No. 25-459

IN THE

Supreme Court of the United States

MICHAEL SALAZAR,

Petitioner,

v.

PARAMOUNT GLOBAL, DBA 247SPORTS,

Respondent.

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

BRIEF OF *AMICUS CURIAE* THE ENTERTAINMENT SOFTWARE ASSOCIATION IN SUPPORT OF RESPONDENT

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STATEMENT OF IDENTITY AND INTEREST OF *AMICUS CURIAE* [1]

Amicus curiae Entertainment Software Association ("*Amicus* ESA") is a not-for-profit U.S. trade association serving companies that manufacture video game equipment and create software for game consoles, handheld devices, personal computers, and the Internet. One of *Amicus* ESA's missions is to advocate for the U.S. video game industry on issues including global content protection, intellectual property, technology, e-commerce, and consumer-facing digital regulations in support of interactive software publishers. *Amicus* ESA's members include many of America's leading video game companies, innovators, creators, publishers, and business leaders that are reimagining entertainment and transforming how we interact, learn, connect, and play.[2]

ESA has a substantial interest in the resolution of this case. The Court's interpretation of the Video Privacy Protection Act, 18 U.S.C. § 2710 ("VPPA") will directly affect privacy compliance obligations and litigation exposure for companies throughout the video game industry, including ESA's members.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] A list of *Amicus* ESA's member companies is available at https://www.theesa.com/about-esa/.

Modern interactive products, such as video games, often incorporate trailers, clips, and other embedded video content as part of a broader gameplay or user experience. An expansive interpretation of the VPPA could therefore expose ordinary game-related products and services to sweeping liability based not on the product the consumer actually obtained, but on the mere presence of video content within a broader interactive experience.

That risk is significant. Video games are a mainstream form of entertainment in the United States, with more than 205 million Americans playing them regularly.[3] The video game industry is also a major and growing contributor to the U.S. economy and, ultimately, to consumers.[4] *Amicus* ESA and its members therefore have an interest in this case because this Court's interpretation of the VPPA's scope will have a significant impact on video game publishers, developers, and distributors.

Amicus ESA submits this brief in support of Respondent Paramount Global, d/b/a 247sports ("247Sports") because Petitioner Michael Salazar ("Petitioner") and other plaintiffs in similar lawsuits seek to impose far-reaching VPPA liability on digital subscriptions, video games, and other interactive media—and, in doing so, to reshape the Act to achieve an application far beyond its text and historical focus.

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[3] *See* Entertainment Software Association, *2025 Essential Facts About the U.S. Video Game Industry* at 5, 7 (July 2025), https://www.theesa.com/wp-content/uploads/2025/06/2025-Essential-Facts-Booklet-05-30-25-RGB.pdf.

[4] *Id.* at 36-37.

SUMMARY OF ARGUMENT

Enacted in 1988, during the era of VCR and video cassette rental stores, Congress narrowly tailored the VPPA in response to the public disclosure of the personal movie rental history of a nominee for the U.S. Supreme Court. The VPPA served to protect the privacy of people who rented video cassette tapes from video rental stores—*not* people who bought separate products from stores that happened to also rent or sell videos.

Petitioner Michael Salazar subscribed to an email newsletter that Respondent provided. Separate from his newsletter subscription, Petitioner alleges that he also accessed Respondent's 247Sports website and watched generally available videos. The Sixth Circuit correctly held that because Petitioner did not rent, purchase, or subscribe to prerecorded audio visual materials that are covered under the Act, he is not a "consumer" under the VPPA. In so ruling, the Sixth Circuit rejected Petitioner's overly broad interpretation of the VPPA, an interpretation that would extend the statute to consumers of any good or service from a video tape service provider,[5] and not only consumers of audio visual goods or services.

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[5] Both courts below assumed, without deciding, that Respondent was a video tape service provider, *Salazar v. Paramount Glob.*, 133 F.4th 642, 649 n.7 (6th Cir. 2024) (explaining "we assume without deciding that Paramount is one" and noting that "the district court did the same"); *Salazar v. Paramount Glob.*, 683 F. Supp. 3d 727, 742 n.21 (M.D. Tenn. 2023) ("For the purposes of its analysis, the Court assumes without deciding that Defendant is a 'video service provider' under the VPPA.").

