
In the
Supreme Court of the United States

NATIONAL BASKETBALL ASSOCIATION,

Petitioner,

v.

MICHAEL SALAZAR,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL APPENDIX TO
BRIEF IN OPPOSITION TO
PETITION FOR CERTIORARI

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[FILED JUNE 12, 2025]

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
NEW YORK**

MICHAEL SALAZAR, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NATIONAL BASKETBALL ASSOCIATION,

Defendant.

Case No: 1:22-cv-7935-JLR
Judge Jennifer L. Rochon
JURY TRIAL REQUESTED

**SECOND AMENDED
CLASS ACTION COMPLAINT**

Plaintiff Michael Salazar, individually and on behalf of all others similarly situated, respectfully submits this Second Amended Class Action Complaint against Defendant National Basketball Association (“Defendant”) for violations of the federal Video Privacy Protection Act, 18 U.S.C. § 2710 (“VPPA”).

Plaintiff’s claims arise from Defendant’s practice of using tracking software programs developed by Facebook to knowingly disclose his personally identifiable information to a third party, Meta Platforms, Inc. (owner of Facebook and Instagram, as well as other applications), in a form of Meta’s choosing given it programmed the software. This personally identifiable information data contains Plaintiff’s and other digital-subscriber Class

Members' (i) personally identifiable information or Facebook ID ("FID") and (ii) the computer file containing video and its corresponding URL viewed ("Video Media") (collectively, "Personal Viewing Information").

In other words, this transmission of Personal Viewing Information to Facebook is achieved through Defendant's adoption of the "Facebook pixel," which Facebook designed in such a way to allow third parties to determine what data it will collect from its users and transmit back to Facebook. From a menu of options, Defendant chooses how it will use the pixel, including what video viewing information is transmitted, when (or what event triggers) data transmission, and the form in which said data is transmitted back to Facebook. The information related to the pre-recorded videos that are watched and then transmitted back to Facebook to link it to the individual using the Facebook ID so it can then be capitalized on by Defendant to push out more content and advertisements it feels the user be interested in based on the ever-evolving Facebook profile.

For the sake of clarity and to alleviate any doubt, and as was previously and appropriately inferred respect to the Complaint (ECF No. 1) throughout the motion to dismiss phase, any allegations related to Plaintiff's viewing of Video Media and the sharing of Personal Viewing Information herein are limited to pre-recorded audiovisual material and *do not* include the watching of live content. Plaintiff's allegations are made on personal knowledge as to Plaintiff and Plaintiff's own acts and upon information and belief as to all other matters.

Nature of the Action

1. This is a consumer digital privacy class action complaint against National Basketball Association, as the owner of NBA.com, for violating the VPPA by disclosing its digital subscribers' identities and Video Media they have watched to Facebook without obtaining their digital subscribers' "written consent" "in a form distinct and separate from any other form setting forth other legal or financial obligations of the consumer." 18 U.S.C. § 2710(b)(2)(B).

2. Digital subscribers of the NBA's newsletters are "consumers" under the VPPA.

3. The VPPA prohibits "video tape service providers," such as the NBA which controls and operates NBA.com, from knowingly disclosing consumers' personally identifiable information ("PII"), including "information which identifies a person as having requested or obtained specific video materials or services from a video tape provider," without express consent in a "distinct and separate" form that "is given at the time the disclosure is sought" or "is given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner[.]" 18 U.S.C. § 2710(b)(2)(B)(ii)(I)-(II).

4. During time periods relevant to this matter, Defendant has collected and shared the personally identifying information of visitors to its website and mobile application ("App") with third parties.

5. Defendant does this through tracking cookies, software development kits ("SDK"), and tracking pixels.

6. In other words, digital subscribers to NBA.com have their personally identifying information disclosed to Defendant's third-party business partners.

7. The Facebook pixel is functional software code developed by Facebook that Defendant has chosen to install on NBA.com allowing it to collect users' data, share that data with Facebook in real time in a form that Facebook controls, and, in return, receive information about its users' identity linked to the Facebook ID and that individual user's video-watching habits. More specifically, the Facebook pixel tracks when digital subscribers visit NBA.com and when digital subscribers view Video Media. NBA.com tracks and discloses to Facebook the digital subscribers' viewed Video Media, and most notably, the digital subscribers' FID which provides any reasonable person access to a person's Facebook (and Instagram) page and/or account which in turn provides that person with access to information such as the person's name, location of residence, work history, educational history, date of birth, photographs of the user that include metadata sufficient to demonstrate location, gender, and likes. This occurs even when the digital subscriber has not shared (nor consented to share) such information.

8. Importantly, Defendant packages personally identifiable information and video viewing information together and shares this Personal Viewing Information with Facebook. Because the digital subscriber's FID uniquely identifies an individual's Facebook user account, Facebook—or any other ordinary person—can use it to quickly and easily locate, access, and view digital subscribers' corresponding Facebook profile. Put simply, the pixel

allows Facebook to know what Video Media one of its users viewed on NBA.com.

9. Thus, without telling or obtaining the express consent of its digital subscribers in a “distinct and separate form” or otherwise, Defendant profits handsomely from its unauthorized disclosure of its digital subscribers’ Personal Viewing Information to Facebook. It does so at the expense of its digital subscribers’ privacy and their statutory rights under the VPPA.

10. Because NBA.com digital subscribers are not properly informed about this dissemination of their Personal Viewing Information – indeed, it is automatic and invisible – they cannot exercise reasonable judgment to defend themselves against the highly personal ways NBA.com has used and continues to use data it has about them to make money for itself at the expense of consumers.

11. Defendant chose to disregard Plaintiff’s and, upon information and belief, hundreds of thousands of other NBA.com digital subscribers’ statutorily protected privacy rights by releasing their sensitive data to Facebook.¹ Accordingly, Plaintiff brings this class action for legal and equitable remedies to redress Defendant’s practices of intentionally disclosing its digital subscribers’ Personal Viewing Information to Facebook in knowing and direct violation of the VPPA.

¹ Given discovery has been stayed for the entirety of this matter, Plaintiff has been unable to seek discovery about the size of the putative class. Order, ECF No. 26 (Dec. 22, 2022). See also ECF No. 25 (noting Plaintiff took the position seeking only limited discovery about size of the class and the existence of any insurance policies).

12. For the sake of clarity and to alleviate any doubt, any allegations related to Plaintiff's viewing of Video Media and the sharing of Personal Viewing Information herein are limited to pre-recorded audiovisual material and *do not* include the watching of live content.

Jurisdiction & Venue

13. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over the claims that arise under the Video Privacy Protection Act, 18 U.S.C. § 2710.

14. This Court also has jurisdiction under 28 U.S.C. § 1332(d) because this action is a class action in which the aggregate amount in controversy for the proposed Class (defined below) exceeds \$5,000,000, and at least one member of the Class is a citizen of a state different from that of Defendant.

15. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391 because Defendant does business in and is subject to personal jurisdiction in this District. Venue is also proper because a substantial part of the events or omissions giving rise to the claim occurred in or emanated from this District.

The Parties

16. Plaintiff Michael Salazar is an adult citizen of the State of California and is domiciled in the State of California. Plaintiff began a digital subscription to NBA.com in 2022 which continues to this day. Plaintiff has had a Facebook account from approximately 2010 to the present. During the relevant time period he has been a subscriber to NBA.com's digital newsletter and has viewed Video Media on Defendant's website. Plaintiff did so while

logged into his Facebook account or having been recently logged into his Facebook account. By doing so, Plaintiff's Personal Viewing Information was disclosed to Facebook pursuant to the systematic process described herein. Plaintiff never gave Defendant express written consent to disclose his Personal Viewing Information to unauthorized third parties.

17. Defendant National Basketball Association:

- a. Is a private major American sports league headquartered in New York, New York.
- b. Is one of the most-watched sports in the United States, averaging 1.6 million viewers per regular season game across the 2021-2022 season.²
- c. Had an annual revenue of \$10 billion for the 2021-2022 season.³
- d. NBA.com has approximately 14.5 million unique monthly visitors.⁴
- e. NBA.com includes a Videos section which provides a broad selection of video content.

² See SportsMediaWatch "NBA Season is most-watched in three years," available at <https://www.sportsmediawatch.com/2022/04/nba-ratings-most-watched-regular-season-three-years/> (last visited _____).

