

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 FOR RESPONDENT

DAVID L. YOHAI
GREGORY SILBERT
ZACHARY D. TRIPP
BLAKE STEINBERG
WEIL, GOTSHAL
& MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8846

PAUL D. CLEMENT
Counsel of Record
ERIN E. MURPHY
DANIELLE R. SASSOON
PHILIP HAMMERSLEY
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Respondent

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QUESTION PRESENTED

The Video Privacy Protection Act of 1988 targets the distinct privacy violation that occurs when a video tape service provider discloses a consumer's video rental history without the consumer's consent. Congress has never acted to protect information about more pedestrian purchases, like bandanas and recliners, and such information is routinely used for marketing purposes. The VPPA addresses the distinct privacy concerns with the unauthorized disclosure of video rental history by providing a private right of action (and statutory and punitive damages) against a "video tape service provider" who, without consent, "knowingly discloses ... personally identifiable information concerning any consumer of such provider." 18 U.S.C. §2710(b)(1). "[P]ersonally identifiable information" is 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). A "video tape service provider" is a "person[] engaged in the business ... of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* §2710(a)(4). And a "consumer" is a "renter, purchaser, or subscriber of goods or services from a video tape service provider." *Id.* §2710(a)(1).

The question presented 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”) (NASDAQ: PARA) was the defendant and appellee in the proceedings below.

CORPORATE DISCLOSURE STATEMENT

Paramount Global (NASDAQ: PARA) is a wholly owned subsidiary of Paramount Skydance Corporation (NASDAQ: PSKY), a publicly traded company.

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT.....	iii
TABLE OF AUTHORITIES.....	vi
INTRODUCTION.....	1
STATEMENT OF THE CASE	5
A. Statutory Background.....	5
B. Procedural Background.....	10
SUMMARY OF ARGUMENT	14
ARGUMENT.....	18
I. The VPPA Protects Only Customers Who Transact For Audiovisual Goods Or Services ..	18
A. The Plain Text Definition of “Consumer” Is Limited to Transactions Involving Audiovisual Offerings.....	19
B. The VPPA’s Structure and Context Tie “Consumer” Status to Audiovisual Goods or Services.....	24
C. The VPPA’s Purpose and Historical Context Confirm Its Narrow Focus on Audiovisual Goods or Services.....	30
II. Salazar’s Interpretation Of “Consumer” Is Wrong At Every Turn.....	31
A. Salazar Ignores the Immediately Surrounding Words That Inform the Scope of “Goods or Services”	32

B. The Interpretive Canons Salazar Invokes Confirm Rather Than Refute the Audiovisual Limitation	36
C. Salazar’s Boundless Reading Would Transform the VPPA Into an Incoherent and Unworkable Internet-Privacy Regime	46
CONCLUSION	52

TABLE OF AUTHORITIES

Cases

<i>Bittner v. United States</i> , 598 U.S. 85 (2023).....	28
<i>Bond v. United States</i> , 572 U.S. 844 (2014).....	30
<i>Browning-Ferris Indus. of Vt., Inc.</i> <i>v. Kelco Disposal, Inc.</i> , 492 U.S. 257 (1989).....	28
<i>Burgess v. United States</i> , 553 U.S. 124 (2008).....	21
<i>City of Columbus</i> <i>v. Ours Garage & Wrecker Serv., Inc.</i> , 536 U.S. 424 (2002).....	37
<i>Comm’r v. Acker</i> , 361 U.S. 87 (1959).....	28
<i>Davis v. Mich. Dep’t of Treasury</i> , 489 U.S. 803 (1989).....	24
<i>DePierre v. United States</i> , 564 U.S. 70 (2011).....	38
<i>Dubin v. United States</i> , 599 U.S. 110 (2023).....	23, 29, 33, 36, 47, 49
<i>Facebook, Inc. v. Duguid</i> , 592 U.S. 395 (2021).....	3, 36, 48, 49
<i>FCC v. AT&T</i> , 562 U.S. 397 (2011).....	22
<i>Fischer v. United States</i> , 603 U.S. 480 (2024).....	35

<i>Graham Cnty. Soil & Water Conservation Dist. v. United States,</i> 559 U.S. 280 (2010).....	33
<i>Jennings v. Rodriguez,</i> 583 U.S. 281 (2018).....	38
<i>Learning Res., Inc. v. Trump,</i> 146 S.Ct. 628 (2026).....	35
<i>Life Techs. Corp. v. Promega Corp.,</i> 580 U.S. 140 (2017).....	19
<i>Marx v. Gen. Revenue Corp.,</i> 568 U.S. 371 (2013).....	40
<i>McDonnell v. United States,</i> 579 U.S. 550 (2016).....	36
<i>Nat'l Soc'y of Pro. Eng'rs v. United States,</i> 435 U.S. 679 (1978).....	35
<i>Patel v. Garland,</i> 596 U.S. 328 (2022).....	43
<i>Pileggi v. Wash. Newspaper Publ'g Co.,</i> 146 F.4th 1219 (D.C. Cir. 2025)	28, 34, 50
<i>Pugin v. Garland,</i> 599 U.S. 600 (2023).....	40
<i>Reves v. Ernst & Young,</i> 494 U.S. 56 (1990).....	35
<i>S.C. Pub. Serv. Auth. v. FERC,</i> 762 F.3d 41 (D.C. Cir. 2014).....	20
<i>Sebelius v. Auburn Reg'l Med. Ctr.,</i> 568 U.S. 145 (2013).....	38
<i>Sterk v. Redbox Automated Retail, LLC,</i> 672 F.3d 535 (7th Cir. 2012).....	36

<i>Sturgeon v. Frost</i> , 577 U.S. 424 (2016).....	33
<i>Sw. Airlines Co. v. Saxon</i> , 596 U.S. 450 (2022).....	19
<i>Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. Auto., Aerospace & Agric. Implement Workers of Am.</i> , 523 U.S. 653 (1998).....	33
<i>Torres v. Lynch</i> , 578 U.S. 452 (2016).....	19
<i>United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.</i> , 484 U.S. 365 (1988).....	36
<i>United States v. Fisher</i> , 6 U.S. (2 Cranch) 358 (1805)	29
<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	36
<i>Van Buren v. United States</i> , 593 U.S. 374 (2021).....	47
<i>Whitman v. Am. Trucking Assn’s, Inc.</i> , 531 U.S. 457 (2001).....	44
Statutes	
15 U.S.C. §1125(a)(1).....	44
15 U.S.C. §7006(13)	22, 44
15 U.S.C. §8403	44
18 U.S.C. §1956(c)	22
18 U.S.C. §2710	15, 29
18 U.S.C. §2710(a)(1).....	1, 4, 6, 7, 13, 19, 21, 22, 23, 24, 31, 32, 40, 43, 44

18 U.S.C. §2710(a)(3).....	1, 6, 7, 25, 38, 40
18 U.S.C. §2710(a)(4).....	1, 4, 6, 13, 20, 21, 23, 24, 31, 43
18 U.S.C. §2710(b)	29
18 U.S.C. §2710(b)(1).....	6, 18, 19, 36, 43, 45
18 U.S.C. §2710(b)(2).....	26, 27, 39, 43
18 U.S.C. §2710(c)(1)	7, 43, 45
18 U.S.C. §2710(c)(2)	8
18 U.S.C. §2710(c)(3)	49
18 U.S.C. §2710(d)	36, 43
18 U.S.C. §2710(e)	50
19 U.S.C. §2411(a)	44
22 U.S.C. §9529(a)(1).....	44
44 U.S.C. §3607(b)(10).....	22
44 U.S.C. §3607(b)(5).....	22
Pub. L. No. 100-618, 102 Stat. 3195 (1988)	6, 8, 29
Pub. L. No. 112-258, 126 Stat. 2414 (2013)	8, 9
Other Authorities	
134 Cong. Rec. 31,070 (1988)	6
Blockbuster, <i>Membership Application</i> (Mar. 15, 2000), https://perma.cc/75A6-8Z7X	5
Michael Dolan, <i>The Bork Tapes</i> , City Paper (1987), https://perma.cc/37V2-T2ZD	6
Elizabeth Gemdjian, <i>The Extraordinary Extension of the Video Privacy Protection Act</i> , 90 Brook. L. Rev. 553 (2025)	8, 9
Sidney Greenbaum, <i>Oxford English Grammar</i> (1996)	20

First Amended Class Action Compl., <i>Carroll v. Chick-fil-A, Inc.</i> , No. 23-cv-314 (N.D. Cal. Apr. 4, 2023)	9
First Amended Class Action Compl., <i>Carroll v. J.M. Smucker Co.</i> , No. 22-cv-8952 (N.D. Cal. Mar. 17, 2023)	9
First Amended Class Action Compl., <i>Carroll v. La-Z-Boy Inc.</i> , No. 22-cv-8961 (N.D. Cal. Feb. 24, 2023)	9
Archis A. Parasharami & Sophie Mancall-Bitel, <i>Pixel Tools Spur a New Wave of Class Action Litigation Under the Video Privacy Protection Act</i> , ABA Bus. L. Today (Apr. 22, 2025), https://perma.cc/CRB2-ASTB	3, 10
S. 2361, 100th Cong. (Oct. 5, 1988)	40
S. 2361, 100th Cong. (May 10, 1988)	40
S. Rep. No. 100-599 (1988)	6, 30, 31, 34, 40
S. Rep. No. 112-258 (2012)	8, 9
Antonin Scalia & Bryan Garner, <i>Reading Law</i> (2012)	29, 38, 39
<i>Usage statistics and market shares of traffic analysis tools for websites</i> , Web Tech. Surveys (May 15, 2026), https://perma.cc/Q226-YA2R	47
<i>Video and Library Privacy Protection Act of 1988: Joint Hearing on H.R. 4947 and S. 2361 Before the Subcomm. on Cts., C.L., & the Admin. of Just. of the H. Comm. on the Judiciary and the Subcomm. on Tech. & the L. of the S. Comm. on the Judiciary</i> , 100th Cong. (1989)	30

Video Mailbox, *Color Brochure*,
<https://perma.cc/36JR-ASQ4>
(last visited June 22, 2026) 5

INTRODUCTION

Congress enacted the Video Privacy Protection Act of 1988 (“VPPA”) to address a specific privacy problem: video tape service providers disclosing information about a consumer’s video rental history. The statute Congress enacted tracks that discrete problem from start to finish. Neither the VPPA nor any other act of Congress expresses comparable privacy concerns with information about non-video transactions involving things like bandanas, recliners, or newsletters. Congress focused only on the distinct privacy intrusion of disclosing the transaction records revealing the videos consumers obtained or requested.

