

## THOUGHT LEADERSHIP

LEGAL UPDATES

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# Nevertheless, The TCPA Battles Will Persist

The Supreme Court handed down a unanimous decision on April 1 in *Facebook Inc. v. Duguid*, holding that, to constitute an “automatic telephone dialing system” under the Telephone Consumer Protection Act (TCPA), equipment must have the capacity to either (a) store telephone numbers using a random or sequential number generator or (b) produce numbers using a random or sequential number generator. The Court’s narrow interpretation of this provision settles an outstanding circuit split – supporting the Third, Seventh and Eleventh Circuits’ interpretation, and rejecting the Second, Sixth and Ninth Circuits’ approach.

The key to the Court’s interpretation is that numbers must be randomly or sequentially generated. To qualify as an automatic telephone dialing system, equipment must fall into one or both of two categories:

1. one that stores numbers that are randomly or sequentially generated (possibly for later dialing); or
2. one that produces numbers using a random or sequential number generator (presumably for immediate dialing).

As Facebook argued, this definition does not include technology that calls or texts consumers from a list of preexisting numbers – a broad prohibition that would have essentially penalized any smartphone user who uses automatic dialing. The Court agreed, clamping down on a long (and enormously costly) line of TCPA litigation surrounding the topic. This is a huge win for businesses that have long sought to use cost-effective, automated technology to communicate with consumers, but have been hobbled by the expansive view of an “automatic telephone dialing system” that the Supreme Court has now rejected.

## What this means to you

While this decision is an important victory for businesses seeking to communicate with consumers, the TCPA battle is not over. For one thing, as the Court stressed in its opinion, the TCPA includes a separate prohibition on calls using artificial or pre-recorded voice technology. For another thing, while courts have in the last few years limited the meaning of “capacity” in the definition of automatic telephone dialing system, litigants seeking to cash in under the TCPA might still make costly (if ultimately) unsuccessful arguments about whether equipment has the capacity for random or sequential number generation. Even putting all this aside, members of Congress have already expressed disapproval of the Court’s decision and indicated an intent to introduce legislation to protect consumers from robocalls once and for all.

## Contact us

If you have any further questions or require information regarding this alert, please contact Scott Helfand, Marci Kawski or your Husch Blackwell attorney.