No. 25-459

IN THE

Supreme Court of the United States

MICHAEL SALAZAR,

Petitioner,

v.

PARAMOUNT GLOBAL, DBA 247SPORTS,

Respondent.

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

BRIEF OF PETITIONER

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QUESTION PRESENTED

The Video Privacy Protection Act ("VPPA") contains a one-sentence liability clause. It prohibits a "video tape service provider" from "knowingly disclos[ing], to any person, personally identifiable information concerning *any consumer* of such provider." 18 U.S.C. § 2710(b)(1) (emphasis added). The statute defines "consumer" broadly to include any "subscriber of goods or services from a video tape service provider." *Id.* § 2710(a)(1). It defines "personally identifiable information" to include information that "identifies a person as having requested or obtained specific video materials or services from a video tape service provider." *Id.* § 2710(a)(3). And it defines "video tape service provider" to include those in the business of delivering audiovisual materials. *Id.* § 2710(a)(4).

Paramount is a "video tape service provider." Michael Salazar subscribed to Paramount's online newsletter, which he used to view videos. Paramount then disclosed Mr. Salazar's Facebook ID and his video-watching history to Facebook. That information is "personally identifiable information."

The question here is whether the phrase "goods or services from a video tape service provider," as used in the VPPA's definition of "consumer," refers to *all* of a video tape service provider's goods or services or only to its *audiovisual* goods or services.

PARTIES TO THE PROCEEDING

Petitioner Michael Salazar was the plaintiff in the district court and the appellant in the Sixth Circuit. Respondent Paramount Global dba 247Sports ("Paramount") was the defendant and appellee in the proceedings below. Paramount is a wholly owned subsidiary of Paramount Skydance Corporation, a publicly traded company (NASDAQ: PSKY).

RELATED PROCEEDINGS

Salazar v. Paramount Global, No. 23-5748, U.S. Court of Appeals for the Sixth Circuit. Judgment entered April 3, 2025. Rehearing denied May 13, 2025.

Salazar v. Paramount Global, No. 3:22-cv-00756, U.S. District Court for the Middle District of Tennessee. Judgment entered July 18, 2023.

TABLE OF CONTENTS

Table of Contents

Table of Contents

Table of Contents

TABLE OF AUTHORITIES

Page

Cases

Page

Page

Page

Page

Statutes

Authorities

Page

Page

Other Authorities

Page

INTRODUCTION

The language Congress writes into a statute is the law. Language it does not include is not the law. Those straightforward principles resolve this case. Congress defined "consumer" in the Video Privacy Protection Act. To hold that Mr. Salazar is not a "consumer," though, a divided panel of the Sixth Circuit replaced what Congress wrote in that definition with limiting language it did not include. In short, it rewrote the law. This Court should vacate and remand.

In the VPPA, Congress defined "consumer" to mean "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1). The critical phrase "goods or services" contains no limitation. It covers everything a video tape service provider offers.

Giving that unmodified phrase its full and fair meaning aligns with the VPPA's broad language elsewhere. Consider, for example, the liability clause. There again, Congress's chosen words suggest breadth. Indeed, the VPPA's substantive prohibition refers to every consumer, of whatever kind, without distinction or limitation. *See id.* § 2710(b)(1) (prohibiting disclosures of "personally identifiable information concerning *any* consumer of such provider" (emphasis added)).

At the same time, Congress knew how to impose an audiovisual limitation when it wanted to do so. Two subsections away from the definition of "consumer," Congress defined "personally identifiable information" as information that "identifies a person as having requested

or obtained *video* materials or services from a video tape service provider." *Id.* § 2710(a)(3) (emphasis added).

Compare that language to Section 2710(a)(1). The "goods or services" that make one a "consumer" must also come "from a video tape service provider." *Id.* § 2710(a)(1). But Congress chose not to include a video-specific modifier before "goods or services" in that definition. Its unqualified language controls.

Here, Paramount is a video tape service provider. And Mr. Salazar is a subscriber of Paramount's online newsletter. Thus, the newsletter he subscribed to came "from a video tape service provider." *Id.* § 2710(a)(1). The only question left is whether that newsletter fits within Section 2710(a)(1)'s all-inclusive "goods or services" language. *Id.* It does. Accordingly, Mr. Salazar is a "consumer." *Id.*

The Sixth Circuit majority reached the opposite conclusion. It held Mr. Salazar is not a "consumer" solely because he did not subscribe to Paramount's audiovisual materials. But the statutory definition does not contain that limitation. And this Court's guidance has been consistent: When interpreting a statutory provision, a court must be careful not to add words, impose requirements untethered to enacted text, or import materially different language from elsewhere. The Sixth Circuit majority's approach violates those instructions.

Its atextual audiovisual limitation also causes a host of other problems. It leaves the "video" modifier in Section 2710(a)(3) no work to do. It gives the unmodified phrase "goods or services" two different meanings.

See id. §§ 2710(a)(1), (b)(2)(D)(ii). And it invites further atextual innovation. As just one example, when assessing "consumer" status, lower courts have asked whether an item provides "exclusive," "extra," or "unique" access to audiovisual materials. The statute asks none of these questions. It demands none of their answers.

Mr. Salazar meets the definition Congress enshrined into law. No more is required. This Court should vacate the decision below and remand for further proceedings.

OPINIONS BELOW

The Sixth Circuit's opinion (Pet. App. 1a–38a) is reported at 133 F.4th 642. The district court's opinion (Pet. App. 39a–71a) is reported at 683 F. Supp. 3d 727.

JURISDICTION

The court of appeals entered its opinion and judgment on April 3, 2025. Pet. App. 1a. It denied Mr. Salazar's petition for rehearing en banc on May 13, 2025. Pet. App. 72a. Justice Kavanaugh's order of August 5, 2025, extended the time to file a petition for a writ of certiorari to October 10, 2025. *See* 28 U.S.C. § 2101(c). Mr. Salazar timely filed a petition for certiorari on October 10, 2025. This Court granted that petition on January 26, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Video Privacy Protection Act, 18 U.S.C. § 2710, was reprinted in the Appendix to Mr. Salazar's Petition for Certiorari. Pet. App. 74a–79a.

STATEMENT OF THE CASE

A. Statutory background

After President Ronald Reagan nominated Judge Robert Bork to a seat on this Court, a journalist visited Judge Bork's local video store—Potomac Video—and asked which movies he had rented. *Salazar v. Nat'l Basketball Ass'n*, 118 F.4th 533, 544 (2d Cir. 2024).[1] The store handed over a list of 146 films. *Id.* The journalist then published "The Bork Tapes." *Id.* Congress "quickly decried the publication." *Id.*; *see also* 134 Cong. Rec. 10259 (May 10, 1988) ("denouncing" the "unwarranted invasion of personal privacy" Judge Bork endured).

The Senate Report reflects a concern that "the computer age," which had already "revolutionized our world," gave businesses the ability "to be more intrusive than ever before." S. Rep. No. 100-599, at 6; *see also id.* at 5–6 (noting "Big Brother" might engage in broad surveillance based on the accumulation of "vast amounts of personal information" in computerized records); *id.* at 7–8 (crediting testimony that "advanced information technology" fostered "more intrusive data collection," including by businesses hoping "to better advertise their products"); 134 Cong. Rec. at 10259–60 (describing a "much more subtle and much more pervasive form of surveillance" that "[n]ot even George Orwell anticipated").

The central concern was that Americans were losing control over their private information. S. Rep. No. 100-599,

1. To avoid confusion, Mr. Salazar will use the abbreviation "*NBA*" throughout this brief to refer to the Second Circuit's opinion.

at 6–7. Privacy, after all, "goes to the deepest yearnings of all Americans." *Id.* at 6. "We want to be left alone." *Id.*

Unauthorized disclosures of video-watching histories, meanwhile, offer "a window into our loves, likes, and dislikes." *Id.* at 7; *see also* 134 Cong. Rec. 10259 (explaining what we watch reflects who we are as people). Members of Congress believed watching films is an "intimate process" that "fuel[s] the growth of individual thought" and "should be protected from the disruptive intrusion of a roving eye." S. Rep. No. 100-599, at 7.

Thus, Congress passed the VPPA. The law ensures consumers maintain control over their private information by generally prohibiting a "video tape service provider" from "knowingly disclos[ing], to any person, personally identifiable information concerning any consumer of such provider." 18 U.S.C. § 2710(b)(1).

The law permits such disclosures in six narrow circumstances, including—as most relevant here—with the consumer's "informed, written consent." *Id.* § 2710(b)(2)(A)–(F). Any unauthorized disclosure subjects a provider to liquidated damages of $2,500. *Id.* § 2710(c)(2).

In a definitions section, the VPPA defines three of the terms used in its one-sentence liability clause. It defines "consumer" to mean "any renter, purchaser, or subscriber of goods or services from a video tape service provider." *Id.* § 2710(a)(1). It defines "personally identifiable information" to include information that "identifies a person as having requested or obtained specific video materials or services from a video tape service provider." *Id.* § 2710(a)(3). And it defines "video tape service provider" to mean "any

person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* § 2710(a)(4).