The VPPA’s text reflects that distinct focus. Its protections run only to specific individuals: a “consumer,” which the statute defines as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” 18 U.S.C. §2710(a)(1). The prepositional phrase “from a video tape service provider” tethers the relevant “goods or services” to what video providers offer in their statutorily defined capacity: the “rental, sale, or delivery of *prerecorded video cassette tapes or similar audio visual materials.*” *Id.* §2710(a)(1), (a)(4) (emphasis added). That linkage and limitation are underscored by the direct parallel between “renter, purchaser, or subscriber” in the VPPA’s “consumer” definition, *id.* §2710(a)(1), and “rental, sale, or delivery” in its video provider definition, *id.* §2710(a)(4). The limitation is buttressed by the definition of “personally identifiable information” (PII) as not just any personal information, but as records of a transaction for “specific *video* materials or services,” *id.* §2710(a)(3)

(emphasis added), and the VPPA’s consent provisions which allow “consumers” to authorize the disclosure of that PII. Purchases of non-video materials do not themselves generate PII for disclosure or consent. So as a matter of common sense and ordinary English, a consumer of “goods or services from a video tape service provider” means a consumer of the audiovisual goods or services that make the business a video provider and that generate PII. A person must transact for videos, not bandanas, recliners, or other non-video merchandise.

For decades, the statute worked exactly that way, playing an important but limited role, even as Congress updated the consent provisions to reflect the migration of video providers from brick-and-mortar stores to the Internet. Someone became a “consumer” by renting a video from Blockbuster or subscribing to Netflix, and those transactions generated PII about a consumer’s video-watching habits, including the video’s title and the consumer’s name, which the provider could not disclose absent the consumer’s consent. That seamless design, backed by the VPPA’s severe penalties, virtually eradicated the unauthorized video-history disclosures that prompted the law’s enactment, leaving reported VPPA cases for the statute’s first two decades few and far between.

In recent years, however, class-action lawyers, lured by the VPPA’s promise of statutory and punitive damages, have tried to repurpose the statute to target unsuspecting companies for routine business practices—as they have with other laws promising statutory damages for minor, but high-volume, perceived transgressions. *See, e.g., Facebook, Inc. v.*

Duguid, 592 U.S. 395, 399 (2021) (foreclosing a similar effort to repurpose the Telephone Consumer Protection Act). This new wave of suits has nothing to do with video stores, video rentals, or the distinct privacy concerns with video-transaction records. These lawsuits instead insist that people become VPPA “consumers” whenever they buy *any* item, at *any* time, from *any* business that later posts videos online. By this (il)logic, even though such non-video transactions themselves trigger no privacy concerns or statutory protections or PII, they qualify individuals as inchoate VPPA “consumers” who can sue based on the subsequent viewing of online videos (even years later) from the same company, even without renting, purchasing, or subscribing to those online videos.

Armed with that unlikely theory, plaintiffs have rescued the VPPA from relative obscurity and brought a bevy of class-action lawsuits against entities, ranging from La-Z-Boy to Chick-fil-A, that market unrelated non-video goods or services and also put free promotional or instructional video clips online. See Archis A. Parasharami & Sophie Mancall-Bitel, *Pixel Tools Spur a New Wave of Class Action Litigation Under the Video Privacy Protection Act*, ABA Bus. L. Today (Apr. 22, 2025), <https://perma.cc/CRB2-ASTB>. And they have initiated putative class actions like this at no cost, just by signing up for a free marketing email from a business with a website with video content.

None of that squares with the text, context, or purpose of the statute Congress enacted. The “consumer” definition “does *not* encompass consumers of all ‘goods or services’ imaginable,” Pet.App.14a, for the simple reason that the words “goods or services” do

not stand alone. Instead, the VPPA covers only goods or services “rent[ed], purchase[d], or subscribe[d] [to]” “from a video tape service provider.” 18 U.S.C. §2710(a)(1). The relevant transactions are thus limited to the “rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials,” *id.* §2710(a)(4), which is to say, the transactions that make a business a “video tape service provider” and generate the PII the statute protects from disclosure absent the consumer’s consent.

Salazar tries to claim the mantle of textualism by observing that the dictionary definitions of “goods” and “services” sweep in “society’s entire economic output,” Pet.App.12a, but that distorts how textualism works. Statutory terms are not read in splendid isolation based on the broadest dictionary definition available; they take meaning from the immediately surrounding text and the broader statutory context. A statute that regulates “video tape service provider[s],” protects information about “specific video materials or services,” and bears the title “Video Privacy Protection Act” does not silently extend to every purchaser of bandanas or groceries.

Salazar’s contrary reading would transform a 1988 video-rental statute into an unworkable internet-privacy regime of broad yet incoherent scope backed by harsh penalties. Statutory protection for viewers of free video content would turn on the happenstance of where they purchased a chicken sandwich or recliner years earlier. Far from compelling this untenable result, text, context, purpose, and common sense all compel affirming dismissal of Salazar’s case.

STATEMENT OF THE CASE

A. Statutory Background

1. By the 1980s, video stores had become fixtures of everyday life across the country; people flocked to local stores, and to emerging chains like Blockbuster, to bring home a wide range of titles. Most video providers during that era operated brick-and-mortar stores where customers would rent (or, less typically, purchase) movies. The providers often required or incentivized people to sign up for memberships, with customers typically providing their name and address and paying a small fee. *See, e.g., Blockbuster, Membership Application* (Mar. 15, 2000), <https://perma.cc/75A6-8Z7X>. When a member rented a film, the store would typically add that transaction to the member's account history. *See* Pet.App.86a. Video providers thus often maintained information that could be used to identify a customer's entire video-viewing history.

Other video providers used a subscription model, delivering videos to subscribers on a recurring basis. Video Mailbox (and, later, Netflix's mail-order DVD service), for example, charged a monthly subscription fee in exchange for delivering videos directly to a customer's mailbox. *See* Video Mailbox, *Color Brochure*, <https://perma.cc/36JR-ASQ4> (last visited June 22, 2026). These providers, too, often maintained records of a subscriber's video history.

2. After President Ronald Reagan nominated Judge Robert Bork to the Supreme Court, a reporter obtained access to the nominee's video rental history and published a profile disclosing the titles of 146 films that his family had rented over a two-year

period. S. Rep. No. 100-599, at 5 (1988); see Michael Dolan, *The Bork Tapes*, City Paper (1987), <https://perma.cc/37V2-T2ZD>. That intrusion sparked outrage among the public and Congress, prompting enactment of the Video Privacy Protection Act of 1988, Pub. L. No. 100-618, 102 Stat. 3195, 3195-97.

The VPPA created privacy protections in a “narrow area”: video providers “disclosing their customers names, addresses and specific video tapes rented or bought by the customer.” 134 Cong. Rec. 31,070 (1988). The act makes it unlawful, absent the consumer’s consent, for a “video tape service provider” to “disclos[e], to any person, personally identifiable information concerning any consumer of such provider.” 18 U.S.C. §2710(b)(1). The VPPA defines a “video tape service provider” [as] any person, engaged in the business ... of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” *Id.* §2710(a)(4). A “consumer” means any renter, purchaser, or subscriber of goods or services from a video tape service provider.” *Id.* §2710(a)(1). And “personally identifiable information” includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider.” *Id.* §2710(a)(3). Congress’ decision to “extend privacy protection to only those transactions involving the purchase of video tapes and not other products,” S. Rep. No. 100-599, at 12, reflects its appreciation that a person’s video-transaction history can reveal far more intimate details than typical purchases.

The existence of a commercial video transaction and the PII it generates lie at the heart of the VPPA.

It is undisputed that merely watching videos for free—without a transaction—does not make someone a “consumer.” The VPPA’s protections attach only to someone who “rent[s], purchase[s], or subscribe[s]” to “goods or services from a video tape service provider.” 18 U.S.C. §2710(a)(1). Likewise, if a person transacts for *non-video* goods or services from a video tape service provider, those records themselves are not protected as PII because they do not identify “specific video materials or services” the person requested or obtained. *Id.* §2710(a)(3).¹

The statute thus does not create privacy rights for everyone who purchases non-video materials or merely views free videos; it provides targeted protection for consumers whose video-related purchases, rentals, or subscriptions create PII. The text aligns with the VPPA’s purpose of protecting against the unauthorized disclosure of the details of the movies someone has watched, without protecting their history of buying bandanas. Reflecting the seriousness of the distinct privacy violation involved in the unauthorized disclosure of video-rental records, the VPPA creates a private cause of action that aggrieved persons can employ to impose substantial penalties on video tape service providers that disclose PII without consent. *See id.* §2710(c)(1). Courts may

¹ To be sure, if the purchaser engages in a subsequent video transaction, information involved in their initial non-video transaction, such as their address, could be PII if it were retained and subsequently used to “identif[y] a person” as having “requested or obtained specific video materials.” *Id.* But it is undisputed that, after an initial non-video transaction, there is no PII protected from disclosure under the VPPA absent later video-viewing activity.

award “actual damages but not less than liquidated damages in an amount of \$2,500,” along with punitive damages and equitable relief, for any unlawful act. *Id.* §2710(c)(2)(A)-(C).

3. Video tape service providers promptly got the message, leaving litigated VPPA cases few and far between in the decades following the Act’s enactment. *See* Elizabeth Gemdjian, *The Extraordinary Extension of the Video Privacy Protection Act*, 90 Brook. L. Rev. 553, 554 (2025) (“markedly few VPPA cases” arose “during the age of physical media”). Indeed, it took 8 years for the first case to be brought under the statute. *See id.* at 554 n.7.

