



MPA



Internet Association



April 16, 2021

The Honorable Marc Berman
California State Assembly
State Capitol, Room 6011
Sacramento, CA 95814

RE: AB 390 (Berman) Auto-Renewals

Dear Assemblymember Berman,

Our organizations must respectfully take an **OPPOSE UNLESS AMENDED** position to your **AB 390**, related to automatic renewal and continuous service offers. As currently written the language of AB 390 is overly vague and would threaten the ability of companies to offer free gifts and trials to consumers in California. We appreciate the intent of AB 390 to ensure that offers for continuous services and free trials are transparent and that consumers remain empowered to cancel services easily. However, as written, the bill will unintentionally impose substantial and unnecessary costs on businesses who are already doing the right thing.

In 2017, the business community worked with Senator Hertzberg on his SB 313, regarding automatic renewal and continuous service contracts, to ensure the language would protect consumers without also overburdening businesses throughout California. Language was negotiated over months and AB 390 would amend that balanced language that was finalized in 2017 and took effect less than three years ago on July 1, 2018. Current law requires businesses receive "affirmative consent" before charging a consumer's credit or debit card for an auto-renewal agreement and requires that auto-renewal terms be presented in a "clear and conspicuous manner" and "in visual proximity...to the request for consent..." It

further requires businesses to disclose how the consumer can cancel the service before paying for any goods or services. And companies must send information on cancellation in a retrievable format. AB 390 would go further dictating how businesses offer automatic renewal and continuous service contracts in a way that is unworkable for businesses and not helpful to consumers.

Notice Requirement

AB 390 would require a specific three to twenty-one day notice before taking payment that would be a significant burden on businesses, while potentially inundating consumers with notices they would ignore, especially in the case of short trials. This notice requirement was also contemplated in SB 313 and was removed from the bill because it was unnecessary, especially in the case of recently entered into agreements because the consumer will have just received a retainable acknowledgement based on current law, which requires that "if 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." An additional notice in a specific time window containing the same information the consumer just received is unwarranted. Studies show that consumers develop notice "fatigue" when overwhelmed with too many notices and they ignore them and therefore, it seems likely that prescribing this specific type and method of providing notice will be ineffective.

The notice window is also almost impossible to achieve reliably by mail in the current environment. This time window also differs unnecessarily from reminder notices periods under other state laws, and is unworkable for short term subscriptions. A new notice requirement would also force businesses to significantly restructure their services and systems, which could be particularly harmful during this time when businesses are still focusing their resources on COVID-19 responses and economic impacts.

Immediate Cancellation

The language of AB 390 is unclear regarding the intent of "immediate" cancellation. Consumers should not be able to abuse free trial or subscription agreements that allow them to take advantage of preferential rates, but then have a right to cancel in the middle of a subscription term. This creates significant economic concerns for businesses given that these types of subscriptions are often priced based on the term of the subscription. We appreciate language added by the author in recent amendments to clarify that the underlying contract is not impacted, but it would be more appropriate to clarify in the law that the cancellation of the autorenewal renewal takes effect at the end of the billing cycle.

Annual Reminder Requirement

The latest language in AB 390 applies notification timelines on automatic renewal or continuous service offers over one year in length, that automatically renews unless the consumer cancels. There is no need for this reminder requirement because under current law there already are requirements to provide clear opt-in, retainable notice, and an easy-to-use cancellation mechanism. If, however, this new

requirement is going to be added to state law, the notification parameters should be consistent with other states to avoid a patchwork of differing notification windows which would be 60 days on the upper limit rather than 31 days. There is no discernable reason to create additional burdens on companies offering California residents convenient autorenewal provisions by creating outlier provisions in this way.

For these reasons, we have taken an oppose unless amended position. We look forward to continued conversations with the author's office.

Sincerely,

Association of Magazine Media
Association of National Advertisers
California Chamber of Commerce
California Newspaper Publishers Associations
Entertainment Software Association
Internet Association
Internet Coalition
Motion Picture Association
TechNet

cc: The Honorable Ed Chau
Members, Assembly Committee on Privacy and Consumer Protection