³ See "NBA reveals US\$10bn revenue for 2022/23 season," available at [https://www.sportspromedia.com/news/nba-revenue-2021-22-season-adam-silver/#:~:text=The%20National%20Basketball%20Association's%20\(NBA,%248.9%20billion%20C%20marking%20another%20record](https://www.sportspromedia.com/news/nba-revenue-2021-22-season-adam-silver/#:~:text=The%20National%20Basketball%20Association's%20(NBA,%248.9%20billion%20C%20marking%20another%20record) (last visited _____).

⁴ See similarweb.com, nba.com, available at web.com/website/nba.com/#overview (last visited _____).

- f. Combined, the National Basketball Association and NBA.com are used by numerous U.S. digital media viewers.
- g. Through NBA.com and App, Defendant delivers and, indeed, is in the business of delivering countless hours of video content to its digital subscribers.

Factual Allegations

A. Background of the Video Privacy Protection Act

18. The United States Congress passed the VPPA in 1988, seeking to confer onto consumers the power to “maintain control over personal information divulged and generated in exchange for receiving services from video tape service providers.” S. Rep. No. 100-599, at 8. “The Act reflects the central principle of the Privacy Act of 1974: that information collected for one purpose may not be used for a different purpose without the individual’s consent.” *Id.*

19. The impetus for the VPPA was President Ronald Reagan’s nomination of Judge Robert Bork to the United States Supreme Court. During the confirmation process, a movie rental store disclosed the nominee’s rental history to the Washington City Paper which then published that record. Congress responded by passing the VPPA, with an eye toward the digital future. As Senator Patrick Leahy, who introduced the Act, explained:

It is nobody’s business what Oliver North or Robert Bork or Griffin Bell or Pat Leahy watch on television or read or think about when they are home. In an area of interactive television

cables, the growth of computer checking and check-out counters, of security systems and telephones, all lodged together in computers, it would be relatively easy at some point to give a profile of a person and tell what they buy in a store, what kind of food they like, what sort of television programs they watch, who are some of the people they telephone. I think that is wrong.

Id. at 5-6 (internal ellipses and brackets omitted).

20. In 2012, with emergence of the internet in mind, Congress amended and updated the VPPA, and in doing so, reiterated the Act's applicability to "so-called 'on-demand' cable services and Internet streaming services [that] allow consumers to watch movies or TV shows on televisions, laptop computers, and cell phones." S. Rep. 112-258, at 2.

21. The 2012 amendments clarified that statute "that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet." Video Privacy Protection Act Amendments Act of 2012, Pub. L. 112-258, 126 Stat. 2414; see also 18 U.S.C. § 2710(b)(2)(B) (authorizing a video tape service provider to disclose consumers' personally identifiable information "to any person with the informed, written consent (including through an electronic means using the Internet) of the consumer" provided either "at the time the disclosure is sought" or "in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner").

22. The consent, however, must be "in a *form distinct and separate* from any form setting forth

other legal or financial obligations of the consumer.” 18 U.S.C. § 2710(a)(4) (emphasis added).

23. The VPPA prohibits “[a] video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider.” 18 U.S.C. § 2710(b)(1).

24. The VPPA defines “consumer” as any “renter, purchase, or subscriber of goods or services from a video tape service provider.” 18 U.S.C. § 2710(a)(1).

25. Under the VPPA, a consumer does not have to spend money for a good or service to be a “subscriber.” *Salazar v. Nat’l Basketball Ass’n*, 118 F.4th 533, 551 (2d Cir. 2024).

26. The VPPA defines personally identifiable information (“PII”) as “information which identifies a person as having requested or obtained specific video materials or services from a video service provider.” 18 U.S.C. § 2710(a)(3).

27. By transmitting Facebook-specific identifiers (i.e., Facebook IDs) and video file names through Facebook’s own embedded tool, the disclosing party, here, Defendant, expressly instructed Facebook as to the exact videos and other content the consumer accessed.

28. The Facebook Pixel is one of the most, if not the most, commonly used, known, and easily understood tracking pixels that link individual users to their internet activities.

29. The Facebook Pixel is designed to allow any ordinary person (as long as we can presume an “ordinary person” can read), to read and understand the contents of information being shared with

Facebook as the title of the video is clearly decipherable since it appears in plain English.

30. Even though some of the information disclosed is technical in nature, any ordinary person can easily surmise what video content a person requested or obtained because it directly tracks the name of the video as it appears on the user's screen, as well as that person's FID, as it is an easily identifiable and unique string of numbers tied to an individual.

31. Further, it is generally understood that when marketing a product or service, knowing your target audience is a fundamental aspect.

32. As such, it is generally understood that the Pixel would receive, decipher, and link data, including data protected by the VPPA, to an individual's Facebook Profile.

33. Indeed, Facebook not only received this information in the precise form it was transmitted but also leveraged it to build detailed profiles for targeted advertising based on a consumer's video-watching habits.⁵

34. A video tape service provider is "any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of

⁵ The Facebook Pixel transmits data via HTTP requests (e.g., through GET requests) that include URL-encoded query parameters. Facebook's own documentation assumes that URL data will be encoded with UTF-8 before being appended to the GET request. See, <https://developers.facebook.com/docs/marketing-api/conversions-api/parameters/customer-information-parameters/> (last visited June 5, 2025). Stated differently, Facebook receives URL data in a form that is easily converted to data strings that humans can read.

prerecorded video cassette tapes or similar audio visual materials.” 18 U.S.C. § 2710(a)(4).

35. Under the VPPA, “[a]ny person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court.” 18 U.S.C. § 2710(c)(1).

36. Under the VPPA, “[t]he court may award—(A) actual damages but not less than liquidated damages in an amount of \$2,500; (B) punitive damages; (C) reasonable attorneys’ fees and other litigation costs reasonably incurred; and (D) such other preliminary and equitable relief as the court determines to be appropriate.” 18 U.S.C. § 2710(c)(2).

37. The VPPA itself requires video tape service providers like Defendant to “destroy personally identifiable information as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected.” 18 U.S.C. § 2710(e).

38. This would mean, for instance, that when a user deletes their account, Defendant no longer has a use for the information and should delete it as soon as practicable. But Defendant’s policies indicate it does not delete said information after no longer having a use for it, let alone the third parties to whom it discloses PII.

B. NBA.com’s Digital Subscriptions

39. To register for NBA.com, users sign up for an online newsletter. NBA.com users provide their personal information, including their email address.

40. Defendant operates a website in the U.S. accessible from a desktop and mobile device at NBA.com.

41. All digital subscribers provide Defendant with their IP address, which is a unique number assigned to all information technology connected devices, that informs Defendant as to subscribers' city, zip code and physical location.

42. Because of how Defendant configured its website and tracking technologies, digital subscribers also provided at least one device identification number, and, upon information and belief, a network identifier.

43. When signing up for a digital newsletter, Defendant does not disclose to its digital subscribers that it will share Personal Viewing Information with third parties, such as Meta. Digital subscribers, during the relevant time period, did not consent to such information sharing.


44. After becoming a digital subscriber, viewers have access to a variety of NBA.com Video Media on Defendant's digital platform.

45. Notably, digital subscriber who watch NBA.com Video Media, the digital subscriber is not provided with any notification that his or her Personal Viewing Information is being shared.

46. Similarly, Defendant also fails to obtain digital subscribers' written consent to collect their Personal Viewing Information "in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer," as the VPPA requires.

1. Changes to Email Sign-Up Widget Made During the Pendency of this Matter

47. In the relevant time period before this matter was commenced, the newsletter sign-up widget appeared as follows:



Want every headline right at your fingertips? Sign up to receive NBA emails!

Email Address

Submit

By clicking "Submit", you agree to the Terms and Conditions and Privacy Policy. You agree that your personal information will be used to send you messages about NBA related products and services, and share your personal information with NBA partners and affiliates so that they can also contact you about products and services that might be of interest to you.

See Internet Archive, nba.com, Sept. 1, 2022, at 05:27:09 a.m., <https://web.archive.org/web/20220901052709/https://www.nba.com/> (last visited Dec. 11, 2024).

48. The NBA knowingly chose to present the text of its alleged disclosure entirely in small light grey text against a white background with none of the words in the entire passage appearing in bold text, different colored text, or bearing an underline.

49. The block of text beginning with “By clicking” is presented as the smallest text in the email sign-up widget, and, upon information and belief, is the smallest text featured on the entire web page.

50. Further, the reference to “Terms and Conditions” and “Privacy Policy” are not highlighted in any fashion (*i.e.*, do not appear in bold or blue text). While the newsletter sign-up widget contains a

hyperlink for “Terms and Conditions,” clicking on that link appears to redirect the user back to the homepage. *See* Internet Archive, nba.com, Sept. 1, 2022, at 05:27:09 a.m. (redirecting back to homepage), available at <https://web.archive.org/web/20220901052709/https://www.nba.com/> (last visited Dec. 11, 2024).

