No. 25-459

In the Supreme Court of the United States

MICHAEL SALAZAR, PETITIONER,

v.

PARAMOUNT GLOBAL, DBA 247SPORTS

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Video Privacy Protection Act of 1988 provides a private right of action against a "video tape service provider" who, without consent, "knowingly discloses … personally identifiable information concerning any consumer of such provider." 18 U.S.C. 2710(b)(1). "[P]ersonally identifiable information" means information that "identifies a person as having requested or obtained specific video materials or services from a video tape service provider." 18 U.S.C. 2710(a)(3). A "video tape service provider" is a "person[] engaged in the business … of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. 2710(a)(4). And a "consumer" is a "renter, purchaser, or subscriber of goods or services" from a "video tape service provider." 18 U.S.C. 2710(a)(1).

The question presented is whether a "consumer" must rent, purchase, or subscribe to the delivery of "prerecorded video cassette tapes or similar audio visual materials" to trigger the VPPA, or whether the rental, purchase, or subscription to entirely dissimilar goods or services is sufficient.

CORPORATE DISCLOSURE STATEMENT

Paramount Global is a wholly owned subsidiary of Paramount Skydance Corporation, a publicly traded company.

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INTRODUCTION

Petitioner Michael Salazar provides no sound basis for this Court to resurrect his effort to dramatically expand the Video Privacy Protection Act of 1988, 18 U.S.C. 2710 ("VPPA"). The VPPA is a Blockbuster-era statute barring the non-consensual disclosure by video rental stores of the rental history of individual patrons. Salazar seeks to transmogrify it into a prohibition against targeted advertising on the Internet. Under his interpretation, the statute would apply "haphazard[ly]," would be "unadministrable," *Pileggi* v. *Wash. Newspaper Publ'g Co.,* 146 F.4th 1219, 1233-34 (D.C. Cir. 2025), and would provide Salazar a massive windfall.

The Sixth Circuit correctly rejected that effort. The court of appeals dismissed Salazar's complaint against 247Sports on the grounds that Salazar is not a "consumer" because he did not "rent[], purchase[], or subscribe[]" to the delivery of any "video cassette tapes or similar audio visual materials." 18 U.S.C. 2710(a)(1) and (4).[1] 247Sports is a news website focused on college sports, and any content Salazar allegedly viewed was available, for free, to any user of the Internet. All Salazar allegedly did was sign up for a free, written email newsletter. That is not a "video cassette tape[] or similar audio visual material[]," *ibid.*, so he is not a "consumer" under the statute.

The circuit courts have roundly rejected VPPA claims like Salazar's, including other claims brought by Salazar himself. Some courts of appeals have held, like

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[1] The complaint names respondent Paramount Global as the owner and parent of 247Sports.com. Pet. App. 81a, 84a. The allegations all focus on 247Sports, so this brief refers to 247Sports.

the Sixth Circuit, that these claims fail because the plaintiff is not a "consumer" within the meaning of the VPPA. Other courts of appeals have dismissed similar suits for failing additional statutory elements, including the need for the defendant to be a "video tape service provider" and for the information to be "personally identifiable." And this Court recently denied certiorari in two other VPPA petitions—including one that presented the same "consumer" question with a virtually identical complaint where Salazar himself successfully opposed certiorari. *Nat'l Basketball Ass'n* v. *Salazar*, No. 24-994, 2025 WL 3506972 (denied Dec. 8, 2025) ("*NBA*"); see *Solomon* v. *Flipps Media, Inc.*, No. 25-228, 2025 WL 350693 (denied Dec. 8, 2025). This Court should deny here as well.

Salazar emphasizes (Pet. 1) that the Second Circuit and Seventh Circuit have interpreted the term "consumer" more broadly than the Sixth Circuit and D.C. Circuit. But that conflict is illusory. As Salazar admits, his claims would fail in the Second Circuit for the independent reason that the computer code shared in targeted advertising does not qualify as "personally identifiable information." Indeed, Salazar acknowledges (*id.* at 18) that the complaint he filed in the *NBA* case *did* fail on that alternative ground. See *Salazar* v. *Nat'l Basketball Ass'n*, No. 22-07935, 2025 WL 2830939 (S.D.N.Y. Oct. 6, 2025). The Seventh Circuit has not yet addressed whether similar computer code includes "personally identifiable information," so there is no concrete split about whether the allegations here would state a claim under the VPPA.

Salazar's claims would likewise fail in the Eighth Circuit for yet another reason: Because 247Sports is not a "video tape service provider" in the first place. See

Christopherson v. *Cinema Ent. Corp.*, No. 24-3042, 2025 WL 3512393 (8th Cir. Dec. 8, 2025); see also *Pileggi*, 146 F.4th at 1238 (Randolph, J., concurring) (similar). 247Sports does not rent, sell, or offer subscriptions to video tapes. Nor does it stream movies or shows. Rather, it is a sports news website with articles, photos, and video clips—and all of the content at issue in this case is available for free to anybody on the Internet. That is a completely different business from renting video cassette tapes. The VPPA does not address it.

