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 AMERICA'S NEWSPAPERS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus America's Newspapers is a non-profit organization incorporated under the laws of the District of Columbia with its principal place of business in Tallahassee, Florida. It does not have any parent corporations, nor does it issue stock, and thus there is no publicly held corporation that owns 10% or more of its stock.

America's Newspapers is a trade association of more than 1,500 newspaper publishers and related companies across the United States. It advocates for the interests of newspaper publishers, provides a forum for discussing best practices and challenges facing the industry, and offers educational opportunities on innovations and trends in the field. America's Newspapers also defends the freedom of the press and champions First Amendment causes.

Many of its members operate news websites that include short news videos along with the text of news stories. Many use third-party analytics tools, like the Meta Pixel, on their websites. These tools provide members with data about website visits that allow them to deliver news more effectively, thereby increasing reader engagement and expanding access to news. The tools also enable advertising exchanges to deliver tailored advertising content on members' webpages.[2] Such targeted advertisements benefit

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[1] No counsel for a party authored this brief in whole or part. No person or entity other than *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Unless otherwise specified, all internal quotations, brackets, and emphases are omitted.

[2] Consistent with industry practice, America's Newspapers' members disclose their sharing of visitors' data in their privacy policies.

both advertisers and viewers because targeted advertisements are more likely to find receptive audiences. As a result, such advertisements generate more revenue for the website operators than untargeted advertising, better funding members' news reporting operations.

Many of America's Newspapers' members also sell physical newspapers and magazines or offer digital email newsletters to update interested readers about the current news. As a result, its members and other newspaper publishers have been targeted by lawsuits like this one, brought by plaintiffs with overly expansive understandings of the protections that the federal Video Privacy Protection Act of 1988 ("VPPA") affords to consumers.[3]

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[3] For example, member Washington Newspaper Publishing Company is the defendant in *Pileggi v. Washington Newspaper Publishing Co.*, 146 F.4th 1219 (D.C. Cir. 2025), *pet. for cert. pending*, No. 25-1040. The *Tennessean* and the *Minnesota Star Tribune* are also members of America's Newspapers and have each faced VPPA claims. *See Buechler v. Gannett Co.*, 2023 WL 6389447 (D. Del. Oct. 2, 2023); *Feldman v. Star Tribune Media Co.*, 659 F. Supp. 3d 1006 (D. Minn. 2023). Other news publishers sued include the *Boston Globe*, the *Epoch Times*, *People*, *Forbes*, the *Philadelphia Inquirer*, and the *Toledo Blade*. *See Ambrose v. Boston Globe Media Partners LLC*, 2022 WL 4329373 (D. Mass. Sept. 19, 2022); *Czarnionka v. Epoch Times Ass'n, Inc.*, 2022 WL 17069810 (S.D.N.Y. Nov. 17, 2022); *Martin v. Meredith Corp.*, 657 F. Supp. 3d 277 (S.D.N.Y. 2023); *Lamb v. Forbes Media LLC*, 2023 WL 6318033 (S.D.N.Y. Sept. 28, 2023); *Braun v. Philadelphia Inquirer, LLC*, 2023 WL 7544160 (E.D. Pa. Nov. 13, 2023); *Collins v. Toledo Blade*, 720 F. Supp. 3d 543 (N.D. Ohio 2024).

INTRODUCTION

As the Sixth and D.C. Circuits correctly held, the VPPA does not protect website visitors who have merely signed up to receive email newsletters. *See Salazar v. Paramount Glob.*, 133 F.4th 642, 645 (6th Cir. 2025); *Pileggi v. Washington Newspaper Publ'g Co.*, 146 F.4th 1219, 1231 (D.C. Cir. 2025). The Court should affirm the Sixth Circuit's judgment for the reasons Paramount sets forth in its brief.

In urging the Court to instead adopt the Second and Seventh Circuits' contrary interpretation of the VPPA, Salazar and his *amici* fail to address the practical impossibility of news and other websites complying with that interpretation of the VPPA, without either ceasing all use of third-party analytics tools that facilitate increased audience engagement and targeted advertising or dramatically changing their operations. They assume that website operators always know both (1) who has ever bought, rented, or subscribed to any of their goods and services, and (2) who is currently visiting their websites. Neither assumption withstands scrutiny. Businesses often cannot identify everyone who bought, rented, or subscribed to their goods or services. More importantly, they normally do not know who is visiting their publicly available, ad-supported websites. Thus, siding with Salazar would force website operators to extend the VPPA's protections to all website visitors — even those Salazar acknowledges are excluded — lest the website operator inadvertently violate the VPPA and become subject to its statutory damages.