In more recent years, a few successful video providers migrated online, while the brick-and-mortar stores largely disappeared. Blockbuster, for instance, filed for bankruptcy in 2010, while online digital streaming services like Netflix and Hulu grew in popularity.

In 2013, Congress amended the VPPA to address the greater tolerance that digital-age consumers were demonstrating for sharing information about the media they consume. *See* Video Privacy Protection Act Amendments Act of 2012, Pub. L. No. 112-258, 126 Stat. 2414 (2013). Before the amendment, providers needed written consent each time they disclosed a consumer’s PII. *See* S. Rep. No. 112-258, at 2-3 (2012); Pub. L. No. 100-618, §2, 102 Stat. at 3195. Over time, however, lawmakers observed that, while people often “share information about the books that they read and the music that they listen to via social media sites, using services such as Spotify or the Washington Post’s social sharing app,” the VPPA’s written-consent

“requirement create[d] obstacles for ... consumers to share information about their video preferences through social media sites on an ongoing basis.” S. Rep. No. 112-258, at 2, 3. Thus, the 2013 amendment gave consumers the option to provide consent prospectively for a two-year period, Pub. L. No. 112-258, §2, 126 Stat. at 2414, facilitating the integration of video-streaming services with burgeoning social-media platforms.

4. The litigation landscape surrounding the VPPA has changed radically over the past few years. Spurred on “by the statute’s lucrative remedies,” plaintiffs began “to bring mostly class action lawsuits not only against the modern analog of video rental stores”—i.e., streaming companies like Hulu and Netflix—“but also, and increasingly, against websites with digital video content, such as Vizio, Patreon, TikTok, Meta, WebMD, General Mills, and Meredith Corporation.” Gemdjian, *supra*, at 555.

“Tester” plaintiffs have sued companies like La-Z-Boy, Chick-fil-A, and Folgers on behalf of putative classes of people who bought a recliner, chicken sandwich, or coffee, then watched promotional videos or other free videos on those companies’ websites. *See* First Amended Class Action Compl. ¶¶48-54, *Carroll v. La-Z-Boy Inc.*, No. 22-cv-8961 (N.D. Cal. Feb. 24, 2023), Dkt.17; First Amended Class Action Compl. ¶¶47-71, *Carroll v. Chick-fil-A, Inc.*, No. 23-cv-314 (N.D. Cal. Apr. 4, 2023), Dkt.15; First Amended Class Action Compl. ¶¶36-55, *Carroll v. J.M. Smucker Co.*, No. 22-cv-8952 (N.D. Cal. Mar. 17, 2023), Dkt.16.

Lured by the prospect of class actions with statutory and punitive damages, these testers assert

that they became VPPA “consumers” in perpetuity without ever buying, renting, or subscribing to videos, simply by buying a recliner or chicken sandwich (or subscribing to a free marketing email) from a company with a website that has video content—which is to say, virtually every company. If the company then uses commonplace third-party software to support video advertising or website analytics with respect to online video content that the tester later views for free, the tester claims that the company has committed a VPPA violation—even though the tester never rented, purchased, or subscribed to a video from the company. Under this theory, viewers of the exact same free online content have zero statutory protection if they purchased furniture or fast food elsewhere. These artificial suits are coming in droves, with hundreds of new class actions being filed every year, targeting a wide range of businesses far afield of Blockbuster’s modern-day analogs. *See* Parasharami & Mancall-Bitel, *supra*.

B. Procedural Background

1. This case exemplifies the recent efforts to vastly expand the VPPA’s reach. 247Sports, owned by Paramount, does not rent, sell, or offer subscriptions to videotapes, movies, or shows. It runs a sports news website focused on college sports. Pet.App.2a. It provides news in articles, news feeds, podcasts, photographs, and video clips. Pet.App.22a, 41a. The only video content at issue in this case is available for

free, via the internet, without registering or paying to receive it. Pet.App.42a & n.5.²

Like many websites that provide content outside a paywall, 247Sports makes money through advertising. Pet.App.92a-93a. The complaint alleges 247Sports has used the “Meta Pixel” to facilitate that advertising-based business model. The pixel is a piece of code inserted into the 247Sports webpage and run “by the user’s browser.” Pet.App.92a. The complaint alleges that if a user has logged into Facebook in their browser and then opens content on 247Sports.com, the user’s browser sends to Facebook the URL of the webpage the user visited, along with the user’s Facebook ID through the “c_user” Facebook cookie. Pet.App.92a, 95a. A Facebook ID is a numeric code that corresponds to a Facebook account. Pet.App.92a.

2. Salazar does not claim to have ever rented, purchased, or subscribed to audiovisual material from 247Sports. In fact, he does not claim to have ever purchased anything from 247Sports. He nevertheless claims to be a “consumer” of 247Sports under the VPPA, solely because he signed up for the 247Sports free email newsletter in 2022. Pet.App.97a. Salazar does not allege that he viewed any video content in that newsletter, or that any such content was even available in the newsletter. Instead, he alleges that he later “view[ed] Video Media through 247Sports.com”—i.e., through the website for free, without regard to his newsletter subscription—“while logged into his Facebook account,” and that his

² 247Sports provides paid subscribers additional content behind a paywall, but it is undisputed that Salazar is not a paid subscriber and never accessed any such content.

browser sent to Facebook his Facebook ID and the URL he accessed, without his consent. Pet.App.84a. On that basis alone, he claims that 247Sports violated his rights under the VPPA, and the rights of “hundreds of thousands of” similarly situated putative class members. Pet.App.80a-106a. Salazar seeks \$2,500 in statutory damages for each class member, along with punitive damages, declaratory and injunctive relief, restitution for the class, and attorneys’ fees and costs. Pet.App.104a-105a.

Paramount moved to dismiss, arguing (among other things) that Salazar is not a VPPA “consumer.” Paramount explained that Salazar’s theory creates a fundamental mismatch between what makes someone a VPPA consumer and the video-watching activity that generates PII and can give rise to a statutory violation. The subscription that confers “consumer” status (in Salazar’s view) involves no video and therefore triggers no immediate statutory protection. Meanwhile, the activity that Salazar contends *is* protected involves no rental, purchase, or subscription—indeed, no transaction at all—and may be nothing more than scrolling through free online videos. The district court granted the motion to dismiss, holding that Salazar is not a VPPA “consumer” because he was not a “subscriber of goods or services from a video tape service provider” under §2710(a)(1). Pet.App.62a-63a. The court reasoned that a person is not a subscriber unless “they subscribe to audio visual materials,” Pet.App.67a-68a, which Salazar does not allege he did.

3. The Sixth Circuit affirmed, holding that Salazar is not a “consumer” because the only thing to

which he subscribed—i.e., the newsletter—was not “in the nature of ‘video cassette tapes or similar audio visual materials.’” Pet.App.4a n.3, 11a n.7, 12a-18a. The court explained that the VPPA’s definition of “consumer” cannot be read by isolating “goods or services” from the surrounding words. The statute protects only consumers of goods or services “from a video tape service provider,” 18 U.S.C. §2710(a)(1), and the separately defined phrase “video tape service provider” refers to businesses engaged in the “rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials”—i.e., materials that generate the PII protected by the statute. *Id.* §2710(a)(4); Pet.App.14a-15a. The statute “tethers the definition of ‘consumer’ to that of ‘video tape service provider’” and “pinpoint[s] the relevant ‘goods or services’”: Those involved in the ‘rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.’” Pet.App.14a-15a.

The Sixth Circuit thus concluded that “the most natural reading, which accounts for the context of both definitions,” is that one becomes a VPPA “consumer” only by subscribing to “goods or services” in the nature of “video cassette tapes or similar audio visual materials.” Pet.App.15a. Under that interpretation, there is no mismatch between the transaction that makes someone a VPPA “consumer” and the video materials that generate PII and potentially trigger VPPA liability. Applying that interpretation, the court held that Salazar’s newsletter subscription did not qualify, as he did not allege that the newsletter contained audiovisual content, linked to audiovisual content, or was the means by which he accessed the videos he later watched for free on 247Sports.com.

Pet.App.19a. The court accordingly affirmed dismissal of Salazar’s suit.

SUMMARY OF ARGUMENT

The VPPA is a targeted video-privacy statute that prohibits a “video tape service provider” from disclosing “personally identifiable information” concerning a “consumer” of that video provider. The statute defines each of those terms by reference to the same subject: video materials and video services, i.e., the sources of the sensitive PII the VPPA protects from unauthorized disclosure. A “video tape service provider” is a person engaged in the “rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” “Personally identifiable information” is information that identifies a person as having requested or obtained “specific video materials or services.” And a “consumer” is a “renter, purchaser, or subscriber of goods or services from a video tape service provider.”

Read together, those interlocking definitions make clear that one becomes a VPPA consumer by renting, purchasing, or subscribing to the audiovisual goods or services that a video provider rents, sells, or delivers, and that generate the PII that the statute protects from unauthorized disclosure—not by purchasing a bandana or La-Z-Boy recliner, or subscribing to a non-video newsletter. The law does not protect non-video transaction records from disclosure, so those transactions do not make a person a “consumer” under the statute. That is the best reading of the statute’s text, and it accords with how ordinary speakers understand the full phrase “renter,

purchaser, or subscriber of goods or services from a video tape service provider.”

This reading avoids a fundamental mismatch between the transactions that make someone a VPPA consumer and the videos and associated PII that could lead to a VPPA violation. It also aligns what a person does to become a consumer—rent, purchase, or subscribe to a video—with the things a business does to become a video tape service provider—rent, sell, or deliver videos. Those interlocking definitions use the same verbs to describe what the two participants in the same transaction each must do. Thus, when the VPPA “consumer” definition is viewed in its entirety, rather than reading the words “goods or services” in isolation, it becomes clear that “goods or services” in this context refers to the *audiovisual* goods or services that video providers rent, sell, or deliver and that generate the PII the statute protects from unauthorized disclosure.