51. Even more concerning, the reference to “Privacy Policy” in the newsletter sign-up widget is not hyperlinked at all. *Id.*

52. The NBA’s September 1, 2022 “block text” makes no reference to the Video Protection Privacy Act, 18 U.S.C. § 2710.

53. Defendant did much more with users’ data than share it with “partners and affiliates” so that “partners and affiliates” could “contact [users] about products and services that might interest [the users].”

54. Moreover, the NBA’s September 1, 2022 block of small gray text does not appear “in a form distinct and separate from any other form setting forth other legal or financial obligations of the consumer.” 18 U.S.C. § 2710(b)(2)(B).

55. Plaintiff was not, and no reasonable consumer would be, put on notice that small light gray text with no indicia of functioning as a hyperlink led to other webpages.

56. The February 24, 2022⁶ version of the NBA’s Privacy Policy makes no reference to the Video

⁶ The “Privacy Policy” hyperlink at the bottom of www.nba.com on September 1, 2022 took users to the February 24, 2022. *See* Internet Archive, nba.com, available at <https://web.archive.org/web/20220828171325/https://www.nba.com/privacy-policy?> (last visited Dec. 12, 2024).

Privacy Protection Act or even contains the word “video.”

57. The June 28, 2021 version of the NBA’s “Terms and Conditions” in effect on September 1, 2022 makes no reference to the Video Privacy Protection Act or even contains the word “video.”

58. On November 9, 2022, after the Court entered the briefing schedule on November 3, 2022 (ECF No. 17), Defendant chose to ***materially alter*** the appearance of the newsletter sign-up widget text:

The image shows a screenshot of the NBA newsletter sign-up widget. At the top, there is a dark blue header with the NBA logo. Below the header, a white box contains the text "WANT EVERY HEADLINE RIGHT AT YOUR FINGERTIPS? SIGN UP TO RECEIVE NBA EMAILS!". Underneath this text is a text input field labeled "Email Address" and a dark blue button labeled "Submit". Below the button, there is a line of small text: "By clicking 'Submit', you agree to the Terms and Conditions and Privacy Policy. You agree that your personal information will be used to send you messages about NBA related products and services, and share your personal information with third parties and affiliates so that they can also contact you about products and services that might be of interest to you." At the bottom of the widget, there is a dark blue sidebar with a list of categories: "NBA ORGANIZATION", "NBA INITIATIVES", "ACROSS THE LEAGUE", "SHOP", and "SUBSCRIPTIONS". Each category has a small downward arrow next to it, indicating a dropdown menu.

See Internet Archive, nba.com, Nov. 9, 2022, at 10:22:19 p.m., available at <https://web.archive.org/web/20221109222220/https://www.nba.com/> (last visited Dec. 12, 2024).

59. Specifically, for the first time, the NBA changed the textual appearance of “Terms and

Conditions” and “Privacy Policy” from light grey text to bolded blue text.

60. For the first time, these phrases showed some indicia of being a hyperlink (and, for “Privacy Policy” actually became a hyperlink).



61. The NBA chose not to increase the size of the text in the “By clicking” language that is still small compared to the text immediately surrounding the “By clicking” language.

62. The NBA’s November 9, 2022 disclosure makes no reference to the Video Protection Privacy Act, 18 U.S.C. § 2710.

63. The NBA’s November 9, 2022 “By clicking” purposely avoids using the term “third parties” or reference Meta when discussing how it would handle Plaintiff’s and putative Class Members’ Personally Identifiable Information, but instead uses the inward-looking term “NBA partners and affiliates.”

64. The NBA’s November 9, 2022 disclosure does not appear “in a form distinct and separate from any other form setting forth other legal or financial obligations of the consumer.” 18 U.S.C. § 2710(b)(2)(B).

65. As a side-by-side comparison, the two disclosures appear as follows:

Sept. 1, 2022	Nov. 9, 2022
 <p>Want every headline right at your fingertips? Sign up to receive NBA emails!</p> <p>Email Address <input type="text"/></p> <p>Submit</p> <p><small>By clicking "Submit", you agree to the Terms and Conditions and Privacy Policy. You agree that your personal information will be used to send you messages about NBA related products and services, and share your personal information with NBA partners and affiliates so that they can also contact you about products and services that might be of interest to you.</small></p>	 <p>WANT EVERY HEADLINE RIGHT AT YOUR FINGERTIPS? SIGN UP TO RECEIVE NBA EMAILS!</p> <p>Email Address <input type="text"/></p> <p>Submit</p> <p><small>By clicking "Submit", you agree to the Terms and Conditions and Privacy Policy. You agree that your personal information will be used to send you messages about NBA related products and services, and share your personal information with NBA partners and affiliates so that they can also contact you about products and services that might be of interest to you.</small></p>

66. The differences between the two disclosures cannot be understated. Plaintiff did not, and no reasonable consumer would, recognize pre-November 9, 2022 language as conspicuous notice of the “Terms of Service” and “Privacy Policy” phrases linking to other web pages. In fact, pre-November 9, 2022, “Privacy Policy” ***was not*** a hyperlink. Moreover, the banner language November 9 version appears in “ALL CAPS” as opposed to “Sentence case,” which is designed to draw the user’s eye to the upper portion of the sign-up widget.

67. Without reasonably conspicuous notice, neither Plaintiff nor any putative Class Member can be bound by the email sign-up widget.

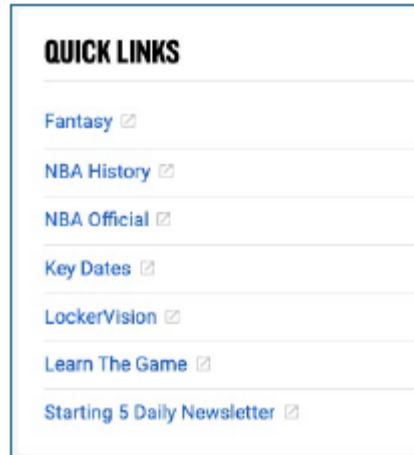
68. While the November 9, 2022 alteration occurred prior to the NBA moving to dismiss the Complaint filed on December 2, 2024 (ECF No. 21), the NBA chose to minimize the extent of its changes by presenting no graphical representation of the email sign-up widget (as opposed to how it presented its “cookie banner”). Instead, Defendant provided only

a textual description and requested judicial notice, proclaiming its “*authenticity is not in question.*” See Def.’s Mem., ECF No. 21, at 4, 8 (emphasis added). Defendant’s motion to dismiss described the email sign-up widget as it appeared on nba.com on November 30, 2022 (after the November 9 change).

69. It appears, based on plaintiff’s counsels’ investigation using publicly available tools, that Defendant dropped its “email sign-up widget” from the home screen of www.nba.com on or about February 20, 2023. *Compare* Internet Archive, nba.com, Feb. 22, 2023, at 3:28:40 p.m. (containing email sign-up widget), *available at* <https://web.archive.org/web/20230222184640/https://www.nba.com/> (last visited Dec. 12, 2024) *with* Internet Archive, nba.com, Feb. 22, 2023, at 6:46:40 p.m. (dropping email sign-up widget, *available at* <https://web.archive.org/web/20230222184640/https://www.nba.com/> (last visited Dec. 12, 2024)).

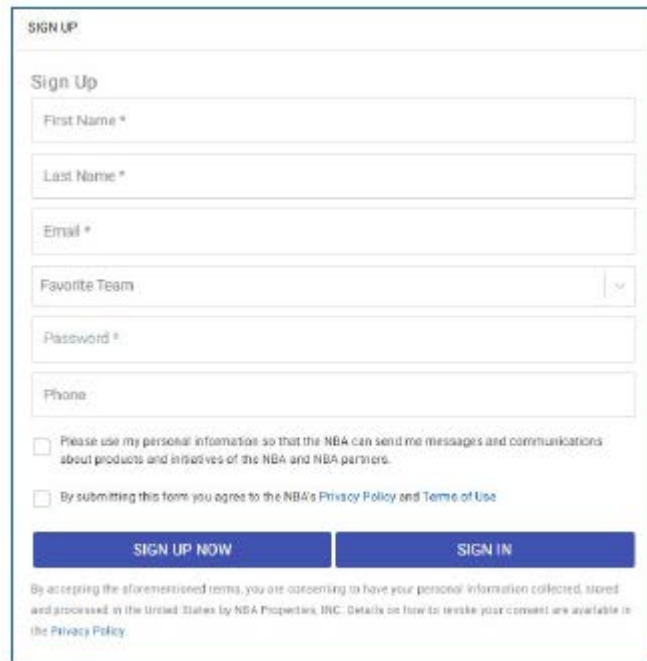
70. It appears that the NBA chose to keep the email sign-up widget off of the home screen of www.nba.com until about October 6, 2023. *Compare* Internet Archive, nba.com, Oct. 5, 2023, at 3:39:40 p.m., *available at* <https://web.archive.org/web/20231005153940/https://www.nba.com/> (last visited Dec. 12, 2024) *with* Internet Archive, nba.com, Oct. 6, 2023, at 11:48:45 p.m., *available at* <https://web.archive.org/web/20231006234845/https://www.nba.com/> (last visited Dec. 12, 2024)).

