

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 NEWS/MEDIA ALLIANCE
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENT**

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INTEREST OF AMICUS CURIAE¹

News/Media Alliance (NMA) submits this brief as amicus curiae in support of respondent. NMA is a nonprofit organization representing over 2,000 publishers in the United States, ranging from the largest news and magazine publishers to hyperlocal newspapers, and from digital-only outlets to papers that have printed news since the nation's founding. NMA's membership accounts for nearly 90% of the daily newspaper circulation in the United States, and over 500 magazine and digital-only brands. As trusted and respected providers of high-quality journalism, their content educates, informs, and entertains millions of Americans daily.

NMA has a direct and substantial interest in the question presented. Media organizations have been and may continue to be targets of Video Privacy Protection Act (VPPA) suits. NMA's members have an interest in the correct interpretation of the statute as it applies to journalistic outlets that provide content in a range of formats, including audiovisual content. Unmoored application of the VPPA poses a serious threat to affordable independent journalism, much of which is funded by the common advertising practices that are the subject of this case.

SUMMARY OF ARGUMENT

This case addresses an issue that has divided the circuits: whether a “consumer” under the VPPA is

¹ No counsel for any party authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than NMA, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

limited to those who rent, purchase, or subscribe to audiovisual content, or whether it extends to a consumer of any goods or services offered by a “video tape service provider.” Under the narrower view, adopted by the Sixth Circuit in this case and the D.C. Circuit in *Pileggi v. Washington Newspaper Publishing Co.*, 146 F.4th 1219 (D.C. Cir. 2025), a “consumer” under the VPPA is someone who rents, purchases, or subscribes to audiovisual materials from a person in that business. Under the broader view, adopted by the Second Circuit in *Salazar v. National Basketball Association*, 118 F.4th 533 (2d Cir. 2024), and the Seventh Circuit in *Gardner v. Me-TV National L.P.*, 132 F.4th 1022 (7th Cir. 2025), a “consumer” under the VPPA is anyone who rents, purchases, or subscribes to any good or service from a person that also offers audiovisual materials. The narrower view is correct.

First, the narrower view is consistent with the statutory text read as a whole. The VPPA was enacted in 1988 to address a specific and narrow privacy concern: the disclosure of a Supreme Court nominee’s video rental history by his local video store. Every operative provision of the statute—the definition of “video tape service provider,” the definition of “personally identifiable information,” and the prohibition on disclosure—reflects that focused purpose. Petitioner’s reading severs the term “consumer” from its commercial and contextual moorings, transforming a statute designed to regulate disclosure of video rental records into a sweeping privacy regime potentially governing any person that posts video online and also offers any other goods or services for sale, rental, or subscription, however unrelated to the freely available video content. Courts must construe statutes as a whole, not isolate individual definitions and expand them beyond the

broader statutory scheme. Petitioner's reading violates that duty and produces arbitrary and absurd results.

Second, applying the VPPA to videos available without subscription on publisher websites and mobile applications would inflict severe and unintended harm on the news media and the public it serves. News publishers operate under extraordinary financial pressure. Close to 3,500 newspapers have disappeared since 2005; 50 million Americans already live with limited or no access to local news; and the industry has lost more than three-quarters of its newspaper jobs since 2005. Within this environment, video has become an indispensable journalistic tool: the proportion of Americans consuming online news video weekly has grown from 55% in 2021 to 72% today. Publishers often offer video content freely, without subscription or payment, as a deliberate strategy to maximize public access to journalism and to support advertising revenue that sustains their operations.

Third, the digital advertising technologies at issue in VPPA class actions, including pixel tracking tools such as Meta Pixel, are not novel or suspicious practices. They are a routine part of a business model that allows news organizations to offer content, including video, to the public for free.

Fourth, if the VPPA is read to apply whenever a newsletter subscriber views a freely available news video, publishers face three choices, each of which disservices the public: stop publishing videos altogether; place video behind paywalls that exclude the many Americans who cannot or will not pay; or abandon the advertising technologies that make free journalism economically viable. None of these outcomes reflects a choice Congress intended in the VPPA.