In addition, the cases against news website operators (and others) erroneously assume that the VPPA extends to all prerecorded videos. It does not. The VPPA only protects consumers of video tape service

providers: companies that rent, sell, or deliver "pre-recorded video cassette tapes or similar audio visual materials." 18 U.S.C. § 2710(a)(1), (4). The short news videos on America's Newspapers' members' websites are not "similar" to "prerecorded video cassette tapes." Judge Bork could not have walked into Potomac Video in 1988 and walked out with a video cassette containing a three-minute news segment. Had Congress wanted to protect privacy rights in all audio visual material, or even all "prerecorded" videos, it would have written the statute differently. But Congress drafted the VPPA to address a specific problem — it did not enact the VPPA as the general internet privacy statute that Salazar and hundreds of other plaintiffs are trying to turn it into.

SUMMARY OF ARGUMENT

I. Paramount persuasively explains why the Video Privacy Protection Act protects consumers of only the same audio visual goods and services as to which the VPPA protects those consumers' privacy interests. The statute's text, context, structure, history, and purpose all support this interpretation, which the D.C. Circuit also adopted in *Pileggi v. Washington Newspaper Publishing Co.*, 146 F.4th 1219 (D.C. Cir. 2025), *pet. for cert. pending*, No. 25-1040. On the other hand, as Paramount explains, Salazar's interpretation disregards foundational rules of statutory interpretation and leads to incoherent, unintended consequences. This Court has repeatedly rejected the kind of out-of-context reading that Salazar prefers. And the statute's drafting history further undermines Salazar's reliance on the meaningful-variation canon.

II. Adopting Salazar's position would force most ad-supported websites that contain videos to stop using third-party analytics tools or substantially alter

how their websites operate — with either response likely reducing or restricting free access to news on the internet as a result. That is because such website operators have no practical way to know whether a current website visitor previously bought, rented, or subscribed to some good or service the website operator offers. To avoid exposing themselves to potentially massive statutory damages, they would need to extend the VPPA's protections to all website visitors. That would eliminate their ability to use the information gleaned from third-party analytics tools to increase their audiences. And it would reduce their advertising revenues — as less-lucrative generic advertisements replace more-valuable targeted ones — forcing website operators, such as America's Newspapers' members, to find other ways of earning revenue from their websites, like increasing the use of paywalls. In arguing that adopting their position would not upend the internet as we know it, Salazar and his *amici* ignore this fundamental information deficit.

III. News organizations and many others caught up in the flood of VPPA lawsuits also are not "video tape service providers" under the Act. Unlike Netflix, Disney+, or Apple TV — the modern-day equivalents of Blockbuster Video — news websites do not sell, rent, or deliver videos that are "similar" to the "prerecorded video cassette tapes" the Act covers. The *only* similarity between a short online news clip (equivalent to a single segment on a nightly newscast) and a prerecorded video cassette tape is that both are prerecorded. But the normal meaning of "similar" requires more. For two things to be "similar," they must be significantly alike. Contemporaneous dictionaries and case law support this requirement. At the very least, that means VPPA-protected videos

must contain content like the full-length movies and television shows that Judge Bork could have found at Potomac Video. Had Congress wanted to cover *any* prerecorded audio visual materials, it would have used "other" instead of "similar." Congress did not, and the Court should give effect to Congress's choice.

ARGUMENT

I. The Video Privacy Protection Act Protects Consumers of Only Audio Visual Goods and Services

Paramount capably sets forth why the VPPA's text, context, structure, history, and purpose show that it covers only consumers of a video tape service provider's audio visual goods and services. *See* Paramount Br. 18-31. Paramount also explains why and how Salazar's proposed interpretation of the Act ignores foundational statutory interpretation rules, leading to incoherent, unintended consequences. *See id.* at 31-51. America's Newspapers fully agrees with those arguments.

Salazar's reliance on the meaningful-variation canon is particularly inapt as applied to the VPPA, which "is far from a *chef d'oeuvre* of legislative draftsmanship." *King v. Burwell*, 576 U.S. 473, 493 n.3 (2015); *see also Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535, 538 (7th Cir. 2012) (Posner, J.) (describing the VPPA as "not well drafted"). As Paramount notes (at 36 n.6), the VPPA's liability clause refers to "the relief provided" — that is, the private right of action — "in subsection (d)." 18 U.S.C. § 2710(b)(1). Yet the private right of action appears in subsection (c). *See id.* § 2710(c). Nor is that the only drafting error in the Act: the destruction of records provision refers to both "subsection (b)(2) or (c)(2)," *id.*

§ 2710(e), yet the latter has nothing to do with records but is part of the private right of action.