The Sixth Circuit's decision follows from the VPPA's text, structure, and history. The statute protects only a defined class of persons—"consumer[s]"—who rent, purchase, or subscribe to goods or services "from a video tape service provider." VPPA § 2710(a)(1). And a "video tape service provider," in turn, is a person engaged in the business of renting, selling, or delivering "prerecorded video cassette tapes or similar audio visual materials." *Id.* § 2710(a)(4). Read together, those definitions confine the VPPA to consumers of audio visual goods or services from a video tape service provider. Petitioner's contrary interpretation would sever those definitions from one another and transform a narrowly drawn statute into an expansive rule applicable to consumers of any goods or services. The Sixth Circuit properly rejected that effort.

This case is part of a broader wave of class actions attempting to fit "a square peg (modern electronic technology) into a round hole (a statute written in 1988 aimed principally at videotape rental services)." *In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 283-84 (3d Cir. 2016) (citation modified). These cases do not involve only individuals who rent, purchase, or subscribe to prerecorded video cassette tapes or similar audio visual goods or services as the VPPA contemplates. Instead, these cases seek to confer VPPA rights on individuals who purchase or subscribe to some other product or service from a defendant and then, separately watch video content offered by that defendant, even where there is no meaningful factual nexus between the transaction and the

allegedly actionable video. This unmoors the VPPA from Congress' intent in enacting the statute.

For ESA's members, the consequences of Petitioner's interpretation of the VPPA would be significant. Video games and related interactive services frequently incorporate trailers, clips, livestreams, and other embedded audio visual features as part of a broader gameplay or user experience—none of which are "prerecorded video cassette tapes or similar audio visual materials." VPPA § 2710(a)(4). Accordingly, a broad interpretation of the VPPA would impose serious burdens on an industry far removed from the prerecorded video cassette tapes and similar audio visual materials Congress chose to regulate. Those burdens would ultimately fall on consumers, impeding innovation and driving higher costs.

As the Sixth Circuit correctly ruled, Petitioner here is not a "subscriber" of actionable "goods or services" from a "video tape service provider." The VPPA should not be expanded from a targeted statute governing covered prerecorded audio visual materials into a broad source of liability for modern interactive digital products and services.

Amicus ESA urges the Court to affirm.

ARGUMENT

I. THE VPPA DEFINITION OF "CONSUMER" SHOULD BE CONSTRUED NARROWLY.

In 1987, the *Washington City Paper* leaked then-Supreme Court Justice nominee Robert Bork's video cassette rental history, publishing a list of 146

films that the Bork family had rented from a local video tape store. *See* S. Rep. No. 100-599, at 5 (1988), *reprinted in* 1988 U.S.C.A.A.N. 4342; *see also Osheske v. Silver Cinemas Acquisition Co.*, 132 F.4th 1110, 1112 (9th Cir. 2025) (summarizing the legislative history of the VPPA). In the wake of this incident, Congress enacted the VPPA the following year. As courts interpreting the VPPA have recognized, "Congress's purpose in passing the Video Privacy Protection Act was quite narrow," and it did not "intend[] for the law to cover factual circumstances far removed from those that motivated its passage." *In re: Nickelodeon Consumer Priv. Litig.*, 827 F.3d at 284. Indeed, "the classic example" of a VPPA violation "will always be a video clerk leaking an individual customer's video rental history. Every step away from that 1988 paradigm will make it harder for a plaintiff to make out a successful claim." *Id.* at 290. Petitioner attempts to stretch the VPPA in a manner that is far removed from this classic 1988 paradigm.

The VPPA is a targeted statute. It applies only to "video tape service providers" and their "consumers." VPPA § 2710(a). The VPPA prohibits video tape service providers from knowingly disclosing to any person personally identifiable information ("PII") concerning any consumer of the provider without the consumer's informed, written consent. *Id.* § 2710(b)(1).

Because the VPPA's definition of "consumer" expressly incorporates the term "video tape service provider," those defined terms must be read together. Read as a whole, the VPPA clearly does not protect *every* renter, purchaser, or subscriber of

any good or service offered by a business that also disseminates some video content. It would thus be inconsistent for Congress to have written a statute aimed at video tape service providers and the disclosure of video-viewing information, yet to have authorized suit by anyone who engaged in any sort of consumer transaction with such a business.

