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REACH OUT AND TEXT SOMEONE: HOW TEXT MESSAGE SPAM MAY BE A CALL UNDER THE TCPA

Daniel L. Hadjinian¹

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Abstract

The Arizona Court of Appeals recently found a business liable for sending an unsolicited advertisement email to a recipient's wireless phone in violation of the Telephone Consumer Protection Act of 1991 ("TCPA"). The court concluded that an email sent to a wireless phone constitutes a "call," and noted that such a commercial call created the same concerns about consumer privacy that Congress intended to remedy with the TCPA. This finding is consistent with an earlier Federal Communications Commission ruling. Preliminary cases indicate that other courts may be willing to adopt a similar interpretation of the TCPA. In light of this recent ruling, this article will consider how various new advertising media and technologies may fall within the scope of the TCPA. Businesses that advertise using electronic delivery methods should consider the effect of this case on their current practices as well as any practices adopted in the future.

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INTRODUCTION

<1>The Arizona Court of Appeals recently held that sending an unsolicited email advertisement that is delivered to a recipient's wireless phone via text message service violates federal law prohibiting unsolicited, automated telemarketing calls to wireless phones. In *Joffe v. Acacia Mortgage*,² an email advertisement was sent to a wireless customer's email address assigned to the phone by a wireless provider. The wireless provider automatically converted all emails received at that address to SMS format ("text messaging") and routed the message to the customer's phone.³ The court interpreted the Telephone Consumer Protection Act of 1991 ("TCPA" or "Act")⁴ broadly, finding that the text message was a "call" within the terms of the Act because such a message was the type of privacy violation that the Act sought to restrict.⁵ This is the first application of the TCPA to such a communication, and it appears that no cases have addressed the issue since the *Joffe* court. Despite this dearth of similar case law, the *Joffe* court's close adherence to legislative intent indicates that courts in other jurisdictions may adopt a similar reading of the TCPA. However, it is unlikely that the TCPA will apply more broadly to other technologies that allow wireless users to access the Internet.

THE TCPA

<2>The TCPA⁶ and its corresponding regulations⁷ prohibit the use of automatic dialing systems or prerecorded voices to make any call to telephone numbers assigned to cellular phones.⁸ An automatic dialing system is defined in the TCPA as equipment that uses random or sequential number generation to store, produce, and dial telephone numbers.⁹ An unsolicited advertisement is any material that advertises the commercial availability of property, goods, or services, transmitted to a person without that person's consent.¹⁰ Telephone solicitation is the initiation of a telephone call or message to a person for the purpose of encouraging investment or purchase of property, goods, or services.¹¹ There are exceptions to this rule. A caller may contact persons who have agreed in writing to be contacted.¹² A caller may also place a call to a recipient with whom the caller has a prior business¹³ or personal¹⁴ relationship. The TCPA provides a private right of action seeking injunctive and monetary relief in state court for violations of its provisions.¹⁵

WHEN IS AN EMAIL A CALL?

<3>In *Joffe v. Acacia Mortgage* the Arizona Court of Appeals found that an unsolicited advertisement originating as an email, converted to a text message, and delivered to a wireless phone, is a “call” within the meaning of the TCPA.¹⁶ In reaching this decision, the court found that a “call” need not have the potential for two-way real-time communication.¹⁷ It also concluded that the TCPA was intended to apply to technologies that did not exist at the time of the act’s passage. The court further found Congress’ subsequent enactment of the Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CAN-SPAM”) ¹⁸ did not preempt application of the TCPA to text messages sent to cellular phones.¹⁹ In reaching this conclusion, the court noted that under CAN-SPAM, Congress directed the Federal Communications Commission (“FCC”) to promulgate regulations regarding spam and wireless devices²⁰ and explicitly instructed that no provision of CAN-SPAM was intended to preempt the TCPA. ²¹

<4>In this case, Acacia Mortgage used a computer with a random email address generator to send several unsolicited email advertisements to an email address assigned to a wireless customer (Joffe) by his wireless carrier, Verizon Wireless. ²² Verizon also provided Joffe with SMS (or text message) service and, as part of that service, provided the email address to the customer.²³ When an email was sent to that address, Verizon automatically converted the email message to SMS format and forwarded the text message to Joffe’s cellular phone.²⁴ Joffe’s cellular phone then received the message from Acacia, advertising a low mortgage rate.²⁵ Joffe brought suit against Acacia alleging violations of the TCPA.²⁶