In 2013, Congress amended the VPPA. *See* Pub. L. 112-258, 126 Stat. 2414 (2013). By then, "the VHS cassette tape" was largely "obsolete," and the Internet had "revolutionized" both "the way that American consumers rent and watch movies and television programs" and the way they "share information," including through "social networking sites, like Facebook." S. Rep. No. 112-258, at 2. Then, as now, "so-called 'on-demand' cable services and Internet streaming services allow[ed] consumers to watch movies or TV shows on televisions, laptop computers, and cell phones." *Id.*

As originally enacted, the VPPA required a video tape service provider to obtain consent "each time [it] wishe[d] to disclose" personally identifiable information. *Id.* at 2–3. To reduce the "obstacles" posed by that constraint, Congress "amend[ed] the VPPA to allow consumers to provide" written consent "one time in advance." *Id.* at 3; *see also* Pub. L. 112-258 (amending the VPPA "to clarify 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"); 18 U.S.C. § 2710(b)(2)(B) (containing the new, Internet-friendly advance-consent provision).

B. Factual and procedural background

1. The complaint

In this lawsuit, Mr. Salazar alleged Paramount—which owns and operates 247Sports.com—violated the VPPA by disclosing his personally identifiable information to Facebook without his consent. Pet. App. 80a–81a, 84a. Through 247Sports.com, Paramount "is in the business of delivering countless hours of video content." Pet. App. 85a. Mr. Salazar obtained a digital subscription to 247Sports.com by signing up for its online newsletter. Pet. App. 88a–89a, 97a. This process required him to provide, among other things, his e-mail address. *Id.*

Mr. Salazar "used his 247Sports.com digital subscription to view Video Media through 247Sports.com," all "while logged into his Facebook account." Pet. App. 84a. Via tracking software Paramount installed on its website, Paramount disclosed Mr. Salazar's personally identifiable information—including his Facebook ID and which videos he watched—to Facebook. Pet. App. 81a–82a, 84a, 88a, 91a–96a, 103a. Facebook and Paramount used this information to create targeted advertising, hoping to increase their revenues. Pet. App. 82a, 92a–93.

2. The district court's decision

Paramount filed a motion to dismiss, arguing Mr. Salazar did not adequately allege he is a "consumer." The district court dismissed Mr. Salazar's claim with prejudice. Pet. App. 40a, 71a. It held that, to be a "consumer," one must subscribe to "audio visual materials" or "video-tape related goods or services." Pet. App. 67a–68a & n.23.

It concluded the newsletter did not meet this standard because Mr. Salazar did not allege he "accessed audio visual content through the newsletter." Pet. App. 69a. The court did not address the allegation that Mr. Salazar "used his 247Sports.com digital subscription" (*i.e.*, the newsletter) "to view Video Media." Pet. App. 84a.

3. The Sixth Circuit's decision

Mr. Salazar appealed. Before the Sixth Circuit rendered a decision, two other courts of appeals weighed in on the dispositive issue. Both the Second and Seventh Circuits held that a subscription to a video tape service provider's online newsletter makes one a "consumer." *See Gardner v. Me-TV Nat'l Ltd. P'ship*, 132 F.4th 1022, 1025 (7th Cir. 2025); *NBA*, 118 F.4th at 537, 549.

But a divided panel of the Sixth Circuit disagreed. Pet. App. 1a–38a. To start, Paramount did not argue it was not a video tape service provider, so the majority accepted that conclusion. Pet. App. 11a n.7. And the majority noted Mr. Salazar subscribed to Paramount's online newsletter. Pet. App. 2a, 4a n.3, 11a. It observed the Second and Seventh Circuits had already held these facts made him a statutory "consumer." Pet. App. 17a.

The majority agreed "goods or services" in Section 2710(a)(1), standing alone, "is not limited." Pet. App. 14a. But it held that phrase has "an association" with the phrase "audio visual materials" in Section 2710(a)(4)'s definition of "video tape service provider." *Id.* Given that "association," the majority held the statute reaches only those "goods and services provided by a company when it is acting as a 'video tape service provider'—namely, 'audio visual materials.'" Pet. App. 16a.

The majority then held Paramount's newsletter did not meet this test. Pet. App. 19a. Like the district court, though, it did not address Mr. Salazar's allegation that he "used his 247Sports.com digital subscription" (*i.e.*, the newsletter) "to view Video Media." Pet. App. 84a.

Judge Bloomekatz dissented. Pet. App. 22a–38a (Bloomekatz, J., dissenting). She explained that, by Section 2710(a)(1)'s "plain text, [Mr.] Salazar is a 'consumer.'" Pet. App. 24a; *see also* Pet. App. 27a (showing how he met all the statutory requirements). Indeed, in her view, the majority reached the opposite conclusion "only by rewriting the plain language of the VPPA." Pet. App. 27a.

Judge Bloomekatz noted Congress's definition of "video tape service provider" "include[s] department stores, supermarkets, and other entities that rent, sell, or deliver the requisite audiovisual materials." Pet. App. 30a. Accordingly, Congress "knew" video tape service providers "could rent, sell, or deliver other types of 'goods or services' too." *Id.* Judge Bloomekatz believed it was "far from the most 'natural' reading of the phrase to say that 'goods or services from a video tape service provider' can only be *some particular* 'goods or services' from that entity." *Id.*

On May 13, 2025, the Sixth Circuit denied Mr. Salazar's petition for rehearing en banc. Pet. App. 72a–73a. Since then, the D.C. Circuit has adopted the same audiovisual limitation the Sixth Circuit majority embraced. *See Pileggi v. Wash. Newspaper Publ'g Co.*, 146 F.4th 1219, 1224 (D.C. Cir. 2025) (requiring one to rent, purchase, or subscribe to "a video cassette tape or similar audio-visual good or service" to gain "consumer" status), *reh'g denied*, 2025 WL 2784620 (Sept. 30, 2025).

SUMMARY OF ARGUMENT

In the definition of "consumer," Congress referred to "goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1). In ordinary parlance, that unmodified phrase includes all tangible and intangible offerings that come "from a video tape service provider." That understanding also aligns with the ordinary meaning of "consumer," which itself contains no limitation on the kinds of goods or services involved. These ordinary meanings are dispositive. A newsletter from Paramount is a "good[] or service[] from a video tape service provider." *Id.*

The VPPA's broader context confirms that, when Congress used "goods or services" in Section 2710(a)(1), it said what it meant and meant what it said. Most notably, Congress knew how to create an audiovisual limitation when it wanted to do so. In the definition of "personally identifiable information," Congress referred to "*video* materials or services from a video tape service provider." *Id.* § 2710(a)(3) (emphasis added). This material variation occurred in grammatically aligned clauses within a single sentence. *See id.* §§ 2710(a)(1), (a)(3). That Congress required different relationships to these differently described subject matters removes all doubt. *See id.* Congress did not say "goods or services" when it meant "video materials or services."

In addition, in the liability clause, Congress prohibited a video tape service provider from "knowingly disclos[ing], to any person, personally identifiable information concerning *any* consumer of such provider." *Id.* § 2710(b)(1) (emphasis added). There, too, it referred broadly to every "consumer," of whatever kind, without distinction or

limitation. Tellingly, Congress repeated that expansive "any" formulation to start the definition of "consumer." *Id.* § 2710(a)(1).

Text and context thus confirm that the unmodified phrase "goods or services" contains no limitation. The Sixth Circuit majority held Mr. Salazar is not a "consumer," but only after adding an audiovisual limitation Congress did not enact. Its holding flouts the ordinary meaning of both "goods or services" and "consumer." It forces materially different terms to take the same meaning. And it ignores Congress's expansive "any" language. This was no mere statutory interpretation. It was a judicial rewrite. And it "makes a hash" of the VPPA. *Pulsifer v. United States*, 601 U.S. 124, 149 (2024).

First, it creates an unnerving amount of surplusage in Section 2710(a)(3). There, the modifier "video" before "materials or services" is left with no work to do. Alarm bells should sound when an interpretation renders *that* word inoperative in *this* statute. But there is also no independent work for "requested or obtained" to do. 18 U.S.C. § 2710(a)(3). Because the majority read the two definitions to refer to the same subject matter (despite Congress's different descriptions), this broader relationship gets swallowed by Section 2710(a)(1)'s narrower "renter, purchaser, or subscriber" formulation. The Sixth Circuit's reading means every transaction that creates a "consumer" will necessarily produce "personally identifiable information" too.

Second, the majority's rewrite forces "goods or services" to take two different meanings in the VPPA. That phrase, in functionally equivalent forms, appears in

both Section 2710(a)(1) and Section 2710(b)(2)(D)(ii). The majority offered no explanation for why Congress would have used "goods and services" elsewhere in the VPPA to refer to all goods and services but used "goods or services" in Section 2710(a)(1) to refer only to audiovisual materials.

Third, the insertion of an atextual audiovisual limitation invites additional judicial innovation. For example, the majority held that Paramount, which is a "video tape service provider," was not "acting" as a video tape service provider when it sent Mr. Salazar his newsletter. But the statute provides no reason to approach this inquiry on a transaction-by-transaction basis. Paramount is a "video tape service provider" all the time. As another example, some courts have held newsletters are sufficiently "audiovisual" only if they provide "extra," "exclusive," or "unique" video access. But, again, the statute requires no such thing.

Mr. Salazar satisfied all the requirements Congress established for "consumer" status under the VPPA. The Sixth Circuit majority's atextual audiovisual limitation is not the law. And its flimsy rationales for imposing that limitation cannot displace the statute's plain text. This Court should vacate and remand.