These errors are the result of Congress's rush to pass the VPPA after the *Washington City Paper* disclosed Judge Bork's movie preferences. The Act was introduced in the Senate on May 10, 1988, and passed by both houses of Congress by October 27, 1988.[4] Yet that overstates the time Congress spent on the Act, as much of the work on what became the final text happened over a three-week period. The original draft of the bill contained extensive protections for library records, as well as video tapes. S. 2361, 100th Cong. § 2 (May 10, 1988). On October 5, 1988, the original text was struck, in favor of a replacement that omitted the library provisions. S. 2361, 100th Cong. § 2 (Oct. 5, 1988). But that new text continued to include the phrase "or library," *id.*, which was deleted nine days later as part of an amendment to correct some — but, as shown above, not all — of the new text's errors, *see* 134 Cong. Rec. 31,069 (Oct. 14, 1988). The amended bill then passed by voice vote in both houses. This rushed passage and the remaining errors provide further reason to reject Salazar's contention that the absence of "video" before "goods or services" in § 2710(a)(1) reflects a meaningful congressional decision.

II. Adopting Salazar's Position Would Fundamentally Remake the Internet

As the D.C. Circuit recognized, the VPPA "presumes that video tape service providers know whether someone is a 'consumer' of their goods or services." *Pileggi v. Washington Newspaper Publ'g Co.*, 146 F.4th 1219,

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[4] *See* Congress.gov, *S.2361 – Video Privacy Protection Act of 1988*, *All Actions*, https://www.congress.gov/bill/100th-congress/senate-bill/2361/all-actions.

1234 (D.C. Cir. 2025). Salazar and his *amici* share that assumption. *See* Salazar Br. 51; EPIC Br. 13; Schwartz Br. 13. But website operators like America's Newspapers' members generally do *not* know who is visiting their websites. Users need not log in or otherwise identify themselves to read articles and watch the accompanying videos. Even when a website allows visitors to log in — and a visitor does so — that person need not provide any (or accurate) identifying information. So even if the website operator had a comprehensive list of everyone who ever bought, rented, or subscribed to any of its goods or services (it does not), that operator would have no way to distinguish between website visitors Salazar claims the VPPA protects and those Salazar agrees it does not.

To avoid the Act's potentially massive statutory damages, website operators would have to refrain from sharing information about *every* website visitor, even those who are not VPPA-protected consumers. Or they would have to significantly change how their websites operate, such as increasing use of paywalls or decreasing the use of videos. Either would be a catastrophic result for America's Newspapers' many members — and millions of others — that rely on third-party analytics tools to learn about and increase their audience, as well as for targeted advertising, which generates revenue, allowing them to provide greater public access to the news.

A. Salazar's Interpretation Practically Erases the Consumer Requirement

The VPPA does not subject video tape service providers that operate websites to potential liability for sharing information about *all* website visitors. Instead, as Salazar admits (at 48), "one's status as a

'consumer' is a necessary, but not a sufficient, condition for VPPA liability." His supporting *amici* agree. *See* Schwartz Br. 16 ("[O]ne who accesses videos could be called a 'downloader,' or perhaps a 'viewer,' but Congress did not give 'consumer' status to one who can only show that they downloaded or viewed a video."); EPIC Br. 13 ("Congress intended to apply the Act's protections to consumers who have a commercial relationship with the provider."). Or, as the D.C. Circuit put it, "Congress . . . did not protect every person who sees a video somehow." *Pileggi*, 146 F.4th at 1237. In sum, there is no dispute that the Act does not protect every person who visits a Paramount (or any) website page containing a video.[5] It protects only "consumer[s]." 18 U.S.C. § 2710(b)(1).

For website operators to avoid violating the VPPA when they use third-party analytics tools that share information about the pages a website visitor opens,[6] they must "know whether someone is a 'consumer' of their goods or services." *Pileggi*, 146 F.4th at 1234. Salazar does not dispute this, but derides (at 51) as "unsupported speculation" the D.C. Circuit's recognition that website operators "cannot readily identify their own consumers." Salazar's *amici* take the same

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[5] This assumes the website operator is a video tape service provider. Few are. *See infra* Part III.

[6] Pileggi and other plaintiffs contend that sharing the URL of a webpage containing a video, along with the Facebook ID cookie on the user's computer, discloses information about videos that the visitor watched or requested in violation of the VPPA (absent the unusual form of consent the VPPA requires). *See*, *e.g.*, *Salazar v. Paramount Glob.*, 133 F.4th 642, 645 n.1 (6th Cir. 2025); *Pileggi v. Washington Newspaper Publ'g Co.*, 2024 WL 324121, at *2 (D.D.C. Jan. 29, 2024), *aff'd*, 146 F.4th 1219 (D.C. Cir. 2025), *pet. for cert. pending*, No. 25-1040; *Braun v. Philadelphia Inquirer, LLC*, 2023 WL 7544160, at *1 (E.D. Pa. Nov. 13, 2023).

view. For example, EPIC asserts that, "[w]hen a person rents, buys, or subscribes to goods or services of *any* kind from a provider, the company is likely to obtain personal information about that person (such as their name and address) that it would not otherwise have." EPIC Br. 13. And Professor Schwartz contends that "any 'consumer' under the statute would necessarily have a contractual relationship with the video tape service provider" that would "allow[] video tape service providers to attempt to negotiate informed, written consent from its consumers." Schwartz Br. 13.