Quite simply, Salazar's complaint would fail as a matter of law in every circuit that has controlling precedent on the dispositive issues in this case. And this case is a poor vehicle to consider the "consumer" question. Contrary to Salazar's assertions, the answer is not outcome-determinative because Salazar's complaint fails for multiple additional reasons that could complicate further review. This Court should allow these issues to continue percolating. Certiorari is unwarranted.

STATEMENT

A. Statutory Background

Congress enacted the VPPA in 1988 after a journalist published then-Judge Robert Bork's video cassette rental history during his Supreme Court confirmation hearings. Pet. App. 23a. The VPPA added Section 2710—entitled, "Wrongful disclosure of video tape rental or sale records"—to Title 18 of the U.S. Code. Under the heading "Video Tape Rental and Sale Records," Section 2710(b) provides that a "video tape service provider" who "knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d)." 18 U.S.C. 2710(b)(1). There is no liability when a disclosure is

made with the consumer's "informed, written consent." 18 U.S.C. 2710(b)(2).

The statute includes a series of interrelated definitions, all of which focus on video tapes. "[V]ideo tape service provider" means "any person, engaged in the business … of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. 2710(a)(4). "'[P]ersonally identifiable information' includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider." 18 U.S.C. 2710(a)(3). And "consumer" means "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. 2710(a)(1). All three definitions focus on disclosure of information about the rental, sale, or subscription to the delivery of specific video tapes or similar audiovisual materials.

As noted above, subsection (b) makes a "video tape service provider" who violates the VPPA "liable to the aggrieved person for the relief provided in subsection (d)." 18 U.S.C. 2710(b)(1). Courts have understood the cross-reference to subsection (d) as a scrivener's error meant to refer to a private cause of action set forth in subsection (c). See *Sterk* v. *Redbox Automated Retail, LLC*, 672 F.3d 535, 537 (7th Cir. 2012).[2]

Subsection (c) creates a private right of action for "[a]ny person aggrieved" by a violation of the VPPA. 18 U.S.C. 2710(c)(1). The VPPA imposes strict liability. The court may award "actual damages but not less than liquidated damages in an amount of $2,500," as well as

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[2] Subsection (d) bars the use of unlawfully disclosed personally identifiable information as evidence in judicial, legislative, or agency proceedings. 18 U.S.C. 2710(d).

punitive damages, attorneys' fees and costs, and any appropriate equitable relief. 18 U.S.C. 2710(c)(2).

B. 247Sports and the Meta Pixel

247Sports does not sell, rent, or provide subscriptions to videotapes, movies, or shows. Rather, 247Sports runs a sports news website that focuses on college sports. Pet. App. 2a. Like ESPN.com and other sports news websites, 247Sports provides news in articles, news feeds, podcasts, photographs, and video clips, among other things. *Id.* at 22a; *id.* at 41a. Any content Salazar may have viewed on the site is available for free to any person, via the Internet, without registering or signing up. *Id.* at 42a & n.5.

Users may also, if they wish, sign up for a free email newsletter. *Id.* at 42a. There is no allegation that signing up for the newsletter is required to view any of the articles, video clips, or other content on the site, or that the email newsletter includes video clips. *Id.* at 18a-19a n. 10.

Like many websites that provide news coverage for free, 247Sports includes advertising. See Pet. App. 92a-93a; see *id.* at 95a (depicting a 247Sports news feature accompanied by a video and advertising). Specifically, the complaint alleges 247Sports has used the "Meta Pixel." The pixel is a piece of code inserted into the 247Sports webpage and run "by the user's browser." *Id.* at 92a. The complaint alleges that if a user has logged into Facebook in their browser and then opens content on 247Sports.com, the user's browser sends to Facebook the name (in the URL) of the content they visited along with the user's Facebook ID stored in the "c_user" Facebook cookie. *Ibid.* A Facebook ID is a numeric code that corresponds to a Facebook account. *Ibid.* The complaint

includes a picture of the data "sent from the device to Facebook":

Pet. App. 95a. Yet, the c_user value depicted in the complaint does not correspond to Salazar's Facebook account. See C.A. Resp. Br. 8. The complaint generally alleges that sending this information to Facebook enables 247Sports to show targeted advertising to viewers. Pet. App. 93a.

C. Factual Background and Procedural History

Salazar filed a putative class action in the United States District Court for the Middle District of Tennessee, alleging that 247Sports had violated the VPPA. Pet. App. 80a-106a. Salazar alleges that he signed up for the 247Sports free email newsletter in 2022. *Id.* at 97a. Salazar does not allege that video content was available in the newsletter or that he viewed any such content in the newsletter. Instead, he alleges that he "view[ed] Video Media through 247Sports.com," *i.e.*, through the website for free, "while logged into his Facebook account." *Id.* at 84a. He alleges that, via the Pixel, his Facebook ID and the URL he accessed were sent to Facebook without his consent. See *ibid.*

He defines the putative class as: "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 disclosed to Facebook by Defendant." *Id.* at 98a. Salazar alleges that he "believes that there are hundreds of thousands of [class] members." *Ibid.* The complaint seeks declaratory and injunctive relief, $2,500 in penalties per class member, unspecified punitive damages, restitution, and attorneys' fees and costs. *Id.* at 104a-105a.

