

No. 25-459

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**In the Supreme Court of the United States**

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MICHAEL SALAZAR,  
PETITIONER,

*v.*

PARAMOUNT GLOBAL, DBA 247SPORTS,  
RESPONDENT.

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*On Writ of Certiorari  
To the United States Court of Appeals  
For The Sixth Circuit*

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BRIEF OF PROFESSOR VICTORIA L. SCHWARTZ  
AS AMICUS CURIAE SUPPORTING PETITIONER

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**INTEREST OF THE *AMICUS CURIAE*<sup>1</sup>**

Victoria L. Schwartz is a Professor of Law and the Director of the Entertainment, Media and Sports Law program at Pepperdine Caruso School of Law. Her interest as amicus curiae is the proper interpretation of the Video Privacy Protection Act (“VPPA”) of 1988. This brief draws on amicus’s scholarship and teaching in the fields of entertainment law and privacy law, both of which are implicated by this case.

**SUMMARY OF ARGUMENT**

This case offers an opportunity for the Court to affirm that the language Congress chose for the definition of “consumer” in the Video Privacy Protection Act (“VPPA”) means exactly what it says. Namely, Congress defined “consumer” broadly as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” The ordinary understanding of this definition places two specific restrictions on the term “consumer.” First, the consumer must be a “renter, purchaser, or subscriber of goods or services.” Second, those goods or services must be from a video tape service provider, itself a statutorily defined term. No further limitation appears in the statute. The statute does not limit “goods or services” to audio visual materials but only requires that they be from a video tape service provider. The Court should not add this additional judicially created limitation to the VPPA.

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<sup>1</sup> No counsel for a party authored any part of this brief. Nor did anyone, other than amicus and her academic institution, financially contribute to preparing or submitting it. This brief reflects only amicus’s views, not those of her academic institution.

The plain meaning of the statute should not be undermined by alleged concerns that the VPPA's privacy protections are obsolete in light of technological and business changes in the ways that consumers access audio visual content. Rather, it is important to recognize that Congress revisited and amended the VPPA in 2012 and chose to retain the statute's original definition of "consumer." By 2012, the technological and business landscape for the distribution of audio visual content shared many key elements with today's industry, especially with regard to streaming. Therefore, the fact that Congress chose to keep the definition of "consumer" intact in 2012, demonstrates that it did not consider the definition obsolete.

By requiring that a "consumer" be any "renter, purchaser, or subscriber," Congress ensured that the video tape service provider would necessarily have a contractual relationship with the consumer. This makes sense in the overall framework of the VPPA, which allows video tape service providers to avoid liability if they obtain informed, written consent from consumers. Obtaining such informed, written consent is straightforward where there is an existing contractual relationship, which is always the case for a renter, purchaser, or subscriber. In fact, in the 2012 amendments to the VPPA, Congress focused its revisions on making consent from consumers easier to obtain in light of new technology. This carefully considered framework offers adequate limitations on the scope of liability under the VPPA.

Besides being inconsistent with the statute's plain language, limiting "goods or services" to only audio visual materials would make it easy to circumvent the VPPA's privacy protections. Emailed newsletters are

already having a resurgence as a tactic for engaging with consumers. Allowing companies to restructure their business model to escape VPPA liability by having consumers subscribe to a newsletter or something similar rather than directly for audio visual content, would undermine the privacy protections of the VPPA.

For all of these reasons, the Court should not write in this additional limitation on the VPPA's scope.

### ARGUMENT

Unlike much of the rest of the world, the United States notoriously does not have generally applicable federal privacy statutes. The United States does, however, protect privacy through a number of specific statutes in particularly sensitive areas such as health, finance, and education. In doing so, Congress inherently recognizes that corporations left to their own devices inadequately protect privacy due to a number of market failures that require legislative intervention. *See generally* Victoria L. Schwartz, *Corporate Privacy Failures Start at the Top*, 58 B.C. L. Rev. 1693, 1698–1736 (2016) (discussing the existing consumer-centric explanations for the widespread failure of corporations to protect privacy and offering an additional supply-side corporate market-distortion explanation).