The broader statutory context and structure confirm that conclusion. The title, headings, context, and structure all show that the statute as a whole is directed to a single end: preventing the “[w]rongful disclosure of video tape rental or sale records.” 18 U.S.C. §2710. The statute’s consent provisions reinforce that focus by empowering “consumers” to authorize disclosure of that PII. It makes little sense to qualify someone as a consumer empowered to authorize disclosure of PII when the person has never engaged in a video transaction and thus no protected PII even exists. That is even more obvious after the 2013 amendments, which allow a “consumer” to grant advance consent for up to two years. That provision

works well if one becomes a consumer and can grant consent via the very transaction that generates PII, i.e., transacting for particular videos. But that provision makes little sense if individuals can become VPPA consumers (and any consent can expire) years before there is any PII to disclose.

The statute's history and purpose point in the same direction. Congress enacted the VPPA in response to disclosures of video-rental records—most notoriously the publication of Judge Bork's family video-rental history, which was seen as a serious breach of personal privacy. No one cared about Judge Bork's purchases of bandanas or recliners. Accordingly, the legislative materials repeatedly describe a statute directed at protecting information related to video transactions. Indeed, the Senate Report specifies that a department store that sells videotapes must protect transactions involving videotapes, not transactions involving other products.

Salazar's contrary interpretation defies bedrock interpretive rules at every turn. He treats "goods or services" as if those words appeared alone and then gives them their broadest possible dictionary meaning, as "all tangible and intangible offerings" or indeed as "everything" offered. *Petr.Br.1, 10*. But like speakers of ordinary English, courts interpret statutory phrases in context, not in splendid isolation and to their semantic limits. None of the interpretive canons Salazar invokes provides him any aid. Meaningful variation, surplusage, consistent usage, and the word "any" do not justify untethering "consumer" from "video tape service provider" or the broader video-focused context in which it appears. At

most, his arguments show only that Congress did not universally use the same formulations or invariably repeat the modifier “video” in a statute that is all about video privacy. They do not show that Congress untethered VPPA consumers from the PII the statute protects from unauthorized disclosure or silently transformed a video-privacy statute into an all-purpose privacy law that converts commonplace internet business models into founts of statutory and punitive damages.

Salazar’s reading would create just those unworkable and unintended consequences. It is undisputed that the statute does not protect the disclosure of information about free video viewership absent any transaction. But on Salazar’s theory, anyone who ever signed up for a free email or bought anything from a company would perpetually be a VPPA consumer with a potential springing claim when they watch a video on the company’s website—be it a product tutorial, news clip, or promotional ad—if the website employs commonplace tools for analytics or advertising. That would be the case even though Congress has never expressed a privacy concern for (1) non-video transaction records; or (2) sharing of free video-viewership information absent any transaction.

At the same time, viewing free videos online would not enjoy any kind of comprehensive or coherent protection. Instead, the legality of disclosing information concerning individuals’ viewing of free online videos would depend on the happenstance of whether they once acquired an entirely unrelated product from the same company. Finally, Salazar’s version of the statute would be difficult to administer

and create perverse incentives: It would pressure companies to seek disclosure consent from purchasers of non-video products and services and collect and retain records linking website visitors to unrelated transactions—all in the name of a *privacy protection* statute. That cannot be right. This Court should affirm.

ARGUMENT

I. The VPPA Protects Only Customers Who Transact For Audiovisual Goods Or Services.

The VPPA protects “consumer[s]” from unauthorized disclosure of their video-transaction history. 18 U.S.C. §2710(b)(1). It does not protect purchasers of bandanas or recliners from disclosure of their transaction history. Nor does it protect individuals who view promotional, instructional, or other videos online for free without any transaction. It thus makes little sense to allow a plaintiff to combine those two unprotected and unrelated activities—a non-video transaction and subsequent unrelated free video viewership—and parlay them into statutory and punitive damages. The far better reading of the statute requires a consumer of goods or services from a video tape service provider to rent, purchase, or subscribe to the same goods or services that a business must rent, sell, or deliver to be a video tape service provider: video tapes or similar audiovisual materials, not unrelated non-video items. That reading follows from the statute’s text, structure, and context; it accords with the history and purpose of the VPPA; and it disposes of this case because Salazar

subscribed only to a free newsletter that was not itself an audiovisual good or service.

A. The Plain Text Definition of “Consumer” Is Limited to Transactions Involving Audiovisual Offerings.

Statutory interpretation begins with the text; the full text, not just snippets of text, viewed “in isolation” and stripped from its “context.” *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 455 (2022). The VPPA provides that a “video tape service provider” “shall be liable” if it “knowingly discloses ... personally identifiable information concerning any consumer of such provider” without that consumer’s consent. 18 U.S.C. §2710(b)(1). To sue under the VPPA, then, one must be a “consumer,” which in turn is defined as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” *Id.* §2710(a)(1).

Salazar contends that “goods or services” includes any product or service sold, rented, or offered for subscription by a video tape service provider at any time, even if unrelated to videos. But the words “goods or services” do not appear in isolation and cannot be interpreted in a vacuum, without regard to the other words in the VPPA’s “consumer” definition. *See Life Techs. Corp. v. Promega Corp.*, 580 U.S. 140, 146 (2017) (“[A] word is given more precise content by the neighboring words with which it is associated.”); *Torres v. Lynch*, 578 U.S. 452, 459 (2016). And the balance of the definition helps to give coherent scope to “goods or services.” Specifically, Congress defined “consumer” as a “renter, purchaser, or subscriber of goods or services from a video tape service provider.” 18 U.S.C. §2710(a)(1) (emphases added). The

definition of consumer thus contains two limitations that restrict the relevant goods or services to video tapes or similar audiovisual materials: (1) they must be from a video tape service provider; and (2) the transaction must involve a rental, purchase, or subscription from that provider.

1. To start, the prepositional phrase “*from a video tape service provider*” modifies what goods or services one must receive to become a “consumer.” See *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 61 (D.C. Cir. 2014) (per curiam) (“Nouns joined by coordinating conjunctions are usually treated as a single, compounded unit, and a postmodifying prepositional phrase is most naturally read to modify that single unit.”); accord Sidney Greenbaum, *Oxford English Grammar* 219, 233 (1996). Thus, a consumer of services from an internet service provider is understood to refer to a consumer of that company’s internet services, not someone who bought unrelated goods or services. Similarly, a consumer of goods or services from a video tape service provider is best understood to be a consumer of that provider’s video goods or services, not of unrelated goods or services.

Congress underscored that sensible reading by defining “video tape service provider” in a way that clarifies what “goods or services” such a provider must offer: the “rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” 18 U.S.C. §2710(a)(4). Because Congress defined “consumer” by reference to the separately defined phrase “video tape service provider,” “goods or services from a video tape service provider” naturally refers to what the provider offers when acting in that

statutorily relevant capacity, not to any unrelated goods or services the provider may offer. *See Burgess v. United States*, 553 U.S. 124, 130-31 & n.3 (2008). Thus, individuals become VPPA consumers only when they rent, purchase, or subscribe to prerecorded video cassette tapes or similar audio visual materials.

Congress reinforced that limitation by describing the regulated business entities as “providers.” In ordinary usage, a “provider” is understood by the distinctive good or service that it makes available—i.e., a “medical provider” offers medical care, a “cable provider” offers cable packages, and an “internet service provider” offers internet access. A reference to acquiring goods or services from those providers—especially in a legal context where those goods or services are understood to give rise to distinct regulatory concerns—is ordinarily understood to mean the specialized goods or services they distinctively offer, not unrelated items they incidentally offer that do not raise the same regulatory concerns. Thus, a statute addressed to the distinct privacy concerns of medical providers or the distinct monopoly concerns of cable providers would not be triggered by those providers’ sales of branded T-shirts.³

The same is true for “goods or services from a video tape service provider.” 18 U.S.C. §2710(a)(1), (4). Someone becomes a “consumer” by renting,

³ That limiting understanding is often conveyed in ordinary English entirely by context. A headline announcing a “T-Mobile service outage,” for example, is naturally understood to mean an outage of cellular services, not the suspension of return services at a T-Mobile retail outlet.

purchasing, or subscribing to what the video provider makes available *qua* video provider, not unrelated items offered by happenstance. Other statutes illustrate the point. For example, to help modernize government services, Congress has provided for an assessment of “the products or services of cloud service providers,” defined as “an entity offering cloud computing products or services to agencies.” 44 U.S.C. §3607(b)(5), (10). While toothbrushes and produce delivery are “products” and “services” of Amazon, the statute clearly requires an assessment only of Amazon’s cloud computing services, not of the speed of its grocery delivery.

2. The VPPA’s use of “renter, purchaser, or subscriber” to describe how the consumer relates to the “goods or services” confirms as much. 18 U.S.C. §2710(a)(1). This phrase is unique in the U.S. Code, and all three terms describe how to transact for videos.⁴ The first word Congress chose is “renter.” Especially in 1988, during the heyday of brick-and-mortar video stores, the verb “rent” “evo[ked]” videos, *see FCC v. AT&T*, 562 U.S. 397, 406 (2011), not things like “candles, sunglasses, posters, [or] dog bandanas,” Petr.Br.21, that people never rent. Then and now, purchasing a video has been a second (generally more expensive) alternative to renting. And “subscribe” dovetails with a specific business model for providing

⁴ In contrast, when Congress has sought to cover transactions for any kind of good or service, it has typically started with “sale” (not “rent”) and often included other kinds of transactions or catchall language. *E.g.*, 15 U.S.C. §7006(13) (“sale, lease, exchange, licensing, or other disposition”); 18 U.S.C. §1956(c) (“purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition”).

videos to customers. *See supra*, p.5 (discussing Video Mailbox).

That aligns with how ordinary speakers would have understood the words in the definition of “consumer” at the time of enactment. If someone in 1988 was asked to “ren[t]” or “purchas[e]” a “good” from a “video tape service provider” engaged in the business of offering “prerecorded video cassette tapes or similar audio visual materials,” 18 U.S.C. §2710(a)(1), (4), she would have visited a place like Blockbuster and returned with a movie like *Lethal Weapon*, not a dog bandana, Petr.Br.21. If that same person were told to “subscrib[e]” to a “servic[e]” from a video provider, 18 U.S.C. §2710(a)(1), she would have signed up for monthly deliveries from Video Mailbox, rather than subscribed to the *Wall Street Journal*. That is not because dog bandanas are not “goods” or because newspaper subscriptions are not “services.” It is because context matters, especially the context supplied by the immediately surrounding words in a definition. Here, the definition as a whole makes plain that the goods or services that make someone a VPPA consumer are audiovisual in nature.