ARGUMENT

Statutory interpretation always begins with the text. *See, e.g.*, *Dean v. United States*, 556 U.S. 568, 572 (2009). Often, it ends there as well. *See, e.g.*, *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) (holding that, when a statute's language is unambiguous, "the sole function of the courts—at least where the disposition required by

the text is not absurd—is to enforce it according to its terms"); *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.").

"The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). At all times, however, this Court must "presume" that Congress "says in a statute what it means and means in a statute what it says there." *BedRoc*, 541 U.S. at 183 (describing this interpretive presumption as "[t]he preeminent canon of statutory interpretation"); *see also Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (describing it as the "cardinal canon" courts must "always" consult "before all others").

In the VPPA, Congress defined a "consumer" to mean "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1). The question here is narrow. Paramount is a "video tape service provider." In the appeal below, it did not argue otherwise. Pet. App. 11a n.7. Likewise, everyone agrees Mr. Salazar is a "subscriber" of Paramount's online newsletter. Pet. App. 4a, 11a (majority opinion); Pet. App. 26a (Bloomekatz, J., dissenting); Pet. App. 42a–44a, 62a n.19, 70a (district court opinion).

Because Mr. Salazar is a "subscriber" of an online newsletter that comes "from a video tape service provider," 18 U.S.C. § 2710(a)(1), the only remaining statutory question is whether that newsletter is a "good or service." It is. That conclusion aligns with the text's

ordinary meaning, respects both the meaningful-variation and consistent-usage canons, avoids surplusage, and accounts for Congress's repeated use of "any."

The Sixth Circuit majority's contrary rule, meanwhile, assumes Congress did not mean what it said. Worse still, it adds an atextual audiovisual limitation into Section 2710(a)(1)'s definition of "consumer." Because neither is permissible, this Court should reject the Sixth Circuit majority's analysis.

I. Text and context confirm the phrase "goods or services from a video tape service provider" includes all goods or services from such entities, not just audiovisual ones.

Congress defined "consumer" to mean "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1). This definition contains a limitation concerning the *source* of the goods or services. *Id.* But it contains no limitation on the *type* of goods or services involved. *See Gardner*, 132 F.4th at 1025 ("Nothing in the Act says that the goods or services must be video tapes or streams."); *NBA*, 118 F.4th at 537, 544, 549–50 (holding the definition "is not limited to *audiovisual* 'goods or services'").

By its plain text, the definition of "consumer" refers broadly, without any limiting or exclusionary language, to *all* "goods or services" that come "from a video tape service provider." 18 U.S.C. § 2710(a)(1). Thus, one can become a "consumer" under the VPPA by renting, purchasing, or subscribing to "*any* of [a video tape service] provider's 'goods or services'—audiovisual or not." *NBA*, 118 F.4th at

549. The ordinary meaning of the words Congress chose, the VPPA's surrounding context, and multiple canons of statutory interpretation compel this conclusion.

A. The ordinary meaning of Congress's chosen terminology contains no audiovisual limitation.

In statutory interpretation, ordinary meaning is paramount. *See Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454 (2012) (explaining that, when interpreting an undefined term, "ordinary meaning" is the "first" place this Court should look); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 69 (2012) ("The ordinary-meaning rule is the most fundamental semantic rule of interpretation."). Here, ordinary meaning does important work on two levels.

1. The ordinary meaning of the unmodified phrase "goods or services" includes all goods or services.

When it defined "consumer," Congress did not use specialized terminology. It did not, for example, invent a new word. *Cf.* The Office: *Women's Appreciation* (NBC television broadcast, aired May 3, 2007) (threatening a full "disadulation" if a report is not on Jim's desk by the end of the day). Nor did it use a known word but in an idiosyncratic and revolutionary way. *Cf.* Mean Girls (Paramount Pictures 2004) (forever rejecting attempts to make "fetch" happen). Instead, it used ordinary language, defining "consumer" to mean "any renter, purchaser, or subscriber of *goods or services* from a video tape service provider." 18 U.S.C. § 2710(a)(1) (emphasis added).

Because the VPPA does not define "goods" or "services," those ordinary words must be given "their 'ordinary meaning . . . at the time Congress enacted the statute.'" *Wisc. Cent. Ltd. v. United States*, 585 U.S. 274, 277 (2018) (omission in original; citation omitted). The critical consideration is "how we use the word[s] in everyday parlance." *Mohamad*, 566 U.S. at 454; *see also Thompson v. United States*, 604 U.S. 408, 419 (2025) (Alito, J., concurring) (examining what an undefined term "means in ordinary speech"). After all, "those whose lives are governed by law are entitled to rely on its ordinary meaning, not left to speculate about hidden messages." *Feliciano v. Department of Transportation*, 605 U.S. 38, 45 (2025).

English speakers use both the individual words "goods" and "services" and the combined phrase "goods or services" in their everyday lives. But it is difficult to imagine any context in which they might use these unmodified terms to refer only to audiovisual materials. Instead, the unmodified terms ordinarily refer to the full range of economic offerings.

Contemporary dictionaries confirm the point. At the time of the VPPA's passage, the unmodified word "goods" was commonly understood to mean "all tangible items," particularly when used in the phrase "goods and services." *Black's Law Dictionary* (5th ed. 1979); *see also The Oxford English Dictionary* (2d ed. 1989) (defining "goods" broadly as "property or possessions"). Likewise, the term "services" has long been understood to mean "the section of the economy that supplies needs of the consumer but produces no tangible goods." *The Oxford English Dictionary* (3d ed. 2014); *see also Black's Law Dictionary* (6th ed. 1990) (defining the term simply

as "[t]hings purchased by consumers that do not have physical characteristics"); Pet. App. 25a (Bloomekatz, J., dissenting) (citing additional dictionaries).

These dictionaries reinforce the reader's intuition: In everyday speech, in 1988 and now, the unmodified phrase "goods or services" contains no limitation. The phrase is made up of "general words with general meanings," and those words should not be "arbitrarily limited." Scalia & Garner, *Reading Law* 101.

As relevant here, an online newsletter fits comfortably within the statute's all-inclusive "goods or services" language. *See, e.g.*, Pet. App. 26a (Bloomekatz, J., dissenting) ("Neither Paramount nor the majority disputes that the phrase 'goods or services,' in common parlance, includes newsletters."). And Mr. Salazar's newsletter came from Paramount, which is a video tape service provider. Pet. App. 11a n.7. Section 2710(a)(1) requires no more. By the provision's plain text, Mr. Salazar is a "consumer." 18 U.S.C. § 2710(a)(1).

The Sixth Circuit majority avoided this conclusion by declining to give "goods or services" its common, everyday meaning. Indeed, it openly admitted as much, noting that "goods or services," by itself, "is not limited." Pet. App. 14a. Still, it read the unmodified phrase to mean only audiovisual materials. Pet. App. 15a. But neither Paramount nor the Sixth Circuit majority identified any other context in which the unmodified phrase takes that narrow meaning.

We are not dealing here with some "chameleon word." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006). The

phrase "goods or services" has a stable, ordinary meaning that contains no audiovisual limitation. The only way to arrive at the majority's audiovisual limitation "is by taking a red pen to the statute." *Milner v. Dep't of Navy*, 562 U.S. 562, 573 (2011).

And that is precisely what the Sixth Circuit majority did. It transformed the statutory text by adding a video-specific modifier that does not appear in Section 2710(a)(1). *See, e.g.*, Pet. App. 15a (holding "the expression 'goods or services' is limited to *audiovisual* ones" (emphasis added)); Pet. App. 18a (holding the phrase "'goods or services' relates to *audio-visual* materials" (emphasis added)); *Pileggi*, 146 F.4th at 1224, 1231–32 (similar).

This reality was not lost on Judge Bloomekatz. *See* Pet. App. 28a (Bloomekatz, J., dissenting) (describing the majority's reading as "atextual" because it "effectively adds the limiting words 'audio visual' before 'goods or services' in the statutory text"). The Second Circuit spotted this problem, too. When confronted with a similar argument from the NBA, that court unanimously declined to "graft[] unstated limitations" onto the phrase "goods or services." *NBA*, 118 F.4th at 549.

In any event, that the Sixth Circuit majority repeatedly added a video-specific modifier proves that its reading is divorced from the ordinary meaning of "goods or services." This atextual modifier was the majority's sole basis for excluding Mr. Salazar from "consumer" status. *See* Pet. App. 2a, 19a (affirming dismissal because Mr. Salazar "did not subscribe to 'audio visual materials'"). In this respect, the Sixth Circuit majority did not so much interpret Section 2710(a)(1) as rewrite it. *See* Pet. App. 27a (Bloomekatz, J., dissenting).

Not surprisingly, this Court has repeatedly rejected the majority's approach. *See, e.g.*, *Muldrow v. City of St. Louis*, 601 U.S. 346, 355 (2024) (declining to "add words" to a statute because doing so "impose[s] a new requirement," such that "the law as applied demands something more . . . than the law as written"); *Romag Fasteners, Inc. v. Fossil, Inc.*, 590 U.S. 212, 215 (2020) (declining to "read into statutes words that aren't there"); *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 252 (2010) (explaining that supplying a "conspicuously absent" limitation "more closely resembles inventing a statute rather than interpreting one" (internal quotation marks, citation, and brackets omitted)).