Congress initially enacted one such subject-specific privacy law, the Video Privacy Protection Act (“VPPA”), in 1988 with broad bipartisan support after outrage from the invasion of privacy that occurred when a newspaper published the film rental history of a Supreme Court nominee. *See* 18 U.S.C. § 2710. Although its title and some of its language evoke vocabulary prominent in an earlier era, the statute was drafted broadly in such a way that its provisions

remain relevant to today’s digital entertainment environment. Indeed, the statute was amended by Congress to further account for technological changes in the Video Privacy Protection Act Amendments Act of 2012, Pub. L. No. 112-258, 126 Stat. 2414 (2013) (codified as amended at 18 U.S.C. § 2710(b)(2)(B)).<sup>2</sup>

While the VPPA has multiple provisions that have resulted in litigation, the question before this Court is straightforward. Should this Court take the VPPA’s precise statutory definition for the term “consumer,” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider” at face value as applying to any “goods or services from a video tape service provider”? The answer is yes. The VPPA’s statutory definition for “consumer” applies to all of a video tape service provider’s “goods or services.” The Court should not impose an additional limitation on the definition of “consumer” as applying to just audio visual materials that does not appear in the VPPA. In addition to this broad reading being faithful to the statutory language passed by Congress, an alternative more limited reading would enable companies to structure their businesses to thwart the VPPA’s privacy protections.

**I. The VPPA broadly defines “consumer” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.”**

The VPPA imposes liability on a “video tape service provider who knowingly discloses, to any person,

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<sup>2</sup> Congress voted to pass the law in 2012, but it was signed by the President and went into effect in 2013.

personally identifiable information concerning any consumer of such provider,” 18 U.S.C. § 2710(b)(1), except for disclosures that meet the requirements of one of the statutorily created exceptions. *Id.* § 2710(b)(2). Video tape service providers are themselves defined, in relevant part, 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.” *Id.* § 2710(a)(4).

Both courts below assumed that Paramount is a “video tape service provider” under this definition. *Salazar v. Paramount Global*, 683 F. Supp. 3d 727 (M.D. Tenn. 2023), *aff’d*, 133 F.4th 642 (6th Cir. 2025). Similarly, both courts below assumed that Paramount disclosed Mr. Salazar’s “personally identifiable information” when it disclosed his video-watching history to Facebook along with his Facebook ID, precisely the sort of information at the core of the statute’s protections. *Id.* The courts below, however, found that Mr. Salazar’s lawsuit for violation of the VPPA could not survive a 12(b)(6) motion to dismiss because, in their view, Mr. Salazar is not a “consumer” under the statute. *Salazar*, 683 F. Supp. 3d at 745; *Salazar*, 133 F.4th at 653. That conclusion is inconsistent with the VPPA’s statutory language.

**A. The plain language of the statute supports a broad understanding of “consumer.”**

The VPPA defines “consumer” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” 18 U.S.C. § 2710(a)(1). This Court has repeatedly recognized that the natural reading of the word “any” has an expansive meaning. *Patel*

*v. Garland*, 596 U.S. 328, 338 (2022); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218–19 (2008). The statutory definition of “consumer” would have made perfect sense with the word “a” replacing “any,” but by choosing to use the word “any,” Congress suggested a definition that is intentionally broad.

Despite that breadth, the VPPA does place important substantive limitations on its definition of the term “consumer.” The plain language of the VPPA’s definition requires any would-be consumer under the statute to establish two separate requirements. First, they must be a “renter, purchaser, or subscriber” of “goods or services.” 18 U.S.C. § 2710(a)(1). Second, those “goods or services” must be “from a video tape service provider,” a term which is itself precisely defined in the statute. *Id.*

The question before this Court is whether a third limitation, which does not appear in the statutory language, ought to be read into the statute. Is there a statutory requirement that the “goods or services” to which a “consumer” is a “renter, purchaser, or subscriber” be limited to audio visual materials? The Court should hold that the answer is no and should not impose this additional limitation that does not appear in the VPPA’s text.

**B. The controlling statutory language in the VPPA’s definition of “consumer” does not limit “goods or services” to audio visual materials.**

The Sixth Circuit’s majority decision below would add a third requirement to the two set out by Congress in order to be a “consumer” under the VPPA, namely that the “goods or services” themselves be “audio

visual materials.” *Salazar v. Paramount Global*, 133 F.4th 642, 650–51 (2025). This requirement is not consistent with the VPPA’s statutory language.