Fifth, the VPPA’s consent exception cannot rescue petitioner’s broad reading. The statute’s consent requirement—a separate written form, given at the time of disclosure or in advance for a defined period, with a clear opportunity to withdraw—is not feasible, nor consumer-friendly, for every person who visits a website or app without any subscription.

For all these reasons, the Court should affirm the judgment below and hold that a “consumer” under the VPPA must be a renter of, purchaser of, or subscriber to video cassette tapes or similar audiovisual materials—not merely to any goods or services of an entity that also happens to post video online.

ARGUMENT

I. Adopting the broader approach to “consumer” is inconsistent with the VPPA and would substantially harm the news media and the public it serves.

News publishers routinely post free and publicly accessible videos on their websites and mobile applications, while offering a variety of subscription services—sometimes free, and sometimes paid—including print and online newspapers, newsletters, and special “subscriber-only” content. This case will determine whether a person who subscribes to a print newspaper, digital news, or other non-video content becomes a VPPA “consumer” with respect to video clips to which they do not subscribe and that can be freely accessed by anyone on a website or app.² The answer, compelled by the statute’s text, structure, history, and

² NMA does not concede, and assumes for purposes of this brief only, that news publishers can qualify as “video tape service providers” based on audiovisual content on their websites.

purpose, is no. Moreover, answering the question in petitioner’s favor could subject the news media to extensive class-action lawsuits without any fair notice that videos freely available without a subscription are covered by the statute.

A. The expansive interpretation of the VPPA that petitioner advocates conflicts with the text, structure, purpose, and history of the statute.

The VPPA was enacted in 1988 in response to a specific privacy concern: the disclosure of Judge Robert Bork’s video rental history by his local video store during his Senate confirmation hearings. The statute’s text reflects that congressional purpose. The statute regulates the relationship between “video tape service providers” and “consumers” by restricting the knowing disclosure of consumers’ “personally identifiable information.” 18 U.S.C. § 2710(b)(1). Read as a whole, the VPPA restricts disclosure of personal information in connection with a specific commercial transaction: the rental or purchase of, or subscription to, video cassette tapes or similar audio-video materials. It does not apply to freely and publicly accessible videos on websites or apps available without renting, purchasing, or subscribing.

With specified exceptions, the VPPA prohibits “video tape service providers” from knowingly disclosing the “personally identifiable information concerning any consumer of such provider.” *Id.* The VPPA defines “video tape service providers” as “any person, engaged in the business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” § 2710(a)(4). It defines “consumer” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” § 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.” § 2710(a)(3).

Taken together, those statutory provisions apply to the same type of transaction that motivated the VPPA’s passage: a person’s rental, purchase, or subscription to videos (Judge Bork) offered by entities engaged in that business (the local video store). As the D.C. Circuit explained, “[p]utting the words together, a ‘consumer’ of a ‘video tape service provider’ is someone who ‘rent[s], purchase[s], or subscribe[s]’ to the ‘good or service’ that a ‘video tape service provider’ offers—that is, ‘video cassette tapes or similar audio visual materials.’” *Pileggi*, 146 F.4th at 1232 (quoting 18 U.S.C. § 2710(a)).

Petitioner’s reading severs the term “consumer” from its commercial and contextual moorings. Under petitioner’s view, any person who purchases, rents, or subscribes to any good or service, including a newspaper or free newsletter, becomes a VPPA-protected “consumer” with respect to any video content posted online by the same provider and made available without a subscription, no matter how long after or unconnected to the person’s non-video subscription. But petitioner’s reading ignores that courts have “a duty to construe statutes, not isolated provisions. And the Court must read the words Congress enacted in their context and with a view to their place in the overall statutory scheme.” *Turkiye Halk Bankasi A.S. v. United States*, 598 U.S. 264, 275 (2023) (internal quotation marks and citations omitted); *see also Helvering v. Gregory*, 69 F.2d 809, 810–811 (2d Cir. 1934) (“[T]he meaning of a sentence may be more than that of the separate words, as a melody is more than

the notes.”) (L. Hand, J.). The Sixth Circuit correctly recognized and applied this principle below. *See Salazar v. Paramount Global*, 133 F.4th 642, 650 (6th Cir. 2025) (“The statutory phrase ‘goods or services’ cannot be construed in a vacuum to wall it off from the meaning imputed by the rest of the statute’s text.” (internal quotation marks omitted)); *id.* at 651 (“Together, text and context point to the same place: the expression ‘goods or services’ is limited to audiovisual ones.” (internal quotation marks omitted)).