That was true when Judge Bork rented movies from Potomac Video. The video store had to know which movies Judge Bork rented — to ensure it got them back. And it had to know which movies Judge Bork requested, but were out of stock — so it could tell him when they were available again. Similarly, when video stores offered monthly, paid subscriptions,[7] they too needed to know who had (or wanted) their videos. In these scenarios, they could be sure who their consumers were and thus could avoid disclosing their information absent informed written consent.

But compare that to the facts in *Pileggi*. Her only connection with the *Washington Examiner* was that she had signed up to receive email newsletters. *See* 146 F.4th at 1225. Pileggi did not allege that she logged in when she visited the *Washington Examiner*'s

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[7] Some companies offered a video subscription service well before Netflix pioneered DVD-by-mail subscriptions. In addition to Video Mailbox, *see* Paramount Br. 5, Video Valet offered an $800 annual subscription service that allowed subscribers to receive unlimited video tapes and home delivery via motorcycle. *See*, *e.g.*, Nancy Rivera Brooks, *Fast Forward Market: Video Stores Experience a Record Explosion*, L.A. Times, June 30, 1986 (discussing Video Valet), https://perma.cc/3TZM-TNXL.

website — with the email she used for the newsletters or any other. *See generally* First Am. Class Action Compl., *Pileggi v. Washington Newspaper Publ'g Co.*, No. 1:23-cv-345-BAH, ECF No. 20 (D.D.C. May 5, 2023) ("*Pileggi* Am. Compl."); *see also Pileggi*, 2024 WL 324121, at *10 ("[P]laintiff does not claim that a newsletter subscription was required to access those videos, functioned as a login, or gave newsletter subscribers extra benefits as viewers."). Nor did she allege that the *Washington Examiner* had access to the Facebook ID cookie on her computer that the Meta Pixel transmits to Meta and that, she claimed, could identify her. *See generally Pileggi* Am. Compl. Indeed, she did not allege *any* facts to show that the *Washington Examiner* could have determined, in real time, that she was the one visiting its website. The *Washington Examiner*'s experience is typical of America's Newspapers' other members.

More generally, businesses that operate websites containing videos face two real limitations on their ability to know that a particular website visitor meets Salazar's preferred reading of the VPPA's definition of consumer.

First, companies do not always know who buys, rents, or subscribes to their goods or services. For example, take a person who buys a jersey from the Washington Nationals' Team Store at the stadium with cash, a pre-paid debit card, or a gift card. The Nationals have no reason to get that person's name — and that person has no reason to give their name — during that transaction. When that person later visits the Nationals' website to watch video highlights from that game — or from a game a year or two later[8] —

[8] *See* Major League Baseball, Gameday – Top Highlights, Orioles vs. Nationals (including clips of Jacob Young's solo homer,

the Nationals would have no way of knowing this website visitor once bought a jersey. This scenario is not limited to baseball souvenirs and highlights. It extends to every cash transaction at every brick-and-mortar store that has a website with video clips.[9] Nor is it hyperbole — many such sellers have found themselves defendants in VPPA lawsuits.[10]

Second, most websites have no idea who is visiting their website. They do not make users create accounts and log into them — or otherwise identify themselves to the website operator — to view the site's webpages with video content. And for good reason: requiring website visitors to identify themselves with verifiable and accurate information would reduce site traffic, audience engagement, and thus advertising revenue that sites generate by views and clicks. It would also reduce the ease of access to information on the internet and prevent users from viewing information anonymously. And publishers would have to store this information identifying website users and protect it from hackers, creating further consumer privacy

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CJ Abrams' RBI single, and Keibert Ruiz's sacrifice fly from the Nationals' May 17, 2026 game against the Baltimore Orioles), https://atmlb.com/4euEKxF (last visited June 22, 2026).

[9] It also affects businesses that sell subscriptions through third parties — such as for pre-paid cellphone service or video game services like Xbox Game Pass or PlayStation Plus.

[10] Plaintiffs have alleged "purchaser" status based on having "eaten and enjoyed" a chocolate bar, Class Action Compl. ¶ 38, *Rodriguez v. Hershey Co.*, No. 3:23-cv-398-L-DEB, ECF No. 1 (S.D. Cal. Mar. 2, 2023), having "purchased and eaten at" a Chick-fil-A, First Am. Class Action Compl. ¶ 50, *Carroll v. Chick-fil-A, Inc.*, No. 4:23-cv-314-LJC, ECF No. 15 (N.D. Cal. Apr. 4, 2023), and having purchased school-related memorabilia, *see Hernandez v. Jostens, Inc.*, 2024 WL 1135165, at *3 (C.D. Cal. Feb. 7, 2024). *See also* Paramount Br. 9-10.

concerns. *See* Paramount Br. 50. Salazar and his *amici* ignore all of this.