“Goods or services” is not a defined clause within the statute, thus the presumption is that its plain and ordinary meaning applies. *See Perrin v. United States*, 444 U.S. 37, 42 (1979) (“[U]nless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”). Both in 1988, as well as today, the ordinary meaning of “goods or services” is not limited to audio visual materials. *See Goods, Black’s Law Dictionary* (5th ed. 1979) (“Sometimes the meaning of ‘goods’ is extended to include all tangible items, as in the phrase ‘goods and services.’”).

“Goods or services” are also not a modified term within the statute, except regarding their origin. No adjective precedes the phrase “goods or services.” Instead, the phrase is followed by an origin requirement that the “goods or services” be “from a video tape service provider.” 18 U.S.C. § 2710(a)(1). This origin requirement is the only limitation the statute places on “goods or services.” Yet it is a significant limitation because “video tape service provider” itself is a defined term limiting the statute’s application to those 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).

As Judge Easterbrook succinctly pointed out, the statute “does not say ‘subscriber of . . . video services;’ it says ‘subscriber of . . . services *from a video tape service provider.*” *Gardner v. Me-TV Nat’l Ltd. P’ship*, 132 F.4th 1022, 1025 (7th Cir. 2025). In that case, the Seventh Circuit held that “[n]othing in the Act says

that the goods or services must be video tapes or streams.” *Id.* Similarly, the Second Circuit concluded that “[t]he phrase ‘goods or services’ in the VPPA is not cabined to audiovisual goods or services.” *Salazar v. Nat’l Basketball Ass’n*, 118 F.4th 533, 544 (2d Cir. 2024).

This Court has made clear that statutory language must control the meaning of legislation. *See, e.g., Thompson v. United States*, 604 U.S. 408, 413–18 (2025) (focusing on statutory language to define the scope of a statute). Here, the statutory language is clear. Congress did not choose to define or limit “goods and services” to audio visual goods and services.

Other statutory provisions within the VPPA confirm this conclusion. Congress uses the term “audio visual material” in two different provisions in the VPPA. Both the “video tape service provider” definition, and the provision establishing when disclosure is permissible reference “audio visual material[s].” 18 U.S.C. §§ 2710(a)(4), 2710(b)(2)(D)(ii). Under this Court’s precedent, we should not “lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply,” especially when it “has shown elsewhere in the same statute that it knows how to make such a requirement manifest.” *Jama v. Immigr. & Customs Enf’t*, 543 U.S. 335, 341 (2005). Congress showed it could use “audio visual” to limit or modify a noun but did not do so in connection with the broad phrase “goods and services” within the definition of “consumer.” Therefore, the VPPA’s definition of “consumer” should be read as containing only the express limitations provided by Congress.

The Sixth Circuit’s decision would write in the phrase “audio visual” where it does not appear in the VPPA presumably to create what it perceives as a necessary limiting principle on the scope of the VPPA. *See Salazar*, 133 F.4th at 650–51. Congress did in fact clearly lay out its two limiting principles in the statute’s text, namely that the person claiming to be a “consumer” for purposes of the statute must be a “renter, purchaser, or subscriber,” and second that the “goods or services” that the person rented, purchased, or subscribed to must be “from a video tape service provider.” 18 U.S.C. § 2710(a)(1). This Court ought not add on a third limitation where Congress itself did not do so.

**C. Congress revisited and amended the VPPA in 2012 in light of extensive technological and business changes but retained the statute’s original definition of “consumer.”**

Congress has not ignored the VPPA since it was originally enacted in 1988. Rather, Congress revisited and amended the VPPA with the Video Privacy Protection Act Amendments Act of 2012, in order to modernize it for a new technological and business era. Video Privacy Protection Act Amendments Act of 2012, Pub. L. No. 112-258, 126 Stat. 2414 (2013) (codified as amended at 18 U.S.C. § 2710(b)(2)(B)). The Sixth Circuit’s majority opinion entirely ignores this critical legislative update to the statute, one that shows that Congress had the opportunity to revise the definition of “consumer,” but opted not to do so. *See Salazar*, 133 F.4th at 644–53.

