Facebook, Inc. v. Noah Duguid, et al.

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141 S. CT. 1163 (2021)

In *Facebook v. Duguid,* the Supreme Court reversed the decision of the Ninth Circuit, holding that Facebook's notification system does not use the necessary "random or sequential number generator" technology to make The Telephone Consumer Protection Act of 1991 ("TCPA") applicable.[1] Petitioner Duguid's initial complaint alleged that Facebook's elective security measure giving users the option to receive text messages as a form of security alert violated the TCPA.[2] Facebook argued that their system did not fall under the TCPA since they did not use a random or sequential number generator.[3] The Court relied on methods of statutory interpretation to determine that a system must have a random or sequential number generator to be present to constitute a violation of the TCPA.[4]

I. BACKGROUND

The Telephone Consumer Protection Act of 1991 forbids abusive telemarketing practices, particularly by placing restrictions on communications made using an "automatic telephone dialing system."[5] Those who use an automatic telephone dialing system are identified as autodialers.[6] The TCPA further defines an "automatic telephone dialing system as "a piece of equipment with the capacity both 'to store or produce telephone numbers to be called, using a random or sequential number generator,' and to dial those numbers."[7] Here, petitioner Facebook, Inc. uses an elective security measure that gives users of their social media platform the option to receive text messages when there is a login attempt from a new device or browser.[8] Noah Duguid, the respondent, received such a text, which alerted him to a login in attempt on an account he had not created.[9] Duguid engaged in multiple attempts to stop the text messages, eventually bringing a putative class action against Facebook.[10]

1. Facebook, Inc. v. Duguid, 141 S. Ct. 1163, 1173 (2021).
2. *Id* at 1165.
3. *Id*.
4. *Id*.
5. *Id*.
6. *Id.*
7. 47 U.S.C. § 227(a)(1).
8. *See Facebook*, 141 S. Ct. at 1165.
9. *Id.*
10. *Id.*

Duguid's complaint alleges that Facebook violated the TCPA because their database had the ability to store numbers and distribute automated text messages.[11] In response, Facebook contended that the TCPA did not apply to their system because it did not use a "random or sequential number generator."[12] The Ninth Circuit agreed with Duguid, "holding that §227(a)(1) applies to a notification system like Facebook's that has the capacity to dial automatically stored numbers."[13]

Facebook appealed to the Supreme Court.[14] The issue was "whether the clause 'using a random or sequential number generator' in §227(a)(1)(A) modifies both of the two verbs that precede it ("store" and "produce"), as Facebook contends, or only the closest one ("produce"), as maintained by Duguid."[15]

Ultimately, the court decided that "to qualify as an 'automatic telephone dialing system' under the TCPA, a device must have the capacity either to store a telephone number using a random or sequential number generator, or to produce a telephone number using a random or sequential number generator."[16]

II. ANALYSIS

The Court came to their decision by looking at the text of the statute and the broader statutory context.[17] By reading the text of the statute in the most natural way and comparing that reading to other aspects of Section 227(a)(1)(A), the Court found that Facebook's view was most appropriate.[18] That conclusion was supported by three contentions regarding the modifying phrase "using a random or sequential number generator."[19] First, the court held the series qualifier canon applied to the "modifier at the end of a series to the entire series," which then applied the "using a random or sequential number generator" phrase to both the "store" and "produce" terms.[20] Facebook's program didn't produce phone numbers, and did not use any of the stored numbers in a random or sequential number generator, thus did not fall within the statute.[21] Second, the words "store" and "produce" were contained in an integrated clause, separated by the word "or."[22] Given the use of "or," "it would be odd to apply" the modifying phrase to those words individually or separately.[23] Finally, the modifying phrase is separated from

11. *Id.*
12. *Id.*
13. *Id.*
14. *See Facebook*, 141 S. Ct. at 1165.
15. *Id.*
16. *Id.*
17. *See id.* at 1165-66.
18. *Id.*
19. *Id.* at 1169.
20. *Facebook*, 141 S. Ct. at 1165.
21. *See id.* at 1169.
22. *Id.*
23. *Id.*

the antecedents by a comma, which suggests that the phrase should qualify each antecedent, instead of just one.[24]

Duguid maintains that the last antecedent rule would limit the modifying clause only to the phrase that it immediately follows.[25] However, Duguid's argument failed on two accounts. First, the last antecedent rule does not apply if the modifying clause follows an integrated list, as it does here with the "using a random or sequential number generator" phrase following the "store" or "produce" phrase.[26] Second, the phrase "telephone numbers to be called" is actually the last antecedent relevant to the modifying clause, not "produce."[27]

When analyzing the statute in context, the Court held that the TCPA was not intended to apply to equipment that does not have a random or sequential number generator.[28] Congress's intent in passing the statute was to mitigate the harmful effects of autodialer technology, such as unnecessary traffic on emergency lines.[29] Facebook's technology does not involve these concerns, and therefore, the Court opted for the interpretation that excluded its technology.[30] On the other hand, Duguid's interpretation would inappropriately extend the statute to any technology or equipment that is capable of storing and dialing telephone numbers.[31]

The Court also found Duguid's arguments concerning the text and context of the statute to be inappropriate.[32] Using Duguid's interpretation, the Court's decision would loop all equipment with the capacity to store and dial a phone number into the statute, which would include personal cell phones.[33] In addition, the distributive canon provides that "a series of antecedents and consequents should be distributed to one another based on how they most naturally relate in context."[34] Duguid argues that canon should be applied to this case, but the Court determined it was ill-suited because the number of consequents did not match up to the number of antecedents.[35] Duguid also attempted to use the TCPA's privacy protection goals, particularly focusing on consent, to aid his argument, but used too broad a reading of those goals in light of the choice to define autodialers precisely.[36] Lastly, Duguid argued that the statute should apply to updated, modern technology, as the number generator is likely to become obsolete or outdated, but that does not overrule Congress' chosen definition of autodialer.[37]

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24. *Id.* at 1167.
25. *See id.* at 1170..
26. *See Facebook*, 141 S. Ct. at 1165-66 (citing Jama v. ICE, 543 U.S. 335, 344 (2005)).
27. *Id.* at 1170.
28. *See id.* at 1171.
29. *Id.*
30. *Id.* at 1172.
31. *Id.* at 1173.
32. *See Facebook*, 141 S. Ct. at 1172.
33. *See id.* at 1171.
34. *Id.* at 1166.
35. *See id.*
36. *See id.* at 1172.
37. *Id.*

III. CONCURRENCE (J. ALITO)

Justice Alito's concurring opinion agreed with the Court's reasoning and holding, but clarified that canons should not be used as a rule, but only when helpful to the statute's interpretation.[38] He also offered a different argument that would allow for series qualifiers to modify varying numbers of nouns or verbs in the list depending on the circumstance.[39] While it is unclear which is appropriate in the case, Justice Alito asserted that it is important to view the use of interpretive canons as a flexible, rather than inflexible rule.[40]

IV. CONCLUSION

Using both the text and context of the statute, the Court held that Facebook's notification system does not use the necessary "random or sequential number generator" technology to make the TCPA applicable.[41] The judgment of the Court of Appeals was reversed, and the case was remanded for further proceedings consistent with the opinion.[42]

38. *See Facebook*, 141 S. Ct. at 1173-75 (Alito, J., concurring).
39. *See id.* at 1174-75.
40. *Id.* at 1175.
41. *See id.* at 1173 (majority opinion).
42. *Id.*