As the Sixth and D.C. Circuits correctly recognized, the VPPA protects only those persons whose rental, purchase, or subscription bears the requisite relationship to a video tape service provider's provision of "prerecorded video cassette tapes or similar audio visual materials." VPPA § 2710(a)(4). That narrower, textually grounded reading gives effect to the statute's structure, preserves a meaningful limiting principle, and avoids converting the VPPA into a sweeping source of liability for ordinary digital publishers and businesses far removed from the video tape service relationships Congress sought to regulate. For industries built around interactive media, that limiting principle is essential to providing predictable compliance boundaries.

A. *The VPPA's Definition of "Consumer" Must Be Read in Light of the Statute's Definition of "Video Tape Service Provider."*

The VPPA did not emerge as a general privacy law for all businesses that happen to use video. It arose from a specific problem in a specific market: the disclosure of records tied to traditional video-rental transactions. Congress enacted the statute to "preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar

audio visual materials." S. Rep. No. 100-599, at 1; *see also id*. at 11; VPPA § 2710. That focus matters here. The question is not whether a user subscribed to something from a business that also distributes video content, but whether the user's subscription or purchase falls within the narrower prerecorded audio visual materials Congress chose to regulate.

The statutory text reflects that same narrow focus. A "consumer" is defined as "any renter, purchaser, or subscriber of goods or services from a video tape service provider." VPPA § 2710(a)(1) (emphasis added). A "video tape service provider," in turn, is "any person, engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Id.* § 2710(a)(4) (emphasis added). Read together, those definitions do not naturally extend to every purchase or subscription from a business that also offers some video content somewhere in its broader operations. As the Sixth Circuit explained, the consumer definition is "tether[ed]" to the provider definition, which identifies the relevant goods or services as those involved in the "rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." *Salazar*, 133 F.4th at 650-51 (quotations omitted).

This reading is not judicial narrowing; it is ordinary textual interpretation. As the Sixth Circuit observed, courts do not construe statutes "atomistically—chopping [them] up and giving each word the broadest possible meaning." *Id.* at 650 (citation modified). Instead, courts "rely on the principle of *noscitur a sociis*—a word is known by the

company it keeps—to 'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.'" *Yates v. United States*, 574 U.S. 528, 543 (2015) (citation modified). In *Yates*, for example, the Court interpreted that "the words immediately surrounding 'tangible object' in § 1519—'falsifies, or makes a false entry in any record [or] document'"—helped "cabin the contextual meaning of that term." *Id.*; *see also United States v. Williams*, 553 U.S. 285, 294 (2008) ("[A] word is given more precise content by the neighboring words with which it is associated"); *Heather v. Healthline Media, Inc.*, No. 3:22-cv-05059-JD, 2023 WL 8788760, at *2 (N.D. Cal. Dec. 19, 2023) (reasoning, in construing the VPPA, that "it would be 'illogical, or very poor legislative drafting,' to use the same word, 'service,' in close proximity, while giving it different meanings.") (*quoting Borden v. eFinancial, LLC*, 53 F.4th 1230, 1233 (9th Cir. 2022)).

The legislative history of the VPPA confirms the same narrow focus. Congress described the protected privacy interest in terms of what films and television programming a person chooses to watch. *See* S. Rep. No. 100-599, at 4 ("Protecting an individual's choice of books and films is a second pillar of intellectual freedom . . . .); *id.* ("'[A] State has no business telling a man, sitting alone in his house, what books he may read or what films he may watch.'"); *id.* at 13 (mentioning audio visual materials like "action, romance, science fiction and the like"). The statute's core concern was the disclosure of records generated in the course of the

provision of video services, as illustrated by the disclosure of Judge Bork's video rental history that prompted the Act's enactment. *See id.* at 5 ("It is nobody's business what Oliver North or Robert Bork or Griffin Bell or Pat Leahy watch on television or read . . . ."); *id.* at 7 ("There's a gut feeling that people ought to be able to read books and watch films without the whole world knowing."). Nothing in that history suggests Congress meant to regulate every consumer transaction with a business that happens to use video somewhere in its broader operations.

