The TRACED Act and What it means for Robocall Scammers

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Let’s face it, we’ve all been there before. You’re receiving a phone call from a telephone number that you don’t recognize and the caller ID displays a state you’ve never visited. You hesitate to answer while you quickly try to remember to whom you’ve given your cellphone number recently, or which prospective employer may be calling about your application. You decide to play it safe and answer the call with a curious “hello.” You’re greeted with a friendly “hello” in return, and for a brief moment you exhale and begin to ask with whom you’re speaking. Before you can finish your sentence, you are interrupted by the voice as it begins to tell you about how you can switch to a better health insurance plan and receive a great discount. You hang up and sigh as you realize you’ve just received your ninth robocall of the week.

Over the last several years, there has been a significant uptick in the United States of illegal robocalls, as internet phone systems have made it easier for scammers to place them. Scammers placing illegal robocalls have largely been able to dodge law enforcement simply by displaying fake caller ID information, a technique called “spoofing.”

In an effort to put spoofing to a halt, the telecommunications industry has come up with a new technology standard called STIR (Secure Telephony Identity Revisited) and SHAKEN (Secure Handling of Asserted information using toKENs). STIR/SHAKEN is an industry-developed set of rules that outline how the telecommunication companies are to implement the STIR technology.

STIR/SHAKEN advises the use of digital certificates from trusted certificate authorities to authenticate telephone calls. The technology allows the call to be screened and validated by the

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2 Id.
4 Id.
6 Id.
7 Id.
originating telephone service provider. Once validated, the caller information will be sent to the receiving service provider where the call will then be verified through a verification service and certificate repository. When the caller identity is verified, the call will be allowed to reach the consumer’s phone. Unauthenticated numbers collected by the new technology will be blocked, reported, and prosecuted. The Federal Communications Commission (FCC) will be responsible for promulgating the rules establishing when a provider of voice service may block a caller; the FCC will also provide safeguards for voice service providers against liability for inadvertent call-blocking from misidentification of telephone numbers. Legitimate callers that are misidentified as unauthentic will have an opportunity to authenticate the number, and once authenticated, be allowed to reach the consumer. The technology sounds great, but State Attorneys General are still looking for congress to be the catalyst to implement it.

Cue the TRACED Act (Act). “TRACED” stands for Telephone Robocall Abuse Criminal Enforcement and Deterrence, and the Act began as a bill to deter criminal robocall violations and improve enforcement of Section 227(b) of the Communications Act of 1934. The Act requires voice service providers to implement STIR/SHAKEN authentication technology within 18 months of enactment of the Act.

So how did the TRACED Act come to be? In January of 2019, Senator John Thune of South Dakota introduced the bill, and in March, 54 Attorneys General showed support for the bill in a letter to the U.S. Senate Committee on Commerce Science and Transportation. The letter highlighted how robocalls were the top source of consumer complaints received by their offices, and urged for an expansion of the FCC’s toolkit to combat the illegal, unsolicited calls. On May 23, 2019, with bipartisan support, the bill passed with flying colors through the Senate, and is awaiting consideration by the House of Representatives. Similarly, a companion bill titled the Stopping Bad Robocalls Act sailed through the House, offering some optimism that at least one anti-robocall bill will be signed into law very soon.

8 Id.
9 Id.
10 Id.
11 Id.
13 S. 151, 116th Cong. § 1 (2019).
15 Id.
18 Id.
Attorneys General have begun stepping up in support of federal legislation to resolve the harassing, unwanted calls, as well as fighting robocalls in their jurisdictions through education and the solicitation of consumer input. Specifically, the consumer protection division of Nebraska Attorney General Doug Peterson’s office has launched an educational program called Protect the Good Life. A section of their website provides plenty of useful information on protection from a number of consumer threats, including robocalls. Information on adding telephone numbers to the Do Not Call Registry, and opting out of unsolicited commercial mail can be found on the site as well.

In North Carolina, Attorney General Josh Stein recognizes citizen’s hatred for robocalls, and is now offering an online petition for citizens to sign. Stein states that signing the petition will “help [Stein] fight for people’s privacy and peace of mind” by highlighting the sheer amount of people who feel harassed by disruptive robocalls.

The TRACED Act provides a remedy for consumers against the illegal robocalls the Attorneys General of Nebraska and North Carolina have been combating. Violators of the Act will now be subject to liability including a forfeiture penalty of up to $10,000 per illegal call upon proper notice issued by the FCC. In addition to the authentication technology, the Act extends the statute of limitations for enforcement against reported robocalls. If the violation was unintentional, the FCC will have one year from the time of violation to issue notice. The FCC will have three years from the time of a purposeful violation to issue notice.

The Act also requires the chairperson of the FCC and the United States Attorney General to establish an interagency group to study and report to congress the details concerning prosecution and other enforcement of the Act. The interagency group is to include representatives from the Department of Commerce, the Department of State, the Department of Homeland Security, the Federal Communications Commission, the Federal Trade Commission, and the Bureau of Consumer Financial Protection.

With new detecting technology, increased penalties, and more supervision, the hope behind the Act is to make pesky robocalls a relic of the past. Doing so shields consumers from the dangers presented when dealing with scammers and restores the trust for incoming telephone calls that has been lost due to the surge in illegal robocalls.

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22 Id.
24 Id.
25 S. 151, 116th Cong. § 1 (2019).
26 Id.
27 Id.
28 Id.