

Matthew Murrell
Soltero Sapire Murrell PLLC

<https://ssmlawyers.com>
matthew@ssmlawyers.com



COMPUTER AND
TECHNOLOGY
SECTION

Facebook v. Duguid

- No. 19-511
- Telephone Consumer Protection Act (TCPA)
- Second TCPA case in as many terms:
 - *Barr v. American Association of Political Consultants*, No. 19-631
- Oral Argument: December 8, 2020
- Opinion Below: 926 F.3d 1146 (9th Cir.)



Facebook v. Duguid

- Facebook security alert text messages
 - Sent to the phone number of a registered Facebook user when someone has logged in to their account
- In 2014, Facebook sent several such messages to Noah Duguid
- BUT Mr. Duguid had never registered for a Facebook account, the previous user of his cell phone number had



Facebook v. Duguid

- TCPA makes it unlawful
 - “to make any call . . . using any automatic telephone dialing system . . .
 - to any telephone number assigned to a . . . cellular telephone service”
 - without “the prior express consent of the called party”
- 47 U.S.C. § 227(b)(1)



Facebook v. Duguid

- “Automatic Telephone Dialing System” or ATDS or autodialer is defined in the statute as:

(1) . . . equipment which has 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.



Facebook v. Duguid

- “Automatic Telephone Dialing System” or ATDS or autodialer is defined in the statute as:

(1) . . . equipment which has the capacity—

(A) to [REDACTED] produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.



Facebook v. Duguid

- “Automatic Telephone Dialing System” or ATDS or autodialer is defined in the statute as:

(1) . . . equipment which has the capacity—

(A) to store [REDACTED] telephone numbers to be called, [REDACTED]
[REDACTED] and

(B) to dial such numbers.



Facebook v. Duguid

- TCPA makes it unlawful
 - “to make any call . . . using any automatic telephone dialing system . . .
 - to any telephone number assigned to a . . . cellular telephone service”
 - without “the prior express consent of the called party”
- 47 U.S.C. § 227(b)(1)



Facebook v. Duguid

- “Automatic Telephone Dialing System” or ATDS or autodialer is defined in the statute as:

(1) . . . equipment which has 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.



Facebook v. Duguid

- **Potential impact of the decision:**
 - **2007 - 14 TCPA cases were filed**
 - **2019 - 3,267 TCPA cases were filed**
- **Many telemarketers do not use random number generators in their dialing equipment**
- **A narrow definition of ATDS could curb these suits**



FCC v. Prometheus Radio Project

- No. 19-1231
- Consolidated with:
 - *National Association of Broadcasters v. Prometheus Radio Project*, No. 19-631
- Oral Argument: January 19, 2021
- Opinion Below: 939 F.3d 567 (3rd Cir.)

FCC v. Prometheus Radio

- **Telecommunications Act**
 - Rules re ownership of media outlets (e.g., TV, radio, newspaper, etc.)
 - Meant to keep the sources of news and media diversified
 - One company shouldn't possess monopoly over a local media market
- FCC required to review those rules every 4 years



FCC v. Prometheus Radio

- Since 2002, the FCC & the Third Circuit have gone back and forth over relaxing these restrictions
- Why relax the restrictions?
 - Radio & newspaper far less important
 - Number of broadcasting voices huge (national cable television, satellite television & radio, etc.)
 - Explosion in nontraditional outlets (internet)



Matthew Murrell
Soltero Sapire Murrell PLLC

<https://ssmlawyers.com>
matthew@ssmlawyers.com



COMPUTER AND
TECHNOLOGY
SECTION