2. The word "consumer," in everyday parlance, contains no audiovisual restriction.

The ordinary meaning of "consumer" removes any lingering doubt. Because "an entirely artificial definition is rare, the meaning of the definition is almost always closely related to the ordinary meaning of the word being defined." *Delligatti v. United States*, 604 U.S. 423, 438 (2025) (quoting Scalia & Garner, *Reading Law* 228). Accordingly, if the meaning of some constituent part of a definition (*e.g.*, "goods or services") is unclear, "the ordinary meaning of the term [being defined] is one of 'the most important' factors [the Court] can consider." *Id.*; *see also* Scalia & Garner, *Reading Law* 228 (providing that, when a definition includes an unclear term, "[f]ar and away the most important [criterion of interpretation] is the contextual factor of the word actually being defined").

But the ordinary meaning of "consumer" is not limited to those who acquire videos. Common sense

suffices for that proposition, but consulting a dictionary quickly confirms it. At the time the VPPA was enacted, the word "consumers" broadly included "[i]ndividuals who purchase, use, maintain, and dispose of products and services." *Black's Law Dictionary* (5th ed. 1979); *see also Black's Law Dictionary* (6th ed. 1990) (same). The same is true now.

Congress's definition of "consumer" is narrower than dictionary definitions in two respects. It includes only those who rent, purchase, or subscribe to goods or services, not necessarily those who use, maintain, or dispose of them. *See* 18 U.S.C. § 2710(a)(1). And it specifies the source of the goods or services (*i.e.*, "from a video tape service provider"). *Id.*

Like the ordinary, everyday understanding, though, Congress's definition does *not* restrict "consumer" status to those who receive only a particular kind of goods or services. And, "[w]hen Congress takes the trouble to define a term it uses, a court must respect its definitions as virtually conclusive." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) (internal quotation marks and citation omitted). Indeed, this Court will follow an explicit statutory definition "even if it varies from a term's ordinary meaning." *Van Buren v. United States*, 593 U.S. 374, 387 (2021). It is an even easier call to follow a statutory definition that *aligns* with the term's ordinary meaning.

An example may help show the consistency. Consider Blockbuster, a classic example of a video tape service provider. *See NBA*, 118 F.4th at 548 (asking readers to think about Blockbuster). One Blockbuster remains in operation today. As expected, it offers movie rentals.

But it also sells candles, sunglasses, posters, and even dog bandanas.[2] In everyday speech, a person who bought any of those items would be described as Blockbuster's "consumer." One who saw Mr. Salazar leaving the last Blockbuster with a branded bag, for example, would hardly need to look inside to reach that conclusion.

Because Congress mirrored that normal linguistic expectation, the same is true under the VPPA. Because Blockbuster remains a video tape service provider, anyone who buys a dog bandana from Blockbuster is a "purchaser" of a "good[] . . . from a video tape service provider." 18 U.S.C. § 2710(a)(1). Thus, by the statute's plain terms, that person is a "consumer."

Paramount's interpretation, which the Sixth Circuit adopted, clashes with the ordinary meanings of both "goods or services" and "consumer." And the mismatch here is substantial. Indeed, the Sixth Circuit majority reached its conclusion only by excluding "widely accepted" and "prototypical" examples of consumers from Section 2710(a)(1)'s reach. *Delligatti*, 604 U.S. at 435–37.

These points alone are dispositive. *See United States v. Ressam*, 553 U.S. 272, 274 (2008) ("The most natural reading of the relevant statutory text provides a sufficient basis for reversal."). But a deeper look only reinforces the conclusion. The VPPA's broader context shows the unmodified phrase "goods or services" should be accorded its ordinary meaning, not the far narrower one the Sixth Circuit embraced.

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2. Blockbuster, https://bendblockbuster.com/shop (last visited Apr. 16, 2026).

B. When Congress meant to impose an audiovisual limitation, it used a video-specific modifier.

Enacting a statute "has traditionally been seen as a solemn and deliberative act that requires verbal exactitude." Scalia & Garner, *Reading Law* 170. For that reason, "[i]n a given statute, . . . different terms usually have different meanings." *Pulsifer*, 601 U.S. at 149.

The VPPA's meaningful variations confirm that, when Congress used the unmodified phrase "goods or services" in Section 2710(a)(1), it meant all goods or services. Compare the definitions of "consumer" and "personally identifiable information." The former refers to "*goods or services* from a video tape service provider." 18 U.S.C. § 2710(a)(1) (emphasis added). The latter refers to "*video materials or services* from a video tape service provider." *Id.* § 2710(a)(3) (emphasis added). And, critically, these different descriptions of the relevant subject matter—one with a video-specific modifier and one without—appear in contextually aligned passages within the same sentence. For each one, the referenced subject matter must identically come "from a video tape service provider." *Id.* §§ 2710(a)(1), (a)(3).

The variation within this parallel structure suggests that, in Section 2710(a)(1) and Section 2710(a)(3), Congress was indeed referring to different subject matters. The phrase "video materials" is narrower than "goods," and "video . . . services" is narrower than "services." In both definitions, the preposition "from" identifies the *source* of the subject matter. But specifying the source does not change the *scope* of the referenced subject matter. Instead, Congress used a video-specific modifier to do that work.

And it deployed that limiting modifier in Section 2710(a)(3), but *not* in Section 2710(a)(1).

This was no absent-minded "mistake in draftsmanship." *Corley v. United States*, 556 U.S. 303, 315 (2009). Indeed, there is "every reason to believe that Congress used the distinct terms very deliberately." *Id.* Begin with just the words "goods" and "video materials." These terms have "some heft and distinctiveness," suggesting Congress was "likely to keep track of and standardize" their usage. *Pulsifer*, 601 U.S. at 149. Congress said "goods" twice in the VPPA, *never* modifying that word with "video" or any other word. 18 U.S.C. §§ 2710(a)(1), (b)(2)(D)(ii). It used "materials" four times in the statute, *always* with some video-specific modifier. *Id.* § 2710(a)(3) (referring to "video materials"); *id.* § 2710(a)(4) (referring to "audio visual materials"); *id.* § 2710(b)(2)(D)(ii) (referring to "audio visual material" and then to "such materials").

This fact alone strongly suggests Congress did not use "goods" and "video materials"—or "services" and "video . . . services"—interchangeably here. That Congress twice referred to "goods or services" and either "video materials" or "audio visual materials" in the same sentence removes all doubt. *Id.* §§ 2710(a)(1), (a)(3) (using "goods or services" and "video materials or services" in two definitions that appear in a single sentence); *id.* § 2710(b)(2)(D)(ii) (using "goods and services" and "audio visual material" in the same sentence).

In addition, for this law at least, "video" is no insignificant word. It is the VPPA's "key word." *Milner*, 562 U.S. at 578; *see also Pileggi*, 146 F.4th at 1233 (noting the word "'video' suffuses the statute"). For that reason,

"video" should do work where it appears. *See Milner*, 562 U.S. at 578. The absence of "video" as a modifier in Section 2710(a)(1) should be respected as well. *See CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 234–35 (2025) (explaining this Court "do[es] not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply"); *Russello v. United States*, 464 U.S. 16, 23 (1983) (requiring courts to presume Congress acted "intentionally and purposely" when it "include[d] particular language in one section of a statute but omit[ted] it in another section of the same Act").

Still, the Sixth Circuit majority read these two different phrases—"goods or services" and "video materials or services"—to mean the same thing. Pet. App. 15a. This holding, by itself, is linguistically unsustainable. It overlooks Congress's decision to use a video-specific modifier when defining "personally identifiable information," but not when defining "consumer."

Section 2710(a)(3)'s video-specific modifier proves another point, too. It shows that "Congress, when it desired to do so, knew how to restrict the scope" of the subject matter referenced in the VPPA. *Patterson v. Shumate*, 504 U.S. 753, 758 (1992); *see also Milner*, 562 U.S. at 583 (Alito, J., concurring) (highlighting "different language" in a statute's subparagraphs to show that "Congress knew how to refer to . . . narrower activities" when it wished to do so). Indeed, had Congress wanted to limit Section 2710(a)(1) to audiovisual goods or services, "it could have simply borrowed from the [definition] next door." *SAS Institute, Inc. v. Iancu*, 584 U.S. 357, 364 (2018).

But, in Section 2710(a)(1), Congress "eschewed the language" it used in Section 2710(a)(3) to create an audiovisual limitation. *Babb v. Wilkie*, 589 U.S. 399, 412 (2020). This Court cannot disregard "Congress's choice to depart from the model of a closely related statute." *SAS Institute*, 584 U.S. at 364. It should be even more reluctant to disregard Congress's decision to depart from the model of a contextually aligned definition in the *same* sentence of the *same* statute. *See Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (explaining that "[a]textual judicial supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language" by, for example, elsewhere "expressly includ[ing] the language" a party "asks [this Court] to read in").

The absence of a video-specific modifier in Section 2710(a)(1) confirms the general phrase "goods or services" should "be accorded [its] full and fair scope." Scalia & Garner, *Reading Law* 101. In choosing a different course, the Sixth Circuit majority adorned the definition of "consumer" with a limitation "Congress could have adopted but did not enact." *Rico v. United States*, 146 S. Ct. 947, 955 (2026).

But the presence or absence of "video" is not the only meaningful variation the Sixth Circuit majority paved over. The definition of "consumer" refers to "any *renter, purchaser, or subscriber* of goods or services from a video tape service provider." 18 U.S.C. § 2710(a)(1) (emphasis added). Meanwhile, the definition of "personally identifiable information" refers to individuals who have "*requested or obtained* specific video materials or services from a video tape service provider." *Id.* § 2710(a)(3) (emphasis added).