71. On or about October 6, 2024, the NBA appears to have relaunched and rebranded its digital newsletter as “The Starting 5 Daily Newsletter” and added a hyperlink to the right column of homepage:



See Internet Archive, nba.com, Oct. 6, 2023, at 11:48:45 p.m., *available at* <https://web.archive.org/web/20231006234845/https://www.nba.com/> (last visited Dec. 12, 2024).

72. On or about October 7, 2023, the “Starting 5 Daily Newsletter” hyperlink directs the user to the following sign-up screen:



SIGN UP

Sign Up

First Name *

Last Name *

Email *

Favorite Team

Password *

Phone

☐ Please use my personal information so that the NBA can send me messages and communications about products and initiatives of the NBA and NBA partners.

☐ By submitting this form you agree to the NBA's Privacy Policy and Terms of Use

SIGN UP NOW **SIGN IN**

By accepting the aforementioned terms, you are consenting to have your personal information collected, stored and processed in the United States by NBA Properties, INC. Details on how to revoke your consent are available in the Privacy Policy.

See Internet Archive, nba.com, Oct. 7, 2023, at 6:03:54 p.m., available at <https://web.archive.org/web/20231007180354/https://www.nba.com/starting5> (last visited Dec. 12, 2024).

73. This version of the sign-up widget requires the user to provide (a) first name; (b) last name; (c) email address; and (d) to set up a password for the account.

74. This October 7, 2023 version of the sign-up widget also optionally asks the user (a) to identify “Favorite Team;” and (b) to provide a phone number.

75. The October 7, 2023 version of the sign-up widget also contains a checkbox stating that “[b]y submitting this form you agree to the NBA’s Privacy Policy and Terms of Use.” *Id.* (colored text in original).

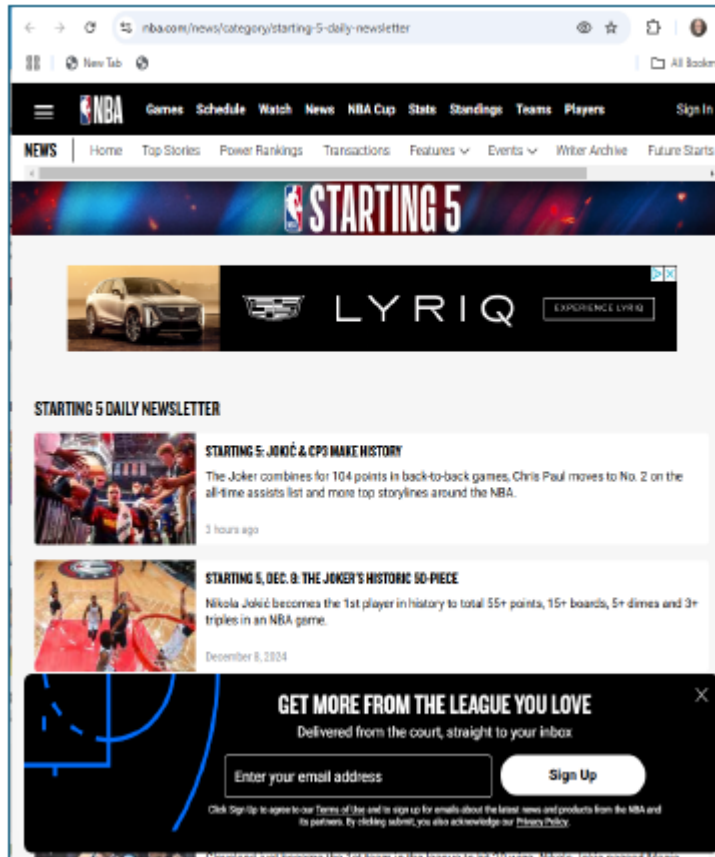
76. The NBA's October 7, 2023 disclosure makes no reference to the Video Protection Privacy Act, 18 U.S.C. § 2710.

77. The NBA's November 9 disclosure does not appear "in a form distinct and separate from any other form setting forth other legal or financial obligations of the consumer." 18 U.S.C. § 2710(b)(2)(B).

78. The August 2023 version of the NBA's Privacy Policy in effect on October 6, 2023 makes no reference to the Video Privacy Protection Act or even contains the word "video."

79. The February 20, 2023 version of the NBA's "Terms of Use" in effect on October 6, 2023 makes no reference to the Video Privacy Protection Act or even contains the word "video."

80. On or about October 17, 2023, the NBA chose to make its "Starting 5 Daily Newsletter" available on its website. See nba.com, Starting 5 Daily Newsletter, *available at* <https://www.nba.com/news/category/starting-5-daily-newsletter> (last visited Dec. 12, 2024). The "Starting 5 Daily Newsletter" archive contains the email sign-up widget:



Id.

81. In this version of the email sign-up widget, the hyperlinks to “Terms of Use” and “Privacy Policy” appear in white text on a black background and are the same color and size as the surrounding text. *Id.*

82. The NBA’s disclosure as of the time of this filing makes no reference to the Video Protection Privacy Act, 18 U.S.C. § 2710.

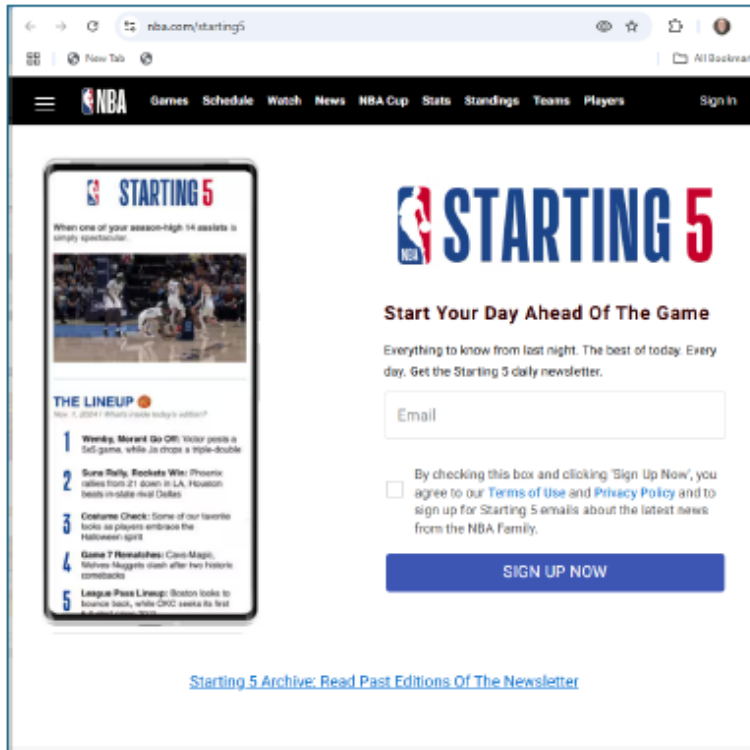
83. The NBA’s disclosure as of the time of this filing does not appear “in a form distinct and separate from any other form setting forth other legal or

financial obligations of the consumer.” 18 U.S.C. § 2710(b)(2)(B).

84. The February 20, 2023 version of the NBA’s “Terms of Use” in effect as of the time of this filing makes no reference to the Video Privacy Protection Act or even contains the word “video.”

85. The August 2023 version of the NBA’s Privacy Policy in effect as of the time of this filing makes no reference to the Video Privacy Protection Act or even contains the word “video.”

