In the Supreme Court of the United States

No. 25A____

ME-TV NATIONAL LIMITED PARTNERSHIP,
Applicant,
v.
DAVID VANCE GARDNER AND GARY MERCHANT,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To the Honorable Amy Coney Barrett,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the U.S. Court of Appeals for the Seventh Circuit

Pursuant to Rules 13.5 and 30.2 of this Court, Applicant Me-TV National Limited Partnership respectfully requests a 59-day extension of time, to and including October 10, 2025, within which to petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit in this case. The Seventh Circuit issued its judgment and opinion on March 28, 2024, and denied MeTV's timely rehearing petition on May 14, 2025. Unless extended, the time within which to file a petition for writ of certiorari will expire on August 12, 2025. This Application is filed at least ten days before that date. MeTV would invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

1. This case presents a recurring question regarding the proper interpretation of the Video Privacy Protection Act, 18 U.S.C. § 2710 ("Video Act" or "Act"). Congress enacted the Act in 1988 in response to a local video store's unauthorized disclosure—and a newspaper's subsequent publication of—Judge Robert Bork's video rental

history. *See* Appendix ("App.") 2a–3a. The Act allows any "consumer" to sue for statutory damages when a "video tape service provider" makes unauthorized disclosures of information about "specific video materials or services" that the consumer has "requested or obtained." 18 U.S.C. § 2710(a)(3), (b)(1), (c). Congress defined "video tape service provider" and "consumer" narrowly: A "video tape service provider" is a business that "rent[s], s[ells], or deliver[s] … prerecorded video cassette tapes or similar audio-visual materials," and a "consumer" is an individual that "ren[ts], purchase[s], or subscribe[s to] goods or services from a video tape service provider." *Id.* § 2710(a)(1),(4).

This case concerns the scope of the Video Act: Does it provide a cause of action to consumers of *all* goods and services from a "video tape service provider," or only consumers of *video* goods and services? In other words, can plaintiffs sue if their "consumer" status rests solely on transactions that do not involve video materials?

2. This issue has sweeping implications for the Internet economy and has resulted in an entrenched circuit split. Congress designed the statute to regulate VHS-era businesses like Blockbuster, and courts have held that it applies equally to Blockbuster's modern-day successors, such as subscription-based streaming video services. But class-action plaintiffs have urged courts to stretch the Act further, arguing that it applies whenever (1) a business displays video clips on its website and (2) the plaintiff buys, rents, or subscribes to *something* (whether video material or not) from the business. On this view, there is no limit to the types of transactions that may support a plaintiff's claim; buying a t-shirt, renting a car, or subscribing to free e-mail updates is sufficient. Leveraging common features in today's Internet

economy, enterprising plaintiffs have pressed this expansive view of Video Act liability to sue grocery stores, fast food chains, newspapers, and other businesses whose websites communicate with third-party servers. Many plaintiffs merely create a free website account or subscribe to free email newsletters before bringing suit.

3. The Sixth Circuit and most district courts have rejected this boundless interpretation. Reading the entire the Act in context, they have held that a plaintiff must purchase, rent, or subscribe to *video* goods or services from a *video* tape service provider to assert a *Video* Act claim. *See, e.g.*, *Salazar v. Paramount Global*, 133 F.4th 642 (6th Cir. 2025). However, the Second Circuit (in *Salazar v. National Basketball Ass'n*, 118 F.4th 533 (2d Cir. 2024) ("*NBA*")) and the Seventh Circuit (in this case) have taken the opposite position, reading the words "goods or services" to encompass *all* goods or services, whether video related or not. A petition for writ of certiorari is pending with respect to the *NBA* decision. *See* No. 24-994.

