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

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BRIEF OF *AMICI CURIAE* THE MOTION PICTURE ASSOCIATION, INC., AND NCTA – THE INTERNET & TELEVISION ASSOCIATION IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The Motion Picture Association, Inc. ("MPA") is a not-for-profit trade association founded in 1922. The MPA serves as the voice and advocate of the motion picture and television industry, advancing the business and art of storytelling, protecting the creative and artistic freedoms of storytellers, and bringing entertainment and inspiration to audiences worldwide. The MPA's member companies are Amazon Studios LLC; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc. The MPA's members and their affiliates are leading producers and distributors in the theatrical, television, and home-entertainment markets in the United States and abroad.

NCTA – The Internet & Television Association ("NCTA") represents network innovators and content creators that entertain, inform, and connect consumers. NCTA member companies connect over 82 million customers to high-speed internet, video, and other services, and include video programming networks with a rich history of creating award-winning TV programming.

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no entity or person other than *amici* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Respondent Paramount Global is a member of *amicus* NCTA and a corporate affiliate of Paramount Pictures Corporation, which is a member of *amicus* MPA. Neither respondent nor its affiliates made any monetary contribution intended to fund the preparation or submission of this brief.

The members of the MPA and NCTA are leading providers of audio visual materials in the United States and therefore rely upon the correct application of the Video Privacy Protection Act ("VPPA"), 18 U.S.C. 2710, to protect their commercial interests. At the same time, amici's members are parts of diversified corporate enterprises that engage in numerous lines of business. Those distinct lines of business often involve subscriptions, purchases, or other consumer relationships that have nothing to do with providing video tape services but nevertheless would be covered by the VPPA under petitioner's interpretation.

In recent years, amici's member companies have been besieged by claims under the VPPA based on increasingly expansive interpretations of the statute. That trend has imposed significant burdens on the media and entertainment industries, among others, and has generated widespread uncertainty regarding the statute's scope. The MPA and NCTA therefore have a substantial interest in ensuring that the VPPA is interpreted in a manner that is consistent with its text and purpose: preventing the unauthorized disclosure of consumers' *video transactions*.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Video Privacy Protection Act in 1988 to address a specific concern: the disclosure of consumers' video-rental histories without consent. When the statute was enacted, people had to actively seek out video content, and they obtained it in the form of video tapes rented or purchased from brick-and-mortar stores whose core business was the rental and sale of video tapes. The VPPA thus regulated a discrete set of intentional video transactions. The

statute accordingly defines its coverage by reference to the two sides of such video transactions: the "video tape service provider" that provides videos to "consumers," and the "consumer" 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). The statute prohibits certain disclosures by video tape service providers about such video transactions.

Petitioner's construction disregards the VPPA's focus on video transactions by divorcing the participants from the transaction that connects them and analyzing them as unrelated statutory concepts. Specifically, petitioner contends that a "consumer" should be construed as anyone who subscribes to, rents, or purchases *any goods or services*, whether or not those goods or services bear any relation to audio visual materials, from a company that also provides video content. That construction would have sweeping consequences in today's media ecosystem, transforming the VPPA from its original form as a narrow statute regulating video transactions into a wide-ranging internet privacy statute.

Those consequences flow from two fundamental shifts in the media ecosystem since Congress enacted the VPPA in 1988. First, video content is now ubiquitous on the internet, and individuals encounter videos all the time, even without seeking them out. Consumers encounter videos throughout their day, simply by visiting news websites, search engines, and retail websites. Second, much more so today than in 1988, companies that provide audio visual materials are often parts of extensive enterprises that operate across far-ranging lines of business. For example, an individual might buy groceries from Whole Foods (owned and operated by Amazon.com, Inc.), then

watch a free video about a yoga mat she is considering purchasing from Amazon.com (also owned and operated by Amazon.com, Inc.). Under petitioner's construction, that grocery shopper would be a "consumer" under the VPPA because she purchased "goods or services" (groceries) from a company that also delivered free, unrelated video content (about a yoga mat).