<5>The Arizona Court of Appeals concluded in *Joffe* that the TCPA’s provisions apply to any type of call, be it via voice or text communication.²⁷ It defined a “call” as communicating or attempting to communicate by telephone, giving the term its ordinary, contemporary, and common meaning.²⁸ In reaching its decision, the *Joffe* court also relied on the TCPA’s prohibition on making “any call”²⁹ and its goal of regulating automated calls.³⁰ It therefore found that any attempt to communicate with a cellular phone comes within the scope of the TCPA, regardless of whether two-way communications were possible.³¹ The court further pointed out that the TCPA explicitly includes calls that lack the potential for real-time communication³² by prohibiting telemarketing calls using an artificial or prerecorded voice.³³

<6>The court's analysis found that the nature of the email address (composed primarily of a phone number) and its resultant automatic conversion to a text message were critical factors.³⁴ The court rejected Acacia's argument that it had merely sent an email, which is permitted by the TCPA, and focused instead on the automatic conversion of the email to a text message delivered to a wireless phone.³⁵ It characterized Acacia's actions as "co-opting" the services offered by Joffe's carrier based on the conversion and forwarding of email messages to cellular phones.³⁶ According to the court, this co-opting guaranteed that the computer-generated text message would be delivered to the customer's cellular phone.³⁷ The appellate court found the message sent by Acacia to be squarely within the definition of a "call"³⁸ by adopting the trial court's characterization of the action as initiating a demand to make a connection for the purpose of sending an advertisement.³⁹

<7>The *Joffe* court further determined that Acacia's call was in violation of the TCPA because it was using an automatic dialing system.⁴⁰ The court acknowledged that the advertisement delivery technology used by Acacia did not exist at the time of the TCPA's passage.⁴¹ Nevertheless, the decision emphasized the TCPA's prohibition on the use of any automatic telephone dialing system.⁴² It also found that the TCPA's description of auto-dialers in functional⁴³ —rather than specific—terms demonstrated that the Act's target was the practice of automatically generating and dialing calls, not the technology behind this practice.⁴⁴ The court further supported its analysis by citing an FCC order reaching the same conclusion regarding the TCPA and advances in technology.⁴⁵

<8>Finally, the *Joffe* court rejected Acacia's argument that CAN-SPAM⁴⁶ preempted the TCPA's governance of text message ads sent to cell phones. In CAN-SPAM, Congress directed the FCC to issue rules to protect consumers from unwanted commercial messages sent to wireless devices.⁴⁷ The court noted that the legislative history of CAN-SPAM indicated that the relevant provision was inserted into the statute to address unwanted text messages sent to wireless devices, including cellular phones.⁴⁸ However, CAN-SPAM's statutory text explicitly provides that it shall not be interpreted to override the TCPA.⁴⁹ Relying on this language, the court also noted that its interpretation did not render CAN-SPAM superfluous because the TCPA only applies to calls made using an automated dialing system, a limitation to which CAN-SPAM is not subjected.⁵⁰ The court therefore concluded that the TCPA was not pre-empted by CAN-SPAM.⁵¹

<9>The court's analysis implies that CAN-SPAM may apply more broadly than the TCPA in two ways: (1) the TCPA requires that an automated device dialing device be used; and (2) the TCPA's scope is limited to calls, meaning that users of wireless devices other than phones (or users who receive spam in a form other than text message, such as wireless email) would likely have to use CAN-SPAM's protection from unwanted email, rather than the TCPA's protection from unwanted calls.

<10>The determination that text messages are within the scope of "calls" under the TCPA is particularly important in the context of the email-to-text conversion at issue in *Joffe*. Under that analysis, the TCPA provides an outright prohibition on sending unsolicited text spam to cell phones, which includes unsolicited commercial email automatically converted to text message and sent to a cell phone.⁵² By contrast, CAN-SPAM can require the recipient's consent in some cases of text spam,⁵³ but for traditional unsolicited commercial email it requires recipients to "opt out" of future receipt by notifying the sender – meaning that a recipient must first receive unsolicited commercial email in order to avoid further spam.⁵⁴ The *Joffe* court's analysis therefore brings certain unsolicited commercial email within the scope of the TCPA, protecting consumers from the need to incur costly, unwanted texts before opting out.