86. The “Starting 5” link also contains the following email sign-up widget:



The screenshot shows a web browser window displaying the NBA Starting 5 email sign-up widget. The widget is titled "STARTING 5" and features the NBA logo. The main headline reads "Start Your Day Ahead Of The Game" followed by the sub-headline "Everything to know from last night. The best of today. Every day. Get the Starting 5 daily newsletter." Below this is an email input field with the placeholder text "Email" and a blue "SIGN UP NOW" button. A checkbox is present with the text: "By checking this box and clicking 'Sign Up Now', you agree to our [Terms of Use](#) and [Privacy Policy](#) and to sign up for Starting 5 emails about the latest news from the NBA Family." On the left side of the widget, there is a preview of the Starting 5 newsletter content, including a headline "THE LINEUP" and a list of game highlights numbered 1 through 5. At the bottom of the widget, there is a link: "Starting 5 Archive: Read Past Editions Of The Newsletter".

See NBA, *Starting 5*, available at <https://www.nba.com/starting5> (last visited Dec. 12, 2024).

87. In this version of the email sign-up widget, the hyperlinks to “Terms of Use” and “Privacy Policy” appear in blue text on a white background and are the same size as the surrounding text. *Id.*

88. The NBA’s “Starting 5” disclosure as of the time of this filing makes no reference to the Video Protection Privacy Act, 18 U.S.C. § 2710.

89. The NBA’s “Starting 5” disclosure as of the time of this filing does not appear “in a form distinct and separate from any other form setting forth other legal or financial obligations of the consumer.” 18 U.S.C. § 2710(b)(2)(B).

90. The February 20, 2023 version of the NBA’s “Terms of Use” in effect as of the time of this filing makes no reference to the Video Privacy Protection Act or even contains the word “video.”

91. The August 2023 version of the NBA’s Privacy Policy in effect as of the time of this filing makes no reference to the Video Privacy Protection Act or even contains the word “video.”

C. Defendant’s Policies Fail to Comply with the VPPA and Do Not Reference the VPPA or Even Contain the Word “Video”

92. The NBA’s “Privacy Policy” does not reference the Video Privacy Protection Act, 18 U.S.C. § 2710.

93. The Privacy Policy for NBA.com in effect at the time this matter was commenced stated that the NBA collects “Personal Information” from its users:

“...the data we collect includes:

Data that you provide directly when you register for, or use, the Services. This data will vary, but typically consists of name, email address, postal address, phone number and other similar contact data. We also receive data from the communications you send to us, such as customer service inquiries, product reviews and other feedback regarding the Services.

User credentials, such as username, password, password hints and similar security information used to create an account and authenticate users of the Services.

Demographic data, such as age, gender, country and language preference. Payment data, such as credit card information and billing address.

Device data, such as type of device, operating system and other software installed on the device, device settings, IP address, device identifiers and error reports.

Usage data, such as the programs and features you access, items you purchase, and the timing, frequency and duration of your interactions through the Services.

Location data, such as IP addresses received from your device.

Information about your interests and preferences, such as your favorite teams and players, your home city or your communications preferences. In addition to what you provide directly, we may infer your interests and preferences from other data we

collect, such as the content and advertisements you interact with while using the Services.

Third party integrations. If you connect your use of the Services through a third party service (*e.g.*, a social media platform), the third party may share certain information from your third party account with us.

Other third party data, such as data from our affiliates, partners or vendors, data brokers or public sources.”

See Internet Archive, nba.com, Sept. 16, 2022, at 08:39:47 a.m., *available at* <https://web.archive.org/web/20220916083947/https://www.nba.com/> (last visited Dec. 11, 2024).

94. NBA.com discloses in its Privacy Policy that it automatically collects “Usage data, such as the programs and features you access.” *Id.*

95. Importantly, however, neither NBA.com’s Terms of Service nor Privacy Policy disclosed that Defendant would share digital subscribers’ private and protected Personal Viewing Information with third parties, including Meta.

96. The NBA modified its Privacy Policy in August 2023, which also fails to make mention of the Video Privacy Protection Act, 18 U.S.C. § 2710.

D. How NBA.com Disseminates Digital Subscribers' Personal Viewing Information

1. Tracking Pixels

97. Approximately seven-in-ten U.S. citizens have a Facebook profile⁷ – all of whom provided the same personal information to Meta when creating their Facebook profiles.

98. Meta promotes its ability to allow businesses to target their ads to specific audiences using these types of identifying information⁸ as well as information about actions specific users have taken on the businesses' websites.⁹

99. Facebook introduced its Pixel tracking tool in 2013 to allow online businesses like Defendant to track the actions of their users, subscribers, and customers on their websites, and importantly, to build detailed, valuable profiles about their website users.¹⁰ See Meta, *Meta Pixel*, available at

⁷ Schaeffer, Katherine, Pew Research Center, *5 Facts about how Americans use Facebook, two decades after its launch* (Feb. 2, 2024), available at <https://www.pewresearch.org/short-reads/2024/02/02/5-facts-about-howamericans-use-facebook-two-decades-after-its-launch/> (last visited Dec. 12, 2024).

⁸ Meta Business Help Center, Age and gender, Meta, available at <https://www.facebook.com/business/help/151999381652364> (last visited Dec. 12, 2024); see also Meta Business Help Center, About specific targeting, Meta, available at <https://www.facebook.com/business/help/121933141221852?id=176276233019487> (last visited Dec. 12, 2024).

⁹ Meta Business Help Center, Options to create a website custom audience, Meta, available at <https://www.facebook.com/business/help/2539962959620307> (last visited Oct. 15, 2024).

¹⁰ Meta, *Meta Pixel*, available at <https://developers.facebook.com/docs/meta-pixel/> (last visited Dec. 12, 2024).

<https://developers.facebook.com/docs/meta-pixel/> (last visited Dec. 12, 2024).

100. Meta describes the Meta Pixel as “a snippet of JavaScript code that allows you to track visitor activity on your website. It works by loading a small library of functions which you can use whenever a site visitor takes an action (called an event) that you want to track (called a conversion). Tracked conversions appear in the Ads Manager where they can be used to measure the effectiveness of your ads, to define custom audiences for ad targeting, for Advantage+ catalog ads campaigns, and to analyze that effectiveness of your website’s conversion funnels.”

See Meta, Meta Pixel, *available at* <https://developers.facebook.com/docs/meta-pixel/> (last visited Dec. 12, 2024).

101. Once activated, the Meta Pixel “tracks the people and type of actions they take,”¹¹ including each page users’ visit, what buttons they click, as well as specific information that users input into a website.¹²

102. Meta explains that installing the Pixel allows them to “track Facebook ad-driven visitor activity on [their] website” and enables Facebook “to match . . . website visitors to their respective Facebook User accounts.”¹³

103. In its “Get Started” page, Meta explains “[b]y default, the Pixel will track URLs visited, domains

¹¹ Meta, Overview, *available at* <https://www.facebook.com/business/goals/retargeting> (last visited Dec. 12, 2024).

¹² Meta, About Meta Pixel, *available at* <https://www.facebook.com/business/help/742478679120153?id=1205376682832142> (last visited Dec. 12, 2024).

¹³ Meta, Get Started, *available at* <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited Dec. 12, 2024).

visited, and the devices your visitors use.”¹⁴ In addition, website operators can also program their Pixel to track “conversions” (website visitor actions) which are sent to the Facebook Ads Manager and the Facebook Events Manager to be used to analyze the effectiveness of ad campaigns and to define custom audiences to adjust and create new campaigns¹⁵

104. Meta’s “Get Started” page further explains how it can identify website visitors and match them to their Facebook pages: “[The Meta Pixel] relies on Facebook cookies, which enable us to match your website visitors to their respective Facebook User accounts. Once matched, we can tally their actions in the Facebook Ads Manager so you can use the data to analyze your website’s conversion flows and optimize your ad campaigns.”

105. Facebook maintains vast amounts of data on each of its users’, like Plaintiff and the putative members of the Class.

106. This data is not limited to only what a person does on Facebook, but also includes all records relating to when a user is tracked on off-Facebook websites – such as Plaintiff’s interactions with www.nba.com.

107. Facebook Pixels continuously add data from new interactions to the historical profiles Meta maintains on individuals with Facebook profiles.

¹⁴ Meta for Developers, Get Started, Meta (2024), *available at* <https://developers.facebook.com/docs/meta-pixel/get-started> (last visited Dec 12, 2024)

¹⁵ Meta for Developers, Conversion Tracking, Meta (2024) *available at* <https://developers.facebook.com/docs/meta-pixel/implementation/conversion-tracking/> (last visited Dec 12, 2024)

108. Each interaction sent to Meta via the Pixel (including interactions sent by www.nba.com), is linked to all of the other personal information Meta possesses about the user, such that Defendant has access to and can leverage a user's personal data.