Such a broad reading of the VPPA would impose immense burdens on industry and consumers alike. Under petitioner's theory, virtually *everyone* would be a "consumer." To comply with the VPPA, a company would need to determine whether an individual who encounters a free video on any webpage affiliated with the company has obtained any goods or services from the company, online or in person, at any point within the statute of limitations period. That could necessitate the aggregation of consumer information across disparate lines of business in ways Congress never contemplated and privacy advocates ordinarily oppose. Alternatively, compliance could require a company somehow to obtain informed consent from every individual it transacts with, likely repeatedly. Companies would have to undertake these onerous steps all without knowing whether, when, or under what circumstances those individuals will ever request or obtain video content from the company. Those results would be unadministrable for companies and create friction for consumers across a wide range of commercial transactions. Congress enacted a targeted statute focused on video transactions, not an all-purpose regulation of ordinary data practices across the modern economy.

For companies, the consequences of petitioner's broad reading are magnified by increasingly

expansive, and often conflicting, interpretations of other VPPA provisions, which have generated a wave of litigation and staggering potential exposure for companies. Some lower courts have held, for example, that a local print newspaper can be a "video tape service provider," *Collins* v. *Toledo Blade*, 720 F. Supp. 3d 543, 553-554 (N.D. Ohio 2024); that disclosing the URL for a webpage can be a disclosure of "specific video materials or services," *Kueppers* v. *Zumba Fitness, LLC*, 805 F. Supp. 3d 1226, 1231 (S.D. Fla. 2025) (*Kueppers*); and that a person "request[s] or obtain[s]" specific video materials simply by visiting a webpage that auto-plays a video, *Sellers* v. *Bleacher Rep., Inc.*, No. 23-cv-368, 2023 WL 4850180, at *4 (N.D. Cal. July 28, 2023) (*Sellers*). Other courts have disagreed on all those points. Companies thus face substantial uncertainty about the statute's reach, leaving companies vulnerable to class actions and mass arbitrations with uncertain outcomes despite diligent efforts to comply. The resulting unpredictability, combined with the VPPA's statutory damages of $2,500 per violation, creates the prospect of enormous aggregate liability, even for questionable claims. Put concretely, 10,000 visitors to a website featuring free video content could create the prospect of up to $25 million in VPPA liability. Petitioner's construction of "consumer" would exacerbate those dynamics by further expanding the universe of conduct potentially subject to the statute, inviting further litigation and increasing compliance uncertainty and potential exposure for all companies, including amici's members.

In all events, petitioner's effort in this case to transform the VPPA by expanding its definition of "consumer" is foreclosed by the traditional tools of statutory interpretation. As the court below held, the

VPPA should be construed so that an individual becomes a "consumer" only when she rents, purchases, or subscribes to *audio visual* goods or services from a video tape service provider. Petitioner's construction—that "consumer" means any person who transacts in *any* goods and services, whether or not related to video content—is not compatible with the statute's focus on *video* transactions. This Court has repeatedly declined to give statutory terms their broadest construction where doing so would divorce the statute from the problem Congress sought to address. The VPPA's surrounding provisions and structure further confirm that "goods or services" must be limited to audio visual goods or services. Petitioner's construction, moreover, would create several statutory anomalies and render the statute's consent provisions unworkable. This Court should affirm the court of appeals' construction.

ARGUMENT

I. Petitioner's Reading Of The VPPA Ignores Its Context And Purpose.

Petitioner's construction of the VPPA's definition of "consumer" relies on blinding oneself to the statutory context and Congress's basic purpose in enacting the statute. The VPPA bars a "video tape service provider" from disclosing the "personally identifiable information" of "any consumer of such provider." 18 U.S.C. 2710(b)(1). A "video tape service provider" is any person "engaged in the business of * * * rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. 2710(a)(4).[2]

[2] Because the scope of the term "video tape service provider" is not before the Court, we assume that entities that deliver (footnote continued)

A "consumer," in turn, is defined as "any renter, purchaser, or subscriber of goods or services from a video tape service provider." 18 U.S.C. 2710(a)(1). The definitions of "consumer" and "video tape service provider" are thus interdependent; the terms cannot be construed in isolation.

Petitioner, however, asks this Court to do just that. Petitioner contends that "consumer" refers to "every 'consumer'" who buys any sort of "goods or services" from a company that also delivers audio visual content, *separate and apart from any transaction in audio visual materials*. Pet. Br. 10-11. On petitioner's reading, then, a person who engages in *any* commercial transaction with a company and encounters a free video in a separate, unrelated interaction with the same company would be a "consumer" under the VPPA. Petitioner insists that such a broad construction of "goods or services" must control because it is the "ordinary meaning" of the phrase. Pet. Br. 17-18.

