

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**

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

The Video Privacy Protection Act creates a cause of action against a video tape service provider that knowingly discloses “personally identifiable information concerning any consumer” without consent. 18 U.S.C. §§ 2710(b)(1), (b)(2)(B). It defines “consumer” and “personally identifiable information.” *Id.* §§ 2710(a)(1), (a)(3). These adjacent definitions use different language to describe different relationships to different subject matters that identically come “from a video tape service provider.” *Id.*

Paramount concedes it is a “video tape service provider.” It agrees Mr. Salazar is a “subscriber” of the newsletter Paramount sent him. Resp. Br. 18–19. And it concedes it disclosed his “personally identifiable information.” It nowhere argues otherwise.

The narrow question here is whether Mr. Salazar is a “consumer,” 18 U.S.C. § 2710(a)(1), such that the “personally identifiable information” Paramount disclosed about him “concern[s] any consumer,” *id.* § 2710(b)(1). The answer hinges entirely on what Congress meant by the phrase “goods or services from a video tape service provider.” *Id.* § 2710(a)(1). Paramount insists that phrase carries an implied audiovisual limitation. It is wrong. The VPPA’s text, context, and structure impose no audiovisual limitation on the “goods or services” that make one a “consumer.” The Court should vacate and remand.

ARGUMENT

I. Text and context confirm the phrase “goods or services from a video tape service provider” contains no audiovisual limitation.

In his opening brief, Mr. Salazar began with the ordinary meaning of “goods or services.” Petr. Br. 15–19. It is a natural place to start. *See, e.g., Mohamad v. Palestinian Auth.*, 566 U.S. 449, 454 (2012) (looking “first” to an undefined “word’s ordinary meaning”). Indeed, beginning there is an essential part of what it means to “presume” Congress “says in a statute what it means and means in a statute what it says there.” *BedRoc Ltd. v. United States*, 541 U.S. 176, 183 (2004); *see also Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (requiring courts to consult this “canon before all others”).

Mr. Salazar then turned to context. And he showed how that context supported the conclusion that the phrase “goods or services” takes its ordinary meaning in Section 2710(a)(1). Petr. Br. 19–34, 39–52.

Paramount cries foul. It argues Mr. Salazar has read “goods or services” “in splendid isolation based on the broadest dictionary definition available.” Resp. Br. 4. Tellingly, Paramount never offers *any* dictionary definition of the phrase. It simply adds an atextual modifier. Resp. Br. 2, 14, 15, 18, 24, 30 (arguing “goods or services” means “audiovisual goods or services”). The choice, then, is not so much between a broad definition and a narrow one. It is between a dictionary definition and a statutory rewrite.

In any event, Paramount’s argument proceeds as if “goods or services” might take its ordinary meaning only because Mr. Salazar began with those words and a dictionary. Resp. Br. 4, 16, 19, 31, 36. And it insists

Mr. Salazar asks the Court to “ignore context in construing ‘goods or services.’” Resp. Br. 36 n.6.

Not so. Mr. Salazar agrees “[c]ontext plays a vital role when interpreting statutes.” *Feliciano v. Department of Transportation*, 605 U.S. 38, 50 (2025). Given that vital role, this reply starts with context. The outcome here does not depend on whether one examines ordinary meaning in the first frame or the final scene. No matter where the camera pans, or how far in or out it zooms, the conclusion remains the same: The phrase “goods or services from a video tape service provider” contains no audiovisual limitation.

A. “Personally identifiable information” does not always concern a “consumer,” and a “consumer” will not always have “personally identifiable information.”

Start with a point of agreement. The VPPA does not protect “information about non-video transactions involving things like bandanas.” Resp. Br. 1. Instead, every operative provision protects some amount of “personally identifiable information.” 18 U.S.C. §§ 2710(b), (d), (e). Information that “identifies a person as having requested or obtained specific video materials or services from a video tape service provider” meets that standard. *Id.* § 2710(a)(3).