The Senate Report on the VPPA confirms that transaction-specific, and holistic, reading: “The definition of personally identifiable information includes the term ‘video’ to make clear that simply because a business is engaged in the sale or rental of video materials or services does not mean that all of its products or services are within the scope of the bill.” S. Rep. No. 100-599, at 11-12 (1988). The Report gave the example of “a department store that sells video tapes,” which “would be required to extend privacy protection to only those transactions involving the purchase of video tapes and not other products.” *Id.*

Petitioner’s interpretation also produces results that Congress could not have intended and that no reasonable person—including the thousands of news publishers that are NMA’s members—could have expected. It is already wrong to conclude that website or app videos are “similar” to prerecorded video cassette tapes and thus covered by the VPPA (an issue that might be presented in future cases before this Court). *See Pileggi*, 146 F.4th at 1238 (Randolph, J., concurring) (concluding that the *Washington Examiner* was not a video tape service provider because the short online videos on its website were not “prerecorded video cassette tapes or similar audio visual materials”).

But it cannot be that a statute focused on purchasing, renting, and subscribing to video content requires publishers and other website and app operators to apply the statute to videos that are freely available without any purchase, rental, or subscription. Indeed, as the D.C. Circuit recognized, it would mean that video tape service providers would have to presume that all visitors to their website containing audio-visual content are consumers under the statute. *See Pileggi*, 146 F.4th at 1234.

Had Congress intended that result, it surely could have obtained it when it amended the pre-Internet VPPA to address technological changes in 2013. Congress amended the VPPA to update consent mechanisms to account for online consent forms, *see* Video Privacy Protection Act Amendments Act of 2012, Pub. L. 112-258, 126 Stat. 2414, but it chose not to expand the definition of “consumer” to cover digital media users; as the Eleventh Circuit noted in *Ellis v. Cartoon Network, Inc.*, 803 F.3d 1251 (11th Cir. 2015), “Congress could have employed broader terms in defining ‘consumer’ when it enacted the VPPA (e.g., ‘user’ or ‘viewer’) or when it later amended the Act (e.g., ‘a visitor of a web site or mobile app’), but it did not.” *Id.* at 1256-57.

Petitioner’s broad reading also produces absurd results. As the D.C. Circuit warned in *Pileggi*, a person could “purchase a single ticket at a baseball game and then sue the baseball team’s owner after watching a free video on the team’s website years later.” 146 F.4th at 1233-34. Yet, the same website could freely disclose information about anyone who did not purchase a ticket but clicked a video link. *Id.* A statute that confers privacy rights based on unrelated commercial transactions—and withholds identical rights from

members of the public engaging in identical conduct—would be arbitrary and absurd.

B. Posting videos on news sites and apps is an essential aspect of news publishers' First Amendment-protected activities to inform the public in the digital age.

An expansive approach to the meaning of “consumer” in the VPPA risks harming news publishers and the public in ways that Congress clearly did not intend and that implicate core First Amendment values.

The press plays an indispensable role in our system of self-governance. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (recognizing “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open”); *see also Mills v. Alabama*, 384 U.S. 214, 219 (1966) (“[T]he press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.”). And, as explained below, video content is essential to modern news publishing. As traditional print media declines and the public’s preference for digital, audiovisual experiences increases, online videos have become an important way for journalists to inform the public.

The public benefits from access to free website and app videos not kept behind paywalls or requiring subscriptions. To offer the public the type of news that it prefers and to do so without charging for video access, publishers—like many online businesses—rely on advertising revenue. Technology like Meta Pixel

facilitates the necessary advertising that helps struggling news outlets survive and perform the function that the First Amendment recognizes as indispensable.

Subjecting online publishers to class-action lawsuits under the VPPA based on publicly accessible web videos, in which statutory damages are set at \$2,500 per disclosure, will have grave consequences. It might require publishers to cease providing free video content and reduce the use of advertising technologies that provide necessary revenue. Congress did not make that consequential choice in the VPPA; instead, it only regulated video rental, sale, and subscription transactions between consumers and entities in the business of renting and selling video tapes and similar material.