1. 247Sports moved to dismiss. It argued, among other things, that 247Sports is not a "video tape service provider," that Salazar was not a "subscriber" and therefore not a "consumer" within the meaning of the statute, and that 247Sports did not knowingly disclose any "personally identifying information." *Id.* at 49a.

The district court granted the motion to dismiss with prejudice. *Id.* at 39a-71a. First, the court found that Salazar had Article III standing based on the alleged disclosure. *Id.* at 50a-61a. Second, the court held that Salazar failed to state a claim under the VPPA because he was not a "subscriber of goods or services from a video tape service provider" within the meaning of Section 2710(a)(1), and therefore not a "consumer." *Id.* at 62a-63a. The court reasoned that a person is not such a subscriber unless "they subscribe to audio visual materials," *id.* at 67a-68a, and the complaint lacked any allegations that the email newsletter qualified.

The court did not reach 247Sports' alternative arguments for dismissal. *Id.* at 63a.

2. The court of appeals affirmed. Pet. App. 1a-21a. The court agreed that Salazar had Article III standing and assumed without deciding that 247Sports is a

"video tape service provider." *Id.* at 11a. The court of appeals then agreed with the district court that Salazar was not a "subscriber" (and thus not a "consumer") because he had not "subscribe[d] to 'goods or services' in the nature of 'video cassette tapes or similar audio visual materials.'" *Id.* at 4a n.3, 11a n.7, 12a-18a.

Drawing on the VPPA's text, structure, and context, the court of appeals explained that the "definition of 'consumer' in the statute does not encompass consumers of all 'goods or services' imaginable," but only "those 'from a video tape service provider.'" *Id.* at 14a (quoting 18 U.S.C. 2710(a)(1)). That "tethers the definition of 'consumer' to that of 'video tape service provider," by "pinpoint[ing] the relevant 'goods or services': Those involved in the 'rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.'" *Id.* at 14a-15a. "So the most natural reading, which accounts for the context of both definitions, shows that a person is a 'consumer' only when he subscribes to 'goods or services' in the nature of 'video cassette tapes or similar audio visual materials.'" *Id.* at 15a.

Salazar was not such a "consumer" because he did not plausibly allege the newsletter linked to or contained any audiovisual content, or that he accessed any audiovisual content through the newsletter. *Id.* at 19a. The court therefore affirmed the dismissal of Salazar's suit. It did not reach 247Sports' alternative arguments for dismissal.

Judge Bloomekatz dissented. *Id.* at 22a-38a. She would have interpreted a "subscriber" to include a person who subscribes to goods or services without regard to whether they are "video cassette tapes or similar audio visual materials." *Ibid.* Judge Bloomekatz did not address 247Sports' alternative arguments.

3. The Sixth Circuit timely denied Salazar's request for rehearing en banc, without noted dissent. Pet. App. 72a-73a.

ARGUMENT

Salazar asks this Court to decide whether a person can be a "consumer" under the VPPA without buying, renting, or subscribing to the delivery of video tapes or similar audiovisual materials, and instead by buying, renting, or subscribing to goods or services that are completely different from video tapes—here, by signing up for a free non-video email newsletter. The court of appeals correctly adopted the narrower rule, and the question does not warrant this Court's review.

The circuit courts broadly agree that Salazar's claim should fail. Although there is a 2-2 circuit conflict over the meaning of "consumer," there is no square conflict over whether the kinds of targeted advertising claims in this case fail as a matter of law. Rather, the courts of appeals have dismissed such suits on multiple grounds: because the plaintiff is not a "consumer," the shared computer code is not "personally identifiable information," and the defendant is not a "video tape service provider." All told, six circuits (the Second, Third, Sixth, Eighth, Ninth, and D.C. Circuits) have dismissed such suits on at least one of those grounds.

No circuit has held that these suits satisfy even two of these elements, much less all three. In particular, in the Second Circuit—one of the circuits that reads "consumer" more broadly—Salazar's claim would (and did) fail for lacking "personally identifiable information." And the only other circuit that reads "consumer" more broadly (the Seventh Circuit) has not yet addressed the meaning of "personally identifiable information"

or "video tape service provider." Those remain open questions, so there is accordingly no concrete split.

Quite simply, Salazar is trying to fit a square peg into a round hole. The VPPA, enacted in the 1980s, does not ban the free Internet. The lower courts thus far have overwhelmingly rejected similar efforts to misapply the statute. Even if they sometimes disagree about *why* the VPPA is inapplicable to claims about accessing free ad-supported video clips on websites like 247Sports, they are in broad agreement that it *is* inapplicable. This Court accordingly should allow these issues to continue percolating, rather than to grant review at this point on an undeveloped record when the circuit conflict is only abstract and does not actually lead to different ultimate outcomes on materially identical facts. Indeed, this Court recently denied review in two petitions raising similar questions under the VPPA, including in the *NBA* case where Salazar himself successfully opposed this Court's review of the "consumer" question. This Court should deny review here as well.

