

When in Doubt, Begin with the Text

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These days, it is not very often that we see a 9-0 decision from the U.S. Supreme Court. But assuming the Court is not playing an April Fool's joke, today we got just that with the opinion in *Facebook v. Duguid*, Case No. 19-511, authored by Justice Sotomayor with a concurrence by Justice Alito. So what led to a unanimous decision in the case? As Justice Sotomayor said, "begin with the text."

The case turned on the TCPA's definition of ATDS, which can be found in Section 227(a)(1) of the TCPA. Specifically, to qualify as an ATDS, equipment must, among other things, have the capacity "to store or produce telephone numbers to be called, using a random and sequential number generator." And, the issue was whether the clause "using a random or sequential number generator" modifies both verbs that precede it (store and produce) or just the closest one (produce). Applying the "series qualifier canon," which provides that a modifier at the end of a list normally applies to the entire series, produced the most natural construction of the definition, according to the Court. This was because the phrase "store or produce telephone numbers to be called" is a concise, integrated clause that "hangs together as a unified whole." Using a clever example, the Court highlighted how "strange" it would be to only apply the clause to the closest verb.

The Court also found that its interpretation was consistent with the punctuation used in the ATDS definition, which had a comma between "store or produce telephone numbers to be called" and "using a random or sequential number generator." According to several leading treatises—including one authored by Duguid's counsel—where a qualifying phrase is separated from antecedents by a comma, the qualifier is supposed to apply to all antecedents.

Finally, the Court rejected the notion that its reading conflicted with the "rule of the last antecedent" because such a rule is "context dependent" and courts have refused to apply it where, as here, the modifying clause appears after an integrated list.

This very straightforward approach easily garnered the unanimous support of the Court (although Justice Alito found too heavy a reliance on canons of statutory interpretation as rules versus the common understanding of text). And the approach permitted the Court to then quickly dismiss Duguid's "sense" of the text arguments that had success with some of the lower courts. And, as Justice Sotomayor concluded, "[t]his Court must interpret what Congress wrote," and "Duguid's quarrel is with Congress, which did not define an autodialer as malleably as he would have liked."

This case is a good reminder that when you are dealing with a statute, “begin with the text.” In many cases, the text of the statute will provide you with the simplest and most straightforward resolution. Luckily for those of us on the defense side here at TCPAWorld, the text in this case results in a narrow definition of ATDS.

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