109. In addition to the information every user is required to provide to Meta when creating an account (including First and Last name, date of birth, gender, email address and/or mobile number, and password), Meta also possesses and has access to all of the information every user has ever posted on his or her Facebook profile, profile views, likes, comments, shares and/or re-posts, event invitations, event R.S.V.P.'s, Facebook messages, "check-ins," and much, much more. Further, as explained above, Facebook maintains a record of each user's Off-Facebook Activity – all Facebook Pixel events that "fire" on non-Facebook websites, including www.nba.com.

110. Crucial to the Pixel's effectiveness is its ability to associate a user's interactions on websites across the internet with that specific user's unique Facebook profile. The Pixel's fundamental purpose is to continuously add data from new interactions to the historical profiles Meta maintains on individuals with Facebook profiles (and even for a time after users delete their Facebook profiles).

111. Each interaction sent to Meta via the Pixel (including by the NBA from www.nba.com), is linked to all of the other personal information Meta possesses about the user, and this constant addition of data aids Meta – one of the worst data-privacy actors of this generation...if not ever – in targeting users.

112. NBA also benefits by being able to build “Custom Audiences” of users who interact with www.nba.com in different ways.

113. Thus, for each of Plaintiff’s interactions on the Website, the Pixel transmitted those interactions to Meta, who was able to instantaneously associate that interaction with Plaintiff’s personal information that he submitted when creating her account, and any personal information ever available on his Facebook profile.

114. Facebook also creates “shadow profiles,” of users and at least one court has recognized that a pixel’s ability to track comprehensive browsing history is important. *See, e.g., Brown v. Google LLC*, 525 F. Supp. 3d 1049, 1078-79 (N.D. Cal. 2021) (finding a reasonable expectation of privacy where Google combined the unique identifier of the user it collects from websites and Google Cookies that it collects across the internet on the same user).¹⁶

115. Once a company or organization has installed the Meta Pixel on its website, the Pixel tracks users as they navigate through the website and logs a variety of information designated for tracking by the company, including pages visited, any website “buttons” they click, the specific information entered in forms (including personal information), as well as “optional values.”¹⁷

117. To obtain the code for the Pixel, the website advertiser tells Facebook which website events it

¹⁶ *See* Facebook Shadow Profiles (Feb. 2022), *available at* https://www.cesifo.org/DocDL/cesifo1_wp9571.pdf (last visited Dec. 12, 2024)

¹⁷ Meta, Meta Pixel, *available at* <https://developers.facebook.com/docs/meta-pixel/> (last visited Dec. 12, 2024).

wants to track (e.g., Video Media) and Facebook returns corresponding Facebook pixel code for the advertiser to incorporate into its website.

118. Defendant installed the Facebook tracking pixel, which enables it to disclose Plaintiff's and Class Members' Personal Viewing Information to Facebook, because it benefits financially from the advertising and information services that stem from use of the Pixel.

119. When a digital subscriber enters the website www.nba.com, navigates to, and then watches Video Media on the website, the website sends to Facebook information about the viewer, including, but not limited to, their identity and the media content the digital subscriber watched.

120. Specifically, www.nba.com sends to Facebook the video content name, the URL of the pre-recorded video that was viewed (which clearly identified the video content being watched) along with, most notably, the viewers' Facebook ID that uniquely identifies the user. Defendant's website does this because Defendant made the knowing choice to configure the tracking technologies on its site to function in this manner.

121. To "implement the pixel" on its website, Defendant had to take several affirmative steps. For example, Facebook notes: "To install the Pixel, we highly recommend that you add its base code between the opening and closing <head> tags on every page where you will be tracking website visitor actions. Most developers add it to their website's persistent header, so it can be used on all pages." See Meta for Developers, *Get Started, Installing the Pixel*, available at <https://developers.facebook.com/docs/>

meta-pixel/get-started (last visited May 1, 2025) (formatting in original).

122. Moreover, Facebook notes that “[d]evelopers and marketers can *optionally choose* to send additional information about the visit through Custom Data events.” See Facebook, *Meta Pixel*, available at <https://developers.facebook.com/docs/meta-pixel> (last visited May 1, 2025). Thus, Defendant made a conscious decision to share its users’ PII to Meta.

123. This awareness is demonstrated by several factors, including: (a) the fundamental purpose and functionality of the Pixel, which is designed to collect data on user interactions with a website, (b) the widespread public information and media coverage regarding Meta’s advertising practices, making these practices widely known, and (c) the resources and documentation provided by Meta on its website, where users like the Defendant can access information about the Pixel’s capabilities and obtain the necessary code to implement it on their own websites.

124. At all relevant times, the Defendant was aware that the Pixel transmits PII to Meta. This awareness is demonstrated by several factors, including: (a) the fundamental purpose and functionality of the Pixel, which is designed to collect data on user interactions with a website, (b) the widespread public information and media coverage regarding Meta’s advertising practices, making these practices widely known, and (c) the resources and documentation provided by Meta on its website, where users like the Defendant can access information about the Pixel’s capabilities and obtain

the necessary code to implement it on their own websites.

125. The Defendant's awareness of the Pixel is further demonstrated by the benefits it derived from the Pixel's functionality.

126. By installing the Pixel, the Defendant was able to target digital advertising to its subscribers, as well as potential subscribers, based on the content those individuals had previously accessed or requested from the website, including prerecorded audiovisual materials.¹⁸

127. Defendant specifically benefited from its installation of the Pixels because Defendant maintains a Facebook page (www.facebook.com/nba) and advertises on Facebook, meaning its disclosure of users' interactions to Meta ensured its ads were shown to the right individuals on Facebook at exactly the right time.

128. Defendant is the sole operator of the Website, and Defendant is solely responsible for the decisions it makes about what technology to include within its Website. Defendant made the affirmative decision to knowingly include the Meta Pixel on its website.

129. Defendant knew and understood what the Pixel was, how it functioned, and what data it would collect and share with Meta because Defendant installed the Pixel on its site and configured its functionality.

¹⁸ Meta for Developers, Conversion Tracking, Meta for Developers (2024), *available at* <https://developers.facebook.com/docs/meta-pixel/implementation/conversiontracking/> (last visited Dec. 12, 2024).

E. Facebook ID (“FID”)

130. An FID is a unique and persistent identifier that Facebook assigns to each user. With it, any ordinary person can look up the user’s Facebook profile and name with the execution of one simple command within an internet browser. In short, an FID is a link to the user’s Facebook profile. When a Facebook user with one or more personally identifiable FID cookies on their browser views Video Media from NBA.com on the website or app, NBA.com, through its website code, causes the digital subscriber’s identity and viewed Video Media to be transmitted to Facebook by the user’s browser. This transmission is not the digital subscriber’s decision, but results from Defendant’s purposeful use of its Facebook tracking pixel by incorporation of that pixel and code into NBA.com’s website or App. Defendant could easily program the website and app so that this information is not automatically transmitted to Facebook when a subscriber views Video Media. However, it is not Defendant’s financial interest to do so because it benefits financially by providing this highly sought-after information.

131. Every Facebook account is assigned a unique User ID—commonly known as the “Facebook ID” or “FID” field—which links directly to a specific user’s profile regardless of the name, alias, or other personal information publicly displayed on the account. This information, and other information, is transmitted to Facebook being a data file called the “c_user_” cookie. This User ID functions as a persistent identifier that uniquely distinguishes one account from all others on the Facebook platform.

132. Facebook itself publishes explanations and help-center materials confirming that a User ID is a string of numbers that connects to a specific profile and can be entered into the URL bar (e.g., “[www.facebook.com/\[UserID\]](http://www.facebook.com/[UserID])”) to navigate directly to that profile. Ordinary Internet users — roughly seven in ten Americans — are among Facebook’s user base and regularly encounter URLs and learn from Facebook’s own “Help” pages how to find and use User IDs.¹⁹

133. A simple online search for “how to find Facebook account with Facebook ID” immediately yields publicly available instructions, demonstrating that even non-technical users can, without specialized knowledge, discover and apply a User ID to locate a given Facebook profile.

134. In modern internet use, average individuals see and click URLs dozens or hundreds of times per day across email, news articles, social media, and other web pages.

135. Upon seeing a string beginning “http” or “www,” an ordinary person understands that it can be entered into a browser to access the linked resource.

136. When a URL embedding a Facebook User ID is disclosed — such as by a video service provider — any ordinary user who follows that link will be brought directly to the Facebook profile operating under that ID, thereby identifying the person who watched the video and revealing any public details displayed on that profile (e.g., photos, posts, “friends”,

¹⁹ <https://www.pewresearch.org/short-reads/2024/02/02/5-facts-about-how-americans-use-facebook-two-decades-after-its-launch/> (last visited May 8, 2025)

location, occupation, partner/spouse, educational history, etc.).