I. The Court of Appeals Correctly Concluded that the VPPA Does Not Apply

Salazar agrees that the VPPA is entirely inapplicable when a member of the general public watches free online video content on a website without buying, renting, or subscribing to anything: That person is not a "consumer," as the statute requires. So even if the website is a "video tape service provider," the VPPA does not apply when that website shares the user's browsing history to enable targeted advertising.

The court of appeals correctly held that the VPPA does not suddenly spring into effect when a person buys, rents, or subscribes to goods or services like a t-shirt—

or here, a free email newsletter—that are not "prerecorded video cassette tapes video cassette tapes or similar audio visual materials." Such a person is still not a "consumer" within the meaning of the VPPA. The court's judgment is also correct for additional reasons, including because 247Sports is not a "video tape service provider" and Salazar failed to allege that 247Sports disclosed "personally identifiable information." See C.A. Resp. Br. 43-49.

A. Salazar Is Not A "Consumer" Under The VPPA

1. As the D.C. Circuit explained in *Pileggi*, there are at least five reasons why a "consumer" under the VPPA is limited to people who rent, buy, or subscribe to the delivery of video tapes or similar audiovisual materials—and thus does not reach a person who rents, buys or subscribes to goods or services that are entirely unlike video tapes. See 146 F.4th at 1232.

First, the parallel definitions of "consumer" and "video tape service provider" confirm the narrower reading. The Act defines "consumer" as "any *renter*, *purchaser*, or *subscriber* of goods or services from a video tape service provider[.]" 18 U.S.C. 2710(a)(l) (emphases added). A video tape service provider, in turn, is a person in the business of the "*rental*, *sale*, or *delivery* of prerecorded video cassette tapes or similar audio visual materials[.]" 18 U.S.C. 2710(a)(4) (emphases added).

"The definitions of 'consumer' and 'video tape service provider' are [thus] paired to some degree: [R]enter with rental, purchaser with sale, and subscriber with delivery, all of which subsection (a)(4) applies to audio visual materials." *Carter* v. *Scripps Networks*, *LLC*, 670 F. Supp. 3d 90, 99-100 (S.D.N.Y. 2023). "Putting the words together, a 'consumer' of a 'video tape service pro-

vider' is someone who 'rent[s], purchase[s], or subscribe[s]' to the 'good or service' that a 'video tape service provider' offers—that is, 'video cassette tapes or similar audio visual materials.'" *Pileggi*, 146 F.4th at 1232. The statute thus is triggered when a person *rents* Forest Gump, *purchases* My Cousin Vinny, or *subscribes to* Netflix. But it is not triggered when a person purchases a cup of coffee or t-shirt, or signs up for a free newsletter, and thereafter accesses a website for free just like any other member of the public.

Second, the title, heading, and structure reinforce that narrower reading. See *Pileggi*, 146 F.4th at 1232; *e.g.*, *Dubin* v. *United States*, 599 U.S. 110, 120-121 (2023) (looking to titles and headings to interpret ambiguity). The title is the "Video Privacy Protection Act of 1988," and the heading is, "Wrongful disclosure of *video tape rental or sale records*." Video Privacy Protection Act of 1988, Pub. L. No. 100-618, §§ 1, 2, 102 Stat. 3195 (emphases added). That reinforces what the text already suggests: "[T]he relevant good that a consumer subscribes to must be a video, not just any good or service provided by someone who also happens to offer video or audio-visual services." *Pileggi*, 146 F.4th at 1233.

The definition of "personally identifiable information" further reinforces that narrower reading. It covers disclosure of information that "identifies a person as having requested or obtained *specific video materials*[.]" 18 U.S.C. 2710(a)(3) (emphases added). Accordingly, the statute is not triggered when a person buys, rents, or subscribes to things that are not "specific video materials."[3]

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[3] The legislative history also supports the court of appeals' reading. The Senate Report states that the definition "make[s] clear that simply because a business is engaged in the sale or rental of video

Third, "the statute's substantial penalty provision weighs in favor of enforcing the textual linkage between a consumer and a video." *Pileggi*, 146 F.4th at 1233. The Act imposes penalties of at least $2,500 per violation, even when actual damages are lower—quickly leading to runaway damages for otherwise innocuous conduct. See *ibid.* (calculating $1.25 million in penalties for a site with 100 visitors who watch 5 clips). "The statutory text and purpose demonstrate Congress's desire to protect consumers of actual video services with such remedies. But the stringency of the remedy weighs against judicial expansion of the text to cover harms further removed from commerce in videos or similar audio-visual services." *Ibid.*

Fourth, the VPPA's authorization of punitive damages further counsels in favor of construing the text "against the expansive liability that [Salazar] proposes." *Ibid.*; see *Bittner* v. *United States*, 598 U.S. 85, 102 (2023) ("The law is settled that penal statutes are to be construed strictly[.]") (citation omitted).

