automatic renewal; and

³ <https://community.intuit.com/articles/1145935-what-happens-to-my-quickbooks-online-data-after-i-cancel>

(iv) The methods by which the consumer may obtain details of 290 the automatic renewal provision and cancellation procedures, including by contacting the seller 291 at a specified telephone number or e-mail address; and or

(C) If the notice is also provided by email, include active weblinks to 293 allow the consumer to cancel the automatic renewal.

...

(c) A person who sells a free trial of a good or service to a consumer with a term of one month or more, where the contract automatically renews at the end of the free trial period, shall:

(1) Notify the consumer of the automatic renewal no fewer than 24 and no more than 72 hours before the expiration of the free trial period; and or

(2) 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.

Sec. 204. Exemptions.

...

(b) Section 203 (b) and (c) shall not apply to a person offering a simple mechanism routinely available from the Internet or a mobile device or application that allows the consumer to cancel automatic renewal provisions at any time.

(c) Section 203(b) and (c) shall not apply to any free trial offerings so long as the automatic renewal offer or continuous service offer includes a free gift or trial, the business shall also disclose in the acknowledgment how to cancel, and allow the consumer to cancel, the automatic renewal or continuous service before the consumer pays for the goods or services.