One can obviously "request" an item without renting, purchasing, or subscribing to it (*e.g.*, an unfulfilled request). Likewise, one can "obtain" an item without renting, purchasing, or subscribing to it (*e.g.*, a promotional giveaway).

Consider, too, how Congress paired the relationship language to the subject matters across the two definitions. *See Babb*, 589 U.S. at 406 (examining how "individual terms" in a statute "relate to each other"). In Section 2710(a)(1), it linked narrow relationship language (*i.e.*, "renter, purchaser, or subscriber") to a broad subject matter (*i.e.*, "goods or services"). In Section 2710(a)(3), by contrast, Congress linked broad relationship language (*i.e.*, "requested or obtained") to a narrow subject matter (*i.e.*, "video materials or services").

But the Sixth Circuit majority did a third thing—it combined Section 2710(a)(1)'s narrow relationship language with Section 2710(a)(3)'s narrow subject matter. This sort of stitching together occasionally makes for a good movie. *See, e.g.*, YOUNG FRANKENSTEIN (20th Century Fox 1974). But it is no way to interpret a statute. *See Fischer v. United States*, 603 U.S. 480, 508 (2024) (Barrett, J., dissenting) (explaining that "snipping words from one subsection and grafting them onto another violates [this Court's] normal interpretive principles").

Congress defined "consumer" and "personally identifiable information" using different language to describe different relationships to different subject matters from a single source. This language shows that "goods or services" in Section 2710(a)(1) "admits of no exception." *Brogan v. United States*, 522 U.S. 398, 408

(1998). That provision must be read "as broadly as [it is] written." *Id.* at 406.

In fashioning an audiovisual limitation that does not appear in Section 2710(a)(1), the Sixth Circuit majority erased Congress's textual choices. The D.C. Circuit made the same mistake. *See Pileggi*, 146 F.4th at 1235 (claiming "there is no meaningful or material change in textual focus" between Section 2710(a)(1) and Section 2710(a)(3)). That judicially crafted audiovisual restriction cannot stand. *See Brogan*, 522 U.S. at 408 (holding "[c]ourts may not create their own limitations on legislation").

C. Congress's use of "any" confirms it included all consumers of video tape service providers, not just some.

This Court has repeatedly held the word "any" "has an expansive meaning." *Patel v. Garland*, 596 U.S. 328, 338 (2022). For example, if a statute refers to "any judgment," it "applies to judgments 'of whatever kind.'" *Id.* Likewise, if a statute refers to "any" person, its "expansive and unqualified" language means "every" person, "without distinction or limitation." *A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 345 (2025); *see also Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 309–10 (2025) (similar).

Congress used the word "any" in at least three relevant places in the VPPA. *First*, in the liability clause, Congress prohibited knowing disclosures of "personally identifiable information concerning *any* consumer of such provider." 18 U.S.C. § 2710(b)(1) (emphasis added). This reference alone suggests Congress included "every" consumer, "of

whatever kind," "without distinction or limitation." It did not refer to a narrow subset of a video tape service provider's consumers. *See* Scalia & Garner, *Reading Law* 101–03 (discussing the general-terms canon).

And Congress used a second "broadening" word in this location—namely, "concerning." *Patel*, 596 U.S. at 338–39 (explaining the word "regarding," which means "concerning," ensures "the scope of a provision covers not only its subject but also matters relating to that subject"). The presence of two expansive words right before "consumer" in the liability clause shows Congress was not speaking narrowly.

Recall, too, that free-standing (*i.e.*, unfulfilled) requests are included in the definition of "personally identifiable information." 18 U.S.C. § 2710(a)(3). For such requests, the individual's "consumer" status must have arisen from some *other* interaction with the video tape service provider. After all, a free-standing request cannot make one a "renter, purchaser, or subscriber." *Id.* § 2710(a)(1). The absence of a video-specific modifier in Section 2710(a)(1), coupled with "any consumer" in Section 2710(b)(1), confirms Congress did not care whether this other interaction *also* involved audiovisual materials. It is enough that the request itself did. *See id.* § 2710(a)(3).

Second, Congress defined "consumer" to mean "*any* renter, purchaser, or subscriber of goods or services from a video tape service provider." *Id.* § 2710(a)(1) (emphasis added). Here, too, Congress used "expansive and unqualified" language that includes "every" renter, purchaser, or subscriber of a provider's "goods or services." The definition itself confirms breadth. *See NBA*, 118 F.4th at 546.

Third, Congress permitted "*[a]ny* person aggrieved by any act of a person in violation of this section" to "bring a civil action in a United States district court." 18 U.S.C. § 2710(c)(1) (emphasis added). Congress did not restrict the VPPA's protections to a narrowly defined subcategory of people. Instead, it paired a broad prohibition with a broad cause of action. *See* 18 U.S.C. §§ 2710(b)(1), (c)(1). And this Court has explained the law's "any person aggrieved" formulation covers "anyone even *arguably* within the zone of interests to be protected or regulated by the statute." *FDA v. R. J. Reynolds Vapor Co.*, 606 U.S. 226, 232–33 (2025) (internal quotation marks and citation omitted).

Critically, the Sixth Circuit majority agreed Mr. Salazar was aggrieved by the disclosures here. *See* Pet. App. at 7a–8a (holding Mr. Salazar "suffered a concrete injury by reference to well-established privacy harms"); *see also Pileggi*, 146 F.4th at 1227–31 (agreeing the plaintiff was aggrieved by unconsented-to disclosures). But it affirmed dismissal based on an artificially narrowed interpretation of "goods or services"—and, by extension, "consumer." Pet. App. 2a, 13a–15a, 19a. This mismatch is telling. As explained above, the majority's audiovisual limitation assumes Congress did not mean what it said in Section 2710(a)(1). *See supra* Part I.A.1. But it also assumes Congress did not mean what it said in Section 2710(c)(1).

Congress's repeated use of "any" reinforces Section 2710(a)(1)'s broad language. It also leaves "no room" for courts to impose their own limitations on Section 2710(a)(1)'s broad text. *Ames*, 605 U.S. at 310. When it comes to Section 2710(a)(1), it makes no difference whether

an individual subscribes to an online newsletter, buys bubblegum, or rents ANY GIVEN SUNDAY (Warner Bros. 1999) from a video tape service provider. All three result in "consumer" status.

D. Adding an atextual limitation on "goods or services" creates surplusage elsewhere in the statute.

Yet another "cardinal principle of statutory construction" requires this Court "to give effect, if possible, to every clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Accordingly, this Court is "reluctant to treat statutory terms as surplusage in any setting." *Id.* (internal quotation marks, citations, and brackets omitted). But it is "especially unwilling to do so" when the word being considered occupies a "pivotal . . . place in the statutory scheme." *Id.*

Consider again Section 2710(a)(3). It contains the same prepositional phrase—"from a video tape service provider"—the Sixth Circuit majority read as narrowing Section 2710(a)(1)'s language. Pet. App. 14a–15a; *see also Pileggi*, 146 F.4th at 1235 (relying on the same prepositional phrase). But that definition also includes the modifier "video" before "materials or services." 18 U.S.C. § 2710(a)(3). The majority's reading leaves that word no "operative significance." *Pulisfer*, 601 U.S. at 141. It can do only what "from a video tape service provider" already does.

Judge Bloomekatz and the Second Circuit highlighted this problem. *See* Pet. App. 32a (Bloomekatz, J., dissenting) (explaining the majority's reading renders

Section 2710(a)(3)'s video-specific modifier "superfluous" because that provision "has the same limiting context the majority emphasizes"); *NBA*, 118 F.4th at 548 ("But if 'goods or services' are, by definition, audiovisual materials, then Congress's express restriction in the definition of 'personally identifiable information' to information about '*video* materials or services' would be superfluous.").

Pause again for a moment to consider the significance of "video" in the *Video* Privacy Protection Act. As the D.C. Circuit noted, that word appears in the VPPA's "title, five times in the definitional section, and thirteen times in the statute as a whole." *Pileggi*, 146 F.4th at 1236. It is no doubt a "pivotal" word, and Congress was not shy about using it. Any reading that makes *that* word surplusage, in *this* statute, should be viewed with deep skepticism.

But "video" is not the only word the Sixth Circuit majority's reading renders inoperative. Rewind a bit in Section 2710(a)(3) to "requested or obtained." By reading Section 2710(a)(1) and Section 2710(a)(3) to refer to the same subject matter (despite Congress's different terminology), the majority collapsed the differing relationship language, too. Section 2710(a)(3)'s broader relationship language can do no independent work because, under the majority's reading, one is protected by the VPPA only if—as to the same subject matter—he satisfies Section 2710(a)(1)'s narrower relationship language.

And one who satisfies that narrower specification will *always* satisfy the broader one. There is simply no way to have rented, purchased, or subscribed to an audiovisual good or service without also having "requested or obtained" it. Thus, "requested or obtained" adds nothing.

Counting the words after "includes," Congress used just twenty-one words to define "personally identifiable information." 18 U.S.C. § 2710(a)(3). According to the Sixth Circuit majority, three of those words serve no function. That is "an unnerving amount" of surplusage for such a short statutory provision. *Fischer*, 603 U.S. at 498.