137. A Facebook User ID identifies an individual with far greater precision than a name alone, particularly where the name is common or duplicated. For example, while multiple individuals named “John Smith” may exist in the United States—or even on Facebook—only one account will correspond to a particular User ID. Thus, possession of the User ID allows identification of a unique individual with certainty.

138. Even if a profile’s displayed name is pseudonymous (e.g., “Anony Mous”), the underlying User ID still furnishes a clear hook by which third parties can associate specific viewing behavior with a single, uniquely identified human being.

139. Thus, a Facebook User ID is not an obscure technical detail but a readily accessible identifier that ordinary people understand and use to connect personal names, profiles, and online activities.

140. The FID disclosure enables direct linkage of an individual to particular content they have viewed, rendering any assertion of anonymity baseless.

141. Facebook maintains internal user interfaces that automatically translate incoming Pixel transmissions—including the `c_user` value and video metadata—into readable, plain-text formats. These interfaces allow Facebook to view and analyze incoming data in human-understandable terms, such as identifying which user watched which video. Although these internal tools are not publicly available, their existence is evidenced by Facebook’s technical documentation and operational capabilities,

which rely on the ingestion and automated interpretation of Pixel data to serve ads and build user profiles.

142. Indeed, even the website operators who implement the Facebook Pixel have access to dashboards and analytics tools that display Pixel outputs in clear, non-technical terms (e.g., “User watched [Video Title]”). These tools confirm that both Facebook and its business partners interpret the underlying code using accessible interfaces designed to reveal user behavior in plain English.

143. While the technical evidence in this case may show the code-based transmission of a Facebook User ID and video title, Facebook would not need to read or interpret that code manually. Instead, it receives and processes the information through internal systems that automatically extract the meaning of the data—linking a specific user to a specific video—with ease and accuracy.

144. Furthermore, with the rise in General Artificial Intelligence agents such as ChatGPT, anyone with an internet connection can use tools to decipher strings of computer code.

145. In other words, while Facebook can easily identify any individual on its Facebook platform with only their unique FID, so too can any ordinary person who comes into possession of an FID. Facebook admits as much on its website. Indeed, ordinary persons who come into possession of the FID can connect to any Facebook profile. Simply put, with only an FID and the video content name and URL – all of which Defendant knowingly and readily provides to Facebook without any consent from the digital subscribers – any ordinary person could learn the

identity of the digital subscriber and the specific video or media content they requested on nba.com.

146. Additionally, Facebook stores pixel event and other data in Hive tables – internal data storage that is used for large-scale data processing and analytics.

147. Facebook then joins the information across different Hive tables.

148. Facebook can and does identify, process, and use pixel data, via one or more Hive tables (of which there are tens of millions), to understand the domain from which data was originated and what “event” triggered the data disclosure.

149. Said differently, Facebook understands who is sending it data via the Facebook pixel, and, further, understands what the event data means.

150. At all relevant times, Defendant knew that the Facebook pixel disclosed Personal Viewing Information to Facebook. This was evidenced from, among other things, the functionality of the pixel, including that it enabled nba.com and accompanying app to show targeted advertising to its digital subscribers based on the products those digital subscribers had previously viewed on the website or app, including Video Media consumption, for which Defendant received financial remuneration.

F. NBA.com Unlawfully Discloses Its Digital Subscribers’ Personal Viewing Information to Facebook

151. Defendant maintains a vast digital database comprised of its digital subscribers’ Personal Viewing Information, including the names and e-mail addresses of each digital subscriber and information

reflecting the Video Media that each of its digital subscribers viewed.

152. Defendant is not sharing anonymized, non-personally identifiable data with Facebook. To the contrary, the data it discloses is tied to unique identifiers that track specific Facebook users. Importantly, the recipient of the Personal Viewing Information – Facebook – receives the Personal Viewing Information as one data point. Defendant has thus monetized its database by disclosing its digital subscribers' Personal Viewing Information to Facebook in a manner allowing it to make a direct connection – without the consent of its digital subscribers and to the detriment of their legally protected privacy rights.

153. Critically, the Personal Viewing Information Defendant discloses to Facebook allows Facebook to build from scratch or cross-reference and add to the data it already has in their own detailed profiles for its own users, adding to its trove of personally identifiable data.

154. These factual allegations are corroborated by publicly available evidence. For instance, as shown in the screenshot below, a user visits NBA.com and clicks on an article titled "How will pieces come together for the Lakers?" and watches the video in the article.



Pictured above: The article titled “How will pieces come together for the Lakers?” (taken from NBA.com on or about September 8, 2022).

155. As demonstrated below, once the user clicks on and watches the video in the article, Defendant sends the URL, which identifies: (1) that there was a video on the page; (2) the video was “watched;” (3) an identifier for the video content; and (4) the subscriber’s FID, to Facebook.



HTTP single communication session sent from the device to Facebook, reveals the video name, URL and the viewer’s FID (c_user field)

156. As a result of Defendant's data compiling and sharing practices, Defendant has knowingly disclosed to Facebook for its own personal gain the Personal Viewing Information of Defendant's digital subscribers, together with additional sensitive personal information.

157. Defendant disclosed PII within the meaning of VPPA because the information transmitted to Facebook—including users' FIDs and specific video file names—was disclosed in a technical format, but one that is understood by ordinary people.

158. The disclosing party here used Facebook's PageView code to transmit FIDs and video content identifiers directly to Facebook but did so in a manner that is easily decipherable (again, presuming an ordinary person can read). Much like a person does not need to understand precisely how radio waves work to hear the radio play, or understand the words coming out of the radio.

159. Defendant produces exclusive content that promotes via email newsletter, and makes available on its website, www.nba.com.

160. Defendant does not seek its digital subscribers' prior written consent to the disclosure of their Personal Viewing Information (in writing or otherwise) and its customers remain unaware that their Personal Viewing Information and other sensitive data is being disclosed to Facebook.

161. By disclosing its digital subscribers Personal Viewing Information to Facebook – which undeniably reveals their identity and the specific video materials they requested from Defendant's website – Defendant has intentionally and knowingly violated the VPPA.

G. Disclosing Personal Viewing Information is Not Necessary

162. Tracking pixels are not necessary for Defendant to operate NBA.com's digital news publications and sign-up digital subscriptions. They are deployed on Defendant's website for the sole purpose of enriching Defendant and Facebook.

163. Even if an on-line news publication found it useful to integrate Facebook tracking pixels, Defendant is not required to disclose Personal Viewing Information to Facebook. In any event, if Defendant wanted to do so, it must first comply with the strict requirements of VPPA, which it failed to do.

H. Plaintiff's Experiences

164. Plaintiff Michael Salazar has been a digital subscriber of www.nba.com from 2022 to the present. Plaintiff became a digital subscriber of www.nba.com by providing, among other information, email address and IP address, (which informs Defendant as to the city and zip code he resides in as well as his physical location), and any cookies associated with his device. As part of his subscription, he receives emails and other communications from NBA.com. Included in at least some of these emails are videos, sent to Plaintiff via hyperlink or embedded hyperlink. Plaintiff accessed video content via his subscription to Defendant's newsletter.

165. Plaintiff has had a Facebook account since approximately 2010.

166. When he created his Facebook profile, Plaintiff provided Meta with the required information to create his profile: his name, date of birth, gender, contact information, and password.

167. From 2022 to the present, Plaintiff viewed Video Media via www.nba.com.

168. Additionally, Plaintiff has an Instagram account.

169. During the relevant period, Plaintiff's Facebook profile included publicly-available information specifically and uniquely identifying him, including but not limited to his full name, personal photographs that contain location and other information, and likes and follows of certain commercial establishments in his hometown. Plaintiff's Facebook profile was accessible to any person in possession of his unique FID (which Facebook maintains for every user). Any person (or corporation) could use his FID to load Plaintiff's Facebook page directly and see this publicly-available information that specifically and uniquely identifies him.

170. Additionally, Facebook, sitting in possession of Plaintiff's entire Facebook profile and account history, was in a special position. It could not only directly identify Plaintiff, but it could also access his entire historical Facebook dataset, including his visits to www.nba.com and information disclosing that he had viewed specific video content.

171. Plaintiff was a subscriber to www.nba.com and is therefore a "consumer" under the VPPA.

172. Plaintiff requested, obtained, and/or watched prerecorded audio visual material on www.nba.com and through his digital subscription to Defendant's services.