Fifth, a contrary reading is unlikely in context because it would lead to "haphazard and unreasoned line-drawing" and "could well prove unadministrable." *Pileggi*, 146 F.4th at 1233-34. It is undisputed that, so long as users merely "visit [a] website" without first buying, renting, or subscribing to anything, then the VPPA is inapplicable, and the website is free to disseminate the relevant information to support targeted advertising. *Ibid.* But Salazar contends that if a person buys, rents,

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materials or services does not mean that all of its products or services are within the scope of the bill." S. Rep. No. 599, 100th Cong., 2d Sess., 12 (1988). Rather, the statute is limited "to only those transactions involving the purchase of video tapes and not other products." *Ibid.*

or subscribes to *anything* from the website's proprietor, in any context, then dissemination of the same information, for the same purpose, suddenly becomes unlawful and triggers harsh penalties.

For example, under Salazar's view, "a plaintiff could purchase a single ticket at a baseball game and then sue the baseball team's owner after watching a free video on the team's website years later." *Id.* at 1233. But the baseball team—or retailer or other free website operator—has no reliable way to discern whether a viewer purchased an unrelated product at some remote place and time. See *ibid.* Accordingly, to avoid the prospect of being haled into court for harsh statutory damages, websites that include clips "would just have to assume that all visitors to their websites are consumers," effectively depriving the term "consumer" of meaning and transforming it into "visitor" or "user." *Id.* at 1234.

These problems evaporate if a "consumer" is simply read to mean a person who buys, rents, or subscribes to the delivery of prerecorded video tapes or similar audiovisual materials. That is because the seller, leaser, or deliverer of the audiovisual content knows that the consumer has indeed purchased, rented, or subscribed to it, and therefore the video tape service provider knows that it cannot disseminate that viewing history without first obtaining the consumer's consent.

2. Salazar contends (Pet. 20-34) that the court of appeals departed from the ordinary meaning of "goods and services" in the definition of "consumer." But as the court of appeals explained, courts "don't scrutinize a statute atomistically—chopping it up and giving each word the broadest possible meaning." Pet. App. 13a. Rather, it is "a fundamental canon of statutory construction that the words of a statute must be read in their

context and with a view to their place in the overall statutory scheme." *Ibid.* (quoting *W. Va.* v. *EPA*, 597 U.S. 697, 721 (2022)). Often, the meaning of a word or phrase "may only become evident when placed in context." *Sackett* v. *EPA*, 598 U.S. 651, 674 (2023) (citation omitted). As set forth above, see pp. 10-13, *supra*, that is true here.

Salazar similarly argues (Pet. 30) that the court of appeals ignored the statute's reference to "*any consumer*." But the question is who qualifies as a consumer in the first place, *i.e.*, what kinds of goods or services a person must buy, rent, or subscribe to. As the court of appeals explained, the statutory context confirms that those must be prerecorded video tapes or similar audiovisual services to be covered. See Pet. App. 16a-17a. Any such person is accordingly covered, but a person who rents, buys, or subscribes to non-video goods or services is not a VPPA "consumer."

Salazar asserts (Pet. 27-28) that the Sixth Circuit's interpretation renders superfluous part of the definition of "personally identifiable information," which refers to whether a person "requested or obtained specific video materials or services." 18 U.S.C. 2710(a)(3). Not so. The definition of "personally identifiable information" is necessary to delineate what is prohibited: The defendant's disclosure of information revealing that a person "requested or obtained specific video materials or services." *Ibid.* And the statute is triggered by parallel conduct, when a person buys, rents, or subscribes to prerecorded video tapes or similar audiovisual materials.

Under the Sixth Circuit's interpretation, the triggering condition and the prohibited conduct align to form a cohesive whole: The transaction that triggers the statute—the purchase, rental, or subscription to video tapes

or similar goods or services—supplies the same information that must be kept private—the fact that the consumer bought, rented, or subscribed to delivery of particular video content.

By contrast, under Salazar's reading, there is a bizarre disconnect between the triggering condition—buying or subscribing to *any* good or service, no matter how unrelated to video tapes—and what the statute prohibits—disclosure only of whether a person "requested or obtained specific video materials or services." 18 U.S.C. 2710(a)(3). The transactions could be years apart; in completely different contexts; and according to Salazar, utterly unrelated to video tapes, including purchases of "t-shirts, hats, sweatshirts, sunglasses, magnets, pens, pins, bags, playing cards, pint glasses, mousepads, and even dog bandanas." Pet. 32-33. The court of appeals correctly rejected Salazar's effort to create such a strange misfit in the statute's operation.

In her dissent, Judge Bloomekatz invoked the 2013 amendment to the VPPA providing for consent "through an electronic means using the Internet," Video Privacy Protection Act Amendments Act of 2012, Pub. L. 112-258, § 2, 126 Stat. 2414, including via an advance consent rather than "each time the provider wishes to disclose." S. Rep. No. 258, 112th Cong., 2d Sess., 2 (2012). See Pet. App. 37a. But Congress did not amend the definition of "consumer" or otherwise expand the statute's reach. In particular, it failed to include any language to reach transactions for "t-shirts" or "dog bandanas" or merely signing up to receive a free email newsletter. And electronic consent does nothing to address the disconnect that Salazar's interpretation creates, where the transaction that triggers the statute bears no relation to the conduct the statute prohibits.