But there is one further problem. Under the majority's approach, every transaction that gives rise to "consumer" status necessarily produces "personally identifiable information" as well. The D.C. Circuit admitted as much. *See Pileggi*, 146 F.4th at 1237 (holding "the videos for which viewing history is disclosed must be the same video materials or services that the individual purchased, rented, or subscribed to"). Paramount agrees. *See* Br. in Opp. 15–16 (arguing the VPPA requires a single transaction to produce both a "consumer" and "personally identifiable information").

If one statutory element invariably leads to the other, though, one is surplusage *in its entirety*. As this Court has explained, "the canon against surplusage applies with special force" when a reading "renders an entire subparagraph meaningless." *Pulsifer*, 601 U.S. at 143 (citation and brackets omitted). "And still more when the subparagraph is so evidently designed to serve a concrete function." *Id.* Congress's definitions of "consumer" and "personally identifiable information" fit that mold.

The fix here is simple. By referencing different subject matters in Section 2710(a)(1) and Section 2710(a)(3), Congress confirmed a single video tape service provider can provide *both* "video materials and services" *and* other "goods or services" more generally. 18 U.S.C. §§ 2710(a)(1), (a)(3). Renting, purchasing, or subscribing to the latter

makes one a "consumer." *Id.* § 2710(a)(1). Requesting or obtaining the former gives rise to "personally identifiable information." *Id.* § 2710(a)(3). Giving the different terms different meanings, each consonant with ordinary usage, eliminates all the surplusage the Sixth Circuit majority's reading creates.

E. Adding an atextual limitation on Section 2710(a)(1)'s broad language forces "goods or services" to take two different meanings in the VPPA.

The flipside of the meaningful-variation canon is the consistent-usage canon. This canon recognizes that, "[i]n a given statute, the same term usually has the same meaning." *Pulsifer*, 601 U.S. at 149. Accordingly, "[t]his Court does not lightly assume that Congress silently attaches different meanings to the same term" in a single statute. *Azar v. Allina Health Servs.*, 587 U.S. 566, 574 (2019).

This time, consider Section 2710(a)(1) alongside Section 2710(b)(2)(D)(ii). In effect, the two provisions use the same phrase. *Compare* 18 U.S.C. § 2710(a)(1) (using "goods or services"), *with id.* § 2710(b)(2)(D)(ii) (using "goods and services"). Per the Sixth Circuit majority, the unmodified phrase is limited to audiovisual materials in Section 2710(a)(1). But there is not a single hint that the phrase might be so limited in Section 2710(b)(2)(D)(ii). Instead, that provision plainly applies to disclosures made to market *any* goods and services. *Id.* § 2710(b)(2)(D)(ii).

This reality leaves just two possibilities: The majority must either artificially limit "goods and services" in

Section 2710(b)(2)(D)(ii) or read two functionally identical phrases in the same statute to mean different things. Nothing in the statutory text supports either approach.

Section 2710(a)(1)'s surrounding context—namely, the prepositional phrase "from a video tape service provider"—cannot account for the specialized meaning the majority gave "goods or services" there. *See supra* Part I.B; *infra* Part II.A. But Section 2710(b)(2)(D)(ii) does not even have that context. There is no textual or contextual reason to limit "goods and services" there. Nor does anything in the text suggest Congress used this well-known phrase—in a single statute—to mean two different things.

Accordingly, Section 2710(b)(2)(D)(ii) provides yet another clue that the majority's reading is untenable. And the simple act of giving the unmodified phrase its ordinary meaning in both places avoids the trouble entirely.

F. Declining to impose an atextual limitation on Section 2710(a)(1) discourages further atextual innovation.

The Sixth Circuit majority's audiovisual limitation "lacks any basis in [Section 2710(a)(1)'s] text." *Ames*, 605 U.S. at 313–14 (Thomas, J., concurring). Instead, the majority simply "add[ed] in what Congress left out." *Antrix*, 605 U.S. at 233. Judicially imposing an "atextual requirement[]" of this sort tends to present "serious challenges." *Ames*, 605 U.S. at 318 (Thomas, J., concurring). For example, it tends to "distort the underlying statutory text." *Id.* at 313. It also tends to introduce "doctrinal ambiguities" that courts have "no principled way to resolve" because there is no "underlying

legal authority on which to ground their analysis." *Id.* at 315.

Consider just three examples. *First*, the majority's logic produces Schrödinger's video tape service provider. The VPPA defines a "video tape service provider" as "any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. § 2710(a)(4). Here, the majority accepted that Paramount is a "video tape service provider." Pet. App. 11a n.7. At the same time, the majority held Paramount was not "acting" as a "video tape service provider" when it sent Mr. Salazar an online newsletter. Pet. App. 16a. This "acting" analysis opens the paradox.

A hypothetical might bring the problem into sharper focus. Suppose two customers approach two cashiers at Potomac Video at the same time. The first buys a Butterfinger candy bar. The second rents BACK TO THE FUTURE (Universal Pictures 1985). Under the majority's approach, on this set of facts, Potomac Video simultaneously is and is not a "video tape service provider" based on how it is "acting" toward these concurrent customers. "Really, it is quite the puzzle." *Rico*, 146 S. Ct. at 955.

But this "acting" analysis is a statutory distortion. Section 2710(a)(4) provides a stable definition for "video tape service provider." The text provides no basis to conclude that a single entity might sometimes act as a "video tape service provider," and sometimes not, depending on what is included in each of its individual transactions. Paramount is always a "video tape service

provider" because it is engaged in the business of delivering audiovisual materials. 18 U.S.C. § 2710(a)(4).

That neighboring definitions refer to both "goods or services" and "video materials or services from a video tape service provider" independently confirms that an entity keeps its status as a "video tape service provider" no matter which subject matter it happens to provide in a particular moment. *Id.* §§ 2710(a)(1), (a)(3). The majority's "acting" carveout is a judicial invention.

Second, the majority's holding creates a similar paradox as to whether Paramount's newsletter is "audiovisual material." To be sure, the court held the newsletter was not audiovisual material in this case, but only because Mr. Salazar did not allege "he had accessed videos through the newsletter." Pet. App. 19a.[3] The D.C. Circuit reached an even more surprising conclusion. It held "an e-newsletter that includes videos and video links" is not necessarily an audiovisual good or service. *Pileggi*, 146 F.4th at 1237. That court, too, believed such a newsletter qualifies based on how an individual interacts with it. *See id.*

Judge Bloomekatz saw the problem with this logic. She wondered: "[I]f a person purchases a video cassette tape or DVD but does not actually watch the movie, does it cease to be an audiovisual good?" Pet. App. 38a n.4 (Bloomekatz, J., dissenting). It is "curious reasoning" to categorize a

3. This holding contradicts Mr. Salazar's allegations. *See* Pet. App. 84a (alleging Mr. Salazar "used his 247Sports.com digital subscription to view Video Media through 247Sports.com"); Pet. App. 2a, 4a & n.3, 11a (the majority agreeing the online newsletter is the only thing to which Mr. Salazar subscribed).

good or service as "audiovisual" based only on whether and how an individual uses it. *Id.* But recall that Mr. Salazar is not the only person receiving Paramount's newsletter. It is perhaps more "curious" that a single newsletter, sent to multiple subscribers, both is and is not "audiovisual" in nature depending on which recipients click which links.

Consider, too, that an individual might watch a DVD—or click a newsletter's link—years after receiving it. Under the majority's logic, an item might become an "audiovisual" good or service, and the individual who bought it a "consumer," years after the operative transaction. Of course, the provider is unlikely to have any way of knowing whether or when an individual finally uses the item. It is likewise difficult to see how this later-acquired "audiovisual" status can travel backwards in time so that the provider was really "acting" as a provider years earlier. The results just keep getting "curiouser and curiouser." ALICE IN WONDERLAND (Walt Disney 1951). And these anomalies are exactly the kind of "confusion" atextual requirements tend to invite. *Ames*, 605 U.S. at 313, 326 (Thomas, J., concurring).

Third, other courts have held that newsletters qualify as "audiovisual" goods or services only if they "function[] as a login," give subscribers "extra benefits as viewers," or are otherwise "required to access" videos not available to the general public. *Carter v. Scripps Networks, LLC*, 670 F. Supp. 3d 90, 99 (S.D.N.Y. 2023); *see also, e.g.*, *Golden v. NBCUniversal Media, LLC*, No. 22 Civ. 9858, 2024 WL 4149219, at *4 (S.D.N.Y. Sept. 11, 2024) (dismissing a VPPA claim even though the plaintiff clicked the newsletter's links to watch videos because she did not allege those links provided "unique video viewing benefits" or "*exclusive*

video content otherwise unavailable to a member of the general public"); Pet. App. 19a (holding the newsletter here was not "audio visual material" in part because the videos it linked "were accessible to anyone, even those without a newsletter subscription").

But the VPPA nowhere requires one to have "extra," "exclusive," or "unique" access to any good or service—audiovisual or not—for any reason, let alone as a condition of "consumer" status. As these cases show, the atextual slope has proven especially slippery. One atextual requirement often turns into more. And those layered judicial creations inevitably "generate complexity, confusion, and erroneous results." *Ames*, 605 U.S. at 326 (Thomas, J., concurring). To borrow a phrase, the way to avoid those undesirable ends is to avoid these atextual beginnings. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 641 (1943).