IMPLICATIONS OF THE JOFFE DECISION ON ADVERTISING TO CELLULAR PHONES AND OTHER WIRELESS DEVICES

<11>*Joffe* raises two important questions regarding the future of advertising to cellular phones and other wireless devices: (1) whether the TCPA will be applied to text messages sent via email; and (2) whether this new analysis will be applied to other technological devices as the lines between traditional forms of communication continue to blur.

Email to Cell Phone Text Messages

<12>The TCPA's applicability to email delivered via text message may give rise to further litigation. As in *Joffe*, future cases may primarily turn on how broadly a court chooses to interpret the provisions of the TCPA. The broad application of the TCPA adopted by the *Joffe* court appears consistent with Congress's stated intention to protect consumer privacy.⁵⁵ This consistency, when considered in combination with FCC findings and the results of a few early cases, indicate that other courts may adopt a similar interpretation of the TCPA.

<13> While *Joffe* appears to be the first opinion on this issue, it is not the only or even first case of its kind. Verizon Wireless has been active in pursuing litigation against text spammers who target Verizon customers.⁵⁶ These cases were based on numerous claims, including violation of the TCPA, trespass, and conversion.⁵⁷ In one case, a court permanently enjoined a text spammer from delivering any more advertisements to Verizon Wireless customers.⁵⁸ In another, a settlement was reached in which the spammer agreed not to deliver any further text advertisements.⁵⁹ The text-spammers in both cases allegedly sent thousands of unsolicited text messages to Verizon Wireless customers.⁶⁰

<14> The TCPA's legislative history indicates that Congress intended the TCPA to protect consumer privacy and to prevent the disturbance caused to consumers by automated telemarketing calls.⁶¹ Consumers and politicians alike have remained concerned about the invasive nature of unsolicited advertisements in the years since the TCPA's passage. This concern is evidenced by civil actions brought against spammers under state consumer protection laws, and later by Congress' passage of CAN-SPAM, which preempted those laws.⁶² Further, when the FCC issued its Report on the Rules and Regulations Implementing the TCPA, it specifically listed text messages as falling within the scope of prohibited calls to wireless devices.⁶³ In reaching that conclusion, the FCC relied on Congress's findings, thereby adopting its conclusions.⁶⁴

<15> The TCPA's legislative history also indicates that one of the primary concerns of consumers was that the transmittal of such messages to wireless devices results in partial shifting of the advertisement's cost from the sender (ultimately the advertiser) to the consumer recipient.⁶⁵ This cost shifting occurs because wireless customers are charged for the receipt of each call, which includes text messages. The result is that wireless customers have to pay to receive unsolicited advertisements. While text messaging did not exist at the time of the TCPA's passage, Congress did intend for the TCPA to encompass so-called "junk faxes",⁶⁶ another form of advertising that shifts cost to consumers.⁶⁷ The cost-shifting similarity between junk faxes and text message advertisements may weigh in favor of the *Joffe* interpretation.

Application to Other Communications Technologies

<16> Will the TCPA also be applied to other types of electronic

devices? The lines between traditional forms of communication continue to blur as consumers check email and surf the web from their phones, make phone calls over an Internet connection, and even use software to convert voicemail to email. Perhaps the most prominent blended communications method emerging currently is the proliferation of wireless handheld devices allowing users to surf the Internet and check their email. Cell phones, PDA's, and Blackberries (to name a few) can all contain such technology, meaning that even traditional email spam could reach a user's cell phone, and implicate the provisions of the TCPA under a *Joffe*-type analysis.