Before the Sixth Circuit, Paramount’s amicus impressed upon the court that the VPPA was “designed

to protect people who rented VHS and Betamax videocassettes at brick-and-mortar video rental stores,” such that applying it to modern times would “fundamentally transform the internet.” Brief Amicus Curiae of the Chamber of Commerce of the United States of America in Support of Defendant-Appellee, *Salazar v. Paramount Global*, 133 F.4th 642 (2024) (No. 23-5748), 2024 WL 519870. This argument entirely ignores the fact that by the time Congress revisited and amended the VPPA in 2012, people were not renting VHS and Betamax videocassettes at brick-and-mortar video rental stores, but rather the industry was well into the modern digital streaming era.

Instead, Congress’s 2012 amendments to the VPPA must be considered in light of the extensive technological and business changes in the way consumers received audio visual materials between the VPPA’s original enactment in 1988 and the revisions in 2012. Technologically, during the 24-year window between the original VPPA and its amendments, VHS and Betamax videocassettes were replaced first by DVD’s, then by Blu-ray, and finally by streaming audio visual content over the internet. See David Narkiewicz, *What is Blu-Ray Disc and Does it Matter to Me?*, 30 Pa. Law. 54, 54 (2008) (detailing the shift from Betamax, to VHS, to DVDs, and eventually to Blu-ray); Aditya Nair, Gregory Auerbach & Steven J. Skerlos, *Environmental Impacts of Shifting from Movie Disc Media to Movie Streaming: Case Study and Sensitivity Analysis*, 80 *Procedia CIRP* 393, 393 (2019) (“[S]treaming has replaced Blu-rays and DVDs as the preferred mode of entertainment consumption for American consumers.”). The legislative history confirms that Congress was well-aware of streaming technology when

discussing the amendments to the VPPA. *The Video Privacy Protection Act: Protecting Viewer Privacy in the 21st Century, Hearing Before the Subcomm. On Privacy, Tech. & the Law of the S. Comm. on the Judiciary*, 112th Cong. 3 (2012) (“I think it is clear that the law does cover new technologies like streaming because it does not just cover ‘prerecorded video cassette tapes.’ It also covers ‘similar audio-visual materials.’”).

This technological change led to parallel market changes in the distribution of audio visual content. Blockbuster filed for bankruptcy in 2010 after it had previously been the dominant distributor of audio visual materials from its founding in 1985, market dominance during the 1990’s and early 2000’s, and 2004 peak. Brook E. Gotberg, *Technically Bankrupt*, 48 *Seton Hall L. Rev.* 111, 145–49 (2017). As a result, by the time Congress passed its 2012 VPPA amendments, brick-and-mortar video rental stores like Blockbuster that rented VHS and Betamax videocassettes had long disappeared as the primary way in which consumers obtained audio visual material, and had been replaced first by Redbox kiosks, then by Netflix’s DVD-by-mail service, and then finally by Netflix’s streaming video service. See Sage Vanden Heuvel, *Fighting the First Sale Doctrine: Strategies for a Struggling Film Industry*, 18 *Mich. Telecomm. & Tech. L. Rev.* 661, 667–68 (2012) (explaining that video rental stores “peaked in 2003” only to be replaced with Redbox kiosks and Netflix’s “DVD-by-mail service,” and then its 2007 “streaming video service”); *Chapter Three: The Video Privacy Protection Act as a Model Intellectual Privacy Statute*, 131 *Harv. L. Rev.* 1766, 1768 (2018) (“The relevant players in video privacy are no longer Blockbuster and Hollywood Video, but rather Amazon,

Netflix, and Hulu.”); *see also* Evan Hess, *Code-ifying Copyright: An Architectural Solution to Digitally Expanding the First Sale Doctrine*, 81 *Fordham L. Rev.* 1965, 1967 (2013) (noting that in September 2011, Netflix’s CEO announced a restructuring where Netflix would solely stream movies over the Internet, however, the plan was swiftly retracted). Indeed, a VPPA class action lawsuit against streaming provider Hulu was filed in July 2011. *See* Class Action Complaint at 1, *In re Hulu Privacy Litig.*, No. C 11-03764 (N.D. Cal. July 29, 2011).

Additionally, by the time Congress passed its 2012 VPPA amendments, consumers did not only watch audio visual content on devices that attached to their home televisions. Rather, Congress was aware that smartphones had already become a ubiquitous part of the way that consumers engaged with content. S. Rep. No. 112-258, at 2 (2012). (“[S]o-called ‘on-demand’ cable services and Internet streaming services allow[ed] consumers to watch movies or TV shows on televisions, laptop computers, and cell phone.”).