1. Contemporary news organizations operate under challenging business conditions.

To understand the stakes of this case for the news industry, it is necessary to understand the economic environment in which today's news publishers operate. Contemporary news organizations operate under challenging business conditions, striving to connect with and inform readers in an overwhelmingly online environment.

Changes in the news publishing ecosystem over the past two decades have fundamentally challenged publisher business models, making especially small, local publishers and independent newspapers high-risk businesses with "very little room for error." Penelope Muse Abernathy, *The Expanding News Desert*, U.N.C. Ctr. For Innovation & Sustainability in Loc. Media (2018), at 36, <https://perma.cc/9FSQ-M5HL>. News deserts across the United States are spreading

rapidly, with close to 3,500 newspapers having disappeared since 2005 (as of last year). Northwestern Univ., Medill Sch. of Journalism, Media, Integrated Mktg. Commc'ns, *State of Local News Report 2025*, at 9, <https://perma.cc/36G9-NVJW> (“Medill Report”).

“Over the past two decades, print newspaper circulation across the United States has dropped by an estimated 80 million, a loss of 70% from 2005 levels”; the newspaper industry has lost “more than three-quarters of its jobs, and this trend has continued unabated.” *Id.* at 10. Almost two-fifths of all local newspapers have disappeared, “leaving 50 million Americans with limited or no access to a reliable source of local news.” *Id.* at 8.

These conditions reflect a structural transformation of the media landscape. Publishers have for years been at the forefront of developing new business strategies in response to changes in reader habits and business realities to reach consumers where they are—online. The shift to digital is not optional. As the Reuters Institute documents, “[e]ngagement with traditional media sources such as TV, print, and news websites continues to fall, while dependence on social media, video platforms, and online aggregators grows.” Nic Newman et al., *Digital News Report 2025*, Reuters Inst. for the Study of Journalism, at 10, <https://perma.cc/G2CQ-69GK> (“Reuters 2025 Report”). As of last year, more than 86% of American adults read digital news at least sometimes, and 56% did so often, while only 7% read print newspapers often. Christopher St. Aubin & Jacob Liedke, *News Platform Fact Sheet*, Pew Research Ctr. (Sept. 25, 2025), <https://perma.cc/DP4Y-3V6G>. Increasing numbers of Americans want to get their local news online, and the majority accesses their local daily newspapers digitally. Elisa Shearer et al.,

Americans' Changing Relationship with Local News, Pew Research Ctr. (May 7, 2024), <https://perma.cc/TS83-GT6M>.

In sum, the news industry has undergone dramatic transformations, making it difficult to survive today, particularly for small and local publishers. To continue serving the public, publishers must adapt to today's digital world.

2. Video content is central to modern news publishing in ways separate and distinct from subscription revenue.

Within this digital-first strategy, video has become an indispensable journalistic tool. The digital environment requires publishers to complement text articles with multimedia, including videos and audio, which are popular and engaging supplements that appeal to broad audiences. *See, e.g.,* Victoria Holmes, *News Publishers Make a Play for Audio and Video*, Editor & Publisher (Sept. 26, 2022, 12:00 am), <https://perma.cc/Z446-GFMY>. The Reuters Institute confirms this trend: “[a]cross all markets the proportion consuming social video has grown from 52% in 2020 to 65% in 2025 and any video from 67% to 75%.” Reuters 2025 Report, *supra*, at 19. The consumption of news via video is also increasing. In the United States, 72% of readers consume news videos weekly, compared to 55% in 2021. *Id.* at 20.