<17>The *Joffe* court holding could be extended to any text message sent to a wireless phone, PDA, or any other wireless communication device. The prohibitions of both the TCPA and the FCC's regulations are not limited to wireless phones; they extend to any service for which the recipient is charged.⁶⁸ A text message advertisement sent to a wireless device presents the same privacy and cost shifting issues as a text message advertisement sent to a cellular phone.⁶⁹ Regardless of the type of wireless device, if a consumer receives an unsolicited text message from an advertiser in a manner that Congress determined is invasive to consumer privacy and shifts part of the cost to the consumer, courts may find such communications to fall within the scope of the TCPA.⁷⁰

<18>The analysis may differ when handheld wireless devices are used to access email instead of text messages. Courts have found that traditional email spam does not fall within the prohibitions of the TCPA.⁷¹ The *Joffe* court was careful to distinguish normal computer-to-computer email from emails that are automatically converted into text messages.⁷² Indeed, Congress passed CAN-SPAM with the explicit purpose of dealing with unwanted commercial email despite the existence of the TCPA. Similarly, commentators almost invariably confine their discussions of anti-email spam legislation to CAN-SPAM; at most, they refer to the TCPA as a model for such legislation.⁷³ Both of these facts indicate that neither Congress nor the vast majority of commentators believe that the TCPA's prohibitions are applicable to traditional computer-to-computer unsolicited commercial email (spam).⁷⁴

<19>A crucial distinction between email and text messaging is the sender's knowledge of the message's invasive effect on the recipient. The *Joffe* court found that a text message functions in much the same way as a call in that it is a demand to communicate with the recipient, usually signaled by a ring.⁷⁵ In the case of email to text message where the recipient's email

address is composed of only numbers, or contains a wireless domain name, the sender is put on notice that the message may be sent to a cell phone and therefore place demand and cost burdens on the recipient.⁷⁶ Unlike an email that will be converted to a text message, an email which is intended to be received solely as an email contains no such demand. In such a case, the email sender has sought to communicate only with a computer via email.⁷⁷ The recipient may choose to read or discard the email with a leisure that is absent in a call or text message that demands instant communication.⁷⁸ However, recipients of such spam are not left without recourse - unsolicited commercial email of this sort falls squarely within the purview of CAN-SPAM.⁷⁹

<20> It remains to be seen whether courts might extend the TCPA to email accessed by consumers via their wireless devices. It seems likely that legislative initiative would be required for an extension of the *Joffe* principles to emails viewed through an Internet browser on a wireless device.⁸⁰

CONCLUSION

<21>The TCPA has traditionally offered a degree of consumer protection from unsolicited automated telemarketing. The decision in *Joffe* represents a new application of the TCPA to the fight against unsolicited advertisements. The *Joffe* court chose to interpret the language of the TCPA broadly by concluding that an email message delivered to a cellular phone in the form of a text message is a "call." That interpretation gives effect to Congress's stated purpose of restricting the invasion on consumer privacy posed by unsolicited, automated telemarketing and is consistent with FCC rulings. Preliminary indications are that other courts may adopt a similar interpretation of the TCPA, preventing the sending of unsolicited text messages and emails converted to text message. However, because of fundamental differences between text messages and email, it appears unlikely that the TCPA will be applied to email messages accessed from a wireless device.

PRACTICE POINTERS

- Businesses that choose to send unsolicited advertisements must be sure to fit within one of the TCPA's exceptions. This could be as simple as limiting advertisements to a list of people with whom the business already has a preexisting business

relationship, as defined in the statute.

- Businesses that choose to send unsolicited email advertisements should compile a list of domain names that correspond to wireless carriers (e.g. @wireless_carrier.com) and remove any associated email addresses (the FCC also maintains such a list, which businesses should use for verification of their own list). These addresses appear to be within the scope of CAN-SPAM and are more likely to result in automatic conversion to text message – creating the potential to fall within the scope of the TCPA. Courts may be more likely to find liability where the domain name (or an address containing a phone number) put the ad’s sender on notice that the ad may reach a cell phone.

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Footnotes

1. Daniel L. Hadjinian, University of Washington School of Law, Class of 2007. Thank you to Professor Anita Ramasastry for her guidance, Evgenia Fkiaras for her editing, and all of the outstanding Shidler Journal members with whom I have had the pleasure of working.
2. *Joffe v. Acacia Mortgage Corp.*, 121 P.3d 831 (Ariz. App. 2005).
3. *Id.* at 833.
4. Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 (2000).
5. *Joffe*, 121 P.3d at 835.
6. *Id.*
7. 47 C.F.R. § 64.1200 (2004). Congress directed that the FCC promulgate regulations under the TCPA. 47 U.S.C. § 227(b)(2).
8. 47 U.S.C. § 227(b)(1)(A)(iii).
9. 47 U.S.C. § 227(a)(1).
10. 47 U.S.C. § 227(a)(5).
11. 47 U.S.C. § 227(a)(4).
12. 47 U.S.C. § 227(a)(4)(B). However, note that even if