Petitioner's construction is at odds with a fundamental principle of statutory construction: the Court's "duty [is] to construe statutes, not isolated provisions." *Graham County Soil and Water Conservation Dist*. v. *United States ex rel. Wilson*, 559 U.S. 280, 290 (2010) (internal quotation marks omitted). Petitioner argues that the absence of immediately adjacent limiting phrases in the "consumer" definition means that "goods or services" must be construed to have its broadest possible scope, without regard to the VPPA's laser focus on a transaction in *audio visual materials*. But a "statute's

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prerecorded videos on a website can constitute "video tape service providers."

meaning does not always 'turn solely' on the broadest imaginable 'definitions of its component words'"; rather, "[l]inguistic and statutory context also matter." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 523 (2018) (citation omitted). And, as particularly relevant here, attention to statutory context is critical where one party's interpretation would extend the statute's reach well beyond the problem the statute was "enacted to address" and the "context from which the statute arose." *Fischer* v. *United States*, 603 U.S. 480, 498 (2024) (*Fischer*).

Accordingly, this Court has repeatedly rejected broad or literal statutory constructions that would expand the statute's reach beyond Congress's evident purpose. *Yates* v. *United States*, 574 U.S. 528, 536 (2015) (*Yates*); *Fischer*, 603 U.S. at 498 ("Given that subsection (c)(2) was enacted to address the Enron disaster, not some further flung set of dangers, it is unlikely that Congress responded with such an unfocused and 'grossly incommensurate patch.'") (quoting *United States* v. *Fischer*, 64 F.4th 329, 376 (D.C. Cir. 2023) (Katsas, J., dissenting)); *West Virginia* v. *EPA*, 597 U.S. 697, 722 (2022) (explaining that one element of statutory context is Congress's evident intent, and that the Court rejects constructions that, despite their "colorable textual basis," grant more administrative authority than Congress could have intended). In *Fischer*, for example, the Court declined to adopt a maximalist reading of the phrase "otherwise obstructs * * * any official proceeding" that would have transformed the statute in question from one directed at "closing the Enron gap" by prohibiting corporate destruction of documents into a "one-size-fits-all solution to obstruction of justice." 603 U.S. at 491-493, 497. And in *Reves* v. *Ernst & Young*, the Court held that in context "the phrase 'any note' should not be

interpreted to mean literally 'any note,' but must be understood against the backdrop of what Congress was attempting to accomplish in enacting the Securities Acts." 494 U.S. 56, 63 (1990); accord *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 575 (1995).

Petitioner's construction, by ignoring the surrounding context of the phrase "goods or services," would have precisely the transformative effect on the statute that this Court has repeatedly rejected. By construing "goods or services" to mean *any* "goods or services," separate and apart from any transaction in audio visual services, petitioner would transform the VPPA from the narrow regulation of video transactions that Congress enacted into a sweeping general consumer privacy regime that Congress never contemplated.

That result is made especially clear by examining the sweeping and perverse consequences that the VPPA, if construed as petitioner urges, would impose on today's media ecosystem. Amici, as leading contemporary providers of audio visual materials, are well placed to explain those consequences. We first address the ways in which petitioner's construction would detach the VPPA from its original moorings, and then explain how other benchmarks of statutory interpretation—the statutory context, purpose, and history—confirm that the VPPA cannot be construed as broadly as petitioner urges.

II. Applying Petitioner's Reading Of "Consumer" To Today's Media Ecosystem Would Convert The VPPA Into A Sweeping Data Privacy Regime Untethered From The Statute Congress Enacted.

A. Today's media ecosystem bears little resemblance to the one that existed when the VPPA

was enacted. As petitioner acknowledges, Congress enacted the VPPA in response to the disclosure of Judge Robert Bork's video rental history from a brick-and-mortar video store engaged principally in the rental and sale of video materials. Pet. Br. 4. The statute was therefore designed to address a specific privacy issue: certain disclosures of information that would reveal the specific videos an identifiable person rented or purchased. When the VPPA was enacted in 1988, that privacy issue arose overwhelmingly in the context of discrete, intentional transactions involving businesses primarily engaged in the provision of video content. That is, individuals generally encountered audio visual materials only through purposeful transactions with video content distributors and brick-and-mortar video-rental stores.