That limited reading matters well beyond this case. Many interactive digital products incorporate audio visual features as part of a broader user experience. For such industries, the distinction between a subscription or purchase of covered goods or services—prerecorded video cassette tapes or other similar audio visual materials—and a digital newsletter subscription is essential to giving companies clear guidance about when the VPPA applies. Reading "consumer" to extend to any purchaser or subscriber of any service offered by a business that also uses video would erase the very limits Congress built into the VPPA.

This problem is not abstract. If any unrelated purchase or subscription were enough to make a person a VPPA "consumer," liability would turn on happenstance: whether a website visitor had, at some unknown earlier time, signed up for a newsletter or purchased some other product or service from the same entity. *Pileggi v. Wash. Newspaper Publ'g Co.*, 146 F.4th 1219, 1234 (D.C. Cir. 2025). That is not a workable way to define the class of persons entitled to sue under a carefully

cabined privacy statute. It would require a provider to "determine and differentiate between those who just visit the website and those who visit the website after having at some unknown prior time purchased some different good or service." *Id.* at 1234. "That would be a daunting task under any circumstances . . . . because usernames employed by those visiting websites do not always, or even often, match credit or debit card names." *Id.* (citation omitted). "And those buying tickets with cash will leave the provider no ability to carve their website traffic out from that of others." *Id.* (citation omitted). As a result, the predictable outcome would just be to treat all website visitors as statutory "consumers," which would leave the term "consumer" with effectively "no work to do" in the statute. *Id.*; *see also Fischer v. United States*, 603 U.S. 480, 490 (2024) (reasoning that Congress would not have gone "to the trouble of spelling out" one list if "a neighboring term swallowed it up"; instead, the broader term was best read by reference to the more specific one). The Act should be read to avoid that arbitrary and unworkable result.

The VPPA requires more than a wholly independent subscription to some other good or service offered by a business that also happens to distribute video content. The transaction on which the user relies for "consumer" status must itself bear a meaningful relationship to the defendant's allegedly covered audio visual materials.

B. *Because the Petitioner Did Not Rent, Purchase, or Subscribe to "Audio Visual Materials," He Is Not a "Consumer" Under the VPPA.*

This case illustrates why the statutory linkage between "consumer" and "video tape service provider" matters. Here, Petitioner did not subscribe to a video rental store, movie service, television service, or other stand-alone prerecorded video offering. He subscribed to an email sports newsletter and separately watched videos on 247Sports.com, a website owned by Respondent that provides coverage of college sports. *Salazar*, 133 F.4th at 649. That distinction is dispositive. A consumer who rents a movie, subscribes to a streaming library of prerecorded shows, or purchases prerecorded video cassettes is obtaining audio visual materials as a product. Petitioner was not. He subscribed to an online newsletter and separately watched videos on a website that were available to anyone, regardless of whether they had a newsletter subscription. Petitioner's newsletter subscription was thus unrelated to the provision of audio visual materials. As the Sixth Circuit explained, Salazar "failed to allege … that he had accessed videos through the newsletter" subscription on which he relied for "consumer" status; indeed, "if anything, the complaint suggested that the relevant videos were accessible to anyone, even those without a newsletter subscription, by going directly on 247Sports.com." *Id*. at 652-53.

For *Amicus* ESA's members, this distinction is not theoretical. Modern video games often include trailers, video clips, cinematic sequences, and other audio visual elements, but consumers do not separately purchase or subscribe to those products. They are part of the interactive gameplay experience, not the rental, sale, or delivery of stand-

alone prerecorded video media.

Indeed, the relevant question, is not whether video appears somewhere in a company's broader digital ecosystem, but whether video is the object of the transaction on which the plaintiff relies for "consumer" status. Here, it is not. Petitioner did not rent, purchase, or subscribe to the kind of goods or services that render a defendant a covered provider under the VPPA—namely, "prerecorded video cassette tapes or similar audio visual materials." VPPA § 2710(a)(4); *Salazar*, 133 F.4th at 653.

