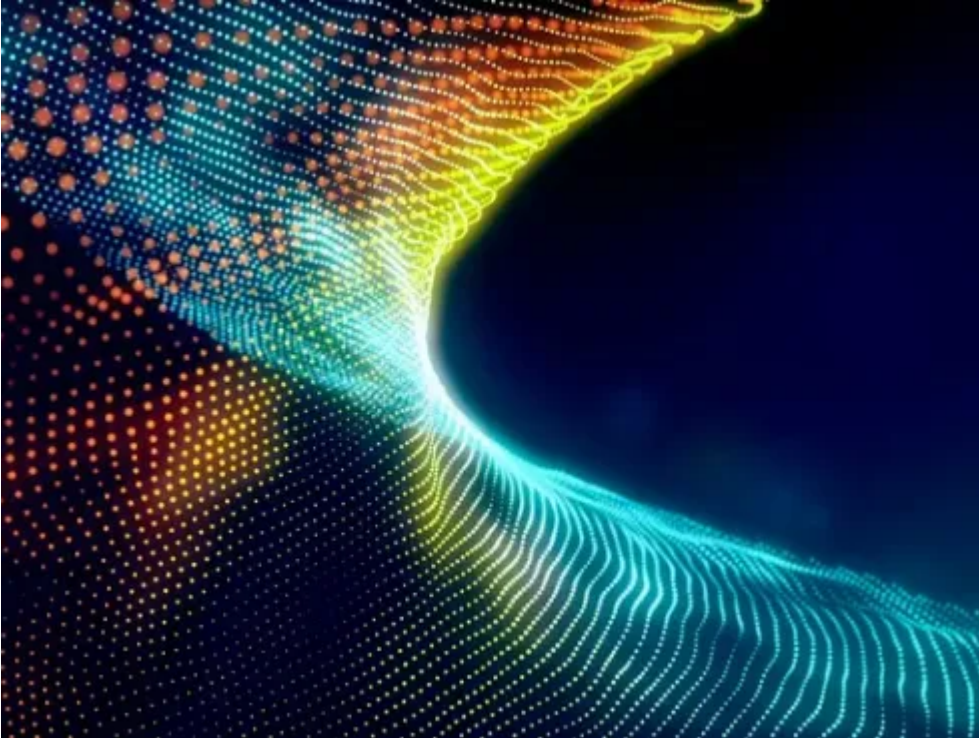


Updates

October 21, 2024

Upcoming Requirements for Digital Goods and Subscription Offers in California



The new year will bring new laws in California. In addition to laws addressing [generative AI training data](#), [digital replicas](#), and [deepfakes](#), there will also be new and amended laws imposing requirements on businesses that offer digital goods or subscriptions.

In this Update, we highlight some key features of these new and amended state laws.

New Requirements for Offering Digital Goods

[Assembly Bill 2426](#), which goes into effect January 1, 2025, extends California’s false advertising laws to address the offering for sale of licenses to digital goods. The new law is intended to ensure that consumers understand when they are purchasing only a license to (rather than an unrestricted ownership interest in) digital goods such as games, movies, music, and books. The law applies to most sellers offering licenses to digital goods who either use terms like, but not limited to, “buy” or “purchase” to describe transactions for digital goods or offer a time-limited rental option alongside more open-ended license options.

When the law applies, a seller must do one of the following in connection with each transaction for digital goods:

- Have the purchaser acknowledge (1) that they are receiving a license to access the digital good; (2) a complete list of restrictions and conditions of the license; and, if applicable, (3) that access to the digital good may later be unilaterally revoked by the seller if the seller “no longer holds a right to the digital good.”
- Provide the purchaser with a clear and conspicuous statement that (1) states in plain language that they are purchasing a license; and (2) includes a hyperlink, QR code, or similar method to access the terms and conditions that provide full details on the license.

Acknowledgments or notices required by the law must be distinct and separate from other terms and conditions of the transaction.

Whether it is deceptive to offer licenses to digital goods using the same terminology that has traditionally been used to describe the sale of physical goods is already a question being [litigated with regard to the Apple App Store](#). AB 2426 will offer regulators and plaintiffs new tools to police the practice as violators may face injunctions and civil penalties from California regulators or civil claims from consumers under the law. However, the new law won't apply to subscription offerings, free digital goods, or any digital goods to which the seller cannot revoke the purchaser's access, including "permanent offline downloads." Left unclear is whether the law is intended to apply to non-fungible tokens (NFTs) or to any license rights that pass along with an NFT.

Updated Requirements for Offering Automatically Renewing Subscriptions

[Assembly Bill 2863](#), which goes into effect on July 1, 2025, is a significant update to the state's law on automatic renewal and continuous service offers. The changes introduced by the new law include:

- **Addressing trial offers.** The bill broadens the definitions of "automatic renewal" and "continuous service" to expressly include free trials that convert to paid subscriptions, clarifying that the law's requirements generally apply to free trial offers.
- **Limit on contradictory information.** The bill prohibits businesses from including any information in their contracts "that interferes with, detracts from, contradicts, or otherwise undermines the ability of consumers to provide their affirmative consent to the automatic renewal or continuous service."
- **Recordkeeping.** Businesses will be required to maintain "verification of the consumer's affirmative consent" for the longer of (1) three years or (2) one year after the contract is terminated.
- **Misrepresentations.** The bill expressly prohibits businesses from misrepresenting a material fact regarding the transaction, whether expressly or by implication. The prohibition covers not only misrepresentations about automatic renewal or continuous service, but also the underlying product or service.
- **Price changes.** Businesses will need to provide clear and conspicuous notice of price changes at least seven days and not more than 30 days before the change takes effect. This notice, which is an addition to the existing notice requirement for material changes in the terms, must include information on how to cancel in a manner that is capable of being retained by the consumer.
- **Expanded renewal reminder notices.** The bill requires businesses to send reminder notices to consumers enrolled in annual subscriptions or continuous service offers. This new requirement, which potentially overlaps with an existing requirement to send renewal reminders when a subscription's initial term is one year or longer, requires that reminders (1) be sent via "the same medium that resulted in the activation of the automatic renewal or continuous service, or the same medium in which the customer is accustomed to interacting with the business" and (2) detail the product or service to which they are subscribed, the frequency and amount of the subscription charges, and how the subscription can be canceled.
- **Required disclosures.** The new law clarifies that certain terms of the offer (*e.g.*, that the offer will automatically renew until canceled, the length of renewal periods, the amount the consumer will be charged, etc.) must be clearly and conspicuously disclosed to a consumer "before confirming the consumer's billing information."
- **Cancellation and "save" attempts.** Businesses will need to allow consumers to cancel subscriptions through the same medium the consumer used to initially sign up. The new law expressly permits businesses to provide offers during the cancellation process to attempt to "save" subscribers, provided businesses follow certain requirements during the process to allow consumers to complete the cancellation without further delay.

Takeaways

Media, gaming, and other industries that offer digital goods for sale or that rely on the subscription model for their businesses face a host of legal, regulatory, and enforcement policy changes. Moreover, the nuanced requirements across jurisdictions are making it increasingly difficult for businesses to offer globally standardized user journeys. Companies that offer digital goods for sale or participate in the subscription economy should review their e-commerce flows and subscription programs to ensure compliance with these ever-changing disclosure, consent, and cancellation requirements at the state, federal, and international levels. By proactively adapting to these changes, businesses can not only avoid potential legal pitfalls, but also build trust and transparency with their consumers.

Authors

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