These facts also refute Salazar's *amici*'s suggestion that the VPPA's consent provision solves any potential problems their interpretation creates. *See* Schwartz Br. 13, 15-16; EPIC Br. 28. There is no reason to compel, for example, the Washington Nationals to make anyone who buys a jersey at their Team Store to sign a time-limited VPPA consent[11] or to modify their website to require identifying logins to watch highlights on a webpage that includes the Meta Pixel. *See* Paramount Br. 50-51.

In short, under Salazar's position, "video tape service providers would just have to assume that all visitors to their websites are consumers." *Pileggi*, 146

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[11] The VPPA's consent provision is unusual. The consent must be in a self-contained, written document that, if sought in advance, is good for no more than two years (although the advance consent can be withdrawn at any time). *See* 18 U.S.C. § 2710(b)(2)(B). Indeed, given the VPPA's two-year limitation, even requiring a signed written consent would not protect the Nationals if someone watched a highlight reel more than two years after paying cash for a jersey. In contrast, the California Consumer Privacy Act of 2018 does not include such restrictions in its definition: "'Consent' means any freely given, specific, informed, and unambiguous indication of the consumer's wishes by which the consumer, . . . including by a statement or by a clear affirmative action, signifies agreement to the processing of personal information relating to the consumer for a narrowly defined particular person." Cal. Civ. Code § 1798.140(h). Under the Lanham Act, to use "a name, portrait, or signature identifying a particular living individual" in a trademark, one must obtain "written consent" without further requirements. 15 U.S.C. § 1052(c). And the Health Insurance Portability and Accountability Act of 1996 makes it a criminal offense to "disclose[] individually identifiable health information to another person" when the disclosing "individual obtained or disclosed such information without authorization." 42 U.S.C. § 1320d-6(a).

F.4th at 1234. Otherwise, they could face massive liability by disclosing the video viewing information of someone who anonymously watched a video on the website after having bought a baseball jersey with cash years earlier. *See id.* at 1233. Such an interpretation "would leave the term 'consumer' 'no work to do' in the statute." *Id.* at 1234 (quoting *Fischer v. United States*, 603 U.S. 480, 490 (2024)).

On the other hand, video tape service providers can distinguish between consumers and non-consumers if "[o]nly those who purchase, rent, or subscribe to a video service are protected, and it is only to those same videos that the statute's privacy protections attach." *Pileggi*, 146 F.4th at 1237. As was true for Potomac Video, modern video providers need to know *who* is renting, purchasing, or subscribing to their videos. That is why these video providers require users to log in to view videos. For example, Netflix needs to know whom to bill each month for a subscription. It thus knows that it cannot disclose that subscriber's video choices (or that it must follow the VPPA's unique consent requirements before it does so). Similarly, Apple TV needs to know who has rented a video so that it can ensure that the video is in the right person's account for 48 hours — and remove it at the end of 48 hours. Apple TV can refrain from using the Meta Pixel or similar tools that enable targeted content delivery and advertising on those webpages. These companies do not provide content that customers can view without logging into the platform and paying. But website operators — such as news publishers that offer some paid content — could continue to use these tools to support webpages with publicly available videos, because those videos are, by definition, not "the same video materials or services

that the individual purchased, rented, or subscribed to." *Id.*

B. Salazar's Interpretation Would Devastate Ad-Supported Websites

Adopting Salazar's interpretation would severely harm news publishers that operate websites (virtually all of them) and reduce the availability of information on the internet. That is because, to avoid inadvertently violating the VPPA, news publishers and others that operate ad-supported websites would have to cease using third-party analytics tools or make other drastic changes to their websites. The Court should not read a statute that narrowly protects "consumers" of "video tape service providers" as an effective ban on analytics-based audience engagement and targeted advertising. *See generally* Paramount Br. 47-50.

Online media outlets are integral to American news consumption. "The vast majority of adults in the United States get at least some news from digital devices, and the online space" supports "both legacy news outlets and new, 'born on the web' news outlets."[12] "[T]he news outlets with the highest traffic" averaged more than 25 million "monthly unique visitors" in 2022.[13]

Many online media outlets use third-party analytics tools, like the Meta Pixel, to drive reader engagement. These tools provide media outlets with after-the-fact information about the demographics of the people who visited their website, as well as information about which webpages drew the most visits and how long

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[12] Pew Rsch. Ctr., *Digital News Fact Sheet* (Nov. 10, 2023), https://perma.cc/47BQ-4N6A.

[13] *Id.*

visitors stayed on particular webpages. This information helps media outlets expand their reader base, for example by providing information about the type of articles that are likely to interest their current audience, as well as the type of audience that is likely to be interested in their articles. Information that the Meta Pixel collects also enables news outlets to purchase advertisements on Facebook that are delivered to past website visitors, to spark re-engagement with that news website. Losing the ability to obtain that information and deliver that content to past website visitors would significantly impair reader engagement — harming both media outlets and their audiences.