II. THE VPPA DEFINITION OF "VIDEO TAPE SERVICE PROVIDER" SHOULD BE CONSTRUED NARROWLY.[6]

A. *The VPPA Narrowly Defines the Term "Video Tape Service Provider."*

The VPPA's narrow definition of "video tape service provider" confirms that the statute does not apply to providers of interactive media products, like Respondent and the members of *Amicus* ESA. Congress defined the term "video tape service

[6] Although Respondent did not argue below that 247Sports is not a "video tape service provider," that definition still matters here because it is expressly incorporated into the VPPA's definition of "consumer." *See* VPPA §§ 2710(a)(1), (4). A plaintiff "cannot claim that he is a 'consumer' unless [defendant] is a 'video tape service provider' in the first place." *See Salazar*, 133 F.4th at 649 n.7, 650 (explaining that the definition of "consumer" is "tether[ed]" to the definition of "video tape service provider"). *Amicus* ESA therefore addresses the scope of the provider definition not to expand the question presented, but because that definition informs the proper construction of "consumer" for purposes of the VPPA.

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

This language is targeted, not open-ended. Under settled interpretive principles, "a word is given more precise content by the neighboring words with which it is associated." *Williams*, 553 U.S. at 294; *see also Gustafson v. Alloyd Co.*, 513 U.S. 561, 575-76 (1995) (construing a broad term narrowly based on the more specific terms surrounding it). Thus, "similar audio visual materials" cannot be read in isolation to encompass any product that contains moving images; it must be understood in light of the surrounding statutory terms—"rental, sale, or delivery" of "prerecorded video cassette tapes"—which point to a discrete set of prerecorded video media and the businesses that traffic in them. *See* VPPA §§ 2710(a)(1), (4). The VPPA's focus on the rental, sale, or delivery of prerecorded video materials reflects the statute's 1988 origin as a law protecting the privacy of video cassette rental records, not a general privacy regime for modern websites, apps, games, or digital platforms that may incorporate video content as one feature among many.

Courts have cautioned against untethering the VPPA from the specific media and business models Congress chose to regulate. *See, e.g., Christopherson v. Cinema Ent. Corp.*, 161 F.4th 525, 528-29 (8th Cir. 2025) (rejecting VPPA coverage for a movie theater reasoning that "[m]ovie theaters may 'deliver[ ]' *movies*, but not the '*materials*' necessary to watch

them,'" and that "[i]f Congress had something else in mind, it could have said so.") (emphasis in original)); *Osheske*, 132 F.4th at 1113 (reaching the same conclusion because a "theater patron[']s" experience does not "involv[e] an exchange of video materials" for money); *Stark v. Patreon, Inc.*, 635 F. Supp. 3d 841, 851 (N.D. Cal. 2022) (declining to extend the VPPA in the context of a subscription-based platform). Judge Randolph made the same point in concurrence in *Pileggi*, explaining that "'[s]imilar' cannot mean 'other,'" and that the VPPA's use of "similar audio visual materials" requires "more than a vague resemblance between the videos at issue in this case and a "prerecorded video cassette tape." *Pileggi*, 146 F.4th at 1238-41 (Randolph, J., concurring). As he put it, "the 'function and operation' of a 'prerecorded video cassette tape' bear little similarity to those of a short online video clip." *Id*. at 1239-41 (citation omitted).

The statutory text and legislative history point in the same direction. Congress understood "similar audio visual materials" to reach adjacent prerecorded video media technologies such as "laser disks, open-reel movies, or CDI technologies," not every later-developed digital product. S. Rep. No. 100-599, at 12. That same narrow understanding persisted when Congress amended the VPPA in 2013 to address online consent and social-media sharing of consumers' video-viewing preferences. By then, Congress was fully aware that dramatic technological change had transformed the market for video content. As one Senate report explained, "the VHS cassette tape [was] now obsolete" and "the Internet has revolutionized the way that American

consumers rent and watch movies and television programs." S. Rep. No. 112-258, at 2 (2012). Yet, Congress left the definition of "video tape service provider" untouched and expressly emphasized that the amendment was "narrowly crafted," "keeps the vast majority of the Act in place," and "does not change the scope of who is covered by the VPPA." 158 Cong. Rec. H6849-01 (Dec. 18, 2012).[7] Congress thus modernized the statute's consent mechanism without expanding its scope.

