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Supreme Court “Unfriends” Ninth Circuit Decision Applying TCPA to Facebook

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In a unanimous decision, the Supreme Court today held that Facebook’s “login notification” text messages (sent to users when an attempt is made to access their Facebook account from an unknown device or browser) did not constitute an “automatic telephone dialing system” within the meaning of the federal Telephone Consumer Protection Act (“TCPA”). In so holding, the Court narrowly construed the statute’s prohibition on automatic telephone dialing systems as applying only to devices that send calls and texts to randomly generated or sequential numbers. *Facebook, Inc. v. Duguid*, No. 19-511, slip op. (Apr. 1, 2021).

The TCPA aims to prevent abusive telemarketing practices by restricting communications made through “automatic telephone dialing systems.” The statute defines autodialers as equipment with the capacity “to store or produce telephone numbers to be called, using a random or sequential number generator,” and to dial those numbers. Plaintiff alleged Facebook violated the TCPA’s prohibition on autodialers by sending him login notification text messages using equipment that maintained a database of stored phone numbers. Plaintiff alleged Facebook’s system sent automated text messages to the stored numbers each time the associated account was accessed by an unrecognized device or browser. Facebook moved to dismiss, arguing it did not use an autodialer as defined by the statute because it did not text numbers that were randomly or sequentially generated. The Ninth Circuit was unpersuaded by Facebook’s reading of the statute, holding that an autodialer need only have the capacity to “store numbers to be called” and “to dial such numbers automatically” to fall within the ambit of the TCPA.

At the heart of the dispute was a question of statutory interpretation: whether the clause "using a random or sequential number generator" (in the phrase "store or produce telephone numbers to be called, using a random or sequential number generator") modified both "store" and "produce," or whether it applied only to the closest verb, "produce." Applying the series-qualifier canon of interpretation, which instructs that a modifier at the end of a series applies to the entire series, the Court decided the "random or sequential number generator" clause modified both "store" and "produce." The Court noted that applying this canon also reflects the most natural reading of the sentence: in a series of nouns or verbs, a modifier at the end of the list normally applies to the entire series. The Court gave the example of the statement "students must not complete or check any homework to be turned in for a grade, using online homework-help websites." The Court observed it would be "strange" to read that statement as prohibiting students from completing homework altogether, with or without online support, which would be the outcome if the final modifier did not apply to all the verbs in the series.

Moreover, the Court noted that the statutory context confirmed the autodialer prohibition was intended to apply only to equipment using a random or sequential number generator. Congress was motivated to enact the TCPA in order to prevent telemarketing robocalls from dialing emergency lines and tying up sequentially numbered lines at a single entity. Technology like Facebook's simply did not pose that risk. The Court noted plaintiff's interpretation of "autodialer" would, "capture virtually all modern cell phones . . . . The TCPA's liability provisions, then, could affect ordinary cell phone owners in the course of commonplace usage, such as speed dialing or sending automated text message responses."

The Court thus held that a necessary feature of an autodialer under the TCPA is the capacity to use a random or sequential number generator to either store or produce phone numbers to be called. This decision is expected to considerably decrease the number of class actions that have been brought under the statute. Watch this space for further developments.

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