3. The parallel definitions of “consumer” and “provider” reinforce the conclusion that what one must *receive* from a business to become a “consumer” is the same as what the business must *provide* to the customer to become a “video tape service provider”: videos. *See, e.g., Dubin v. United States*, 599 U.S. 110, 119-20 (2023).

Those definitions work in tandem because they describe what each participant on both sides of a single transaction must do. On the consumer side, one

must be a “renter,” “purchaser,” or “subscriber.” 18 U.S.C. §2710(a)(1). On the provider side, one must engage in “rental, sale, or delivery.” *Id.* §2710(a)(4). Each consumer-side action has a provider-side counterpart. Thus, a video consumer “rent[s]” what the video provider offers for “rental,” “purchase[s]” what the provider “s[ells],” or “subscribe[s]” to what the provider “deliver[s].” 18 U.S.C. §2710(a)(1), (4). Helpfully, Congress specified the object of those rentals, sales, and deliveries: “prerecorded video cassette tapes or similar audio visual materials.” *Id.* §2710(a)(4).

The statute thus is triggered when a person *rents* *Forrest Gump*, *purchases* *My Cousin Vinny*, or *subscribes* to Netflix. It is not triggered when a person purchases a cup of coffee or a t-shirt, or subscribes to a free marketing email.

B. The VPPA’s Structure and Context Tie “Consumer” Status to Audiovisual Goods or Services.

Statutory structure and context confirm what the text makes clear. *See Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989). The VPPA’s remedial scheme and statutory titles, headings, and context all underscore that the “goods or services” that a person rents, purchases, or subscribes to are the same audiovisual goods or services that a video provider rents, sells, or delivers, and that give rise to the PII the statute protects. Reading the statute to make someone a VPPA consumer based on unrelated, non-video purchases that do not themselves give rise to protected PII would sever the consumer definition

from the balance of the statute and create sweeping, punitive liability that the text does not support.

1. The VPPA is a targeted statute that defines “consumer” for a single purpose—to protect that consumer from the unauthorized disclosure of PII associated distinctly with the rental, purchase, or subscription to video services. For that simple reason, it would be more than passing strange if the statute treated someone as a VPPA consumer based on transactions that do not generate protected PII, i.e., information that “identifies a person as having requested or obtained *specific video materials or services*.” 18 U.S.C. §2710(a)(3) (emphasis added).⁵ Needless to say, a transaction for non-video goods or services cannot generate information identifying “specific video materials or services.” *Id.* Such video-specific PII might not materialize *for years*, if ever. And it would be equally anomalous for the provider to seek advance consent for the disclosure of such not-yet-extant video information based on the sale of a bandana, recliner, or other non-video item.

Those anomalies are avoided if the statute is given its natural construction in which it is video rentals, purchases, or subscriptions that give rise to VPPA consumer status. After all, when a consumer

⁵ The VPPA defines PII by referencing what it “includes,” rather than what that phrase “means.” But no one, including Salazar, contends that ordinary non-video transactions themselves generate protected PII absent a later encounter with a video. *See supra* note 1. Indeed, plaintiffs have typically tried to narrow the scope of PII to avoid absurd results and giving the VPPA impossible breadth, such as imposing punitive liability for the disclosure of information having no connection whatsoever to video transactions.

rents, purchases, or subscribes to a video provider's *audiovisual* goods or services, that transaction simultaneously generates the PII that the VPPA protects. That simultaneity (or near-simultaneity in the case of some subscriptions, *see infra*, pp.41-42), explains why Congress saw no need to include any temporal limit between the "consumer"-status-triggering transaction involving "goods or services" and the statute's non-disclosure obligations. If Congress really thought that the purchase of unrelated goods or services created an inchoate "consumer" who could sue years later when they finally watched a free online video (and thus finally created some video-viewership information), one would expect to see some time limit between the former and latter. But if one becomes a VPPA consumer only by renting, purchasing, or subscribing to video materials that inherently involve PII and immediately trigger the provider's privacy obligations, then the absence of any time limit makes perfect sense.

2. Limiting the universe of VPPA consumers to consumers of video goods or services also brings coherence to the statute's consent provisions, including the provision added in 2013. As one would expect from a privacy statute, the VPPA does not prohibit the disclosure of PII when the "consumer" consents to its disclosure. 18 U.S.C. §2710(b)(2)(B). It would be highly anomalous to empower "consumers" to grant or withhold their consent to disclosure of PII during transactions that do not themselves generate the relevant PII.

On the other hand, the scheme works as a coherent whole when the consent to disclose video history is obtained in the same contract as the video rental, purchase, or subscription. Notably, Congress in 2013 amended the statute to allow for advance consent—but set a strict two-year maximum time limit for that advance consent. 18 U.S.C. §2710(b)(2)(B)(ii)(II). Congress presumably did so because it understood that one became a VPPA consumer only by engaging in the kind of transactions that typically generate covered PII, i.e., the rental or purchase of, or subscription to, video goods or services. Thus, a consumer can grant advance consent to the disclosure of PII in the very transaction that creates PII and makes them a VPPA consumer, and the two-year clock logically begins running immediately. But if a person could become a VPPA “consumer” (and would-be-consent-provider) based on non-video transactions—including transactions more than two years before any PII was generated by watching an unrelated free video—then the advance consent obtained from the VPPA consumer at the point of sale could expire before PII even came into existence. That result makes little sense and underscores that consumer status is not triggered by entirely unrelated transactions, at any time, for anything imaginable.

3. Salazar’s contrary construction gives the statute an entirely arbitrary scope. He would create countless VPPA “consumers” who never qualify for the operative protections of the statute because they never engage in any transactions that generate protected PII. At the same time, Salazar’s view would have the statutory protections for individuals who view free online videos turn on where they bought a chicken

sandwich years earlier. There is no indication that Congress was concerned about any privacy interests implicated by these gratuitous materials, which are different in kind from the video-rental histories Congress sought to protect. But there is even less reason to think that Congress wanted privacy protection for these materials to turn on the happenstance of whether someone purchased entirely unrelated goods or services from the same company, in an entirely unrelated transaction, years earlier.

4. The VPPA’s authorization of punitive damages and stiff statutory damages (\$2,500 per act) strongly favors construing the statute “against the expansive liability” that Salazar’s reading would create. *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F.4th 1219, 1233 (D.C. Cir. 2025). “The Court’s cases abound with the recognition of the penal nature of punitive damages.” See *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 297 (1989) (O’Connor, J., concurring in part and dissenting in part) (collecting cases). And “[t]he law is settled that penal statutes are to be construed strictly.” *Bittner v. United States*, 598 U.S. 85, 102 (2023) (per curiam) (Gorsuch, J., op.) (quoting *Comm’r v. Acker*, 361 U.S. 87, 91 (1959)). That approach ensures “fair notice to regulated parties” before they incur punishment via punitive damages. *Pileggi*, 146 F.4th at 1233.

That notice concern is especially acute here. Nothing in the statute gives fair notice that a company exposes itself to punitive liability when it does two unrelated things—potentially years apart—neither of which independently triggers the statute. Yet Salazar would impose potentially massive liability on a

company that sells a bandana (a transaction that does not itself generate protected PII) and years later allows the same individual to watch free online videos (which involves no rental, sale, or subscription) and shares viewership information for advertising. Statutes are not ordinarily read to impose that kind of arbitrary, springing liability—especially not punitive liability.

5. Every title and heading in the statute confirms what common sense suggests: The statute is triggered by transactions for videos, not bandanas. The statutory heading—appearing right above the definition of “consumer”—is “[w]rongful disclosure of *video tape* rental or sale records,” 18 U.S.C. §2710 (emphasis added), and the sub-heading right below the definitions is “[*v*]ideo tape rental and sale records,” *id.* §2710(b) (emphasis added). The VPPA’s full title is an act to “amend title 18, United States Code, to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual materials.” Pub. L. No. 100-618, 102 Stat. at 3195. And the short title is the “Video Privacy Protection Act of 1988.” *Id.*, §1, 102 Stat. at 3195. A law with those headings and titles is most naturally read to cover *video-related* rentals, sales, and deliveries, not to be triggered by unrelated non-video purchases. *See Dubin*, 599 U.S. at 120-21 (noting that this Court has “long considered” titles and headings as “tools available” for interpreting statutory meaning); *see also United States v. Fisher*, 6 U.S. (2 Cranch) 358, 374 (1805) (Marshall, C.J.); Antonin Scalia & Bryan Garner, *Reading Law* 221-24 (2012).

C. The VPPA's Purpose and Historical Context Confirm Its Narrow Focus on Audiovisual Goods or Services.

Both statutory purpose and historical context strongly buttress what the text makes clear. “[T]he context from which the statute arose demonstrates a much more limited” conception of goods or services “was intended,” *Bond v. United States*, 572 U.S. 844, 866 (2014), than “society’s entire economic output,” Pet.App.12a.

“The impetus” for the VPPA “occurred when a weekly newspaper in Washington published a profile of Judge Robert H. Bork based on the titles of 146 films his family had rented from a video store.” S. Rep. No. 100-599, at 5. Congress was also aware of “[s]imilar, though less well publicized, incidents.” *Id.* at 6. An attorney for a woman in a child-custody dispute, for example, “made an informal request for the records of every film rented by her husband in an effort to show that, based on his viewing habits, he was an unfit father.” *Id.* Similarly, government officials informally sought video-rental history to aid in investigations. *See Video and Library Privacy Protection Act of 1988: Joint Hearing on H.R. 4947 and S. 2361 Before the Subcomm. on Cts., C.L., & the Admin. of Just. of the H. Comm. on the Judiciary and the Subcomm. on Tech. & the L. of the S. Comm. on the Judiciary*, 100th Cong. 77 (1989) (statement of Vans Stevenson, Director of Public Relations, Erol’s Inc.). Though the facts underlying the incidents varied, the core problem was consistent: Third parties sought information about video transactions that Congress believed should remain private.