Publishers have adapted to that reality by “producing more videos of various durations and showcasing them more prominently within their websites and apps.” *Id.* at 19. For example, “*The Economist* is amongst publishers to have added a vertical video carousel on its home page, while the *New York Times*

has incorporated short social media-inspired videos as a way of bringing out the personality of its reporters.” *Id.* “Video content has emerged as one of the most powerful tools for news media companies. As audiences shift from traditional news consumption to online platforms, the demand for video content has skyrocketed.” Dawn DeGuzman, *The Power of Video in News Media: How Increased Audience Engagement Drives Success*, The Associated Press (Sept. 23, 2024), <https://perma.cc/H7Z6-ZNB4>. The shift to videos “has prompted news organizations to rethink their digital strategies, placing video at the forefront of their content delivery.” *Id.*

Video helps audiences form an emotional connection and remember the message, which is “particularly important in news, where conveying the urgency and significance of a story can be enhanced through the use of video. . . . This emotional engagement is crucial for news organizations, as it fosters a deeper connection with their audience.” *Id.* Publishers that fail to invest in video risk being left behind in the competition for advertiser dollars: “Digital video is where advertiser budgets are moving. Publishers without meaningful video capabilities face structural disadvantage, which will become imperative to offset continuing print and traditional display declines.” Gabriel Dorosz, *Ad Industry Takeaways and Priorities for 2026*, Int’l News Media Assoc., Advertising Initiative Blog (Jan. 28, 2026), <https://perma.cc/8DEJ-3QTS>.

In addition, at the same time as artificial intelligence makes text more commoditized and susceptible to copying, publishers are investing more in video. According to the Reuters Institute: “Over three-quarters of our survey respondents (79%) said it would be important to invest more in video, with a majority

(71%) also looking to expand audio formats as a direct response to the AI threat.” Nic Newman, *Journalism and Technology Trends and Predictions 2026*, Reuters Inst. for the Study of Journalism, at 16, <https://perma.cc/M8Y6-JRBR> (“*Journalism & Tech. Trends*”).

Sometimes news sites require a subscription to watch videos, but often they do not. For example, “The New York Times and Newsday let users watch videos in their tabs without subscriptions. And the videos are free on social media.” Hannaá Tameez, *News Publishers Embrace Vertical Video with In-app ‘Watch’ Tabs*, NiemanLab (Nov. 25, 2025, 1:10 p.m.), <https://perma.cc/X3FX-CQYK>. This practice reflects a deliberate strategy. The Reuters Institute notes that “[i]n October the *New York Times* added a curated vertical video feed including news, opinion, and content from across its lifestyle verticals contained within a new watch tab on its app,” and that “[t]he Washington Post has indicated it will be following suit along with a slew of other publishers.” *Journalism & Tech. Trends, supra*, at 20. These short videos also feed TikTok, YouTube Shorts, and Instagram Reels, and thus allow news publishers to reach audiences on those platforms. *Id.*

3. News websites rely on pixel technologies and standard digital advertising to generate the revenue that supports quality journalism.

The advertising technology at the center of VPPA class actions against news publishers—including pixel tools such as Meta Pixel—is not some novel or nefarious practice. It is a normal part of the business model that allows news organizations to offer content, including video, to the public for free.

Advertising plays a vital role in supporting American journalism and the public's access to high-quality information. Publishers have long relied on advertising to generate revenue to fund their journalistic content. Indeed, Alexander Hamilton reportedly said in 1803 that "it is the advertiser who provides the paper for the subscriber. It is not to be disputed, that the publisher of a newspaper in this country, without a very exhaustive advertising support, would receive less reward for his labor than the humblest mechanic." Robert Atwan, *Newspapers and the Foundations of Modern Advertising*, in *The Commercial Connection* 9, 14 (John W. Wright ed., 1979).

That necessity for advertising revenue continues for publishers in today's online environment. Publishers can use paywalls, requiring payment to access content, but "[t]he vast majority of Americans (83%) say they have not paid for news in the past year." Emily Tomasik & Michael Lipka, *Few Americans Pay for News When They Encounter Paywalls*, Pew Research Ctr. (June 24, 2025), <https://perma.cc/3MB4-U5WS>. The "most common reason they cite is that they can find plenty of other news articles for free." *Id.* That is consistent with global data: the Reuters Institute found that "[t]he proportion paying for any online news remains stable at 18% across a basket of 20 richer countries—with the majority still happy with free offerings," and that "the vast majority of audiences remain unwilling to pay for online news." Reuters 2025 Report, *supra*, at 11, 32. In addition, publishers wish to avoid a scenario where their ability to experiment with and adopt different business models is limited and they are forced to adopt one-size-fits-all strategies, while only those with the means to pay have access to news.