The conclusion Paramount draws from these premises—namely, that non-video transactions “do not make a person a ‘consumer’ under the statute,” Resp. Br. 14—does not follow. Nor is it true that the VPPA’s protections “run only” to consumers. Resp. Br. 1. Congress separately defined “personally identifiable information” and “consumer,” and then it paired those defined terms in one provision but not others.

For example, the VPPA requires providers to “destroy personally identifiable information as soon as practicable.” 18 U.S.C. § 2710(e). Likewise, it restricts such information’s admissibility as “evidence in any trial, hearing, arbitration, or other proceeding.” *Id.* § 2710(d). These provisions protect *all* “personally identifiable information,” whether it concerns a “consumer” or a non-consumer. *Id.* §§ 2710(d), (e).

Section 2710(b)(1) is different. It says: “A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d).” *Id.* § 2710(b)(1).¹

This anti-disclosure provision protects less information than Sections 2710(d) and 2710(e). To receive Section 2710(b)(1)’s protection from disclosure, information must meet two conditions. First, as with Sections 2710(d) and 2710(e), it must be “personally identifiable information” under Section 2710(a)(3). As Paramount notes, this requirement “identifies *what* information the statute protects.” Resp. Br. 41. Second, and unlike Sections 2710(d) and 2710(e), it must also “concern[] any consumer of such provider.”

¹ Paramount claims courts have used “context” to conclude Section 2710(b)(1)’s reference to “subsection (d),” which provides for no relief, must mean Section 2710(c), which specifies the VPPA’s remedies. Resp. Br. 36 n.6. But the “highly demanding” doctrine of absurdity, not context, does that work. *Pulsifer v. United States*, 601 U.S. 124, 180 (2024) (Gorsuch, J., dissenting) (explaining the absurdity doctrine permits judges to “correct[]” a “statutory error” that would otherwise produce “a truly irrational result”). Paramount has never invoked the absurdity doctrine here, nor even “absurdity-lite.” *Id.* at 181.

18 U.S.C. § 2710(b)(1). This requirement specifies *whose* information Section 2710(b)(1) protects.

Given the way the two terms interact in Section 2710(b)(1), it is not possible for the “consumer” definition to “expand the VPPA’s reach.” Resp. Br. 50. The “concerning any consumer” clause necessarily narrows Section 2710(b)(1)’s scope.

Paramount concedes the “consumer” definition has a different “function and scope,” Resp. Br. 38, than the “personally identifiable information” definition. It agrees there are “multiple textual variations” between the two definitions. Resp. Br. 37. They use “different words to perform different functions in different ways.” Resp. Br. 37. Given all these admitted differences—in language, scope, and function—it is not at all surprising that the definitions are not “interlocking.” Resp. Br. 14.

Some “personally identifiable information” will concern non-consumers. The VPPA itself sometimes “untethers” and “disconnect[s],” Resp. Br. 42, the two defined terms to protect that information anyway. 18 U.S.C. §§ 2710(d), (e). By the same token, some “consumers” will have no protected “personally identifiable information.” Neither point is cause for alarm. Indeed, the “multiple textual variations,” Resp. Br. 37, between Sections 2710(a)(1) and 2710(a)(3) drive both outcomes.

An example helps show the interaction. Suppose an individual buys a bandana from a video tape service provider. This purchase makes him a “consumer.” 18 U.S.C. § 2710(a)(1). Information about that transaction “concern[s] any consumer.” *Id.* § 2710(b)(1). But it does not meet Section 2710(b)(1)’s first condition. It is not “personally identifiable

information” under the VPPA because it does not “identif[y] a person as having requested or obtained specific video materials or services from a video tape service provider.” *Id.* § 2710(a)(3). Thus, the VPPA does not protect information about that purchase.