4. Plaintiffs filed this putative class-action lawsuit against MeTV, which operates a network of broadcast television stations and maintains MeTV.com to advertise its over-the-air programming. Plaintiffs allegedly created free accounts on MeTV.com to receive programming alerts, separately watched promotional video content on the website (which was freely available to all website visitors, with or without an account), and subsequently discovered that programming code had transmitted their viewing history to a third party. The District Court dismissed Plaintiffs' claims because their website accounts were unrelated to the videos viewed on MeTV.com. Put another way, Plaintiffs could not be Video Act consumers because they had not subscribed to video goods or services. *Gardner v. MeTV*, 2024 WL

779728 (N.D. Ill. Feb. 15, 2024). The Seventh Circuit reversed, joining the Second Circuit and reading the phrase "goods or services" in isolation to bear its broadest possible meaning: "[*a*]*ny* purchase or subscription from a 'video-tape provider' satisfies the definition of 'consumer,'" even a free website account unconnected to video content. *Gardner v. Me-TV Nat'l Ltd. P'ship*, 132 F.4th 1022, 1025 (7th Cir. 2025) (emphasis added).

5. Five days later, the Sixth Circuit rejected the Second and Seventh Circuits' broad interpretation, describing those courts as construing "goods and services" "in a vacuum." *Paramount*, 133 F.4th at 650 (citation omitted). Reading the statute as a whole, the Sixth Circuit held that a Video Act claim lies only if an individual has subscribed to "goods and services provided by a company when it is acting as a 'video tape service provider'—namely 'audio visual materials.'" *Id.* at 651.

MeTV sought rehearing en banc based on the conflicting *Paramount* decision, but the Seventh Circuit denied that request. *See* App. 8a. The Sixth Circuit denied rehearing in *Paramount* a few weeks later. The result is an acknowledged, entrenched 2–1 circuit split on the question described above.

6. There is good cause to grant a 59-day extension of MeTV's time to file a petition for a writ of certiorari.

First, a petition for a writ of certiorari is pending in *NBA* (No. 24-994) regarding the same statutory interpretation question presented here. The Court is scheduled to consider that petition at its September 29, 2025 conference. Extending the deadline for MeTV's petition to October 10, 2025, may thus conserve the Court's

and the Parties' resources. For example, if the Court grants certiorari in *NBA*, it could simply hold MeTV's petition pending disposition of *NBA* on the merits.

Second, the Parties have agreed to participate in a mediation session on September 10, 2025. Extending the deadline for MeTV's petition would allow the Parties to focus their efforts on mediation, which, if successful, would obviate the need for further proceedings in this Court.

Third, extending the deadline may allow MeTV to address developments in two other Video Act cases that present the same question.[1] The D.C. Circuit heard oral argument in *Pileggi v. Washington Newspaper Publishing Co.*, No. 24-7022, on February 27, 2025, and the Ninth Circuit is scheduled to hear oral argument in *Heather v. Healthline Media Co.*, No. 24-4168, on August 12, 2025.

Fourth, MeTV's counsel have filing obligations in other matters, including comments due on August 8 in an EPA proceeding (No. HQ-OAR-2024-0505); a summary judgment motion due on August 20 in *Amazon.com v. CPSC*, No. 25-cv-853 (D. Md.); reply briefs due on August 29 in *Eisenmann v. Cox*, No. 24-6237 (9th Cir.), and September 2 in *Baxley v. Driscoll*, No. 24-510 (D.C. Cir.); and an *amicus* brief due on August 29 in *Ass'n for Accessible Medicines v. Bonta*, No. 25-1821 (9th Cir.).

Finally, no meaningful burden or prejudice would arise from MeTV's proposed extension. MeTV is authorized to state that Respondents consent to the request, and the petition would still be filed in time for the case to be considered and decided during October Term 2025.

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[1] *See Pileggi v. Wash. Newspaper Publ'g Co.*, 2024 WL 324121 (D.D.C. Jan. 29, 2024); *Heather v. Healthline Media, Inc.*, 2024 WL 5401593 (N.D. Cal. June 7, 2024).

Respectfully submitted,

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Me-TV National Limited Partnership[2]

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[2] Pursuant to Rule 29.6, no disclosure statement is required because MeTV is a Delaware limited partnership.