B. Salazar's Complaint Fails for Multiple Additional Reasons

The court of appeals' judgment is further correct for several alternative reasons. Among others, 247Sports is not a "video tape service provider." And as Salazar recognizes (Pet. 18-19), several circuits have held that the computer code disclosed via the Meta Pixel does not qualify as "personally identifiable information." Salazar's effort to use a 1988 statute about video tapes to regulate the modern ad-supported Internet thus fails for multiple reasons.

1. The complaint fails to adequately allege that 247Sports is a "video tape service provider." The VPPA defines such a provider as a person "engaged in the business … of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. 2710(a)(4). 247Sports clearly does not sell, rent, or provide subscriptions to prerecorded video cassette tapes. The complaint also fails to adequately allege that 247Sports is in the business of renting, selling, or delivering "similar audio visual materials."[4]

As the Eighth Circuit held in *Christopherson* and as Judge Randolph explained in his *Pileggi* concurrence, "[t]he VPPA's use of 'similar' requires something more than a vague resemblance between the videos at issue … and a 'prerecorded video cassette tape[].'" *Pileggi*, 146

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[4] 247Sports pressed the "video tape service provider" argument in the district court. D. Ct. Doc. No. 17, at pp. 7-9 (Nov. 30, 2022). 247Sports did not press this argument in the court of appeals as an alternate basis for affirming, see C.A. Resp. Br.1-43, but it is closely related and adequately preserved in this Court. See, *e.g.*, *Dahda* v. *United States*, 584 U.S. 440, 449-450 (2018); *Granfinanciera*, *S.A.* v. *Nordberg,* 492 U.S. 33, 38–39 (1989).

F.4th at 1238 (Randolph, J., concurring); *Christopherson*, 2025 WL 3512393, at *2-3. "'Similar' cannot mean 'other,'" a term that (unlike "similar") would have created a "catch-all for every potential type of video content." *Pileggi*, 146 F.4th at 1238. Rather, the ordinary meaning of "similar" is "'very much alike.'" *Christopherson*, 2025 WL 3512393, at *2 (quoting *Webster's Third New International Dictionary* 2120 (1986)).

Video clips on 247Sports' website are strikingly different from, not "very much alike," prerecorded video cassette tapes. See C.A. Resp. Br. 49-50. First, online video clips are not even "materials" because they are not physical objects: They are "a stream of ones and zeros." *Pileggi*, 146 F.4th at 1239 (Randolph, J., concurring); *Christopherson*, 2025 WL 2512393, at *2 ("'Materials' like prerecorded video cassette tapes have a physical existence.").

Second, the function of a "brief … clip and a feature-length movie are entirely different." *Pileggi*, 146 F.4th at 1239 (Randolph, J., concurring); see *Christopherson*, 2025 WL 3512393, at *3-4 (distinguishing advertisements from video rentals). Such clips are a means for delivering news, not for selling the ability to watch a movie or show.

247Sports is, accordingly, in a different business from the video rental stores that launched the VPPA. Rental stores like Blockbuster sold and rented video tapes of movies and shows. Streaming services like Netflix competed with (and ultimately outcompeted) such stores by selling subscriptions to a streaming service to "watch movies and television programs." S. Rep. No. 258, 112th Cong., 2d Sess., 2. But 247Sports is in an entirely different market, competing not with Netflix but with sports news sites like ESPN.com, using videos to

better deliver news about sports. Such "[a]n online news clip and a VHS rental may both be videos at some high level of generality, but the VPPA's statutory language forecloses such a broad-brush approach." *Pileggi*, 146 F.4th at 1239; e.g., *Banks* v. *CoStar Realty Info., Inc.*, No. 25-00564, 2025 WL 2959228, at *3 (E.D. Mo. Oct. 20, 2025) (holding that Apartments.com, a real estate rental site that includes video clips of apartments, is not a "video tape service provider").

2. The complaint also fails to adequately allege that 247Sports knowingly disclosed any personally identifiable information to a third party. See C.A. Resp. Br. 43-49. As the Second, Third, and Ninth Circuits have all held, information is "personally identifiable" only if it "would readily permit an ordinary person to identify a specific individual's video-watching behavior." *In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 267 (3d. Cir. 2016); *Solomon* v. *Flipps Media, Inc.*, 136 F.4th 41, 43 (2d Cir. 2025), cert. denied, No. 25-228, 2025 WL 3506993 (Dec. 8, 2025) (holding code and digital identifiers did not qualify); *Eichenberger* v. *ESPN, Inc.*, 876 F.3d 979, 986 (9th Cir. 2017) (similar).[5]

As the Second Circuit recently held in rejecting a materially identical "Pixel-based VPPA claim[]" against the NFL for the operation of its website, such a suit fails because the Pixel produces code that an ordinary person

[5] The First Circuit uses slightly different language to describe "personally identifiable information," see *Yershov* v. *Gannet Satellite Info. Network, Inc.*, 820 F.3d 482 (1st Cir. 2016), but all circuits to reach the issue agree the question is whether the information would identify the watcher of the video to an average person. In any event, it is undisputed that the First Circuit does not have circuit precedent holding that a person can become a "consumer" without buying, renting, or subscribing to the delivery of video tapes or similar audiovisual materials.