Additionally, third-party analytics tools enable targeted digital advertising. Digital advertising is integral to the online media ecosystem. In 2022, the digital advertising market was approximately $245 billion and accounted for approximately 72% "of all advertising revenue."[14] "[D]igital advertising provides free media goods . . . in spades."[15] Targeted advertising is an important part of the digital advertising market and "is a form of tailoring information based on provided data." *Bridge & Post, Inc. v. Verizon Commc'ns, Inc.*, 778 F. App'x 882, 887 (Fed. Cir. 2019).

Targeted advertising is economically efficient. "Digital advertisers both collect and use information to target potential buyers."[16] Thus, a company can send advertisements to the individuals who are most

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[14] *Id.*

[15] Jeremy Greenwood et al., *"You Will:" A Macroeconomic Analysis of Digital Advertising*, 92 Rev. Econ. Studies 1837, 1837 (2025).

[16] *Id.* at 1858.

likely to purchase their goods. There is little point in advertising specialty mountain bike tires to someone who does not ride a bike. And advertising children's clothing to a parent is far more likely to increase sales than advertising it to a college student.[17] As a result, targeted advertising can generate more revenue for news websites. In a market with "sufficient competition . . . among similar advertisers, the behavioral targeting revenue for the online publisher can approach double the income from traditional advertising."[18] Losing this revenue premium would devastate operators of ad-supported websites. *See also* Paramount Br. 11.

True, news publishers could address the potential liability Salazar's interpretation creates in ways besides eliminating the use of third-party analytics tools. But all the options harm America's Newspapers' members and millions of other website operators that rely on targeted content delivery and advertising. And many would harm internet users who rely on these websites for news and other information.

To start, news publishers could avoid doing anything that might create a "consumer" relationship under Salazar's interpretation. They could stop selling magazines at newsstands, stop printing newspapers to deliver to businesses and homes, stop selling subscriptions to digital news, stop offering email newsletters, stop selling t-shirts and baseball caps

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[17] In both cases, the advertisements are also more useful to their viewers because viewers can derive value from seeing advertisements for goods they actually want to buy.

[18] Jianqing Chen & Jan Stallaert, *An Economic Analysis of Online Advertising Using Behavioral Targeting*, 38 MIS Q. 429, 447 (2014).

with their logos, and more. If news publishers have no "consumers," they cannot violate the VPPA. But news publishers rely on these magazines, newspapers, newsletters, and even baseball caps for revenue, whether directly from sales or indirectly by driving user engagement.

Similarly, news publishers could remove video content from their websites. A publisher cannot violate the *Video* Privacy Protection Act without videos. But, again, news publishers include videos because they engage visitors and drive revenue. Indeed, short-form video is increasingly the preferred medium for news consumption over text and print. And many users rely on these videos for access to and better understanding of the news.

Alternatively, publishers could move their video content behind paywalls so that only logged in, paying subscribers could access it. And they could limit use of the Meta Pixel to pages outside the paywall or seek informed consent under the VPPA from subscribers accessing content inside the paywall. Or — if they do not want to require every website visitor to log in — publishers could require that everyone who visits their websites fill out a VPPA consent form before navigating to any pages with video content. Yet these options would both decrease news publishers' engagement with their audience and decrease the public's access to news content.

Finally, news publishers could collect *more* data to ensure they can identify everyone who meets Salazar's definition of a consumer. *See* Paramount Br. 50-51. On the website side, they could require everyone who visits their website to identify themselves. This could be done by requiring all visitors to create an account using their actual, verifiable identity and not

a username. *Cf. Pileggi*, 146 F.4th at 1234 (recognizing that identifying "consumers" would be difficult "because usernames employed by those visiting websites do not always, or even often, match credit or debit card names."). Or they could use more intrusive tracking tools to identify website visitors. As for the commercial transaction side, the news publisher could require that everyone who rents, purchases, or subscribes to any good or service provide a verifiable ID as part of the transaction — even for buying a $4 newspaper in cash. The news publisher would then have to keep this website visitor and commercial transaction information in a (secure) database so that the publisher could identify the website visitors who are also consumers and treat their data differently. As the D.C. Circuit recognized, this "would be a daunting task under any circumstances." *Id.*

Any of these hypothetical solutions to the real problems Salazar's preferred definition of consumer creates would radically change how the internet operates. This Court has repeatedly declined invitations to read statutes in ways that ignore how the internet operates. For example, the Court recently recognized that internet service providers "have limited knowledge about how their Internet services are used and who uses them" and declined music labels' efforts to impose secondary copyright liability on internet service providers that did not remove infringers from their networks fast enough. *Cox Commc'ns, Inc. v. Sony Music Ent.*, 146 S. Ct. 959, 965 (2026). The Court also refused to hold internet platforms liable for their "'recommendation' algorithms," recognizing that such algorithms "are merely part of th[e] infrastructure" and "agnostic as to the nature of the content" they recommend. *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 499 (2023). And it recognized that

online platforms, like Facebook and YouTube, engage in protected speech when they curate the content users see. *Moody v. NetChoice, LLC*, 603 U.S. 707, 731 (2024).

