



July 22, 2022

## U.S. PRIVACY LEGISLATION REFERRED TO HOUSE FLOOR

On July 20, 2022, an amended version of the American Data Privacy and Protection Act (“ADPPA”) was passed out of the House Committee on Energy & Commerce by a 53-2 vote.

Some of the major changes made by the Committee since the ADPPA was introduced include specifically granting authority to the California Privacy Protection Agency to enforce the ADPPA in California, shortening the private right of action grace period to 2 years from 4 years and expanding the definition of sensitive covered data to include race, color, ethnicity, religion, union membership and internet browsing history over time and across third party websites, among others.

While this is a positive development in the direction of the ADPPA becoming law, the ADPPA will likely undergo many changes before it is passed out of the House. We will continue to provide updates periodically as the ADPPA move through the legislative process. ☐

## CLASS ACTION CERTIFIED FOR WEBSITE ALLEGEDLY FAILING TO PROVIDE NECESSARY FEATURES FOR VISUALLY IMPAIRED USERS

On June 10, 2022, Plaintiff Anthony Murphy in *Murphy v. Hundreds Is Huge, Inc.*, No. 1:21-CV-00204-RAL, 2022 WL 2110202 (W.D. Pa. June 10, 2022), filed an amended complaint to raise a class action lawsuit against defendant, The Hundreds is Huge, Inc. (“The Hundreds”), alleging that digital properties were not reasonably accessible to visually impaired people in violation of the Americans with Disabilities Act (“ADA”). Specifically, Murphy alleges that The Hundreds did not include adequate policies and practices to make their website accessible to people who are blind or visually impaired.

Murphy sought to certify a class action lawsuit for all blind and visually impaired individuals who use screen reader and other auxiliary aids to navigate The Hundreds’ website and were prevented from doing so because certain necessary features were missing. After examining Murphy’s procedural arguments for allowing the proposed class action, the court ruled in favor of Murphy and certified the class action against The Hundreds.

This case should serve as a reminder to review website compliance with the ADA and of the risks of not complying with the ADA. We will continue to monitor the status of this case and provide periodic updates. ☐

## THIRD CIRCUIT RULES IN FAVOR OF LOAN SERVICER THAT ALLEGEDLY VIOLATED THE TCPA

On June 14, 2022, the Third Circuit Court of Appeals ruled in favor of Navient Solutions, Inc. (“Navient”) in *Panzarella v. Navient Sols., Inc.*, 37 F.4th 867 (3d Cir. 2022). Plaintiffs alleged that Navient violated the Telephone Consumer Protection Act (“TCPA”) by calling their cell phones regarding student loan debt using an automatic telephone dialing system (“ATDS”) without express consent. The court determined that the ultimate issue was whether Navient violated the TCPA when it employed its dialing system to call the Plaintiffs. The TCPA prohibits making any calls using an automatic telephone dialing system to any telephone number assigned to a cellular telephone service. Under the TCPA, an ATDS is equipment which has the capacity to store and produce telephone numbers to be called, using a random or sequential number generator and to dial such numbers.

The court never reached the question of whether or not Navient’s equipment constituted an ATDS. The court found that for a call to violate the TCPA, a call must **use** an ATDS’s capacity to use a random or sequential number generator to produce telephone numbers to be dialed or its capacity to use

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random or sequential number generator to store telephone numbers to be dialed. Significantly, the court determined that equipment having the capability to store and produce numbers to be called using a random or sequential number generator and to dial such numbers was not enough to violate the TCPA. The equipment must actually be used to make calls using the random or sequential number generator to violate the TCPA. In ruling in favor of Navient, the court held that Navient did not violate the TCPA because Navient did not rely on random or sequential number generation when it called the Plaintiffs but relied on a list of numbers.

We will continue to monitor the status of the TCPA and provide periodic updates. ☐

✧ *Elizabeth Anstaett and Nathan Copeland*

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