The VPPA's definition of "consumer" reflects that commercial and technological backdrop. The statute defines "consumer" as a "renter, purchaser, or subscriber of *goods or services from a video tape service provider*." 18 U.S.C. 2710(a)(1) (emphasis added). When the statute was enacted, that definition would have covered an individual who purchased or rented a video tape from the local Blockbuster or an individual who subscribed to cable channels on their home television. That is, the statutory definition of "consumer" would have applied only to purposeful transactions in audio visual content with businesses primarily engaged in providing audio visual content.

Now, by contrast, individuals consume audio visual content all the time, often without seeking it out or without engaging in any commercial transaction. Videos are ubiquitous on today's internet, appearing on webpages from news sites to online retailers to social media platforms, most of which are operated by

companies whose core businesses have nothing to do with audio visual goods and services. Reading a *Wall Street Journal* article might trigger an unrelated video ad to play. Researching a hotel on its website might involve viewing a video showing off the property. Browsing a clothing store's website might lead a person to watch a video of a real person modeling a clothing item that is being offered for sale. In other words, consumers encounter video content constantly throughout the day, particularly online, often without deliberately seeking it out or engaging in any commercial transaction. These everyday encounters with free video content would not themselves make the viewers "consumer[s]" under the VPPA—because such viewers are not "renter[s], purchaser[s], or subscriber[s]" of free videos that they encounter and view on websites. 18 U.S.C. 2710(a)(1). But under petitioner's construction, such viewers may become "consumer[s]" under the VPPA by engaging in any commercial transaction with the same company—even if that transaction is entirely separate from and unrelated to the video viewing.

That reading could bring a broad swath of commerce within the ambit of the VPPA. Many of today's video producers and distributors are part of large conglomerates with increasingly diverse lines of business that have nothing to do with video. For example, Amazon.com, Inc., the parent company of one of the MPA's members, operates an e-commerce platform and owns entities including Amazon Web Services, Zappos, Goodreads, Ring, and Whole Foods Market. Americans engage in countless transactions with those businesses every day that have no relation whatsoever to video content. Likewise, Americans encounter videos on any number of webpages associated with those businesses every day, whether

or not any commercial transaction occurs. The same is true of amici's other members.

Given the commercial and technological evolution of the media landscape, petitioner's myopic reading of "consumer" could extend the VPPA's reach to a litany of everyday consumer transactions that do not include audio visual goods or services. So, for example, a grocery shopper who buys a piece of fruit from Whole Foods Market and later encounters a free video about a yoga mat on Amazon.com could argue that they are a "consumer" under the VPPA. So too could a person who watches a free video on a news website and later makes a purchase in a theme park operated by the same company. At the same time, under petitioner's reading, a person who interacted with the same free online videos, but did not make the brick-and-mortar purchases of unrelated goods, would not have a VPPA claim. Given the VPPA's focus on video transactions, such disparate treatment of online video viewers would make no sense.

Given that these sorts of encounters with videos are ubiquitous in modern online activity, petitioner's construction would dramatically widen the scope of who is a "consumer." Vast numbers of people engage in a broad range of commercial transactions with amici's members. If petitioner's definition of "consumer" were adopted, every one of those individuals would become a "consumer" solely by virtue of those interactions. Separate from and unrelated to such commercial transactions, those customers might encounter free video content on any number of websites associated with amici's members. Under petitioner's reading, each of those customers could then claim entitlement to the VPPA's protections based on those encounters. Those

individuals could accordingly attempt to assert a VPPA claim regarding any of those websites. Petitioner's interpretation would thus extend a statute that Congress intended to regulate purposeful transactions in video tapes into a comprehensive regulation of innumerable commercial transactions across a wide range of industries that do not involve the provision of audio visual content.