a recipient agrees to be contacted, each message must contain an opt-out notice and the sender must comply with an opt out request within 30 days of its receipt. 47 C.F.R. 64.1200(a)(3)(iii) - (vi). Therefore, even if a wireless provider sought to partner with advertisers by including an authorization in its standard customer contract, the customer-recipients would have the right to opt out at the first message.

13. 47 U.S.C. § 227(a)(4)(B); 47 C.F.R. § 64.1200(c)(2)(ii)-(iii) and § 64.1200(e) (applying those provisions to telemarketing calls made to wireless telephones).
14. The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call. 47 C.F.R. § 64.1200(f)(14).
15. 47 U.S.C. § 227(b)(3). Courts have interpreted this provision to preclude federal subject matter jurisdiction, thereby only allowing such actions in state court. *See ErieNet, Inc. v. Velocity Net, Inc.*, 156 F.3d 513, 517 (3d Cir. 1998); *Foxhall Realty Law Offices, Inc. v. Telecommunications Premium Services, Ltd.*, 156 F.3d 432,435 (2d Cir. 1998); *International Science & Technology Institute, Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146, 1151-52 (4th Cir. 1997). Nevertheless, there is disagreement in courts as to whether diversity jurisdiction permits federal courts to hear such cases. *See Consumer Crusade, Inc. v. Fairon and Associates, Inc.*, 379 F.Supp.2d 1132, 1137 (D. Colorado 2005) (stating that no such right exists). *But see Kopff v. World Research Group, LLC*, 298 F.Supp.2d 50, 55 (D.D.C. 2003) and *Accounting Outsourcing, LLC v. Verizon Wireless Personal Communications, LP*, 294 F.Supp.2d 834, 836 (M.D.La.2003) (both stating that such a right does exist).
16. *Joffe*, 121 P.3d at 831.
17. *Id.* at 835-36.
18. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (codified as amended at 15 U.S.C. §§ 7701-7713, 18 U.S.C. § 1037 and 28 U.S.C. §994 (Supp. 2005)).
19. *Joffe*, 121 P.3d at 841.

20. 15 U.S.C. § 7712(b) (2000).
21. *Joffe*, 121 P.3d at 841. 15 U.S.C. § 7712(a). Congress expressly directed that nothing in CAN-SPAM should preclude or override the provisions of the TCPA. 15 U.S.C. § 7712(a). While portions of CAN-SPAM are directed at spam sent to wireless devices, these provisions at most provide an additional avenue for consumers and wireless providers to fight such intrusions. See 15 U.S.C. § 7712(b) (thus overlapping with portions of the TCPA). Further, CAN-SPAM may apply more broadly than the TCPA for two reasons: (1) the TCPA requires that an automated device dialing device be used; and (2) the TCPA's scope is limited to calls, meaning that users of wireless devices other than phones (or users who receive spam in a form other than text message, such as wireless email) would likely have to use CAN-SPAM's protection from unwanted email, rather than the TCPA's protection from unwanted calls.
22. *Joffe*, 121 P.3d at 833. The email address consisted of the wireless customer's phone number and the wireless carrier's domain. As an example, such an email address could be 1234567@att.net, where the customer's phone number is "1234567" and the customer's carrier is AT&T.
23. *Id.* at 837.
24. *Id.* at 837-38.
25. *Id.* at 833.
26. *Id.*
27. *Id.* at 836.
28. *Id.* at 835.
29. 47 U.S.C. § 227(b)(1)(A)(iii).
30. *Joffe*, 121 P.3d at 835.
31. *Id.* at 835-36.
32. *Id.* at 836.
33. 47 U.S.C. § 227(b)(1)(A)(iii)-(B).
34. *Joffe*, 121 P.3d at 837-38.
35. *Id.* at 838.