What modern consumers often perceive as “free” is actually built on the business model of digital advertising. To generate revenue, websites use technologies like Meta Pixel to send targeted advertising to site visitors. “Meta Pixel is a snippet of JavaScript code that allows [companies] to track visitor activity on [a] website. It works by loading a small library of functions which [websites] can use whenever a site visitor takes an action (called an **event**) that [the sites] want to track (called a **conversion**).” Meta, Meta Pixel, <https://perma.cc/43ZH-6BER>. Meta Pixel enables website operators, including publishers, to target visitors with ads relevant to them based on the visitors’ activity on a website. Pixel technologies also help advertisers identify which ad sources lead consumers to visit websites. See, e.g., Adopter Media, *Why Pixel Tracking Is Essential for Your Podcast Advertising*, <https://perma.cc/TRF9-MYFE>. This helps publishers demonstrate to advertisers that they have direct relationships with consumers.

The public benefits from the free access permitted by digital advertising. One study computed “[t]he welfare gain from the introduction of digital advertising” and concluded that “[t]he increased provision of free media goods [due to digital advertising] boosts consumer welfare significantly.” Jeremy Greenwood, Yueyuan Ma & Mehmet Yorukoglu, “*You Will: A Macroeconomic Analysis of Digital Advertising*, 92 Rev. Econ. Stud. 1837, 1838 (2025), <https://perma.cc/KT4J-6X9G>.

The use of pixels is not fringe behavior but is commonplace on all manner of websites. According to a March 2024 report, about 47% of websites use Meta Pixel, including 55% of those in the S&P 500, 58% in the retail industry, 42% in finance, and 33% in health

care. Archis Ashok Parasharami & Sophia Mancall-Bitel, *Pixel Tools Spur a New Wave of Class Action Litigation Under the Video Privacy Protection Act*, *Bus. Law Today* (Apr. 2025), <https://perma.cc/CRB2-ASTB> (citing Lokker, *Online Data Privacy Report: Website Privacy and Compliance Challenges*, at 3 (Mar. 2024)), <https://perma.cc/6EJR-87QN>.

In sum, publishers have long depended on advertising to fund their work. Pixels and other similar, digital-advertising technologies are the means by which most industries attract website visitors and generate advertising revenue.

C. Applying the VPPA to videos on websites and apps available without a subscription would threaten potentially crippling class-action damages and compel publishers to reduce freely available audiovisual news content.

VPPA class actions “have soared over the past several years, and that trend is not slowing down Over the past few years, companies have been hit by a wave of hundreds of putative class actions—and untold numbers of threatened mass arbitrations—alleging that use of pixel tracking tools violates” the VPPA. Parasharami & Mancall-Bitel, *supra*. Those cases are part of a larger trend of digital-privacy suits. From February 2022 to June 17, 2026, more than 4,800 digital privacy cases were filed, including more than 200 against media and telecommunications defendants. FisherPhillips, *Wiretapping Litigation Tracker*, <https://www.fisherphillips.com/en/resources-and-innovation/trackers-and-maps/wiretapping-litigation-map>.

Those statistics, however, understate the scope of the problem because many cases go to arbitration

or are settled before any litigation is filed. Many publishers have settled cases for millions of dollars to avoid expensive and time-consuming litigation—for example, the Boston Globe, Star Tribune, and the Philadelphia Inquirer. See Am. Class Action Settlement Agreement ¶¶ 1.16, 1.32, *Ambrose v. Boston Globe Media Partners, LLC*, No. 1:22-cv-10195-RGS (D. Mass. May 24, 2023), Dkt. No. 51 (providing \$4 million in cash and up to \$1 million in subscriptions to settle VPPA claims); Pioneer Press, *Star Tribune to Pay Subscribers \$2.9M for Sharing Video Data with Facebook* (Dec. 22, 2023), <https://perma.cc/WQX3-NL4M>; *Braun v. Philadelphia Inquirer, LLC*, No. 22-CV-4185-JMY, 2025 WL 1314089, at *3, 13 (E.D. Pa. May 6, 2025) (approving class settlement in VPPA case of \$1,125,000).