Now suppose this same consumer later approaches that same provider with a request. He asks for a copy of *NORTH BY NORTHWEST* (Metro-Goldwyn-Mayer 1959). It is out of stock, but the provider records the consumer’s name and the title he requested. *That* information satisfies Section 2710(b)(1)’s dual conditions. It identifies a person as having “requested” “specific video materials” “from a video tape service provider.” 18 U.S.C. § 2710(a)(3). And it “concern[s] any consumer of such provider.” *Id.* § 2710(b)(1); *see also A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 345 (2025) (showing why this formulation includes “every” consumer of such provider, “without distinction or limitation”).

Thus, Section 2710(b)(1) protects information identifying this consumer’s unfulfilled request for a film Judge Bork once rented. Paramount seems to agree. Resp. Br. 7 n.1 (conceding information from an “initial non-video transaction” can be combined with a “subsequent” request for “video materials or services” to result in protected personally identifiable information); Resp. Br. 25 n.5 (similar); Resp. Br. 41 (agreeing Congress protected information about videos a consumer “requested but did not obtain”).

A non-consumer who makes a similar request receives no protection under Section 2710(b)(1). But this outcome is by no means “happenstance.” Resp. Br. 4, 17, 28, 46–47, 48. Nor is it “arbitrary.” Resp. Br. 27. It is instead the inevitable consequence of Congress’s decision to protect from disclosure only “personally

identifiable information concerning any consumer.” 18 U.S.C. § 2710(b)(1). Still, that non-consumer’s “personally identifiable information” is protected under Sections 2710(d) and 2710(e).

Paramount says these statutory features “make[] little sense.” Resp. Br. 15–16, 18, 27, 45. But that is how Congress wrote the VPPA. It is not always “obvious” why Congress made particular legislative choices. *Montgomery v. Caribe Transp. II, LLC*, 146 S. Ct. 1199, 1206 (2026). There are several plausible explanations for its decision to protect all “personally identifiable information” in Sections 2710(d) and 2710(e) but only “personally identifiable information concerning any consumer” in Section 2710(b)(1).

Maybe Congress thought liquidated damages were unfair unless the provider had previously received something of value from the individual whose information it disclosed. EPIC Amicus Br. 13–14; Schwartz Amicus Br. 2. Maybe it wanted to ensure the plaintiff’s interaction with the provider tangibly affected interstate commerce. 18 U.S.C. § 2710(a)(4) (requiring a provider’s business to “affect[] interstate or foreign commerce”). Maybe it wanted to ensure providers had clear opportunities to obtain consent. Schwartz Amicus Br. 13–19. Maybe it figured they were most likely to track their own consumers.

Whatever the reason, Congress drew the lines it drew. “Better to live with the mystery than to rewrite the statute.” *Montgomery*, 146 S. Ct. at 1207.

B. The VPPA’s other definitions illuminate the meaning of “goods or services.”

Paramount claims the VPPA defines “video tape service provider,” “personally identifiable information,”

and “consumer” “by reference to the same subject: video materials and video services.” Resp. Br. 14. The text says otherwise. The definition of “video tape service provider” refers to “prerecorded video cassette tapes or similar audio visual materials,” 18 U.S.C. § 2710(a)(4), but never mentions “services.” The definition of “personally identifiable information” refers to “video materials or services.” *Id.* § 2710(a)(3). And the definition of “consumer” refers to “goods or services.” *Id.* § 2710(a)(1).

These definitions do *not* use the same phrase to describe the subject matters they reference. Moreover, Sections 2710(a)(3) and 2710(a)(4) use video-specific modifiers in their descriptions. Section 2710(a)(1) does not. These facts suggest that the definitions refer to different subject matters, not a single subject matter in materially different ways. Close inspection shows Congress chose its words carefully.

1. Section 2710(a)(3) confirms the phrase “goods or services” is not limited to audiovisual goods or services.

Paramount argues the audiovisual limitation comes from “the words flanking the phrase ‘goods or services’” in Section 2710(a)(1). Resp. Br. 35. On one side, Congress used the words “renter, purchaser, or subscriber” to describe the relationship a “consumer” must have to the “goods or services.” 18 U.S.C. § 2710(a)(1). On the other, it provided that the “goods or services” must come “from a video tape service provider.” *Id.* Paramount claims Mr. Salazar “ignor[ed]” these “critical components” of the definition. Resp. Br. 33.