cannot decipher. *Hughes* v. *Nat'l Football League*, No. 24-2656, 2025 WL 1720295, at *2-3 (Jun. 20, 2025) (citing *Solomon*, 136 F.4th at 52); *Banks*, 2025 WL 2959228, at *7 (dismissing because "Meta Pixel ID code does not 'identify' plaintiff"). The image of the Pixel code contained in the complaint shows that there is no such disclosure: the information is largely illegible as a jumble of code and data. See p. 6, *supra* (reproducing the Pixel). And a district court in the Second Circuit applied this same rule to dismiss a nearly identical VPPA complaint that Salazar himself filed against the NBA. See Pet. 18.

Nor does Salazar allege that 247Sports disclosed his information within the meaning of the VPPA. The complaint alleges that the information was "transmitted to Facebook *by the user's browser*," Pet. App. 92a (emphasis added); see *id.* at 95a ("sent from the device to Facebook"). The VPPA, however, applies only when the *defendant* "knowingly discloses" personally identifiable information, 18 U.S.C. 2710(b)(1). See C.A. Resp. Br. 44-46. The VPPA thus does not create a cause of action for secondary liability reaching the facilitation of disclosure by a third party. See *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver*, 511 U.S. 164, 182 (1994) ("Congress … has taken a statute-by-statute approach to civil aiding and abetting liability."). Salazar's VPPA claim accordingly fails multiple times over and was properly dismissed at the threshold.

II. The Circuit Conflict Is Illusory and Unimportant

Petitioner is correct that there is a 2-2 circuit split over the interpretation of "consumer." The Sixth Circuit here and the D.C. Circuit in *Pileggi* both interpreted a "consumer" to mean a person who buys, rents, or sub-

scribes to the delivery of prerecorded video tapes or similar audiovisual materials. See pp. 11-16, *supra*. As the court of appeals recognized, the Second Circuit and Seventh Circuit have instead interpreted "consumer" to reach a person who buys, rents, or subscribes to any good or service, including non-video services like the free email newsletter in this case. See *Gardner* v. *Me-TV Nat'l Ltd. P'ship*, 132 F.4th 1022, 1023 (7th Cir. 2025); *Salazar* v. *Nat'l Basketball Ass'n*, 118 F.4th 533, 536 (2d Cir. 2024), cert. denied, No. 24-994, 2025 WL 3506972 (Dec. 8, 2025); Pet. App. 17a.

That conflict is illusory, however, because there is no circuit conflict over the concrete question of whether the VPPA applies to claims like Salazar's challenging targeted advertising on the free Internet. As petitioner himself recognizes (Pet. 18), this same lawsuit about the Pixel would fail in the Second Circuit because that court interprets "personally identifiable information" as information that "would readily permit an ordinary person to identify a specific individual's video-watching behavior." *Solomon*, 136 F.4th at 43 (quoting *Nickelodeon*, 897 F.3d at 267). And the Second Circuit has already applied that standard—and this Court denied review—to reject a materially identical "Pixel-based VPPA claim[]," explaining that "*Solomon* effectively shut the door for Pixel-based VPPA claims." *Hughes,* 2025 WL 1720295, at *2;[6] see also *Joiner* v. *NHL Enters., Inc.*, No. 23-2083, 2025 WL 2846431, at *7 (S.D.N.Y. Aug. 29, 2025) (dismissing Pixel claim under that standard); *Mull* v. *Gotham Distrib. Corp.,* No. 24-6083, 2025 WL 2712215, at

[6] The plaintiff in *Hughes* is represented by the same counsel of record as here and in the Second Circuit's *NBA* case, where Salazar is plaintiff.

*3 (E.D. Pa. Sept. 22, 2025) (dismissing similar claim under *Nickelodeon*).

The Seventh Circuit—the only other court of appeals in the putative split Salazar asserts—has not addressed the scope of "personally identifiable information." That court thus lacks binding precedent addressing that issue. As a result, it remains an open question in the Seventh Circuit whether the claim in this case would properly survive a motion to dismiss. No circuit—none—has precedent holding both that (1) "consumer" means a buyer, renter, or subscriber to any good or service (not merely video tapes or similar materials) *and* (2) Pixel-based information qualifies as "personally identifiable information" covered by the VPPA.

Salazar's claim would fail for still another reason in the Eighth Circuit, which recently joined the chorus of circuits rejecting advertising-based VPPA claims: In *Christopherson*, it held that the VPPA does not reach "any business that posts video-based advertisements on its website" because such advertisements are too dissimilar from video materials that "have a physical existence." 2025 WL 3512393, at *2, *4; see also *Pileggi*, 146 F.4th at 1238 (Randolph, J., concurring); *Banks*, 2025 WL 2959228, at *3 (dismissing claim against Apartments.com on a similar basis). The Second, Third, Sixth, Seventh, and D.C. Circuits did not decide whether the websites at issue qualified as "video tape service providers," so the meaning of that term is an open question as well.