The Senate Report reinforces the point. When discussing the definition of PII, the report clarifies 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. It gave “a department store that sells video tapes” as an example: It “would be required to extend privacy protection to only those transactions involving the purchase of video tapes and not other products.” *Id.* By divorcing the transaction that makes someone a “consumer” from the activity that generates covered PII, Salazar’s capacious conception of a VPPA consumer contradicts Congress’ intent.

II. Salazar’s Interpretation Of “Consumer” Is Wrong At Every Turn.

Salazar’s contrary reading depends on isolating the words “goods or services” from everything around them and then giving those words their broadest possible meaning. Indeed, he affirmatively celebrates the disconnect between his definition of “consumer” and the PII the statute protects by proclaiming that his construction avoids superfluity. But, in reality, it promotes incoherence and directly defies any sensible reading of the statute as a whole. The VPPA does not protect every customer of every business that happens to offer videos somewhere on its website. It protects “consumer[s]” of “video tape service provider[s],” 18 U.S.C. §2710(a)(1), (4), and protects the video history generated in those transactions from unauthorized disclosure. Once the statutory text is read in full, Salazar’s interpretation falls apart. It disregards the words Congress actually used, misapplies the

interpretive canons he invokes, and would convert a targeted video-transaction-privacy statute into a highly punitive trap for the unwary.

A. Salazar Ignores the Immediately Surrounding Words That Inform the Scope of “Goods or Services.”

Salazar boldly claims that the phrase “goods or services” in the VPPA’s definition of consumer “refers to society’s entire economic output.” Pet.App.12a. That broad definition might make sense in an ambitious statute seeking to protect the privacy of every consumer in every transaction implicated by society’s entire economic output. But that expansive definition would be a stranger in a strange land in the context of the targeted statute Congress actually passed in 1988 to prevent wrongful disclosure of video tape transaction records. Every tool of statutory construction, properly applied, supports a narrower definition of “consumer” that fits seamlessly with the balance of the VPPA in general and its “consumer” definition in particular.

1. Salazar’s argument begins with a false premise. He claims—21 separate times, no less—that “goods or services” is an “unmodified phrase” that “contains no limitation.” Petr.Br.17; *see* Petr.Br.1, 2, 10, 11, 15, 16, 17, 21, 22, 33, 34, 38, 39, 42, 49. That premise is wrong no matter how many times Salazar repeats it.

The words “goods or services” are flanked by two phrases that help define “consumer” and that modify the breadth of “goods or services”: a “consumer” is a “renter, purchaser, or subscriber ... from a video tape service provider.” 18 U.S.C. §2710(a)(1). As set forth above, the definition starts with language distinctly

associated with videos—“renter, purchaser, or subscriber”—and ends with language that directly references videos—“video tape service provider.” Particularly in the context of the Video Privacy Protection Act, the definition is naturally read to cover transactions for videos—the very transactions that produce records protected from unauthorized disclosure by the balance of the statute.

By ignoring critical components of the “consumer” definition, Salazar commits an obvious interpretive error. See, e.g., *Textron Lycoming Reciprocating Engine Div., AVCO Corp. v. Auto., Aerospace & Agric. Implement Workers of Am.*, 523 U.S. 653, 657 (1998) (“It is not the meaning of ‘for’ we are seeking here, but the meaning of ‘[s]uits for violation of contracts.’”). “[A] statute’s meaning does not always turn solely on the broadest imaginable definitions of its component words.” *Dubin*, 599 U.S. at 120. Courts construe “statutes, not isolated provisions,” *Graham Cnty. Soil & Water Conservation Dist. v. United States*, 559 U.S. 280, 290 (2010), so a reading that “may be plausible in the abstract” must be rejected if it is “ultimately inconsistent with both the text and context of the statute as a whole,” *Sturgeon v. Frost*, 577 U.S. 424, 438 (2016).

For that reason, Salazar’s repeated insistence that ordinary speakers do not use the “unmodified” phrase “goods or services” to “refer only to audiovisual materials” is beside the point. Petr.Br.16, 17. Ordinary speakers would be unlikely to use the full phrase—“renter, purchaser, or subscriber of goods or services from a video tape service provider”—at all, but if they did they would not use it to refer to the

purchase of a bandana or a recliner or any other random non-video product from “a department store that sells video tapes.” S. Rep. No. 100-599, at 12. Instead, they would understand from context that it is the audiovisual goods or services one secures from a video tape service provider that make one a consumer under the VPPA.

Salazar protests that ordinary speakers use “*from* a video tape service provider” to identify the source of the good rather than to describe the types of goods or services on offer. Petr.Br.39 (emphasis added). But in many contexts “[t]he named source ‘from’ which the product must derive gives meaning to the scope of the regulated goods and services.” *Pileggi*, 146 F.4th at 1235. Someone who obtains goods or services *from* a healthcare provider ordinarily refers to a patient who receives medical treatment, not a visitor who buys a middling cup of coffee from the hospital cafeteria. *Id.* That would be especially clear in a conversation about medical privacy, which further underscores the problems with Salazar’s siloed approach. Context matters for ordinary speakers, no less than statutory drafters. If a musician tells her manager to “get advice from an entertainment lawyer,” no one would think the manager has satisfied that instruction by getting a restaurant recommendation or a stock tip. That is true even though dictionaries define “advice” capaciously to include any kind of recommendation.

Salazar insists that the VPPA’s definition of video tape service provider in (a)(4) cannot inform “goods or services” because (a)(4) “mentions only ‘prerecorded video cassette tapes or similar audio visual materials’” and “does *not* mention ‘services.’” Petr.Br.41. That is

simply wrong. The VPPA and its definitions have a particular kind of service in mind—the delivery of audiovisual materials via subscription. A video tape service provider engages in the “rental, sale, or *delivery*” of audiovisual materials. 18 U.S.C. §2710(a)(4) (emphasis added). That does not mean, however, that a video store or department store offering takeout meals (or a DoorDash service with free online videos) is creating new VPPA consumers with every food delivery.

Further straining to escape the force of the words flanking the phrase “goods or services,” Salazar argues that nothing can narrow the reach of that phrase because it is unambiguous. Petr.Br.42. But while it is a mistake to confuse breadth and ambiguity, it is a bigger mistake to ignore statutory language that makes clear that Congress is not using a phrase in its broadest possible, unmodified sense. After all, it is a settled interpretive principle that “a general phrase can be given a more focused meaning by the terms linked to it.” *Fischer v. United States*, 603 U.S. 480, 488 (2024). Indeed, even without the kind of clear modifying language surrounding “goods or services,” this Court has declined to interpret “[e]very contract ... in restraint of trade” to reach literally every contract, *see, e.g., Nat’l Soc’y of Pro. Eng’rs v. United States*, 435 U.S. 679, 687-88 & n.9 (1978), or “any note” “to mean literally ‘any note,’” *Reves v. Ernst & Young*, 494 U.S. 56, 62-63 (1990) (emphasis added). The list of cases where the Court has turned to statutory context to cabin otherwise broad language goes on, *Learning Res., Inc. v. Trump*, 146 S.Ct. 628, 639 (2026) (Roberts, C.J.), and on, *McDonnell v. United States*, 579 U.S. 550, 568-69

(2016), and on, *United States v. Williams*, 553 U.S. 285, 294 (2008).

In arguing otherwise, Salazar loses sight of the bedrock principle that “[s]tatutory construction ... is a holistic endeavor.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). It is not “a series of if-then computations,” *Duguid*, 592 U.S. at 413 (Alito, J., concurring), where the reader mechanically cuts out isolated words, copies the dictionary definitions of those words, and pastes those definitions into the statutory text, *see, e.g., Dubin*, 599 U.S. at 120. “No reasonable reader interprets texts that way.” *Duguid*, 592 U.S. at 413 (Alito, J., concurring).⁶

B. The Interpretive Canons Salazar Invokes Confirm Rather Than Refute the Audiovisual Limitation.

1. Salazar starts by stretching the meaningful-variation canon beyond its limits. He argues that “goods or services” in the VPPA’s consumer definition cannot mean *audiovisual* goods or services because

⁶ Mechanically reading statutory text in isolation would defeat Salazar’s own claim to monetary relief. The VPPA makes a video tape service provider who violates the law liable “for the relief provided in subsection (d).” 18 U.S.C. §2710(b)(1). But subsection (d) does not provide for any monetary relief; it just bars use of improperly disclosed PII as evidence in a legal proceeding. *Id.* §2710(d). Courts have relied on context to conclude that Congress actually intended to cross-reference subsection (c), which creates a civil action and damages remedy. *See, e.g., Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 537 (7th Cir. 2012). Salazar cannot rely on context to give himself a damages remedy and then turn around and insist that courts ignore context in construing “goods or services.”

the VPPA’s definition of PII refers to “*video* materials or services,” and “different terms usually have different meanings.” Petr.Br.22 (emphasis altered). That gets matters almost exactly backwards.

This meaningful-variation argument fails at the threshold. The meaningful-variation canon “grows weaker with each difference in the formulation of the provisions under inspection.” *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, 536 U.S. 424, 435-36 (2002). As Salazar admits, the two definitions he invokes “describe different relationships to different subject matters.” Petr.Br.26. And they do not merely repeat the phrase “goods or services” with the modifier “video” omitted in one definition; they instead use different words to perform different functions in different ways. The switch from “goods or services” to “specific video materials or services” reflects multiple textual variations.

For instance, the consumer definition is connecting the words “renter, purchaser, or subscriber”—words that do not appear in the PII definition—to “from a video tape service provider.” In that context, it is natural that Congress understood the phrase “goods or services” to correspond to the “video cassette tapes or similar audio visual materials” available by “rental, sale, or delivery” from a video tape service provider. As explained, there is a direct one-to-one correspondence between the “renter, purchaser, or subscriber” component of the VPPA’s consumer definition and the “rental, sale, or delivery” component of its video tape service provider definition.

