

Supreme Court Declines To Extend Telephone Consumer Protection Act's Coverage Of Automatic Telephone Dialing Systems

Client Alert | April 1, 2021

Decided April 1, 2021

***Facebook, Inc. v. Duguid*, No. 19-511**

Today, the Supreme Court unanimously held that a device counts as an automatic telephone dialing system under the Telephone Consumer Protection Act only if it stores or produces telephone numbers using a random or sequential number generator.

Background:

Facebook users can provide a cell phone number that allows the company to send them a text message whenever someone attempts to access their account from an unknown device. Noah Duguid alleges that he has never used Facebook, yet received several of these login-notification text messages. Duguid brought a putative class action lawsuit against Facebook under the Telephone Consumer Protection Act ("TCPA"), claiming that each text message was a violation of the TCPA's prohibitions on making calls using an automatic telephone dialing system ("autodialer"). The TCPA defines an autodialer as "equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

The Ninth Circuit held that Duguid had plausibly alleged violations of the TCPA, even if Facebook had not sent the texts using a random or sequential number generator. A device is an autodialer under the TCPA, the Ninth Circuit ruled, so long as it has the capacity to store and automatically dial numbers.

Issue:

Whether the definition of an autodialer in the TCPA encompasses any device that can store and automatically dial telephone numbers, even if the device does not use a random or sequential number generator.

Court's Holding:

No. A device is an autodialer under the TCPA only if it can store or produce telephone numbers using a random or sequential number generator. A device that merely stores and then automatically dials telephone numbers, but does not have the capacity to use a random or sequential number generator, is not an autodialer and is therefore not subject to the TCPA's prohibitions.

"Because Facebook's notification system neither stores nor produces numbers 'using a

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random or sequential number generator,' it is not an autodialer."

Justice Sotomayor, writing for the Court

What It Means:

- Today's ruling makes clear that a device is an autodialer only if it has the capacity to use a random or sequential number generator. Businesses with notification systems that do not have this capacity should be able to keep those systems in place without running afoul of the TCPA's prohibitions on the use of autodialers.
- The Court's ruling may help reduce class-action litigation under the TCPA. However, the precise scope of the TCPA remains uncertain, as the Court left some important questions open—for example, what counts as a "random or sequential number generator," and whether text messages are "calls" within the meaning of the TCPA. The Court's opinion thus leaves the door open for the FCC to adopt regulations and guidance further limiting the TCPA's scope.
- In writing for the Court, Justice Sotomayor performed a close textual analysis of the TCPA's autodialer definition. The Court's opinion provides further confirmation that the Justices have embraced a method of statutory interpretation that concentrates on the text of statutes.
- The Court's decision is its second major ruling on the TCPA in the past year, following *Barr v. American Association of Political Consultants, Inc.*, in which the Court [left in place](#) the TCPA's ban on robocalls, while invalidating the federal-debt-collection exception.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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