He did not. Indeed, he discussed them extensively. Petr. Br. 2, 10–11, 13–14, 19–23, 25–27, 30–33, 39–40,

44. Regardless, Paramount’s audiovisual limitation cannot “silently emanat[e]” from this surrounding text. *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 605 U.S. 223, 236 (2025). To see why, compare Section 2710(a)(1) with Section 2710(a)(3).

Congress defined “consumer” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.” 18 U.S.C. § 2710(a)(1). It defined “personally identifiable information” to include information that “identifies a person as having requested or obtained specific video materials or services from a video tape service provider.” *Id.* § 2710(a)(3). These definitions, which appear in a single sentence, describe different relationships to different subject matters from a single source.

i. The phrase “from a video tape service provider” does not restrict the meaning of “goods or services.”

Paramount argues “the prepositional phrase ‘from a video tape service provider’ modifies what goods or services one must receive to become a ‘consumer.’” Resp. Br. 20. It relies on the D.C. Circuit’s statement that “[t]he named source ‘from’ which the product must derive gives meaning to the scope of the regulated goods and services.” Resp. Br. 34 (quoting *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F.4th 1219, 1235 (D.C. Cir. 2025)). Thus, Paramount concludes, the phrase “goods or services” includes only what a provider offers “in [its] statutorily relevant capacity”—namely, “prerecorded video cassette tapes or similar audio visual materials.” Resp. Br. 20–21.

That argument has several problems. *First*, the claim that “from” narrows an earlier term’s scope, rather than simply identifying its source, has no

support except the D.C. Circuit's opinion. And that opinion cites nothing for the proposition. *Pileggi*, 146 F.4th at 1235. One can easily find definitions of "from" that specify source. See, e.g., *Webster's New World Dictionary* (3d college ed. 1988) (defining "from" to mean "derived or coming out of," "with (a person or thing) as the maker, sender, speaker, teacher, etc.," and "out of the possession or control of"); *The Oxford English Dictionary* (2d ed. 1989) (defining "from" to denote "derivation" or "source"). Dictionaries support Mr. Salazar's view. Petr. Br. 14, 20, 22, 26, 39.

Paramount's own usage points in the same direction. When it describes a "video tape service provider" as the source of explicitly "non-video goods or services," it uses the preposition "from." Resp. Br. 7 (acknowledging a person can "transact[] for non-video goods or services *from* a video tape service provider" (emphasis altered)).

No one has identified a dictionary that defines "from" the way Paramount claims it has been used in Section 2710(a)(1). Instead, hypotheticals do the heavy lifting. The D.C. Circuit explained: "[I]f Congress sought to protect the consumers of 'goods or services from a medical provider,' the natural reading would be that the consumers are those who received medical services." *Pileggi*, 146 F.4th at 1235. Paramount and its amici repeat the pattern. Resp. Br. 20, 34 (discussing "a consumer of services from an internet service provider" and "advice from an entertainment lawyer"); Chamber of Commerce Amicus Br. 8 (examining phrases like "a dish 'from the Italian place'" and "a song" "from a country artist"). Each example uses the prepositional phrase only once.

The VPPA's definitions section, however, uses "from a video tape service provider" twice in the same

sentence—once after “goods or services” and once after “specific video materials or services.” 18 U.S.C. §§ 2710(a)(1), (a)(3). And *that* context makes a difference. After all, “[c]ourts construe statutes, not isolated provisions.” Resp. Br. 33 (internal quotation marks and citation omitted). If, as just one example, a speaker referred to both “a dish from the Italian place” and “an Italian dish from the Italian place,” a listener would ordinarily conclude that not all dishes “from the Italian place” are “Italian dishes.” She would more readily reach that conclusion if, as here, the speaker described different relationships to the dishes (*e.g.*, that he “asked about” one and “ate” the other).