The litigation pressure under the broad reading of the VPPA advanced by petitioner would be severe and its consequences for the public would be direct and harmful. If the VPPA applies whenever a subscriber to any print service or newsletter views a freely available news video, “a video tape service provider would have 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,” *Pileggi*, 146 F.4th at 1234. Since that is not practicable, “video tape service providers would just have to assume that all visitors to their websites are consumers.” *Id.* The risk of class-action suits from any and all website and app visitors would force publishers to face three choices, each of which disserves the public interest: they can stop publishing videos altogether, eliminating a valuable and increasingly central journalistic format; they can put video behind subscription paywalls and make it easier to determine who is a

VPPA consumer, but thereby degrading public access to news for the many Americans who do not or cannot pay; or they can stop using the tracking pixels that make ad-supported, freely accessible journalism economically viable. None of these outcomes reflects a choice Congress intended in the VPPA.

Class actions present the risk of “potentially ruinous liability,” which “may force a defendant to settle.” Fed. R. Civ. P. 23(f) advisory committee’s note to 1998 amendment. That threat is increased when, as here, a statute permits class-action plaintiffs to recover statutory and punitive damages, attorneys’ fees, and litigation costs. *See* 18 U.S.C. § 2710(c)(2) (authorizing \$2,500 statutory damages per violation, punitive damages, attorneys’ fees and costs). \$2,500 each time a visitor clicks on a video link—coupled with attorneys’ fees, costs, and punitive damages—exposes publishers to crippling damages.

The burden of such liability would fall most heavily on the publishers least able to bear it. As discussed above, *see supra* Part I.B.1, close to 3,500 newspapers have disappeared since 2005, and 50 million Americans already live with limited or no access to local news. *See* Medill Report, *supra*, at 8-9. Small and local publishers—which operate on razor-thin margins and with “very little room for error,” Abernathy, *supra*, at 36—lack the resources to absorb class-action litigation costs or to build the compliance infrastructure that petitioner’s reading would demand. These are precisely the outlets whose disappearance creates and expands the news deserts that deprive communities of the local journalism important to democratic self-governance.

Those severe and punitive consequences counsel in favor of reading the statute as the Sixth and D.C. Circuits did: to apply to consumers of video services,

not to any services of a defendant that also offers videos. As the D.C. Circuit recognized, “the stringency of the remedy weighs against judicial expansion of the text to cover harms further removed from commerce in videos or similar audio-visual services.” *Pileggi*, 146 F.4th at 1233. The lesson is clear: a statute designed to protect the patrons of video tape rental stores should not be construed to impose potentially existential liability for posting freely available web videos.

II. It is not feasible for news sites to obtain informed written consent from every viewer of video content.

Petitioner’s broad reading of “consumer” cannot be saved by resort to the VPPA’s consent exception. The VPPA’s consent exception, 18 U.S.C. § 2710(b)(2)(B), requires consent that is (i) in a form distinct and separate from any other legal or financial obligations, (ii) given at the election of the consumer at the time disclosure is sought or in advance for a set period, and (iii) accompanied by a clear and conspicuous opportunity to withdraw consent.

If petitioner is correct, then every viewer of every video on every website is a potential VPPA plaintiff if he or she purchases, rents, or subscribes to any other good or service that the website owner might offer. The D.C. Circuit captured the problem in *Pileggi*:

While the consent provision may be workable for customers directly acquiring videos, the statutory text does not suggest that Congress meant to require every video tape service provider to obtain a waiver from every t-shirt purchaser on the chance that the same person might sometime in the ensuing years visit the business’s website and watch a video on it.

146 F.4th at 1234 n.3. The same logic applies with full force to news publishers. Requiring a publisher to obtain individualized, form-compliant written consent from every subscriber—before the subscriber happens to click on a freely available news video—is unnecessarily burdensome and not Congress’s intent in the VPPA.

CONCLUSION

For the foregoing reasons, NMA respectfully urges the Court to affirm the judgment of the Sixth Circuit. The Court should hold that a “consumer” under the VPPA must be a renter, purchaser, or subscriber of “video cassette tapes or similar audio visual materials,” not merely any goods or services of a person that also offers audiovisual materials. The text, history, and purpose of the statute compel that result, and the significant harm that the contrary interpretation would visit upon the news media helps confirm it.

Respectfully submitted,

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