Social media was also becoming a major player in the industry with Facebook, YouTube, and Twitter launching between 2004 and 2006, followed by Instagram in 2010. *See* Victoria L. Schwartz, *AI Influencers and a Right of Publicity*, 49 *Colum. J.L. & Arts* 355, 362 (2025). YouTube in particular was focused on video content from the outset, and Facebook added its video platform in 2007. *See* Amy R. Mellow, *...And the Ruling on the Field is Fair: A Fair Use Analysis of Uploading NFL Videos onto YouTube and Why the NFL Should License its Material to the Website*, 17 *S. Cal. Interdisc. L.J.* 173, 173 (2007) (marking YouTube’s first appearance in 2005 as a “video sharing spot on

the Internet”); Facebook, *Facebook Unveils Platform for Developers of Social Applications*, <https://tinyurl.com/4zfu7yxd> (last visited Apr 18, 2026) (announcing the 2007 launch of the app “Video,” which allows “for simple sharing of personal videos between friends within Facebook”). The legislative history confirms that Congress was aware of this change. S. Rep. No. 112-258, at 2 (2012). (“[T]he Internet ha[d] revolutionized the way that American consumers rent and watch movies and television programs . . . many Americans post[ed] their opinions and recommendations on social networking sites, like Facebook and Twitter.”).

Notably, despite these extensive technological and business changes to the industry, Congress chose not to amend the VPPA’s definition of “consumer” from the original statute. Instead, Congress retained the existing definition of “consumer” that, as explained above, on its plain language ought to be read broadly.

**II. The VPPA’s definition of “consumer” ensures a contractual relationship with the video tape service provider, which in turn creates an opportunity to avoid liability through informed, written consent.**

The VPPA’s statutory definition of the term “consumer” requires, that a “consumer” be “any renter, purchaser, or subscriber.” This requirement ensures that any “consumer” under the statute would necessarily have a contractual relationship with the video tape service provider. That contractual privity provides an important built-in limitation on the scope of the statute because it allows video tape service providers to attempt to negotiate informed, written consent from its consumers. Indeed, with the 2012

Amendments to the VPPA, Congress specifically made it easier for a video tape service provider to obtain such informed, written consent from its consumers in light of the technological changes presented by the internet.

**A. The VPPA’s requirement that a “consumer” be “any renter, purchaser, or subscriber” ensures a contractual relationship with the video tape service provider.**

The VPPA’s definition of the term “consumer” provides three possible contractual relationships between the consumer and the video tape service provider. The consumer may be a renter of goods or services from the video tape service provider; the consumer may be a purchaser of goods or services from the video tape service provider; or, the consumer may be a subscriber of goods or services from the video tape service provider. 18 U.S.C. § 2710(a)(1). The courts below and the parties all agree that the question in this case is whether Salazar satisfies the VPPA’s third option for “consumer” as a “subscriber of goods or services from a video tape service provider.” *Salazar v. Paramount Global*, 683 F. Supp. 3d 727, 741–42 (M.D. Tenn. 2023), *aff’d*, 133 F.4th 642, 649 (6th Cir. 2025). Indeed, the Sixth Circuit court correctly noted that the lower court did not need to address whether Salazar was a “renter” or “purchaser” under the VPPA because he only claimed to be a subscriber. *Salazar*, 133 F.4th at 645 n.2. While this is all accurate, focusing in too narrowly on the sole statutory option of “subscriber” risks missing an illuminating aspect of the way that Congress drafted the definition of “consumer.”

While the unadorned noun “consumer” might ordinarily be understood as deriving from the verb “to

consume,” meaning someone who consumes, the statute narrows this ordinary meaning with three more specific and limited means of achieving consumer status. All three options—a renter, a purchaser, and a subscriber—consist of other nouns that derive from verbs. Although none of the three are themselves defined in the statute, a renter is plainly understood as someone who rents, a purchaser is someone who purchases, and a subscriber is someone who subscribes. These three options are not random. Indeed, no other federal statute appears to use this precise trio in defining the term “consumer” or any other term.