III. News Websites Are Not Video Tape Service Providers

Salazar — and many other VPPA plaintiffs (and lower courts) around the country — incorrectly assume that the VPPA extends to all websites that contain any prerecorded video content. *See*, *e.g.*, *Salazar v. Paramount Glob.*, 133 F.4th 642, 653 (6th Cir. 2025) (brief videos inside articles on Paramount's 247Sports.com website); *Salazar v. National Basketball Ass'n*, 118 F.4th 533, 537 (2d Cir. 2024) (free prerecorded sports clips on NBA.com); *Pileggi*, 146 F.4th at 1225, 1237 ("short online videos" in an online news publication). But to be a video tape service provider, an entity must be "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). As Judge Randolph explained in his *Pileggi* concurrence, "'[s]imilar' cannot mean 'other.'" 146 F.4th at 1238.

"Similar" must be given "its ordinary meaning," *Taniguchi v. Kan Pac. Saipan, Ltd.*, 566 U.S. 560, 566 (2012), which "is fixed at the time of enactment," *Wisconsin Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018). That is why courts look to "contemporaneous dictionary definitions" for the meaning of a statutory term. *Delaware v. Pennsylvania*, 598 U.S. 115, 128 (2023) (looking at 1969 and 1972 dictionaries for meaning of "money order" in 1974 Federal Disposition Act).

"Similar" means significantly alike. *Webster's Third New International Dictionary* ("*Webster's Third*")

defines "similar" as "having characteristics in common : very much alike" and "alike in substance or essentials."[19] *The Oxford English Dictionary* defines "similar" as "[o]f the same substance or structure throughout; homogenous" and as "[h]aving a marked resemblance or likeness; of a like nature or kind."[20] *Black's Law Dictionary* defines it as "[n]early corresponding; resembling in many respects; somewhat like; having a general likeness, although allowing for some degree of difference," and notes that "in some cases 'similar' may mean identical or exactly alike."[21] On the whole, these contemporaneous dictionaries require more than a passing resemblance.

Case law supports interpreting "similar" as requiring a high degree of similarity to the items listed in the statute. Just recently, in *Delaware v. Pennsylvania*, the Court interpreted the statutory phrase "money order . . . or other *similar* written instrument." 598 U.S. at 123 (quoting 12 U.S.C. § 2503(1)) (emphasis added). The Court analyzed "what 'similar' entails in light of [the statute's] text and context." *Id.* at 127. To do so, it looked at the features of the listed statutory term: money order. And it found the financial instruments at issue to be "similar written instruments" because they "operate in the

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[19] *Similar*, *Webster's Third New International Dictionary* 2120 (1993); *see also Similar*, *Webster's New Third International Dictionary* 2120 (1981) (same definition); *Similar*, *Webster's Ninth New Collegiate Dictionary* 1098 (1987) (replacing "very much alike" in *Webster's Third* with "strictly comparable").

[20] *Similar*, *The Oxford English Dictionary* 490 (2d ed. 1989); *see also Similar*, *American Heritage Dictionary* 1141 (2d ed. 1991) ("[r]elated in appearance or nature").

[21] *Similar*, *Black's Law Dictionary* 1240 (5th ed. 1979); *see also Similar*, *Black's Law Dictionary* 1383 (6th ed. 1990) (identical definition).

same manner as money orders" and "implicate the one feature of money orders that [the statute] explicitly identifies." *Id.* at 127-28.

The courts of appeals agree. For example, the Eleventh Circuit cited definitions of "similar" from *Black's Law* and *Webster's Third*. *See Duckworth v. Allianz Life Ins. Co. of N. Am.*, 706 F.3d 1338, 1343 (11th Cir. 2013). Applying this "usual and common meaning" of "similar," it held that the Railroad Retirement Act of 1974 is "similar" to the Social Security Act because both provide a system of disability benefits. *Id.* at 1343-44. And in interpreting a statute covering "antitrust violations, unfair trade practices, restraints of trade, or other *similar* offenses relating to the regulation of business practices," 18 U.S.C. § 921(a)(20)(A) (emphasis added), the Eighth Circuit asked whether the allegedly similar offenses are "'comparable' or 'nearly corresponding' to the enumerated offenses." *United States v. Stanko*, 491 F.3d 408, 414 (8th Cir. 2007) (quoting *Webster's Third New International Dictionary* 2120 (2002)).

