

SCOTUS clarifies “autodialer” definition in Facebook TCPA decision

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On April 1, 2021, the [Supreme Court held](#) in a 9-0 decision that an “automatic telephone dialing system” is a device that has 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.

As a quick refresher: the Telephone Consumer Protection Act (TCPA) restricts certain calls made by an “autodialer,” which the TCPA defines as “equipment that has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers.” The Opinion, authored by Justice Sotomayor, states, “the clause ‘using a random or sequential number generator’ modifies both verbs that precede it (‘store’ and ‘produce’) and therefore a system which neither stores nor produces numbers ‘using a random or sequential number generator’ is not an autodialer.” The Court went on, “the 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.” (emphasis added).

Further, in Footnote 6, the Court states, “... all devices require some human intervention, whether it takes the form of programming a cell phone to respond automatically to texts received in ‘do not disturb’ mode or commanding a computer program to produce and dial phone numbers at random. We decline to interpret the TCPA as requiring such a difficult line-drawing exercise around how much automation is too much.” Footnote 6 effectively negates analyzing a system to determine whether human intervention has occurred and seems to draw a more bright-line rule considering the technology alone.

What does this mean for your calling program? It would be prudent to review your telephone dialing system and analyze whether it has 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.

As always, please reach out to the authors or any member of McGlinchey’s Consumer Financial Services Compliance team if you have any questions as they relate to your particular dialing system

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