The PII definition, by contrast, isolates the specific information that providers must keep

confidential. It thus focuses on *what* the information is (the particular video titles requested or obtained), without addressing from whom the person rented, purchased, or subscribed. Indeed, the information extends beyond rentals, purchases, and subscriptions to reach requests for materials that are out of stock, as Salazar acknowledges. Petr.Br.25-26. Those differences in function and scope may help explain the differences in language. But they do not begin to explain why Congress would have wanted VPPA “consumer” status to be triggered by transactions involving non-video goods or services that do not themselves generate protected PII.

Moreover, Salazar ignores that the meaningful-variation argument is “no more than a rule of thumb.” *Sebelius v. Auburn Reg’l Med. Ctr.*, 568 U.S. 145, 156 (2013). There is simply no rigid “canon of interpretation that forbids interpreting different words used in different parts of the same statute to mean roughly the same thing.” *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018). That is because, “[t]hough one might wish it were otherwise, drafters ... often ... use different words to denote the same concept.” Scalia & Garner, *supra*, at 170; see *DePierre v. United States*, 564 U.S. 70, 83 (2011) (Congress sometimes “uses slightly different language to convey the same message”). That is certainly the case with the VPPA, which includes other minor variations in wording, rather than mechanically reproducing a single phrase like “prerecorded video cassette tapes or similar audio visual goods or services” at every turn. For example, while the PII definition refers to “specific video materials or services,” 18 U.S.C. §2710(a)(3), a later provision describes protected information as details

about certain “video tapes or other audio visual material,” *id.* §2710(b)(2)(D)(ii). While one could strain to interpret the latter not to reach “services” or limit the reach of the former via the word “specific,” the far more logical inference is that Congress fell short of the platonic ideal of “perfection of drafting,” Scalia & Garner, *supra*, at 170, and the provisions cover the same information despite minor variations in wording.

Finally, the meaningful-variation rule of thumb must be reconciled with the canons that words and phrases are known by the company they keep, that statutory text and provisions should be interpreted harmoniously, and that context matters. *See* Scalia & Garner, *supra*, at 167-69, 180-82, 195-98. When the entire statute is focused on video-transaction privacy, and the statute includes numerous (albeit textually varied) references to “video materials or services,” “video tapes or other audio visual materials,” and “video cassette tapes or similar audio visual materials,” it might be theoretically possible to read the omission of a similar modifier before “goods or services” to signal a congressional intent to reach “society’s entire economic output.” *Pet.App.12a*. But while such a construction might be linguistically possible, it is utterly implausible as a construction of a statute with a singular focus on video-transaction privacy. The far more likely—and correct—inference is that Congress omitted the modifier as unnecessary given the plain meaning of the surrounding words and the broader context of the statute as a whole.

2. Salazar’s scattershot efforts to invoke the anti-surplusage canon, *Petr.Br.30-33*, largely repackage

his meaningful-variation arguments and fare no better.

a. The Sixth Circuit’s interpretation does not render the word “video” in the PII definition’s reference to “specific video materials or services” superfluous. *Contra* Petr.Br.30. This Court has long recognized that anti-superfluity is a relatively weak interpretative guide because Congress often adds language to “remove doubt” about the meaning of surrounding text. *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013). Because the PII definition sets forth precisely what information video providers must keep confidential to avoid statutory and punitive damages, 18 U.S.C. §2710(a)(1), (a)(3), Congress had every reason to speak with particular clarity to make “doubly sure” that video providers understood their legal obligations, *Pugin v. Garland*, 599 U.S. 600, 609 (2023).

The statutory history confirms this point. The Senate Judiciary Committee added “video” to the definition of PII relatively late in the legislative process. *See* S. Rep. No. 100-599, at 5; *compare* S. 2361, 100th Cong. §2(a) (May 10, 1988), *with* S. 2361, 100th Cong. §2(a) (Oct. 5, 1988). And it did so, in its own words, “*to make clear*” that the VPPA’s privacy protections extend only to audiovisual goods or services. S. Rep. No. 100-599, at 12 (emphasis added). Thus, the word “video” is *not* surplusage, but belt-and-suspenders language specifically designed to make the statute’s exclusive focus on information about video materials or services crystal clear.

b. Salazar’s claim that the Sixth Circuit’s interpretation makes the phrase “requested or

obtained” in the PII definition superfluous, Petr.Br.31-32, is weaker still. As noted, Congress was not content to protect the information about the titles a consumer purchased, rented, or subscribed to. It also wanted to protect against the unauthorized release of titles that an established customer requested but did not obtain (because the title was out of stock or otherwise unavailable); hence the express reference to “requested.” Moreover, the distinct dynamic with subscriptions explains the reference to “or obtained.” Whereas a purchaser or renter might be safely assumed to obtain the title they purchased or rented, the same is not true of a subscriber, who generally subscribed to a service, not particular titles. In short, there is nothing superfluous about the PII definition’s reference to “requested or obtained.”

c. Salazar’s final surplusage salvo is likewise wide of the mark. He claims that, under the Sixth Circuit’s reading, “every transaction that gives rise to ‘consumer’ status necessarily produces ‘personally identifiable information’ as well,” thus making one of those “statutory element[s] ... surplusage in its entirety.” Petr.Br.32 (emphasis omitted). That is not quite correct, and is more a feature than a bug in all events. The “consumer” and “PII” definitions serve distinct and indispensable functions: The definition of “consumer” identifies *whom* the statute protects and authorizes to give consent, while the PII definition identifies *what* information the statute protects. In part because of those distinct but related functions, the two provisions are highly complementary without overlapping entirely. It is possible, for example, to briefly be a VPPA “consumer” before the video provider generates protected PII in one particular

scenario—namely, subscribers to video services may subscribe and thus become “consumers” before they “request or obtain” their first specific title. There is thus no surplusage.

While those points are sufficient to eliminate any actual superfluity, the Sixth Circuit’s construction does mean that virtually every transaction that qualifies someone as a VPPA consumer will also generate protected PII. But that is a hallmark of statutory coherence, not a superfluity problem. Salazar’s contrary reading completely untethers the VPPA’s consumer definition from its PII definition in ways that would create countless inchoate VPPA consumers with no video transaction records to protect as PII or disclose with consumer authorization. That veritable army of inchoate VPPA consumers, having purchased anything from recliners to chicken sandwiches, or merely signed up for marketing emails, would generate no protected PII from those transactions and thus would obtain no immediate rights under the VPPA. Instead, they would lie in wait to launch class actions against unsuspecting companies that provide free online videos while sharing browsing history for advertising or analytics, as countless companies do. As already explained, there is no superfluity problem here at all. But if the price of avoiding superfluity is to create both a massive disconnect between two otherwise complementary statutory definitions and a statute of incoherent coverage with highly punitive traps for the unwary, then a little superfluity is well worth tolerating.

3. The consistent-usage argument Salazar raises is entirely unpersuasive. Petr.Br.33-34. He claims that the Sixth Circuit’s interpretation forces the phrase “goods or services” to “take two different meanings in the VPPA.” Petr.Br.33. But Salazar once again ignores the full text of the consumer definition, in particular, the words flanking “goods or services” in the definition. Subsection (b)(2)(D)(ii) lacks those words and refers more generally to circumstances where certain PII can be used for “marketing goods and services directly to the consumer.” 18 U.S.C. §2710(b)(2)(D)(ii). The “consumer” definition, by contrast, is specific to transactions for “goods or services” “from a video tape service provider.” It is thus no surprise that provisions with materially different text might mean something different.

4. Salazar next tries to marshal interpretive support from the statute’s “use of ‘any.’” Petr.Br.27. But the placement of “any” helps Paramount, not Salazar. Of course, “the word ‘any’ has an expansive meaning” with respect to the words that immediately follow. *Id.* (quoting *Patel v. Garland*, 596 U.S. 328, 338 (2022)). But Congress did *not* put “any” before the statutory phrase “goods or services.” 18 U.S.C. §2710(a)(1). Indeed, the VPPA uses “any” a dozen times elsewhere, *id.* §2710(a)(1), (a)(4), (b)(1), (b)(2)(B), (b)(2)(D)(ii), (b)(2)(E), (b)(2)(F), (c)(1), (d), despite being a “short statutory provision,” Petr.Br.32. Thus, under Salazar’s own logic, the absence of “any” immediately before “goods or services” is a damning omission. *See* Petr.Br.22-27 (urging the Court to draw interpretive inferences based on variations in statutory language). Congress certainly knows how to use that precise phrase—“*any* goods or services”—

when it wants to sweep expansively, *see, e.g.*, 15 U.S.C. §1125(a)(1); *id.* §8403; 19 U.S.C. §2411(a); 22 U.S.C. §9529(a)(1), yet it did not do so in the VPPA.⁷

Instead, in the consumer definition “any” modifies not “goods or services,” but “*any* renter, purchaser, or subscriber of goods or services from a video tape service provider.” Petr.Br.28 (quoting 18 U.S.C. §2710(a)(1)) (emphasis in original). Congress’ desire to comprehensively capture all renters, purchasers, and subscribers of the relevant goods or services from video tape service providers does not shed light on whether Congress wanted to sweep in purchases of goods or services entirely unrelated to videos, that do not generate protected PII, and could just as readily be purchased from a non-video tape service provider. In fact, given the specific focus of the VPPA, it is telling that Congress did not employ emphatic broadening language like “*any* goods or services *of any kind*,” as one would expect if Congress intended to signal a dramatic change of subject from videos—the single-minded focus of the VPPA—to any economic offering imaginable, including dog bandanas. After all, if Congress actually intended a provision in a statute otherwise focused on rodents to cover every animal up to and including pachyderms, one would expect a clear signal marking that substantial change in scope. *Cf. Whitman v. Am. Trucking Assn’s, Inc.*, 531 U.S. 457, 468 (2001).

⁷ Congress also knows how to use other broadening language, *e.g.*, 15 U.S.C. §7006(13) (covering “intangibles,” “any combination” of goods, services, and intangibles, and real property), yet omitted it here.