That choice is telling. Congress was aware of proposals that would have broadened the Act considerably. During the 2012 legislative process, Congress did not adopt a proposal that, as Netflix explained, could have expanded the definition of "video tape service provider" to encompass "user generated content, events such as video chat or conferencing, video games, cable television network content offerings, online education tools and services . . . and many more."[8] Congress instead retained the original definition of video tape service provider that it adopted in 1988. If Congress had meant to expand the statute to reach a broader category of industries, "one would expect to find some mention of it" in the legislative history—but it is not there. *See Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 523-24 (1981). The VPPA should not now be read to accomplish

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[7] Pub. L. No. 112-258, 126 Stat. 2414 (2013). While Congress did not pass the law until January of 2013, it is titled the "Video Privacy Protection Act Amendments Act of 2012."

[8] *The Video Privacy Protection Act: Protecting Viewer Privacy in the 21st Century: Hearing Before the S. Subcomm. on Privacy, Tech. & the Law*, 112 Cong. 25, 78 (2012) (written response of Netflix to questions from Sen. Coburn).

through litigation the very expansion Congress declined to enact.

B. *Respondent 247Sports' Online Newsletter Does Not Constitute "Similar Audio Visual Materials."*

Respondent 247Sports' newsletter should not be treated as "similar audio visual materials" under the VPPA. As the Eighth Circuit recognized, and as Judge Randolph explained in his concurrence in *Pileggi*, the VPPA's use of "similar" requires more than a vague resemblance between modern digital video content and a "prerecorded video cassette tape." *Pileggi*, 146 F.4th at 1238 (Randolph, J., concurring). The ordinary meaning of "similar" is narrower—something "very much alike." *Christopherson*, 161 F.4th at 528-29. Under that ordinary meaning, the short clips on 247Sports.com do not qualify. Users do not obtain a physical object; they click a link and receive what Judge Randolph described as "a stream of ones and zeros." *Pileggi*, 146 F.4th at 1239 (Randolph, J., concurring). And their "function" is different as well: "a brief informational clip" is not "a feature-length movie," but a tool for delivering sports news, commentary, highlights, and related information. *Id.*; *Christopherson*, 161 F.4th at 529-30. Treating such clips as "similar audio visual materials" would expand the statute well beyond the prerecorded media Congress identified. *See Christopherson*, 161 F. 4th at 530.

C. *The VPPA Reaches Only Businesses Actually "Engaged in" Delivering Covered Audio Visual Materials.*

The VPPA does not reach every business that happens to host, display, or disseminate some video content. By its terms, it applies only to video tape service providers, which are entities "engaged in the business" of the "rental, sale, or delivery" of "prerecorded video cassette tapes or similar audio visual materials." VPPA § 2710(a)(4). The statute's threshold limitation matters: as the Sixth Circuit has explained, "under the plain language of the statute, only a 'video tape service provider' . . . can be liable." *Daniel v. Cantrell*, 375 F.3d 377, 381-83 (6th Cir. 2004) (declining to expand VPPA definition to non-video-store defendants). The statute thus targets businesses for which video delivery is a real commercial focus rather than businesses that use video only incidentally in a broader enterprise. That distinction is particularly important for the video game industry, where audio visual features are often used to support gameplay, storytelling, and social interaction, but are not themselves the business being offered to consumers.

Lower courts interpreting the VPPA have correctly recognized that the statute reaches only businesses whose work is actually centered on delivering covered video content. To qualify as a "video tape service provider," a company's business model "must not only be substantially involved in the conveyance of video content to consumers but also significantly tailored to serve that purpose." *In re Vizio, Inc., Consumer Priv. Litig.*, 238 F. Supp. 3d 1204, 1221 (C.D. Cal. 2017). The phrase "engaged in

the business" thus connotes "'a particular field of endeavor'" or "a focus of the defendant's work," *id*., not a business in which video plays only an incidental role. Courts have therefore held that entities merely "peripherally or passively involved in video content delivery" do not fall within the VPPA. *Id*. at 1221-22; *see also Christopherson*, 161 F.4th at 529-30 (finding movie trailers offered on business' website for advertising purposes peripheral to movie-theater business); *Cantu v. Tapestry, Inc*., No. 22-cv-1974-BAS-DDL, 2023 WL 4440662, at *8-9 (S.D. Cal. Jul. 10, 2023) (rejecting VPPA claims where defendant merely "host[ed] pre-recorded video content" for marketing purposes).