B. According that sweeping scope to the VPPA would inflict significant adverse consequences on companies and consumers alike. To comply with the VPPA as petitioner construes it, a company would be required to determine whether any given individual who encounters a free video on any webpage affiliated with the company has rented, purchased, or subscribed to *any* of the company's goods or services, online or in brick-and-mortar stores, across all the company's various lines of business, at any point within the statute of limitations period. For instance, a company might need to cross-reference information about a retail customer's purchases with data regarding the same customer's unrelated website visits to determine whether that customer encountered any free videos online. Only by tracking and aggregating information about customers across disparate lines of business—the very activity that privacy advocates and petitioner's amici warn against, see EPIC Amicus Br. 13-14—would companies be able to ascertain who counts as a "consumer" under the VPPA. Congress enacted the VPPA to protect consumers from the specific risk of their video transactions being disclosed, not to require companies to monitor and aggregate data about customers of non-video goods and services who happen separately to encounter free videos that are unrelated to their commercial transactions.

Industry, too, would suffer from petitioner's sweeping interpretation. Amici's members transact and interact with hundreds of millions of people across their various lines of business every day. If every one of those individuals could become a "consumer" for purposes of the VPPA simply by encountering a free video online, amici's members could face untold numbers of claims. That concern is heightened by the flood of class actions and mass arbitrations under the VPPA. Hundreds of VPPA lawsuits are filed annually, see, *e.g.*, Archis A. Parasharami & Sophie Mancall-Bitel, *Pixel Tools Spur a New Wave of Class Action Litigation Under the Video Privacy Protection Act*, American Bar Association Business Law Today (Apr. 22, 2025)[3] (noting two hundred VPPA cases filed annually), and an untold number of mass arbitrations involving thousands, or even tens of thousands, of claims have been initiated, see, *e.g.*, Amended Petition to Compel Arbitration, *Allen* v. *BAMTech, LLC*, No. 2:25-cv-3861 (C.D. Cal. July 1, 2025), Dkt. No. 27 (petition to compel arbitration on behalf of 3,553 claimants following a threatened mass arbitration of tens of thousands of claims). Because each claim carries potential statutory damages of $2,500, 18 U.S.C. 2710(c)(2)(A), the proliferation of VPPA mass actions "poses a significant risk to a wide variety of companies across industries." Meg Strickler, *Surge of Consumer Privacy Litigation Based on the Video Privacy Protection Act*, 79 Bus. Law. 233, 238 (2024). Given the proliferation of class and mass arbitrations under the VPPA, petitioner's interpretation could create staggering potential exposure for amici's

[3] https://businesslawtoday.org/2025/04/pixel-tools-spur-a-new-wave-of-class-action-litigation-under-the-video-privacy-protection-act.

members—regardless of whether they have disclosed any personally identifiable information. *Id.* at 234 (explaining that "[t]he availability of statutory damages has incentivized the spate of class actions brought by the plaintiff's bar and contributed to the high stakes involved in recent cases seen against website operators"). Indeed, a mass arbitration could result in millions of dollars in filing fees alone, a serious fairness concern that has caused arbitration providers to revisit their mass action practices. See *JAMS Mass Arbitration Procedures and Guidelines* (May 1, 2024)[4] ("The filing of dozens, hundreds or even thousands of individual claims may create administrative burden and onerous fees, as well as delay and potential unfairness to all Parties, all of which may impair the integrity of the Arbitration process."). Those potentially sky-high costs could transform even meritless VPPA claims into bet-the-company litigation.

Those concerns have been exacerbated by the uncertainty resulting from some lower courts' broad interpretations of other key provisions of the VPPA. The lower courts have disagreed on the interpretation of nearly every major substantive provision of the statute. Notably, lower courts have adopted different definitions of "personally identifiable information." Compare *In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 267, 284, 289-290 (3d Cir. 2016) (*Nickelodeon*) ("personally identifiable information" means "the kind of information that would readily permit an *ordinary person* to identify a specific individual's video-watching behavior" (emphasis added)), with *Yershov* v. *Gannett Satellite Info. Network*, 820 F.3d 482, 486 (1st Cir. 2016) ("personally

[4] https://www.jamsadr.com/mass-arbitration-procedures.

identifiable information" means "information reasonably and foreseeably likely to reveal which * * * videos [a person] has obtained"). There is thus widespread disagreement among lower courts as to whether similar data constitute personally identifiable information that is subject to the VPPA's disclosure requirements. Compare, *e.g.*, *Solomon* v. *Flipps Media, Inc*., 136 F.4th 41, 54-55 (2d Cir. 2025) (Facebook ID is not "personally identifiable information"), with, *e.g.*, *Ghanaat* v. *Numerade Labs, Inc.*, 689 F. Supp. 3d 714, 720 (N.D. Cal. 2023) (Facebook ID can be "personally identifiable information" if plaintiff also alleges personal information existed on their Facebook page).