II. The Sixth Circuit majority's minimal statutory analysis does not withstand scrutiny.

Taken together, the above textual and contextual clues confirm that, when Congress used the unmodified phrase "goods or services" in Section 2710(a)(1), it said what it meant and meant what it said. The Sixth Circuit majority offered just two justifications for its contrary conclusion. Neither warrants the insertion of an atextual "audiovisual" modifier in Section 2710(a)(1).

A. The unmodified "goods or services" in Section 2710(a)(1) are not associated with the "audiovisual materials" in Section 2710(a)(4).

The Sixth Circuit majority based its holding primarily on the associated-words canon. *See* Pet. App. 13a–16a. This canon teaches that a word is sometimes "given more precise content by the neighboring words with which it is associated." *Fischer*, 603 U.S. at 487 (internal quotation marks and citation omitted). It ensures that, "regardless of how complicated a sentence might appear," "none of its specific parts are made redundant by a clause literally broad enough to include them." *Id.* at 488.

The majority used the associated-words canon to link, via the portal of the prepositional phrase "from a video tape service provider," the unmodified "goods or services" in Section 2710(a)(1) to the "prerecorded video cassette tapes or similar audio visual materials" in Section 2710(a)(4). Pet. App. 13a–15a. This application of the associated-words canon is certainly atypical. *See* Scalia & Garner, *Reading Law* 197 (noting that "most associated-words cases involve listings—usually a parallel series of nouns and noun phrases, or verbs and verb phrases"). In addition, the majority's use of the canon bristles with linguistic difficulties.

First, the only association between "goods or services" and "prerecorded video cassette tapes or similar audio visual materials" is that either might come "from a video tape service provider." But ordinary speakers use "from" to specify a source, not to limit the scope of an unrestricted phrase like "goods or services." *See supra* Part I.B. Moviegoers, for example, did not expect JAWS

(Universal Pictures 1975) and THE LORAX (Universal Pictures 2012) to refer only to the same subject matter merely because both films happened to come "from" the distribution company Universal Pictures. One preposition cannot carry that weight.

If—counterfactually—Congress had defined "video tape service provider" to include only those dealing exclusively in audiovisual materials, "from a video tape service provider" would be a substantial limiting factor. But, as the Second Circuit explained, it did not. *See NBA*, 118 F.4th at 548 (noting the definition of "video tape service provider" "is not limited to entities that deal *exclusively* in audiovisual content").

Instead, Congress's definition of "video tape service provider" "cast[s] a wide net." *Id.* It "ensure[s] that businesses dealing in audiovisual goods or services satisfy the definition even if they *also* deal in non-audiovisual goods or services." *Id.*; *see also* Pet. App. 26a (Bloomekatz, J., dissenting) (noting the definition "captur[es] department stores, supermarkets, [and] other companies that are 'engaged' in many commercial pursuits," so long as those pursuits also include "the 'rental, sale, or delivery' of video tapes and the like").

In addition, the definitions of "consumer" and "personally identifiable information" unambiguously show that a single "video tape service provider" can provide both "video materials or services" and "goods or services." *See supra* Part I.D. Thus, there is no limiting association between "goods or services" and "prerecorded video cassette tapes or similar audio visual materials" here. A "video tape service provider" can engage in transactions involving either or both.

Second, this purported association overlooks "services" in Section 2710(a)(1). The definition of "video tape service provider" mentions only "prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. § 2710(a)(4). It does *not* mention "services." And "materials" cannot include "services" without rendering even more of the definition of "personally identifiable information" surplusage. *Id.* § 2710(a)(3) (mentioning both "materials" and "services"); *see also supra* Part I.D (highlighting surplusage issues).

Courts have taken varying approaches to this self-inflicted problem. The Sixth Circuit majority, for example, affirmed dismissal because Mr. Salazar "did not plausibly allege that the newsletter itself was an 'audio visual material.'" Pet. App. 19a; *see also* Pet. App. 2a (similar). It never assessed whether the newsletter was a qualifying "service" under Section 2710(a)(1). The reason is simple: It used the supposed association between the terms in Section 2710(a)(1) and Section 2710(a)(4) to read "services" out of the statute.

Similarly, the D.C. Circuit sometimes required one to "rent, purchase, or subscribe" to a "video or similar audio-visual material" to gain "consumer" status. *See, e.g.*, *Pileggi*, 146 F.4th at 1231 (twice referring to audiovisual "materials" without mentioning "services"); *id.* at 1232 (similar). But that court seems to have sensed the problem because it sometimes, without explanation, added "services" back into consideration. *See, e.g.*, *id.* at 1224 (requiring one to rent, purchase, or subscribe "to a video cassette tape or similar audio-visual good or service" to gain "consumer" status); *id.* at 1231–32 (similar).

This inconsistency highlights the awkwardness of the supposed association. And whether a court adds "services" back (like the D.C. Circuit) or leaves it out (like the Sixth Circuit majority), there is no way to credit the supposed association without doing some violence to the word.

Third, as this Court explained over 100 years ago, the associated-words canon applies only when words are "otherwise obscure or doubtful." *Russell Motor Car Co. v. United States*, 261 U.S. 514, 519 (1923). But the Sixth Circuit majority did not hold that the unmodified phrase "goods or services" is ambiguous, obscure, or doubtful. Nor did it use this canon to remove some redundancy that might otherwise appear in the VPPA. *See Fischer*, 603 U.S. at 487. If anything, it impermissibly used the canon "to create . . . doubt." *Russell Motor Car*, 261 U.S. at 519.

Fourth, the majority did not identify an accepted meaning of the unmodified phrase "goods or services," in any other context, that is limited to audiovisual materials. This fact, too, is fatal. Even under the associated-words canon, a word capable of multiple meanings must still "be assigned a permissible meaning." Scalia & Garner, *Reading Law* 195. Relatedly, the canon can "limit a general term to a subset of all the things . . . it covers," but only according to that general term's "ordinary meaning." *Id.* at 196. Here, however, "audiovisual materials" is not a permissible, let alone ordinary, meaning of "goods or services." *See supra* Part I.A.1.

Given these defects, the Sixth Circuit majority's use of the associated-words canon "is like using a hammer to pound in a screw—it looks like it might work, but using it botches the job." *Fischer*, 603 U.S. at 509 (Barrett, J., dissenting).

B. The VPPA's legislative history provides no reason to restrict "goods or services" to audiovisual materials.

In a footnote, the Sixth Circuit majority relied on legislative history to justify its audiovisual limitation. *See* Pet. App. 16a–17a n.9. It suggested the following passage "bolstered" its narrowing construction:

> [S]imply because a business is engaged in the sale or rental of video materials or services does not mean that all of its products or services are within the scope of the bill. For example, a department store that sells video tapes would be required to extend privacy protection to only those transactions involving the purchase of video tapes and not other products.

Pet. App. 17a n.9 (quoting S. Rep. No. 100-599, at 12). As the brackets make clear, the majority omitted the beginning of the first sentence it quoted.[4] In its entirety, that sentence reads: "*The definition of personally identifiable information includes the term 'video' to make clear that* simply because a business is engaged in the sale or rental of video materials or services does not mean that all of its products or services are within the scope of the bill." S. Rep. No. 100-599, at 12 (emphasis added).

This snippet of legislative history, which concerns Section 2710(a)(3) instead of Section 2710(a)(1), is no reason

4. Paramount advanced the same argument—also in a footnote—with a similar partial quotation. *See* Br. in Opp. 12–13 n.3.

to limit the scope of "goods or services" in the definition of "consumer." But, when read in its entirety, as it must be, this portion of the Senate Report reinforces the VPPA's text in two relevant ways.

First, it shows Congress accounted for the fact that video tape service providers might not deal exclusively in audiovisual goods or services. A "department store that sells video tapes," for example, would need to extend the VPPA's "privacy protection to only those transactions involving the purchase of video tapes." *Id.* Because of the definition of "personally identifiable information," the store would not need to extend the same protections to transactions involving its "other products." *Id.* Still, one would become that store's "consumer" by renting, purchasing, or subscribing to those "other products." *See* 18 U.S.C. § 2710(a)(1).

Second, and relatedly, the Senate Report confirms Congress used "personally identifiable information," not "consumer," to zero in on video-specific interactions. *See NBA*, 118 F.4th at 548 (explaining that, while "sharing information that is not about video materials or services is beyond the scope of the statute," "it's the definition of 'personally identifiable information' that limits what can be shared, not the definition of 'consumer'"). And Congress created that audiovisual limitation in Section 2710(a)(3) by including a video-specific modifier. *See supra* Part I.B. Thus, legislative history underscores the meaningful variations between Section 2710(a)(1) and Section 2710(a)(3). *See id.*

III. The D.C. Circuit's reasoning fares no better.

The D.C. Circuit offered several more reasons to insert an atextual audiovisual limitation into Section 2710(a)(1). Paramount has adopted these reasons. *See* Br. in Opp. 12–14. But they, too, quickly unravel. Indeed, these supplementary justifications all fail for the same basic reason—namely, they are "elaborate efforts to avoid the most natural meaning of the [VPPA's] text." *Patel*, 596 U.S. at 340.

A. Neither the VPPA's title nor the liability clause's heading supply the video-specific modifier Congress left out of Section 2710(a)(1).

The D.C. Circuit's first additional consideration concerns the statute's title and headings. *See Pileggi*, 146 F.4th at 1232. The court explained these features "point to a narrow reading that is centered around videos and those who market them." *Id.* (internal quotation marks, brackets, and citation omitted).