Reading the two definitions together shows Congress used “from a video tape service provider” to identify the source of the specified subject matter. The repetition most naturally suggests that both “specific video materials or services” and more general “goods or services” can come “from a video tape service provider.” 18 U.S.C. §§ 2710(a)(1), (a)(3).

That the phrase is a double feature in Section 2710(a) is not the only problem with Paramount’s reading. Paramount agrees Congress defined “video tape service provider” to include businesses like CVS. Resp. Br. 49. But describing someone as a purchaser of a good “from” CVS reveals almost nothing about the kind of good involved. It reveals the source. And it identifies that individual as one of CVS’s consumers.

These points confirm that, when Congress wanted to restrict subject matter, it did not rely on a prepositional phrase. It deployed a video-specific modifier. 18 U.S.C. § 2710(a)(3). And it chose not to use that modifier in the definition of “consumer.”

Second, the VPPA primarily defines a “video tape service provider” as one in the business “of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.” *Id.* § 2710(a)(4). That definition provides no basis to conclude a single entity might sometimes “act[] in [its] statutorily relevant capacity,” Resp. Br. 20–21, and sometimes not. Indeed, other definitions rule out that possibility. Whether it provides general “goods or services” or “specific video materials or services,” the source remains a “video tape service provider.” 18 U.S.C. §§ 2710(a)(1), (a)(3).

The VPPA’s secondary definition of “video tape service provider” includes an entity that receives a disclosure under Sections 2710(b)(2)(D) or 2710(b)(2)(E), “but only with respect to the information contained in the disclosure.” *Id.* § 2710(a)(4). This passage confirms that, when Congress wanted to make an entity a provider for a limited purpose, it did so explicitly.

Nowhere does the VPPA define the term “video tape service provider” based on what an entity “characteristically produces.” Chamber of Commerce Amicus Br. 8. Even Paramount agrees. It admits Walmart and Target qualify as “video tape service providers.” Resp. Br. 49. But those businesses do not “characteristically produce” videos.

Third, Paramount’s argument reads “services” out of Section 2710(a)(1). Resp. Br. 1, 18, 19–20, 21, 24, 37 (arguing “goods or services” means only “prerecorded video cassette tapes or similar audio visual materials”). Mr. Salazar flagged this problem. Petr. Br. 41–42. Paramount sometimes adds “services” back. Resp. Br. 2, 14–15, 18–19, 20, 25–26, 30, 34.

Paramount’s “solution” forces “goods or services” to mean “audiovisual goods or services.” Resp. Br. 2, 14–15, 18–19, 20, 25–26, 30, 34, 51. Here, Paramount is not so much interpreting “goods or services” as replacing it with a narrower phrase. And, with Paramount’s substitution, Sections 2710(a)(1) and 2710(a)(3) would cover the exact same subject matter.

As a result, in Paramount’s reading, a “consumer” will always have “personally identifiable information.” It admits as much. Resp. Br. 4 (arguing “consumer” status is “limited” to the transactions that “generate the PII the statute protects from disclosure”); Resp. Br. 14 (arguing “one becomes a VPPA consumer by renting, purchasing, or subscribing to the audiovisual goods or services” that “generate the PII that the statute protects”). The D.C. Circuit also embraced this result. *Pileggi*, 146 F.4th at 1237 (holding “the videos for which viewing history is disclosed must be the same” ones “purchased, rented, or subscribed to”).

When responding to arguments about surplusage, though, Paramount changes its tune. There, it claims the two definitions do not “overlap[] entirely.” Resp. Br. 41. It suggests there might be a “brief[]” disconnect because a subscriber “to video services” is a “consumer” before he “request[s] or obtain[s]” his “first specific title.” Resp. Br. 41–42. But “personally identifiable information” is not limited to “titles” or “video materials.” 18 U.S.C. § 2710(a)(3). Information that identifies the subscriber as having “obtained” the “specific video . . . services” he subscribed to is “personally identifiable information,” even without a request for “video materials.” *Id.* Paramount’s example confirms its reading causes complete overlap.

