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Supreme Court Resolves Circuit Split and Narrows the Scope of the TCPA

The Supreme Court has resolved the complex question of what equipment qualifies as an automatic telephonic dialing system (ATDS), or autodialer, under the Telephone Consumer Protection Act of 1991 (TCPA) by unanimously ruling that equipment must use a random or sequential number generator in order to meet the definition. The anticipated decision in *Facebook, Inc. v. Duguid* resolves a long-standing circuit split.

Under the TCPA, an "automatic telephonic dialing system" is defined as equipment with 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.

The *Facebook* case turned on whether the clause "using a random or sequential number generator" modifies both verbs that precede it ("store" and "produce") or only the closer one ("produce").

The Ninth Circuit previously held that the recipients of unwanted text messages properly stated a TCPA claim by alleging that Facebook engaged in autodialing by (i) storing numbers to be called and (ii) dialing such numbers automatically.

Reversing the Ninth Circuit, the Court concluded that Facebook did not use an ATDS because its technology did not use a random sequential number generator to create phone numbers but rather sent text messages to phone numbers that were linked to specific accounts. The Court commented that expanding the definition of ATDS to include any equipment that merely stores and dials telephone numbers would capture virtually all cell phones and subject ordinary cell phone owners to penalties under the TCPA.

The TCPA creates a private right of action for individuals who receive unlawful calls or text messages from autodialers. The Supreme Court's decision will have significant implications for class action litigation and provides clarity for businesses that use automated calls and text messages to communicate with customers, including digital health companies that engage with patients via text messaging.

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