Lower courts have also diverged on whether disclosing the URL of a page visited can satisfy the VPPA's prohibition against disclosing the "specific video materials or services" requested or obtained. Compare, *e.g.*, *Kueppers*, 805 F. Supp. 3d at 1231 (finding alleged disclosure of "URL to a webpage containing the video" sufficient to state a claim, and collecting cases holding the same), with, *e.g.*, *Martin* v. *Meredith Corp*., 657 F. Supp. 3d 277, 285 (S.D.N.Y. 2023) (*Martin*) (holding opposite). As another example, lower courts disagree on whether companies principally engaged in a line of business other than the provision of audio visual materials, such as a local newspaper, are "video tape service providers" under the VPPA. Compare, *e.g.*, *Collins* v. *Toledo Blade*, 720 F. Supp. 3d 543, 553-554 (N.D. Ohio 2024) (local print newspaper is a "video tape service provider"), with, *e.g.*, *Carroll* v. *Gen. Mills, Inc*., No. 23-cv-1746, 2023 WL 4361093, at *3 (C.D. Cal. June 26, 2023) (General Mills is not). And the lower courts have further split on whether a plaintiff must have actively sought out a video in order to have "requested or obtained" audio

visual materials. Compare, *e.g.*, *Sellers*, 2023 WL 4850180, at *4 (no difference "between videos [the plaintiff] clicked on and videos that auto-played when he clicked on an article"), with *Martin*, 657 F. Supp. 3d at 285 (person who has "merely reviewed an article on the page or opened the page and done nothing more" has not "requested or obtained specific video materials or services").

This judicial patchwork has created considerable unpredictability as to how the statute will be interpreted and applied in any given jurisdiction. Companies thus face significant uncertainty about whether and how the VPPA might be applied to their online activities, creating litigation risk despite companies' diligent efforts to comply. That uncertainty, combined with the enormous potential statutory damages in a mass action, means that companies must seriously consider large settlements as an alternative to expensive and uncertain litigation—even if they reasonably believe they are not subject to the statute or have not disclosed "personally identifiable information." Petitioner's construction of "consumer" would exacerbate those dynamics and create even greater uncertainty for companies across industries.

III. Respondent's Construction, Not Petitioner's, Accounts For Statutory Text, Structure, And Congressional Intent.

Petitioner's construction would produce absurd results in the modern media ecosystem, demonstrating that petitioner's reading of "consumer" divorces the VPPA's scope from the narrow problem Congress sought to address. Congress enacted the VPPA to protect against unauthorized disclosures of individuals' choices regarding the audio visual

materials they rent, purchase, or subscribe to. But petitioner urges that the VPPA should be accorded a far more sweeping scope, prohibiting disclosure of personally identifiable information of *anyone* who rents, buys, or subscribes to *any* goods or services offered by a company and is later and entirely separately exposed to any free video on any platform maintained by that company. Petitioner's reading would thus transform the VPPA into a broad data-privacy regime triggered by all manner of non-video transactions. That stark disconnect between the "principal evil motivating [the VPPA's] passage" and its proposed reach is strong evidence that petitioner's construction cannot be what Congress intended. *Yates*, 574 U.S. at 536. Given the very specific problem Congress enacted the VPPA to address, it is not credible to think that "Congress responded with such an unfocused and 'grossly incommensurate patch.'" *Fischer*, 603 U.S. at 498 (quoting *United States* v. *Fischer*, 64 F.4th at 376 (Katsas, J., dissenting)).

The other traditional tools of statutory construction—particularly analyzing other aspects of the statutory context and history—confirm that conclusion. Considered in light of the surrounding statutory text, the "most plausible understanding," *Fischer*, 603 U.S. at 497-498, of the definition of "consumer" is that it is limited to someone who rents, purchases, or subscribes to "goods or services" that are "prerecorded video cassette tapes or similar audio visual materials," 18 U.S.C. 2710(a)(1), (4).

