



## ALERTS

### Supreme Court Narrows Definition Of Automatic Telephone Dialing System In A Victory For Facebook

April 2, 2021

#### Highlights

SCOTUS settles a circuit split by adopting a narrower definition of automatic telephone dialing system (ATDS) for computers that generate random telephone numbers to automatically dial

No federal robocall law currently deters businesses from using computers that store telephone numbers to automatically call or text consumers

Some senators have vowed to amend the Telephone Consumer Protection Act to adopt a broader definition of ATDS

In a 9-0 decision published on April 1, 2021, the U.S. Supreme Court held that Facebook did not violate the Telephone Consumer Protection Act (TCPA), the federal law governing robocalls, when it sent text messages to a man who said he never had an account with the tech giant. In its holding in *Facebook v. Duguid*, the Supreme Court sided with the Third, Seventh, and Eleventh Circuits to settle a circuit split by adopting the narrow definition for an “automatic telephone dialing system” (ATDS) under the Telephone Consumer Protection Act (TCPA).

The TCPA bars the use of an automatic dialing system to make

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unconsented-to calls or texts. The TCPA defines an “automatic telephone dialing system” 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.”) Until this ruling gave clarity to the issue, courts and the Federal Communications Commission struggled with applying this definition.

In *Facebook v. Duguid*, the unanimous decision held:

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. To qualify as an “automatic telephone dialing system,” a device must have the capacity either to store a telephone number using a random or sequential generator or to produce a telephone number using a random or sequential number generator.

Therefore, the TCPA only covers devices that *generate* numbers randomly. The Supreme Court decision explained that the question they were being asked to answer was simply one of grammar and basic statute interpretation:

We begin with the text. Congress defined an autodialer in terms of what it must do (“store or produce telephone numbers to be called”) and how it must do it (“using a random or sequential number generator”). The definition uses a familiar structure: a list of verbs followed by a modifying clause. Under conventional rules of grammar, “[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,” a modifier at the end of the list “normally applies to the entire series.” The Court often applies this interpretative rule, usually referred to as the “series-qualifier canon.” This canon generally reflects the most natural reading of a sentence. Imagine if a teacher announced that “students must not complete or check any homework to be turned in for a grade, using online homework-help websites.” It would be strange to read that rule as prohibiting students from completing homework altogether, with or without online support.

Because the Supreme Court adopted this narrow definition, there is no federal law to deter banks, debt collectors, or marketers from using a computer that dials off lists of numbers to automatically call or text consumers, with or without those consumers’ consent.

Some senators have already noted their displeasure with the Supreme Court’s plain-meaning interpretation, and they have indicated that Congress will take action to “fix” the law. According to media reports, U.S. Sen. Edward Markey (D-Mass.), one of the TCPA’s authors, and Rep. Anna Eshoo (D-Calif.) issued a joint statement calling the ruling “disastrous” and stating “we can and will act to make right what the Supreme Court got wrong. We plan to soon introduce legislation to amend the TCPA, fix the Court’s error, and protect consumers.”

While banks, debt collectors, marketers, and other entities using computers to store and dial numbers are currently free from fear of violating federal law, they should remain aware of Congressional efforts to amend the TCPA.

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