The three possible options chosen by Congress ensure that anyone who satisfies the statute’s definition of “consumer” will necessarily have contractual privity with the video tape service provider. Inherent in the ordinary meaning of the term purchaser is someone who exchanges valuable consideration in order to acquire something, thus creating a valid contractual relationship. *See Purchaser, Black’s Law Dictionary* (5th ed. 1979) (“[A] person who, for adequate and full consideration in money or money’s worth, acquires an interest . . . in property . . . .”); *see also Purchaser of Value, Black’s Law Dictionary* (5th ed. 1979) (“One who pays consideration for property or goods bought.”). Similarly, the ordinary meaning of the noun “renter” is “one that rents.” *Renter, Webster’s Third New International Dictionary* 1923 (Phillip Babcock Gove ed., 2002). The ordinary meaning of the verb “rent” requires exchanging valuable consideration in order to temporarily use or acquire something, thus creating a valid contractual relationship. *See Rent, Black’s Law Dictionary* (5th ed. 1979) (defining “rent” as “[c]onsideration paid for use or occupation of property”).

Finally, the ordinary meaning of the term “subscriber” is “one who subscribes.” *Subscriber*, *Webster’s Third New International Dictionary* 2278 (Phillip Babcock Gove ed., 2002). The verb “subscribe” is similarly understood as requiring the exchange of valuable consideration. *See Subscribe*, *Black’s Law Dictionary* (5th ed. 1979) (defining “subscribe” as “to agree in writing to furnish money or its equivalent”). The common thread across all three terms, is that each requires consideration and therefore creates contractual privity between the consumer and the party on the other side of the contract.

Notably, by providing these three options, the statute does not require a consumer to actually consume the “goods or services,” as long as they purchase, rent or subscribe to the goods or services. Therefore, while the lower courts focused on the fact that Salazar’s complaint failed to allege that “he had accessed videos through the newsletter,” *Salazar*, 133 F.4th at 652; *see also Salazar*, 683 F. Supp. 3d at 744, this added requirement entirely ignores the definition chosen by Congress. Indeed, one who accesses videos could be called a “downloader,” or perhaps a “viewer,” but Congress did not give “consumer” status to one who can only show that they downloaded or viewed a video. Instead, by defining “consumer” with only the three specific options of renter, purchaser, or subscriber, Congress ensured that the consumer would necessarily have contractual privity with the video service provider.

**B. The existence of a contractual relationship between the consumer and the video tape service provider provides an important limiting principle by making obtaining informed, written consent straightforward.**

The de facto requirement of a contractual relationship between the consumer and video service provider provides an important limiting principle on the scope of the VPPA and fits nicely within the overall statutory framework. Notably, the VPPA does not impose an absolute ban on video service providers sharing personal data. Instead, the originally enacted VPPA included a number of important exceptions, including an exception for when a video tape service provider obtains “informed, written consent of the consumer given at the time the disclosure is sought.” Video Privacy Protection Act of 1988, Pub. L. No. 100-618, 102 Stat. 3195 (codified as amended at 18 U.S.C. § 2710 (2012)). In doing so, Congress implicitly recognized that consumers may have heterogenous privacy preferences, and therefore the VPPA empowers consumers to make a choice regarding the sharing of their personal data by ensuring that the consumer is given a meaningful choice. By including in the originally enacted exception three separate requirements on the consent, namely that it be “informed,” “written” and also “given at the time the disclosure is sought,” Congress wanted to make sure that any consent provided would actually be meaningful and not merely buried deep in small font.

The definition of “consumer” ought to be read in connection with this exception. By narrowing the ordinary meaning of “consumer” to only three options that all ensure contractual privity between the

consumer and the video tape service provider, it becomes straightforward for video tape service providers to obtain informed, written consent from the consumer should they need to share the consumer's covered personal data for some reason. Should the reason for disclosing the consumer's covered personal data be sufficiently compelling, then under the initial statutory regime the consumer could provide informed, written consent given at the time the disclosure is sought.

**C. Congress's 2012 amendments made it easier for video tape service providers to obtain informed, written consent from consumers.**

Congress revisited and amended the VPPA with the Video Privacy Protection Act Amendments Act of 2012, in order to modernize it for a new technological and business era. Video Privacy Protection Act Amendments Act of 2012, Pub. L. No. 112-258, 126 Stat. 2414 (2013) (codified as amended at 18 U.S.C. § 2710(b)(2)(B)). Although Congress chose to keep the definitions of both "consumer" and "video tape service providers" unchanged, Congress did make a substantive change to the VPPA. Specifically, Congress focused its amendment efforts on creating an updated and simpler method for video tape service providers to obtain meaningful consent from consumers in light of the internet and new technologies.