A. The VPPA defines "consumer" as "any renter, purchaser, or subscriber of goods or services from a *video tape service provider*." 18 U.S.C. 2710(a)(1) (emphasis added). A "consumer" is thus someone who engages in a transaction with a "video tape service

provider." A "video tape service provider," in turn, is a person "engaged in the business" of "rental, sale, or delivery of *prerecorded video cassette tapes or similar audio visual materials*." 18 U.S.C. 2710(a)(4) (emphasis added). A "video tape service provider" is thus defined by the commercial service it provides: rental, sale, or delivery of *videos or similar audio visual materials*. Given that the statute's coverage hinges on interrelated definitions regarding two sides of a transaction—the "video tape service provider" who provides the audio visual materials, and the "consumer" who obtains the "goods or services" from the "video tape service provider"— "consumer" is best understood as one who obtains what the "video tape service provider" is providing. That is, the "goods or services" that a "consumer" obtains are best understood as limited to the types of goods or services that a video tape service provider is defined as providing: videos and similar audio visual materials. See Resp. Br. 19-24, 32-36.

Likewise, the VPPA protects against the disclosure only of "personally identifiable information," which is defined as "information which identifies a person as having requested or obtained specific *video* materials or services from a video tape service provider." 18 U.S.C. 2710(a)(3) (emphasis added). That definition likewise indicates that Congress was focused on the "rental, sale, or delivery" of "audio visual materials"—not *all* goods or services.

In addition, the title of the statute—along with each of the section headings—points toward a narrow construction focused on individuals' consumption of audio visual materials. *Dubin* v. *United States*, 599 U.S. 110, 120-121 (2023) ("'[T]he title of a statute and the heading of a section' are 'tools available for the

resolution of a doubt' about the meaning of a statute.") (quoting *Almendarez-Torres* v. *United States*, 523 U.S. 224, 234 (1998)). The title of the section of the U.S. Code in which the statute is codified is "Wrongful disclosure of video tape rental or sale records." 18 U.S.C. 2710. And the heading of the liability section is "Video tape rental and sale records." 18 U.S.C. 2710(b). Congress made clear, then, that it was laser-focused on an individual's privacy interest in the *video content* they rent, watch, or subscribe to. See *Yates*, 574 U.S. at 539-540 (relying on section title as confirming limitations on the scope of "tangible object").

B. In addition, petitioner's construction creates several anomalies in the VPPA's operation.

First, petitioner's definition of "consumer" severs the logical connection between the VPPA's coverage and its central prohibition. Subject to statutory exceptions, the VPPA prohibits disclosing "information which identifies a person as having requested or obtained specific *video* materials or services from a video tape service provider." 18 U.S.C. 2710(a)(3) (emphasis added). Under the court of appeals' construction, that prohibition is directly related to the transaction on which the VPPA focuses: a "consumer" rents, purchases, or subscribes to *audio visual materials* provided by a video tape service provider, and information about the specific video requested or obtained in that transaction is protected. In other words, the information protected from disclosure is the subject of the transaction that makes an individual a "consumer" and brings them within the statute's protection. The statute's definitional focus on the video provider-consumer transaction and its prohibition on disclosing the specific video

requested or obtained in *that* transaction form a coherent whole.

Petitioner's construction disrupts that coherent reading of the statute's interrelated provisions. For example, under petitioner's interpretation, a person becomes a "consumer" by obtaining *any* goods or services from a video tape service provider, whether or not related to audio visual materials, but what is prohibited is the disclosure of the consumer's separate and unrelated encounter with a free video on some website or platform maintained by the provider. That construction breaks the logical chain between the VPPA's prohibition against disclosure and the transaction that brings an individual within the statute's ambit.

As another example, the VPPA relies heavily on consent as a means of permitting disclosures that are desired by consumers. The statute's consent provisions are narrow: they permit disclosure of personally identifiable information if the consumer expressly gives "informed, written consent" at the time of disclosure or in advance, and the consumer must be given a "clear and conspicuous" opportunity to withdraw consent "on a case-by-case basis" or to withdraw consent from "ongoing disclosures." 18 U.S.C. 2710(b)(2)(B)(i)-(iii). Those provisions make sense when a "consumer" is someone who engages in a purposeful transaction to rent, purchase, or subscribe to video content from a video tape service provider. The company can identify that transaction as falling within the statute's ambit; the consumer can be asked for consent at the time of that transaction; and the consumer will understand what it is they are being asked to consent to. It is far less clear how the advance-consent and opt-out provisions could sensibly

operate under petitioner's interpretation. It is hardly administrable to ask consumers, at the time they purchase groceries from Whole Foods, to provide informed consent to the potential future disclosure of unspecified information in connection with an unspecified video on an unspecified website or platform at an unspecified time. Providing meaningful opt-out options to the same vast universe of customers creates further administrability challenges. It is highly unlikely that Congress intended the statute's consent provisions—which are meant to temper the VPPA's prohibition and effectuate consumer preferences—to create such a head-scratching morass.