Salazar highlights several other references to “any,” but they do not help him. Petr.Br.27. Congress forbade providers from disclosing PII about “*any* consumer.” Petr.Br.27 (quoting 18 U.S.C. §2710(b)(1)) (emphasis in original). That says nothing about who qualifies as a consumer in the first place and only highlights the anomaly of creating a large class of consumers with no protected PII. Congress similarly allowed “[*a*]ny person aggrieved by any act of a person in violation of this section’ to ‘bring a civil action.” Petr.Br.29 (quoting 18 U.S.C. §2710(c)(1)) (emphasis in original). That again says nothing about who qualifies as a consumer in the first place. And a large class of PII-less consumers makes little sense when the way someone becomes aggrieved under the VPPA is via the unauthorized disclosure of PII.

5. Straying even further afield, Salazar claims that adopting his interpretation would avoid “further atextual innovation” among the lower courts about how to interpret (1) the definition of “video tape service provider,” Petr.Br.34, 35, (2) what qualifies as an “audiovisual material,” Petr.Br.36, and (3) whether newsletters fall within the statute’s scope, Petr.Br.37. Of course, none of these issues is squarely before the Court. But the principal reason that lower courts have worked to impose narrowing constructions on those other statutory terms is that the statute simply cannot have the broad and incoherent reach Salazar attributes to it. The surest way to avoid that problem and resist the temptation for undue judicial innovation is to faithfully interpret the full text of the VPPA’s consumer definition, rather than read the words “goods or services” in isolation. That interpretation creates a coherent statute where

virtually every VPPA consumer has PII (and consent to give or withhold) and avoids an interpretation where statutory coverage literally turns on where someone bought a chicken sandwich years earlier.⁸

C. Salazar’s Boundless Reading Would Transform the VPPA Into an Incoherent and Unworkable Internet-Privacy Regime.

In addition to being incompatible with the statutory text and context, Salazar’s interpretation is practically untenable. By severing “consumer” from the PII-generating audiovisual transactions at the heart of the VPPA, he would convert a 1988 video-rental statute into the de facto regulatory regime for widespread internet advertising technology that did not even exist at the time of the VPPA’s enactment. And it would be a decidedly incoherent regulatory regime, simultaneously wildly overbroad and radically underinclusive, with statutory coverage (and substantial statutory penalties) turning on total happenstance. Two people could watch the same free online videos on a website with the same commonplace

⁸ Salazar’s musings about whether newsletters qualify as audiovisual goods or services, Petr.Br.36-38, are best left for a case where (unlike here) the plaintiff alleges that the newsletter *does* qualify as an audiovisual good or service. Although Salazar alleged that he watched videos on 247Sports.com, *see* Petr.Br.36 n.3, he does not allege that the newsletter itself (as opposed to the online platform) is a video or contained any audiovisual content, *see* Pet.App.19a. He alleges only that the newsletter links to pages on the website that contain articles, still photos, and other content—content that can be accessed by visitors of the website regardless of whether they signed up for the newsletter. Pet.App.19a, 22a-23a.

advertising or analytics software, and one could recover punitive damages while the other would have zero protection, depending on where they engaged in an unrelated non-video transaction years earlier. Those absurdities are further proof that Salazar gives the statute a meaning it cannot bear.

1. Under Salazar’s interpretation of the VPPA, any company that provides video content, even without any rental, purchase, or subscription—which is to say virtually any company with a website—could face potentially ruinous class-action liability just for engaging in “commonplace computer activity.” *Van Buren v. United States*, 593 U.S. 374, 393 (2021). The use of technology like the Meta Pixel, Google Analytics, TikTok Pixel, and X Pixel, which track and disclose a website visitor’s browsing activity to a third-party for analytics or targeted advertising, is commonplace. Over half of all websites reportedly use tools that associate certain web activity with a user’s Meta, Google, TikTok, or X account. *See Usage statistics and market shares of traffic analysis tools for websites*, Web Tech. Surveys (May 15, 2026), <https://perma.cc/Q226-YA2R>. If Salazar is correct that someone has a valid VPPA claim just for watching a free video on a website owned by a company from which that person previously acquired an unrelated non-video good or service, then companies would face crippling liability for online conduct that is “ubiquitous” and divorced from the privacy concerns that prompted the VPPA—especially if all that is involved is a promotional or instructional video about Folgers or the latest La-Z-Boy chair. *Dubin*, 599 U.S. at 129. Even if companies decide to change their policies immediately after a decision in Salazar’s

favor, plaintiffs would still have at least two years to bring litigation on behalf of broad classes defined by the happenstance of non-video transactions that could stretch back an unlimited number of years earlier.

Congress may some day want to comprehensively address the use of third-party tracking software on the internet. But that some day was not November 5, 1988, when it acted to address a decidedly pre-internet problem. Nor was it January 10, 2013, when it updated the VPPA to facilitate advance consent in ways that are incompatible with Salazar's understanding of how and when one becomes a VPPA consumer. Moreover, if Congress does address the use of third-party advertising and analytics software, it is unlikely to be distinctly concerned with its use in promotional and instructional videos, as opposed to its use on websites more generally. To be sure, the likely scope of a future effort to address third-party tracking software is a matter of speculation. But there is no serious argument that Congress would consciously make statutory coverage turn on the happenstance of whether a 2026 online video watcher bought a non-video product from a brick-and-mortar store years earlier. That Salazar's interpretation would yield just that arbitrary coverage is a cautionary tale against repurposing pre-dial-up statutes to address distinctly modern issues. *Cf. Duguid*, 592 U.S. at 405-06 (declining to extend the Telephone Consumer Protection Act's autodialer restrictions to smart phones).

Salazar cannot meaningfully dispute that, under his interpretation, almost everyone in America is an inchoate VPPA "consumer." After all, virtually

everyone has transacted for *something* from a business that also rents, sells, or delivers unrelated audiovisual materials. One would be hard pressed to find a person (either now or in 1988) who has never bought an item from Walmart, Target, Sears, Amazon, CVS, K-Mart, or the countless other stores that count audiovisual materials among the vast array of goods they supply. At the same time, most people regularly view free online videos on websites that use third-party advertising or analytics. Thus, despite Congress' intention to enact privacy protections in a "narrow" arena, *supra*, p.6, Salazar would have the Court employ "a chainsaw" where Congress "meant to use a scalpel," *Duguid*, 592 U.S. at 405, and convert a 1988 video-records statute into the reigning regulatory regime for internet privacy.

Inevitably, the VPPA is uniquely ill-suited for that accidental task. Nothing in the VPPA cabins the "staggering breadth" Salazar would give it. *Dubin*, 599 U.S. at 129. Congress did not include any temporal limitation on the transaction involving a "good or service"; it thus does not matter how long ago the rental, purchase, or subscription happened. And although there is a two-year limitations period, that starts running when the provider makes the unlawful *disclosure*. See 18 U.S.C. §2710(c)(3). So long as the consumer files suit within two years of that disclosure, he has a timely claim no matter how long ago the goods-or-services transaction occurred. At the same time, the statute offers no protection at all for the video-viewing activity of a person who did not separately purchase any product or service from the provider. That is not a statute that makes any sense,

and it is not the statute Congress wrote in 1988 to target a narrow and distinct problem.

2. Not only would Salazar’s position vastly expand the VPPA’s reach; it would also have the perverse effect of *undermining* consumer privacy in the online world. Under his view, a company cannot know whether a website visitor is a VPPA “consumer” simply by asking whether the visitor rented, purchased, or subscribed to audiovisual materials. It must instead determine whether that visitor has ever obtained *any* good or service from the company, even an unrelated product purchased years or decades earlier. That rule would pressure companies to collect and retain more information about their customers—not less—contrary to the whole thrust of the VPPA. *See, e.g.*, 18 U.S.C. §2710(e) (requiring video providers to destroy PII “as soon as practicable, but no later than one year from the date the information is no longer necessary for the purpose for which it was collected”); *accord Pileggi*, 146 F.4th at 1233-34.

If companies responded by seeking blanket consent to disclose video-viewing information from every person who ever visits their site, that would equally run counter to the VPPA’s intended purposes. The VPPA targets the unauthorized disclosure of PII and thus empowers “consumers” to grant or withhold consent. An overbroad definition of “consumer” that turns consent into an empty gesture as the rote price of admission to websites would frustrate the plain intent of the statute. The net result would be that the VPPA would not provide anyone with any meaningful protection—because virtually everyone would provide consent reflexively.

These consequences confirm that Salazar has misread the statute. Congress enacted the VPPA to prevent video providers from disclosing the video-viewing records they obtained in the ordinary course of providing audiovisual goods and services. *See supra*, pp.5-8. It did not require every company that offers online video content to create sprawling identity-matching systems that follow customers across years of unrelated transactions, or to force everyone to consent to disclosure as the price of getting online.

The regime Salazar envisions has nothing to recommend it, and it can be avoided by the simple expedient of interpreting the statute as written and as a coherent whole. A consumer of goods and services from a video tape service provider is a person who transacted for the same thing that triggers protection from unauthorized disclosure: videos. The statute sensibly protects those consumers whether they purchase, rent, or subscribe, and whether they obtain or merely request a particular title. Salazar's contrary interpretation would create a veritable army of inchoate VPPA consumers with no transaction that generates protected PII, but a springing claim to harsh statutory and punitive damages should they subsequently go online and view a video, for free, on a website supported by advertising. The choice between those alternatives is straightforward.

CONCLUSION

For those reasons, this Court should affirm.

Respectfully submitted,

DAVID L. YOHAJ	PAUL D. CLEMENT
GREGORY SILBERT	<i>Counsel of Record</i>
ZACHARY D. TRIPP	ERIN E. MURPHY
BLAKE STEINBERG	DANIELLE R. SASSOON
WEIL, GOTSHAL	PHILIP HAMMERSLEY
& MANGES LLP	CLEMENT & MURPHY, PLLC
767 Fifth Avenue	706 Duke Street
New York, NY 10153	Alexandria, VA 22314
(212) 310-8846	(202) 742-8900
	paul.clement@clementmurphy.com

Counsel for Respondent

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