

Telephone Consumer Protection Act

A Burr & Forman **BLOG**

United States Supreme Court Weighs in on Definition of Automatic Telephone Dialing System in TCPA

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Facebook, Inc. v. Duguid, et. al., No. 19-511, 2021 WL 1215717 (S.Ct. April 1, 2021)

On April 1, 2021, the United States Supreme Court released its much anticipated decision addressing the definition the phrase “Automatic Telephone Dialing System” (“ATDS”) used in the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”). At issue in the underlying case was whether technology used to send a text message constituted an ATDS. Writing for the Court, Justice Sotomayor, joined by Justices, Roberts, Thomas, Breyer, Kagan, Gorsuch, Kavanaugh and Barrett, wasted no time summarizing the question before the Court and answering it stating:

the TCPA proscribes abusive telemarketing practices by, among other things, imposing restrictions on making calls with an “automatic telephone dialing system.” As defined by the TCPA, an “automatic telephone dialing system” is a piece of equipment with the capacity both “to store or produce telephone numbers to be called, using a random or sequential number generator,” and to dial those numbers. [47 U.S.C. § 227\(a\)\(1\)](#). The question before the Court is whether that definition encompasses equipment that can “store” and dial telephone numbers, even if the device does not “us[e] a random or sequential number generator.” It does not.

Applying canons of statutory construction and rules of punctuation, the Court made clear that “Congress’ definition of an autodialer requires that in all cases, whether storing or producing numbers to be called, the equipment in question must use a random or sequential number generator, adding that “[e]xpanding the definition of an autodialer to encompass any equipment that merely stores and dials telephone numbers would take a chainsaw to [] nuanced problems when Congress meant to use a scalpel. Duguid’s interpretation of an autodialer would capture virtually all modern cell phones, which have the capacity to “store ... telephone numbers to be called’ and ‘dial such numbers.”

The Court also rejected Duguid’s contention that accepting Facebook’s argument “will ‘unleash’ a

‘torrent of robocalls.’” According to Duguid, the thrust of congressional action since enactment of the TCPA has been to restrict nuisance calls. Because technology adapts to change, the TCPA must be treated as an agile tool and the focus should be on whether a device has the capacity to dial numbers without human intervention. Characterizing Duguid’s argument as “greatly overstating the effect of accepting Facebook’s interpretation,” the Court noted that the TCPA separately prohibits using “an artificial or prerecorded voice” to various types of phone lines, which the Court’s decision did not affect and, “[i]n any event, Duguid’s quarrel is with Congress, which did not define an autodialer as malleably as he would have liked.”

While agreeing with the Court, and much of its analysis, Justice Alito wrote separately to address the Court’s heavy reliance on the “series-qualifier” canon of interpretation, which he characterized as playing a “prominent role in our statutory interpretation cases.”

A copy of the opinion can be found [here](#).

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