173. During the period when Plaintiff was a subscriber to the Defendant's services, he maintained

a Facebook profile. Defendant knowingly shared his Facebook ID (FID) with Meta, along with the titles of the prerecorded audiovisual materials he accessed or requested (frankly, Defendant went one step further and denoted a “watch” in its URLs, which it shared with Facebook) and the URLs for those videos.

174. Plaintiff never consented, agreed, authorized, or otherwise permitted Defendant to disclose his Personal Viewing Information and PII to Facebook.

175. Defendant nonetheless knowingly disclosed Plaintiff’s Personal Viewing Information (his identity and the videos he watched) and PII to Facebook.

176. Because Plaintiff is entitled by law to privacy in his Personal Viewing Information, Defendant’s disclosure of his Personal Viewing Information deprived Plaintiff of the full set of benefits to which he is entitled. Plaintiff did not discover that Defendant disclosed his Personal Viewing Information to Facebook until August 2022.

Class Action Allegations

177. Plaintiff brings this action individually and on behalf of all others similarly situated as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class (the “Class”):

All persons in the United States with a digital subscription to an online website owned and/or operated by Defendant that had their Personal Viewing Information [of pre-recorded videos] disclosed to Facebook by Defendant.

178. The “Class Period” is from September 16, 2020, two years preceding the initial filing of this matter, to the present.

179. Excluded from the Class are Defendant, their past or current officers, directors, affiliates, legal representatives, predecessors, successors, assigns and any entity in which any of them have a controlling interest, as well as all judicial officers assigned to this case as defined in 28 USC § 455(b) and their immediate families.

180. Numerosity. Members of the Class are so numerous and geographically dispersed that joinder of all members of the Class is impracticable. Plaintiff believes that there are hundreds of thousands, if not millions, of members of the Class widely dispersed throughout the United States. Class members can be identified from Defendant's records and non-party Meta's records. At a minimum, the combination of Defendant's email subscriber list with Meta's identification of users who have Off-Facebook Activity from www.nba.com will identify members of the Class.

181. Typicality. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff and members of the Class were harmed by the same wrongful conduct by Defendant in that Defendant caused Personal Viewing Information to be disclosed to Facebook without obtaining express written consent. his claims are based on the same legal theories as the claims of other Class members.

182. Adequacy. Plaintiff will fairly and adequately protect and represent the interests of the members of the Class. Plaintiff's interests are coincident with, and not antagonistic to, those of the members of the Class. Plaintiff is represented by counsel with experience in the prosecution of class action litigation

generally and in the emerging field of digital privacy litigation specifically.

183. Commonality. Questions of law and fact common to the members of the Class predominate over questions that may affect only individual members of the Class because Defendant has acted on grounds generally applicable to the Class. Such generally applicable conduct is inherent in Defendant's wrongful conduct. Questions of law and fact common to the Classes include:

- a. Whether Defendant knowingly disclosed Class members' Personal Viewing Information to Facebook;
- b. Whether the information disclosed to Facebook concerning Class members' Personal Viewing Information constitutes personally identifiable information under the VPPA;
- c. Whether Defendant's disclosure of Class members' Personal Viewing Information to Facebook was knowing under the VPPA;
- d. Whether Class members consented to Defendant's disclosure of their Personal Viewing Information to Facebook in the manner required by 18 U.S.C. § 2710(b)(2)(B); and
- e. Whether the Class is entitled to damages as a result of Defendant's conduct.

184. Superiority. Class action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the

unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action. Plaintiff knows of no special difficulty to be encountered in litigating this action that would preclude its maintenance as a class action.

185. Injunctive Relief. Plaintiff also satisfies the requirements for maintaining a class under Rule 23(b)(2). Defendant acted on grounds that apply generally to the proposed Class, making final declaratory or injunctive relief appropriate with respect to the proposed Class as a whole. Notably, as detailed above, Defendant, after the filing of this action, removed the Facebook Pixel from its website. Plaintiff has received no assurance that Defendant will not re-install the Facebook Pixel, making declaratory and/or injunctive relief necessary to protect the rights of Plaintiff and the proposed Class.

CLAIM FOR RELIEF
FIRST CLAIM FOR RELIEF

Count I: Violation of the Video Privacy Protection Act (“VPPA”), 18 U.S.C. § 2710

186. Plaintiff incorporates the allegations contained in paragraphs 1 through 154 as if fully set forth herein.

187. The VPPA prohibits a “video tape service provider” from knowingly disclosing “personally-identifying information” concerning any consumer to

a third-party without the “informed, written consent (including through an electronic means using the Internet) of the consumer.” 18 U.S.C § 2710.

188. As defined in 18 U.S.C. § 2710(a)(4), a “video tape service provider” is “any person, engaged in the business, in or affecting interstate commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audiovisual materials.”

189. Defendant is a “video tape service provider” as defined in 18 U.S.C. § 2710(a)(4) because it engaged in the business of delivering audiovisual materials that are similar to prerecorded video cassette tapes and those sales affect interstate or foreign commerce.

190. As defined in 18 U.S.C. § 2710(a)(3), “personally-identifiable information” is defined to include “information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider.”

191. Defendant knowingly, as it affirmatively programmed the Pixel into the code for nba.com, caused Personal Viewing Information, including FIDs, concerning Plaintiff and Class members to be disclosed to Facebook. This information constitutes personally identifiable information under 18 U.S.C. § 2710(a)(3) because it identified each Plaintiff and Class member to Facebook as an individual who viewed NBA.com Video Media, including the specific video materials requested from the website.

192. As defined in 18 U.S.C. § 2710(a)(1), a “consumer” means “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” As alleged in the preceding

paragraphs, Plaintiff subscribed to a digital NBA.com plan that provides Video Media content to the digital subscriber's desktop, tablet, and mobile device. Plaintiff is thus a "consumer" under this definition.

193. As set forth in 18 U.S.C. § 2710(b)(2)(B), "informed, written consent" must be in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer; and (2) at the election of the consumer, is either given at the time the disclosure is sought or given in advance for a set period of time not to exceed two years or until consent is withdrawn by the consumer, whichever is sooner." Defendant failed to obtain informed, written consent under this definition.

194. In addition, the VPPA creates an opt-out right for consumers in 18 U.S.C. § 2710(2)(B)(iii). It requires video tape service providers to also "provide[] an opportunity for the consumer to withdraw on a case-by-case basis or to withdraw from ongoing disclosures, at the consumer's election." Defendant failed to provide an opportunity to opt out as required by the VPPA.

195. Defendant knew that these disclosures identified Plaintiff and Class members to Facebook. Defendant also knew that Plaintiff's and Class members' Personal Viewing Information was disclosed to Facebook because, inter alia, Defendant chose, programmed, and intended for Facebook to receive the video content name, its URL, and, most notably, the digital subscribers' FID.

196. By disclosing Plaintiff's and the Class's Personal Viewing Information, Defendant violated Plaintiff's and the Class members' statutorily

protected right to privacy in their video-watching habits. See 18 U.S.C. § 2710(c).

197. As a result of the above violations, Defendant is liable to the Plaintiff and other Class members for actual damages related to their loss of privacy in an amount to be determined at trial or alternatively for “liquidated damages not less than \$2,500 per plaintiff.” Under the statute, Defendant is also liable for reasonable attorney’s fees, and other litigation costs, injunctive and declaratory relief, and punitive damages in an amount to be determined by a jury, but sufficient to prevent the same or similar conduct by the Defendant in the future.

Relief Requested

198. Accordingly, Plaintiff, individually and on behalf of the proposed Class, respectfully requests that this court:

- a. Determine that this action may be maintained as a class action pursuant to Fed R. Civ. P. 23(a), (b)(2), and (b)(3) and declare Plaintiff as the representative of the Class and Plaintiff’s Counsel as Class Counsel;
- b. For an order declaring that Defendant’s conduct as described herein violates the federal VPPA, 18 U.S.C. § 2710(c)(2)(D);
- c. For Defendant to pay \$2,500.00 to Plaintiff and each Class member, as provided by the VPPA, 18 U.S.C. § 2710(c)(2)(A);
- d. For punitive damages, as warranted, in an amount to be determined at trial, 18 U.S.C. § 2710(c)(2)(B);

- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit, 18 U.S.C. § 2710(c)(2)(C).

Jury Demand

199. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff, individually and on behalf of the proposed Class, demands a trial by jury on all issues so triable.

Respectfully Submitted:

By: /s/ Michael L. Murphy

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