In those amendments, Congress updated the way in which a video tape service provider could obtain consent, which had always been an option to avoid liability under the statute. Video Privacy Protection Act Amendments Act of 2012, Pub. L. No. 112-258, 126 Stat. 2414 (2013) (codified as amended at 18 U.S.C.

§ 2710(b)(2)(B)). Specifically, Congress took into account the new technological landscape, and allowed for the informed, written consent to be done over the Internet. 18 U.S.C. § 2710(b)(2)(B). Congress also made it even easier to obtain consent, by allowing it to be given in advance for up to two years unless withdrawn by the consumer, rather than having to provide it every time. 18 U.S.C. § 2710(b)(2)(B)(ii)(II). These changes make perfect sense in conjunction with the VPPA’s definition of consumer, which ensures that audio service providers necessarily have a contractual relationship with the consumer who is either renting, purchasing, or subscribing to goods or services. This contractual relationship makes it possible and straightforward for the audio service providers to ask the consumer for consent following the updated process laid out in the 2012 amendments for ease of use in the internet era.

**III. Limiting “goods or services” to audio visual materials would empower companies to formalistically structure their businesses in a manner that undermines the VPPA’s important privacy protections.**

Ignoring the VPPA’s statutory definition of “consumer” by adding the non-textual requirement that the “goods or services” must themselves be audio visual materials, would undermine the VPPA’s important privacy protections. Many of the recent court decisions interpreting the VPPA’s definition of “consumer” involve a consumer who subscribed to a newsletter, watched audio visual materials, and then had their personally identifiable information disclosed without their consent. *See, e.g., Salazar v. Nat’l Basketball Ass’n*, 118 F.4th 533, 536 (2d Cir. 2024) (describing the

newsletter as an “online email newsletter offered by” the NBA); *Salazar v. Paramount Global*, 133 F.4th 642, 645 (6th Cir. 2025) (describing the newsletter as a “247Sports e-newsletter”); *Gardner v. Me-TV Nat’l Ltd. P’ship*, 132 F.4th 1022, 1024–25 (7th Cir. 2025) (“MeTV argue[d] instead that plaintiffs [were not covered by the VPPA because] they subscribed to an *information* service (TV schedules and newsletters), not to a *video* service.”); *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F.4th 1219, 1225 (D.C. Cir. 2025) (describing the newsletter as “an email newsletter” with “embedded news videos and hyperlinks”). This fact pattern is not a coincidence, and an interpretation that suggests that the “goods or services” must themselves be audio visual materials would enable companies to exploit this exact newsletter model to avoid the important privacy protections of the VPPA.

The Sixth Circuit held that Salazar had not subscribed to “audio visual materials,” the requirement it added to the statute’s language, when he subscribed to a newsletter that included links to audio visual materials, because the subscription was to the newsletter rather than directly to the audio visual materials. *Salazar*, 133 F.4th at 652–53. Rather than being a strange aberrational fact pattern, imposing an additional requirement that the “goods or services” must themselves be audio visual materials combined with finding that e-mail newsletters that send consumers to audio visual materials, do not satisfy that requirement, risks ripping a hole through the VPPA’s protections.

These cases make perfect sense in light of the fact that the e-mail newsletter model has exploded. Even though email newsletters are an old way of sending out

information that pre-dates social media, in recent years such newsletters have experienced a growth rather than the expected contraction. See Forbes Commc'ns Council, *The Rebirth of Newsletters: Leveraging Substack & Email Marketing*, Forbes (May 1, 2024), <https://tinyurl.com/5cpbwx3f> (“[T]he newsletter is enjoying a renaissance.”). A recent Wall Street Journal article called 2025 “the year of the newsletter.” Alexandra Bruell, *The Year the Newsletter Business Reached a Fever Pitch*, Wall St. J. (Jan. 1, 2026, at 12:00 ET), <https://tinyurl.com/3c28raj9>. According to that same article, Substack, an online platform that facilitates sending and monetizing such newsletters directly to consumers, had over five million paid subscriptions in 2025, a 67% increase from the prior year. *Id.* Its smaller and newer competitor, Beehiiv, nearly doubled its revenue during that same period. *Id.*