There are accordingly six circuits in which Salazar's claim would fail at a motion to dismiss, for one reason or another: The Second, Third, Sixth, Eighth, Ninth, and D.C. Circuits all hold that such a claim fails as a matter of law. But there is no circuit with appellate

precedent establishing that such claims suffice: The Seventh Circuit has merely upheld the sufficiency of the allegations as to the "consumer" element, without addressing the others. There is accordingly no solidified circuit split as to whether the Pixel-based allegations here state a claim under the VPPA.[7]

Salazar fails to explain why this Court's review is warranted to resolve a conflict over the meaning of "consumer" when his lawsuit would be properly dismissed in every circuit with binding precedent on both the "consumer" and "personally identifiable information" questions—and would fail for additional reasons to boot. Salazar merely asserts that the conflict alone makes the issue sufficiently important. See Pet. 2 (describing this as an "intractable conflict requir[ing] this Court's intervention"); *id.* at 17 (demanding "uniformity"). But this Court's rules make clear that an abstract conflict is not sufficient: it must be a conflict over an "important matter." S.Ct. Rule 10(a).

The purported conflict about *why* these kinds of claims fail is not "important" because there is no square conflict about *whether* they fail. Rather, it remains an

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[7] More broadly, the lower courts have overwhelmingly rejected efforts to expand the VPPA's reach. Nearly all such VPPA cases have been dismissed at a motion to dismiss—and the two cases that have reached summary judgment have been resolved in favor of the defendants. See *In re Hulu Priv. Litig.*, 86 F. Supp. 3d 1090, 1091 (N.D. Cal. 2015) (granting summary judgment in favor of Hulu as there was no evidence Facebook combined identity and video watching history to create "personally identifiable information" within the meaning of the statute, or that Hulu knew Facebook would combine them); *Sterk* v. *Redbox Automated Retail, LLC*, No. 11-1729, 2013 WL 4451223, at *1 (N.D. Ill. Aug. 16, 2013), *aff'd*, 770 F.3d 618 (7th Cir. 2014) (granting summary judgment in favor of Redbox).

abstract dispute that has not yet solidified into a concrete split. Indeed, this Court recently denied two petitions which presented similar VPPA questions—including the very same "consumer" question here. *Solomon*, 136 F.4th at 43; *Salazar*, 118 F.4th at 536.

This Court should deny review here as well. That would allow these issues to continue percolating in the lower courts, as they continue to resolve why exactly these kinds of claims fail as a matter of law.

III. This Case Is A Poor Vehicle

This case in turn is a poor vehicle for addressing the meaning of a "consumer" under the VPPA. Salazar is correct that the Sixth Circuit rested its affirmance solely on the "consumer" question. But contrary to Salazar's assertions, that question is not "outcome-determinative," Pet. 16, because Salazar's claims would be properly dismissed for numerous additional reasons that the Sixth Circuit did not address.

Salazar asserts that this is a "superior vehicle" to the now-denied *NBA* petition because this case supposedly lacks the "multiple vehicle problems" that petition presented. *Id.* at 17. But this petition has the same key vehicle problem: The "personally identifiable information" question is a freestanding reason to dismiss this suit, which could "make matters worse" by "complicat[ing] the Court's review." *Id.* at 18, 20. This case also comes with the additional problem that 247Sports is not a "video tape service provider." The court of appeals did not decide that question either. See Pet. App. 11a n.7. It provides another freestanding basis to affirm the dismissal of Salazar's suit, and thus adds yet another wrinkle that could complicate this Court's review.

The complaint in this case is also notably confusing about what exactly it is alleging. The district court repeatedly admonished Salazar for failing to plead with clarity. For example, the court emphasized that "the complaint is not clear as to what it means when it refers to 'register[ing]' for 247Sports.com or to Plaintiff being a 'digital subscriber.'" Pet. App. 42a n.5. Moreover, "despite repeatedly citing to 247Sports.com in the complaint, Plaintiff does not provide any background information about 247Sports.com that would provide helpful context for the allegations contained in the complaint and the arguments raised by the parties." *Id.* at 41a n.4. The complaint also focuses on information stored in the "c_user cookie," but does not explain what a "cookie" is, who created that cookie, exactly what information the "cookie" contains, or who can read that information (and thus who can actually disclose it). *Id.* at 58a n.16; see also C.A. Resp. Br. 44-46. Finally, the complaint repeatedly refers to "Video Media" on 247Sports.com, circularly defined as "the computer file containing video and its corresponding URL viewed," without alleging that Salazar actually viewed any particular covered video on 247Sports.com. Pet. App. 81a; see also C.A. Resp. Br. 42 n.12.

That lack of context would exacerbate the problem that Salazar is seeking review of a dispute over the meaning of "consumer" when there is no concrete dispute in the circuits that the VPPA is inapplicable under the facts alleged here. Quite simply, "[t]he VPPA addressed a different problem in a different time. If the statute needs updating, that is Congress's work to do." *Pileggi*, 146 F.4th at 1238 (Randolph, J., concurring). Certiorari is accordingly unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2025