It follows that Respondent 247Sports is not a "video tape service provider." 247Sports operates in the sports-news industry, providing rankings, analysis, and commentary content. It does not compete with video rental stores or subscription video services, and any clips within its digital space are incidental to that broader informational enterprise. Under the authorities above, that is not enough. As Judge Randolph explained, "[a]n online news clip and a VHS rental may both be videos at some high level of generality, but the VPPA's statutory language forecloses such a broad-brush approach." *Pileggi*, 146 F.4th at 1239 (Randolph, J., concurring). Because 247Sports uses video to support a separate business rather than offering video as the business itself, it is not "engaged in the business" of delivering covered audio visual materials.

Reading the VPPA otherwise would not simply apply the statute to new technologies; it would

expand the statute into a fundamentally different domain, while creating substantial uncertainty for an industry whose products are built around interactive, not prerecorded, media. That is not the statute Congress enacted.

III. RATHER THAN ADVANCING CONSUMER PROTECTION, PETITIONER'S EXPANSIVE READING OF THE VPPA WOULD HARM CONSUMERS.

Petitioner asks this Court to hold that a person becomes a VPPA "consumer" by subscribing to any good or service offered by a "video tape service provider." That interpretation would not merely extend the VPPA to new digital products, it would rewrite the statute's limiting terms. This Court has cautioned that statutory terms must be read in context, not given their most expansive meaning. *Yates*, 574 U.S. at 543. That caution has special force here, where Petitioner's reading would convert a targeted video privacy law into a broad source of liability for ordinary digital products and services.

Here, the negative consequences would be substantial. A broad interpretation of the VPPA would inject uncertainty into a major and growing contributor to the U.S. economy,[9] and ultimately

[9] The U.S. video game industry alone illustrates the scale. A recent economic-impact study commissioned by Amicus ESA reports that the U.S. video game industry generated and supported more than $101 billion in total economic impact in 2023 and supported more than 350,000 jobs nationwide. Each direct industry job supports 2.36 additional jobs in the national economy. See Video Games In The 21st Century: The 2024

burden the consumers who benefit from it. That burden would fall on the interactive media industry, which has long been defined by innovation and interactivity, not passive prerecorded viewing. The result: inferior products for consumers because of fewer useful interactive video features, more friction in the user experience, and higher costs.

At the same time, a narrow construction of the VPPA would not leave consumers without protection. The relevant choice is not between Petitioner's overbroad reading and no protection at all. Digital privacy is already addressed through other, more suitable legal frameworks. The Federal Trade Commission ("FTC") has repeatedly brought privacy and data-security enforcement actions under Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices in or affecting commerce.[10] Congress has also enacted more tailored protections for modern online services where it thought they were needed. The Children's Online Privacy Protection Act ("COPPA"), for example, imposes specific obligations on websites and online services—including apps—directed to children under 13 or knowingly collecting their personal information. *See* 15 U.S.C. § 6501. And state privacy regimes likewise address modern digital data practices. *See*, *e.g.*, *NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1109 (9th Cir. 2024) (describing the California Consumer Privacy Act

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Economic Impact Report, 5, 20, https://www.theesa.com/wp-content/uploads/2024/02/EIR_ESA_2024.pdf.

[10] The FTC Website, *Privacy and Security Enforcement*, available at https://www.ftc.gov/news-events/topics/protecting-consumer-privacy-security/privacy-security-enforcement.

(CCPA) as giving consumers "an effective way to control their personal information").

The VPPA should not be stretched to do work Congress assigned to other laws—or never assigned at all. To read the statute otherwise would, in this Court's words, "take a chainsaw to these nuanced problems when Congress meant to use a scalpel." *Facebook, Inc. v. Duguid*, 592 U.S. 395, 405 (2021).

CONCLUSION

Amicus ESA respectfully urges the Court to affirm the Sixth Circuit's holding below and decline to extend the VPPA beyond the covered, prerecorded video-service materials Congress chose to regulate.

Respectfully submitted,

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