Indeed, even when the courts of appeals disagree about the bounds of what is similar, they rely on the same dictionary definitions of "similar" and agree that it requires commonality. For example, most courts of appeals have interpreted a provision of the Sentencing Guidelines discussing sentencing for specifically listed "'prior offenses and *offenses similar to them*.'" *United States v. Martinez-Santos*, 184 F.3d 196, 199, 204 (2d Cir. 1999) (quoting U.S.S.G. § 4A1.2(c)) (emphasis in *Martinez-Santos*). Some courts of appeals look at "*all possible factors of similarity*," including the elements, punishments, level of culpability, and perceived seriousness. *Id.* at 200. Others "subscribe to a more limited approach to the determination . . . that focuses on the degree of commonality between the elements or

substance" of the offenses. *Id.* But, in all cases, the court must look for commonality to the listed crimes.

Here, the audio visual material the VPPA covers must be very much alike or nearly corresponding to the "prerecorded video cassette tapes" enumerated in the Act.

In his *Pileggi* concurrence, Judge Randolph concluded that only "physical materials" — "tangible objects which can be held, stored, rented or sold" — are sufficiently similar to prerecorded video cassette tapes. 146 F.4th at 1239. In other words, under Judge Randolph's interpretation, the VPPA covered Netflix's DVD-by-mail program, because Netflix was providing a physical DVD for viewing. But it does not cover any form of digital streaming — not Apple TV or Disney+, much less sports highlights or news clips.[22] Indeed, Judge Randolph concluded that "[t]echnology has overtaken this federal statute and has rendered it largely obsolete." *Id.* at 1238.

But even if Judge Randolph overread "similar" by focusing on the physical medium, the audio visual material the VPPA covers must share some meaningful features with prerecorded video cassette tapes. At the very least, they must contain content like the full-length movies and television shows that were on the video tapes lining Blockbuster's shelves. The VPPA thus extends to Netflix, Disney+, and Apple TV, where modern viewers stream movies like Top Gun, which

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[22] In 2012, Congress amended the consent provision to let Netflix users more easily share their movie selections with friends on social media. *See* S. Rep. No. 112-258, at 3 (2012); 18 U.S.C. § 2710(b)(2)(B). In 2012, Netflix was still in the midst of its switch from home delivery of DVDs to streaming — House of Cards, Netflix's first original series, did not debut until 2013. *See Case Study: Netflix's Transition from DVD Rental to Streaming*, Oxford Exec. Inst. (Nov. 24, 2024), https://perma.cc/MDG3-K2YJ.

they once would have rented from Blockbuster on VHS. And it would extend to a service or website that sells, rents, or offers subscriptions to watch prerecorded full-length news programs. After all, you could buy or rent a full-length *60 Minutes* episode or a 50-minute compilation of NBC News stories from the 1980s.[23] But you could not rent a VHS tape containing only an individual segment of a news program, like those America's Newspapers' members offer on their website. Nor could you rent an individual sports clip highlight, like those offered on 247sport.com. Again, such clips are nothing like the NFL season-long retrospectives that you could have bought on video tape.[24]

True, news and sports highlight video clips — like the audio visual material on video cassette tapes — are prerecorded. That similarity is insufficient. Had Congress wanted to cover providers of any prerecorded videos, it would have defined "video tape service provider" to include the rental, sale, or delivery of "prerecorded video cassette tapes or *other prerecorded* audio visual material" or even just "prerecorded audio visual material." Instead, Congress required that any protected audio visual materials be "*similar*" to "prerecorded video cassette tapes." The Court must

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[23] Both were available on VHS tapes released in 1992 and 1990, respectively, and were offered on eBay recently. *See* eBay, Shop by category, https://perma.cc/T94P-5E4F (*60 Minutes* episode); eBay, Shop by category, https://perma.cc/Y7XR-XUK8 (NBC News 1980s compilation).

[24] There was a market for sports videos in the 1980s that included "highlight films, of individual teams (like the Knicks), tournaments (the United States Open) and players (Michael Jordan). And there [we]re the 60-minute bonanzas of things like the greatest game endings, best hockey fights, and the most dazzling basketball dunks." Gerald Eskenazi, *Sports-Tape Sales On Fast Forward*, N.Y. Times at C1 (Dec. 18, 1989), https://nyti.ms/4vYUU9O.

"give effect, if possible, to every clause and word of a statute" so that "no clause, sentence, or word [is made] superfluous, void, or insignificant." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Reading the VPPA's definition of video tape service provider to encompass all prerecorded videos renders either "video cassette tapes" or "similar" superfluous, in violation of basic rules of statutory construction.

Enforcing the statute's requirement that the audio visual material be "similar" to "prerecorded video cassette tapes" is another way to prevent Salazar and his *amici* from wresting the VPPA from its historical context and transforming it into a general internet privacy statute.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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