> After all, Congress named the law the "*Video* Privacy Protection Act of 1988." The Act's title is "Wrongful disclosure of *video* tape rental or sale records." And the liability section's heading is "*Video* Tape Rental and Sale Records."

Id. (citations omitted).

To start, though, a statute's title and headings "cannot limit the plain meaning of the text." *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (focusing on titles);

see also Bhd. of R.R. Trainmen v. Baltimore & O.R. Co., 331 U.S. 519, 528–29 (1947) (including both titles and headings). Instead, they are "of use only when they shed light on some ambiguous word or phrase." *Bhd. of R.R. Trainmen*, 331 U.S. at 529. Here, however, there is no ambiguity.

In addition, just as producers do not include every scene in a movie's official trailer and designers do not cram the film's entire dialogue onto the promotional poster, it is hardly "unusual" for a title or heading to fail "to refer to all the matters" Congress "wrote into the [statutory] text." *Bhd. of R.R. Trainmen*, 331 U.S. at 528. Titles and headings are just "short-hand reference[s] to the general subject matter involved." *Id.*

Here, for example, neither the title "Wrongful disclosure of video tape rental or sale records" nor the heading "Video Tape Rental and Sale Records" reflects the fact that one can become a "consumer" by virtue of a subscription, not just a rental or sale. 18 U.S.C. § 2710(a)(1). Nor does either reveal that even an unfulfilled request for "specific video materials or services" is protected as "personally identifiable information." *Id.* § 2710(a)(3).

Because the statutory text makes those points clear, though, subscribers are still "consumers" and unfulfilled requests still give rise to "personally identifiable information." The title and headings do not "take the place of the detailed provisions of the text." *Bhd. of R.R. Trainmen*, 331 U.S. at 528. Nor are they meant to "undo or limit that which the text makes plain." *Id.* at 529.

That the VPPA's various shorthand references focus on videos is both unsurprising and irrelevant. VPPA liability attaches only when a "*video* tape service provider" has "knowingly disclose[d] . . . personally identifiable information concerning any consumer." 18 U.S.C. § 2710(b)(1) (emphasis added). An entity counts as a "video tape service provider" only if it engages in, among other things, the "rental, sale, or delivery" of "*audio visual* materials." *Id.* § 2710(a)(4) (emphasis added). And the disclosed information must identify the consumer "as having requested or obtained specific *video* materials or services." *Id.* § 2710(a)(3) (emphasis added).

As a whole, the VPPA is indeed "centered around videos and those who market them." *Pileggi*, 146 F.4th at 1232 (internal quotation marks and citation omitted). But that fact does not mean every word used in the VPPA must share that narrow, video-specific focus. Congress's definition of "ordinary course of business" drives home the point. That definition—one of just four provided in the VPPA—never mentions the word "video." *See* 18 U.S.C. § 2710(a)(2) (defining "ordinary course of business" to mean "only debt collection activities, order fulfillment, request processing, and the transfer of ownership").

That the word "video" appears in multiple other places in the VPPA, including the title and the liability clause's heading, does not grant a court license to narrow the definition of "ordinary course of business" by inserting the word "video." Likewise, courts cannot narrow the definition of "consumer" by inserting a video-specific modifier before "goods or services" just because "video" appears elsewhere in the statute.

B. The VPPA's remedy provision does not restrict Section 2710(a)(1).

The D.C. Circuit next turned to the VPPA's remedies. *See Pileggi*, 146 F.4th at 1233. The statute authorizes courts to award no less than "liquidated damages in an amount of $2,500." 18 U.S.C. § 2710(c)(2)(A). It gives them discretion to award punitive damages, too. *See id.* § 2710(c)(2)(B). The D.C. Circuit held that the availability of liquidated damages showed "Congress's desire to protect consumers of actual video services with such remedies." *Pileggi*, 146 F.4th at 1233. It also held that the availability of punitive damages implicated the rule of lenity, so that the VPPA must "be construed narrowly." *Id.*

There are several problems with this approach. *First*, one's status as a "consumer" is a necessary, but not a sufficient, condition for VPPA liability. Liability requires multiple other elements: (1) a video tape service provider, (2) personally identifiable information, and (3) a knowing disclosure. 18 U.S.C. § 2710(b)(1). Paramount agrees the existence of a "consumer" relationship, standing alone, does not trigger VPPA liability. *See* Br. in Opp. 9 (noting multiple other "elements" are required). Thus, the remedies—which hinge on all the statutory elements combined—reveal nothing about the scope of the "goods or services" included in Section 2710(a)(1).

And, anyway, the D.C. Circuit used the availability of liquidated damages only to justify a near miss—namely, to conclude that Congress sought "to protect consumers of actual video services." *Pileggi*, 146 F.4th at 1233. But the text itself shows Congress sought to protect a video tape service provider's consumers, of whatever kind,

without distinction or limitation, who "requested or obtained specific video materials or services." 18 U.S.C. §§ 2710(a)(3), (b)(1). The court provided no reason to think liquidated damages are inconsistent with that slightly broader protection.

Second, giving the unmodified phrase "goods or services" its full and fair meaning is in no way a "judicial expansion of the text." *Pileggi*, 146 F.4th at 1233. It is merely the faithful adherence to plain text and ordinary meaning, which unsurprisingly produces results aligned with several other canons of statutory interpretation. *See supra* Part I. By contrast, inserting an atextual audiovisual limitation before "goods or services" in Section 2710(a)(1) is a transparent judicial *contraction* of the statutory text.

Third, there is no place for the rule of lenity here. To start, it is unclear whether that rule applies in a purely civil context. *See, e.g.*, *Bittner v. United States*, 598 U.S. 85, 101–03 (2023) (garnering two votes for the affirmative answer, even in the context of a statute that, unlike the VPPA, provides "criminal as well as civil ramifications"); *see also generally United States v. Thompson/Center Arms Co.*, 504 U.S. 505 (1992).

Assuming it can be applied here, the rule of lenity operates "only at the end of the process," "when the ordinary canons of statutory construction have revealed no satisfactory construction." *Lockhart v. United States*, 577 U.S. 347, 361 (2016); *see also Barber v. Thomas*, 560 U.S. 474, 488 (2010) (explaining the rule applies only "if, after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in

the statute, such that the Court must simply guess as to what Congress intended" (internal quotation marks and citations omitted)).

Here, there is no ambiguity, let alone a "grievous" one. And, even if there had been, the traditional tools of statutory interpretation—namely, the ordinary-meaning, meaningful-variation, general-terms, surplusage, and consistent-usage canons—remove it. *See supra* Part I. Because there is no need to "guess" here, there is "no role for lenity to play." *Pulsifer*, 601 U.S. at 153.

C. Congress's purpose does not justify the atextual limitation.

Next, the D.C. Circuit held that Congress's "purpose of insulating video-viewing records from disclosure" would not be served unless "consumer" is restricted to those who rent, purchase, or subscribe to video goods or services. *Pileggi*, 146 F.4th at 1233. Not so. In fact, adding that atextual limitation undermines Congress's broad purpose. *See NBA*, 118 F.4th at 549 (holding that "[g]rafting unstated limitations" onto Section 2710(a)(1) "would be inconsistent with Congress's purpose" of prohibiting disclosures of "personally identifiable information except in certain, limited circumstances").

Put simply, the VPPA achieves its purpose without a judicial rewrite. The law prohibits the disclosure of information that identifies a consumer "as having requested or obtained specific video materials or services from a video tape service provider." 18 U.S.C. §§ 2710(a)(3), (b)(1). It does so no matter what "goods or services" that consumer happened to rent, purchase, or subscribe to from the same entity. *Id.* §§ 2710(a)(1), (b)(1).

This approach, which meticulously adheres to the text, "insulat[es] video-viewing records from disclosure." *Pileggi*, 146 F.4th at 1233.

Finally, the D.C. Circuit feared giving "goods or services" its ordinary meaning would make the statute "unadministrable." *Id.* at 1234. It believed it would be a "daunting task" for video tape service providers to sort their "consumers" from those who simply visit their websites. *Id.* As a result, it worried such providers might just assume "all visitors to their websites are consumers," which would leave "consumer" no real work to do. *Id.*

This concern "swerve[s]" away from interpretive principle by "put[ting] policy considerations in the driver's seat." *Patel*, 596 U.S. at 346; *see also Muldrow*, 601 U.S. at 358 (holding "policy objections cannot override" statutory text). In any event, there is no reason to credit the D.C. Circuit's unsupported speculation that providers cannot readily identify their own consumers, least of all at the motion-to-dismiss stage.

Nor is there any reason to think the task becomes easier if a "consumer" must rent, purchase, or subscribe to *audiovisual* goods or services instead of the unrestricted "goods or services" referenced in Section 2710(a)(1). And, even if a provider made assumptions about its website visitors, it would not transform non-consumers into statutory "consumers." Lastly, this sort of "practical (not linguistic) superfluity" is no reason to "overlook the most natural linguistic interpretation of this statute's terms." *Feliciano*, 605 U.S. at 52–53.

There is simply no basis to rewrite the VPPA's definition of "consumer" to impose a limitation that appears nowhere in the text.

CONCLUSION

For the foregoing reasons, this Court should vacate the judgment and the decision below, and then remand for further proceedings.

Respectfully submitted,

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