C. The legislative history confirms what the text and structure of the VPPA already make clear: the word "consumer" encompasses only an individual who rents, purchases, or subscribes to audio visual goods and services. See *Fischer*, 603 U.S. at 491-492 (relying in part on legislative history); *Loper Bright Enters.* v. *Raimondo*, 603 U.S. 369, 393 (2024) (same).

When Congress first enacted the VPPA in 1988, it could not have been clearer that the VPPA focused, narrowly and exclusively, on *video transactions*. The Senate Report stated that the purpose of the VPPA is "[t]o preserve personal privacy *with respect to the rental, purchase or delivery of video tapes or similar audio visual materials*." S. Rep. No. 599, 100th Cong., 2d Sess. 1 (1988) (emphasis added). The Report also emphasized, in discussing the definition of "personally identifiable information," that the statute's protections were "intended to be transaction-oriented," protecting "information which identifies a person as having requested or obtained specific video materials or services from a video tape service

provider." *Id*. at 11-12. Furthermore, "a department store that sells video tapes would be required to extend privacy protection to *only those transactions involving the purchase of video tapes and not other products.*" *Id.* at 12 (emphasis added).

Those statements, although addressed to the definition of "personally identifiable information," reinforce the statute's focus on transactions in which an individual rents or buys audio visual materials from a video tape service provider. Given that focus, it is implausible that Congress would have defined the "consumer[s]" protected by the statute based on their engagement in transactions to obtain *any* goods or services, regardless of any relation to audio visual materials. Rather, a "consumer" is an individual who engages in the transaction that is the focus of the statute: renting, purchasing, or subscribing to audio visual materials.

Subsequent amendment of the VPPA confirms that Congress has continued to understand the statute as tightly focused on video transactions. In 2013, Congress amended the VPPA to make it easier for consumers to consent to having their information shared with social media companies. S. Rep. No. 258, 112th Cong., 2d Sess. 2 (2012); Pub. L. No. 112-258, 126 Stat. 2414 (2013). In so doing, Congress acknowledged that technological developments had revolutionized the ways in which video is delivered to viewers. S. Rep. No. 258, 112th Cong., 2d Sess. 3. Yet Congress left all of the VPPA's definitional provisions unchanged. And it did so against the backdrop of calls from individual legislators and stakeholders to expand the VPPA to regulate internet privacy more generally. See *The Video Privacy Protection Act: Protecting Viewer Privacy in the 21st Century: Hearing Before the*

Subcomm. on Priv., Tech., and the L. of the S. Comm. On the Judiciary, 112th Cong., 2d Sess. 7 (2012) (statement of Rep. Melvin L. Watt); *id.* at 8-9 (statement of Sen. Patrick J. Leahy); *id.* at 56 (statement of Mark Rotenberg); *id*. at 12 (statement of Prof. William McGeveran). In other words, Congress had an opportunity to fundamentally alter or expand the VPPA to address new technologies, but it declined to do so.

That statutory history confirms the wisdom of this Court's instruction that the scope of the problem that Congress originally sought to address is relevant to the statute's construction. See *Nickelodeon*, 827 F.3d at 288 ("We think Congress's decision [in 2013] to retain the 1988 definition of personally identifiable information indicates that the Act serves different purposes, and protects different constituencies, than other, broader privacy laws."). Given an opportunity to expand the VPPA, Congress reaffirmed its focus on video transactions—confirming what the statutory text and context establish. Congress sought to protect the privacy of a particular transaction; therefore, its definition of the "consumer" involved in that transaction is most naturally read to reflect the statute's focus on the provision of audio visual materials.

CONCLUSION

For the foregoing reasons, the Court should affirm.

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