36. *Id.*
37. *Id.* at 839.
38. *Id.* at 838.
39. *Id.*
40. Acacia did not dispute that its computers randomly or sequentially produced phone numbers. Their argument focused on the fact that the computer merely sent emails. The court summarily dismissed this argument, having already determined that sending an email message to a cell phone through the conversion technology is a call within the TCPA. *Joffe*, 121 P.3d at 838-39.
41. *Joffe*, 121 P.3d at 839.
42. 47 U.S.C. § 227(a)(1) (2000).
43. 47 U.S.C. § 227(a)(1) (2000).
44. *Joffe*, 121 P.3d at 839.
45. *Id.* (citing *Rules and Regulations Implementing the TCPA, Report and Order*, 18 FCC Rcd. 14014, 14092, ¶ 132 (2003)).
46. Pub.L. No. 108-187, 117 Stat. 2699 (2003), *codified at* 15 U.S.C. §§ 7701-7713, 18 U.S.C. § 1037 and 28 U.S.C. §994 (Supp. 2005).
47. 15 U.S.C. § 7712(b) (2000).
48. *Joffe*, 121 P.3d at 840.
49. 15 U.S.C. 7712(a) (2000).
50. *Joffe*, 121 P.3d at 841.
51. *Id.*
52. Kristen J. Mathews, Esq., 'Going Mobile' with Promotional Text Messaging, 7 No. 9 Andrews E-business Law Bulletin 14 (2006).
53. *Id.*
54. Elizabeth A. Alongi, *Has the U.S. Canned Spam?*, 46 Ariz. L. Rev. 263, 287 (2004).
55. S. Rep. 102-178 (1991), *reprinted in* U.S.C.C.A.N 1968, 1968.
56. Complaint Cellco Partnership d/b/a Verizon Wireless

- v. Brown, 2004 WL 2558904 (D.N.J. 2004); Complaint Cellco Partnerships d/b/a Verizon Wireless Inc. v. Abramovich, 2003 WL 23825063 (N.D.Ga 2003). See also Kristen J. Mathews, Esq., 'Going Mobile' with Promotional Text Messaging, 7 No. 9 Andrews E-business Law Bulletin 14 (2006).
57. The cases also alleged violation of the Federal Computer Fraud and Abuse Act, state computer fraud statutes, invasion of privacy, trespass to chattels, civil conspiracy, aiding and abetting, unjust enrichment, and tortious interference with a business relationship. Complaint Cellco Partnership d/b/a Verizon Wireless v. Brown, 2004 WL 2558904 (D.N.J. 2004); Complaint Cellco Partnerships d/b/a Verizon Wireless Inc. v. Abramovich, 2003 WL 23825063 (N.D.Ga 2003).
58. Complaint Cellco Partnership d/b/a Verizon Wireless v. Brown, 2004 WL 2558904 (D.N.J. 2004) (Verizon successfully obtained a permanent injunction against the defendant in this case under both the Federal Computer Fraud and Abuse Act, 18 U.S.C. 1030 (2000), and the TCPA. See <http://news.vzw.com/news/2004/08/pr2004-08-30.html> (last visited May 5, 2007)).
59. Complaint Cellco Partnerships d/b/a Verizon Wireless Inc. v. Abramovich, 2003 WL 22341272 (N.D.Ga 2003) (settlement filed 2/11/04, see BNA Telecommunications Monitor, *Verizon Wireless Settles Lawsuit With Sender of Sexually Explicit Text Messages*, 2/20/2004 BNA Telcom d2, February 20, 2004).
60. Complaint Cellco Partnership d/b/a Verizon Wireless v. Brown, 2004 WL 2558904 (D.N.J. 2004). Complaint Cellco Partnerships d/b/a Verizon Wireless Inc. v. Abramovich, 2003 WL 22341272 (N.D.Ga 2003).
61. S. Rep. 102-178 (1991), reprinted in U.S.C.C.A.N 1968, 1968. The *Joffe* court explicitly attempted to further Congress' intent when it held that the detrimental effect of such calls is the intrusion into the home and the seizing of the telephone line, not simply the communication of an advertisement. *Joffe*, 121 P.3d at 836 (citing *Irvine v. Akron Beacon Journal*, 147 Ohio App.3d 428 (2002)).
62. See generally Elizabeth A. Alongi, *Has the U.S.*

