Robocall Fake News Spreads: More Media Outlets Push Out Misleading TCPA Articles

Tuesday, March 19, 2019

It was inevitable after John Oliver’s witty but highly misleading hit piece on the TCPA. Even after the Czar’s thorough rebuke of the John Oliver bit, mainstream media outlets have followed with their own lightly researched and unintentionally misleading articles. Many simply repeat Oliver’s misleading claims, like these examples from Rolling Stone and Time. Others parrot data from the “robocall index” produced by call-blocking app maker YouMail that doesn’t actually track robocalls. The fake news is causing real harm, because false-TCPA narratives from interest groups get in the way of meaningful reform. And in the meantime, the inundation from true robocallers – mainly offshore spammers – continues.

These #fakenews stories often follow the same pattern. They start with a description of true robocalls from offshore scam artists. Everyone is familiar with these calls. They are from “the warranty department,” or offer to “refinance your house” or a “free cruise.” All you need to do to extend your warranty, refinance your home, or win a free cruise is provide your bank account and social security number. The news accounts – including John Oliver’s – justifiably call out these practices and call for reform. But the stories then pivot and cast legitimate American companies making legitimate phone calls under the same umbrella. And that’s a problem.

This is the slight-of-hand to lookout for. The piece will go from discussing scam artists to discussing calls to collect a legitimate account or to provide important account or service-related information. And the story will falsely attach the same “autodialer” or “robocaller” label to these calls that it correctly attached to auto-spam. They get away with this subtle slight-of-hand by not actually defining these terms. That allows them to ignore the fact that the technology to place auto-spam and spoofed calls is very different from the technology used to place legitimate calls for legitimate purposes. The article will then bolster these misleading statements with quotations to special interest groups like the National Consumer Law Center, discredited “experts,” attorneys who make millions from filing harassing TCPA lawsuits, and the owners of the YouMail call-blocking app. These groups have an obvious interest in painting legitimate companies as robocallers – it’s much easier to sue an actual US company than a sketchy, offshore auto-spammer.

Blind reliance on the YouMail robocall index is particularly problematic. The index, created by a company that markets a call-blocking app, lumps calls to collect accounts and to provide customer-service messages in with auto-spam and scam artists. The index then includes a list of legitimate companies as being the greatest source of robocalls – a list parroted by John Oliver and others. We won’t repeat the list here, because it maligns companies making legitimate, non-robocalls and paints them with the same brush as offshore auto-spammers. The list would look far different if the index tracked actual robocalls.

Misapplication of the YouMail robocall index – which does a fine job of tracking high-volume call patterns but a poor job of tracking scam or spam messaging – lets the real bad guys off the hook. It also allows plaintiffs’ attorneys to cite misleading and alarmist statistics, such as “robocalls are 50% of all calls made in the US” and “robocalls are the number one complaint received by the FCC,” without distinguishing actual robocalls from legitimate calls incorrectly included in the index. The media shines a bright light on legitimate companies while avoiding the tougher task of identifying the real scammers, auto-spammers and spoofers.

Which gives us an idea for a new show: To Catch A Spammer. Does anyone have Chris Hansen’s number? We
promise not to autodial it.

On a serious note, the slight of hand has real consequences. It distracts courts, congress, and regulators from dealing with the actual scourge of auto-spammers, spoofers, and scam artists. Look no further than the smorgasbord of legislation working its way through Congress for evidence of this, which ranges from meaningful reform to special-interest wish lists. It also results in legitimate American businesses being bombarded with frivolous lawsuits for making legitimate calls for legitimate purposes. These frivolous suits costs millions to defend every year and make it extraordinarily difficult for businesses to convey necessary information to their customers and account holders.

But we try to be fair around here at tcpaworld.com. So when our new podcast launches in just 2 short weeks, we will invite YouMail’s CEO – Alex Quilici – back into the lion’s den for a frank discussion about the robocall narratives permeating the media. And for those of you in the media working on robocall or TCPA-related pieces, please reach out. We try to be a resource for all.

© Copyright 2019 Squire Patton Boggs (US) LLP