Academics have also begun to study this phenomenon. See, e.g., Javier Guallar et al., *The Rise of Curated Newsletters in Media: A Case Study of the New York Times*, Journalism Prac., Jan. 2025, at 1 (describing e-mail newsletters as “experiencing a period of great vitality and increasing proliferation in recent years”). Studies suggest that the continued appeal of newsletters may come from the fact that they are finite, that is they have a beginning, middle and end, and therefore contrast with the endless scroll possible with both social media and many internet webpages. See Su Jung Kim et al., *Newly Subscribed! Effects of Email Newsletters on News-reading Habit and Subscriber Retention During Onboarding: Evidence from Clickstream and Subscription Data*, 35 J. of Media Econ. 87, 90 (2024) (“[T]he feeling of having a beginning and ending differentiates reading newsletters

from reading news online or via social media.”). Regardless of what is driving the growth of newsletters, it is clear that they have returned as a major way in which businesses create a contractual relationship with users.

To be clear, not all newsletters create concerns about thwarting the protections of the VPPA. Under the correct reading of the VPPA, newsletters would only trigger liability under the VPPA if they both are from a video tape service provider, and that video tape service provider discloses personally identifiable information, such as the consumer’s video watching practices to third parties without obtaining informed, written consent from those consumers.

Frequently, as was the case here, such newsletters mix written words with videos or include links to audio visual materials. Alexandra Bruell, *The Year the Newsletter Business Reached a Fever Pitch*, Wall St. J. (Jan. 1, 2026, at 12:00 ET), <https://tinyurl.com/3c28raj9> (noting that many “brands have launched direct-to-consumer newsletters, often mixing written words with video and audio”). For example, the CNN’s Reliable Sources newsletter regularly provides links to audio visual content including video clips and interviews, in addition to written material. See *Reliable Sources*, CNN, <https://tinyurl.com/55da437v> (last visited Apr. 19, 2026). The entertainment industry has not been immune to this phenomenon. Many of the biggest providers of modern audio visual content have introduced their own newsletters. For instance, Netflix offers various newsletters including Netflix Family, which targets kids’ content. See Jennifer Nieva, *Family Time Gets an Upgrade with Two New*

*Kid-Friendly Features*, Netflix (July 14, 2021), <https://tinyurl.com/yw3hdswp>.

Imposing the non-statutory requirement that “goods and services” must be audio visual goods and services, combined with seemingly categorizing “goods and services” that have audio visual along with non-audio visual components, such as many newsletters, as not satisfying that requirement will incentivize businesses seeking to avoid the privacy protections of the VPPA to continue to shift in the direction of paid subscriptions for newsletters and other general memberships rather than a model of directly paying for audio visual content. Companies who choose to structure their businesses by obtaining subscribers to newsletters or more general memberships would be able to sell the personally identifiable information of its subscribers, including precisely what videos its subscribers have accessed, without triggering the VPPA’s protections. This is despite the fact that such video-watching history is exactly the sort of sensitive information at the core of the VPPA’s protections.

For example, under the Amazon Prime business model, consumers pay for a subscription to Amazon Prime. The Amazon Prime membership bundles free, fast shipping with various digital content including movies and television shows available at Prime Video. *In re Amazon Prime Video Litigation*, 765 F. Supp. 3d 1165, 1168 (W.D. Wash. 2025). Under the erroneous restricted reading of the VPPA that limits the applicable “goods or services” to only audio visual goods or services, Amazon would be free to sell the video watching history of its subscribers because those subscribers are to Amazon Prime rather than directly to Prime Video.

Consider also what this would have meant in the Blockbuster era that was prevalent at the VPPA's initial enactment. Under this reading of the statute, Blockbuster could have changed its business model to a subscription model, where for a set monthly subscription fee, consumers could take home videos *or* non audio visual material like magazines or puzzles. In that case, because the "service" would not be solely audio visual, Blockbuster could have escaped liability for selling the video-watching history of its customers by capitalizing on this judicially created loophole. Such a result would clearly undermine both the statutory language and its legislative intent.

### CONCLUSION

The Court should find that the plain meaning of the phrase "goods or services from a video tape service provider" as used in the VPPA's definition of "consumer," refers to all a video tape service provider's goods or services and not only its audio visual goods or services. As such, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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