63. *Rules and Regulations Implementing the TCPA, Report and Order*, 18 FCC Rcd. 14014, 14115 (2003).
64. *Id.*
65. S. Rep. 102-178 (1991), *reprinted in* U.S.C.C.A.N 1968, 1969 (1991); Gary S. Moorefield, *SPAM -- It's Not Just for Breakfast Anymore: Federal Legislation and the Fight to Free the Internet From Unsolicited Commercial E-mail*, 5 B.U. J. Sci. & Tech.L. 10, 24 (1999).
66. Junk faxes are unsolicited advertisements sent to fax machines. They not only tie up the recipient's phone line, but they also shift the cost by using the recipient's paper and ink.
67. S. Rep. 102-178 (1991), *reprinted in* U.S.C.C.A.N 1968, 1969 (1991); Gary S. Moorefield, *SPAM -- It's Not Just for Breakfast Anymore: Federal Legislation and the Fight to Free the Internet From Unsolicited Commercial E-mail*, 5 B.U. J. Sci. & Tech.L. 10, 24 (1999); *see also* David E. Sorkin, *Unsolicited Commerical E-mail and the Telephone Consumer Protection Act of 1991*, 45 Buff. L. Rev. 1001 (1997).
68. 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. 64.1200(a)(1)(iii); *Rules and Regulations Implementing the TPCA, Report and Order*, 18 FCC Rcd. 14014, 14115 (2003).
69. *See* Gary S. Moorefield, *SPAM -- It's Not Just for Breakfast Anymore: Federal Legislation and the Fight to Free the Internet From Unsolicited Commercial E-mail*, 5 B.U. J. Sci. & Tech.L. 10 (1999). *See generally* Kristen J. Mathews, *If You're Confused, You Should Be: Two Federal Laws Apply to Cell Phone Messages*, 12 NO. 4 *Intell. Prop. Strategist* 1 (2006).
70. Personal Digital Assistants (PDA's) are any of a variety of handheld electronic devices that combine any number of functions, including personal organizers, address books, task lists, memo pads, and sometimes Internet access. *See* http://en.wikipedia.org/wiki/Personal_digital_assistant (last visited May 5, 2007).
71. *Aronson v. Bright-teeth Now, LLC.*, 824 A.2d 320

(Pa. Super. Ct. 2003).

72. *Joffe*, 121 P.3d at 839.
73. Elizabeth A. Alongi, *Has the U.S. Canned Spam?*, 46 Ariz. L. Rev. 263, 279 (2004); see Gary S. Moorefield, *SPAM -- It's Not Just for Breakfast Anymore: Federal Legislation and the Fight to Free the Internet From Unsolicited Commercial E-mail*, 5 B.U. J. Sci. & Tech.L. 10, 24 (1999). But see David E. Sorkin, *Unsolicited Commercial E-mail and the Telephone Consumer Protection Act of 1991*, 45 Buff. L. Rev. 1001, 1012-17 (1997) (arguing that the TCPA's language can be construed to cover unsolicited commercial email, an argument explicitly rejected by *Aronson v. Bright-Teeth*).
74. Gary S. Moorefield, *SPAM -- It's Not Just for Breakfast Anymore: Federal Legislation and the Fight to Free the Internet From Unsolicited Commercial E-mail*, 5 B.U. J. Sci. & Tech.L. 10, 24 (1999) (noting that application of the TCPA to spam rested on a strained analysis).
75. *Joffe*, 121 P.3d at 838.
76. Email addresses containing a series of numbers likely implicate the TCPA, while emails containing a domain name attributed to a wireless carrier likely implicate CAN-SPAM. Kristen J. Mathews, *If You're Confused, You Should Be: Two Federal Laws Apply to Cell Phone Messages*, 12 NO. 4 Intell. Prop. Strategist 1 (2006).
77. But note that CAN-SPAM may be implicated where the sender knows or should know that the recipient email address is attached to a cell phone or other wireless device. *Id.*
78. See *Joffe*, 121 P.3d at 842.
79. 15 U.S.C. § 7712(a)(4)(A).
80. However, it is worth noting that although the TCPA likely does not apply to such messages, other statutes, including CAN-SPAM, may indeed restrict or prohibit such activities and create a cause of action against those who violate the restrictions.