Indeed, this outcome is linguistically inevitable. It is not possible for one to be a “renter, purchaser, or

subscriber,” *id.* § 2710(a)(1), of audiovisual goods or services without also having “requested or obtained specific video materials or services,” *id.* § 2710(a)(3). Such overlap makes little sense given that, even according to Paramount, the two definitions “serve distinct and indispensable functions.” Resp. Br. 41. The way to ensure they do so is not to blend their terms together, but to leave the statutory language where Congress placed it. In all events, the better reading is that “from a video tape service provider” does not silently alter the scope of “goods or services.”

ii. The phrase “renter, purchaser, or subscriber” does not limit the scope of “goods or services.”

Paramount turns next to Section 2710(a)(1)’s other “flank”—namely, “renter, purchaser, or subscriber.” Resp. Br. 22–23, 32–33. It suggests these words are “distinctly associated with videos.” Resp. Br. 32–33. It says “rent,” standing alone, “evo[kes] videos.” Resp. Br. 22 (internal quotation marks and citation omitted). It points out that “purchasing” a video is just an “alternative to renting.” Resp. Br. 22. And it says “subscribe” refers to a “specific business model for providing videos to consumers.” Resp. Br. 22–23.

These arguments, which Paramount never raised below, are hard to square with reality. One can “rent” all sorts of things—a house, a car, tools, furniture and art to stage a house (including candles and posters, Resp. Br. 22), or a DVD. Nothing about the word “rent” evokes or “distinctly” relates to videos. Resp. Br. 22, 32–33. One can be a “renter” of almost anything.

Whatever one can “rent,” he can generally “purchase.” Indeed, the latter category is broader. People do not often “rent” a service, but they

“purchase” all kinds of services—home-cleaning, pest-control, and laundry services; personal-training services; and even legal services. Likewise, one can purchase an infinite array of goods. Nothing about a “purchaser” is unique to audiovisual goods or services.

Lastly, one can “subscribe” to practically anything—a newspaper, a car service, various apps (for music, exercise, or education), a video-streaming service (*e.g.*, Netflix, Hulu, or Paramount+), or even, as CHRISTMAS VACATION (Warner Bros. 1989) reminds us each year, a jelly-of-the-month club. Nothing about a “subscriber” requires video-specific transactions.

Setting aside these non-video applications, Paramount’s argument presents another textual oddity. When Congress unmistakably referred to “video materials or services,” it did not use the relationship language Paramount believes is uniquely associated with videos. 18 U.S.C. § 2710(a)(3). This fact, too, suggests Congress did not rely on that relationship language to identify the subject matter. Instead, it used a video-specific modifier. *Id.*

Paramount next insists “personally identifiable information” can arise only in the context of “transactions.” Resp. Br. 1, 3, 4, 15–16, 27, 29, 39, 46. It even says “commercial video transaction[s] . . . lie at the heart of the VPPA.” Resp. Br. 6.

But Congress’s definition of “personally identifiable information” imposes no transactional requirement. It broadly refers to information that “identifies a person as having *requested or obtained* specific video materials or services” from a provider. 18 U.S.C. § 2710(a)(3) (emphasis added). One can “obtain[] specific video materials or services,” *id.*, without renting, purchasing, or subscribing to them. Software

& Info. Indus. Ass'n Amicus Br. 12 (using a dictionary to show that “to ‘obtain’ something means ‘to acquire [it], in any way’” (citation omitted)); *see also* Petr. Br. 26 (using a promotional giveaway as one example).

And, as Paramount concedes, Congress “also wanted to protect” information about video materials and services a consumer “requested but did not obtain.” Resp. Br. 41. But a free-standing request will never result in the kind of transaction required by Section 2710(a)(1). Petr. Br. 26, 28.

That Paramount would impose a transactional requirement on “personally identifiable information” is strong evidence it is rewriting the statute. That it would require the same transaction to generate a “consumer,” too, removes all doubt. Paramount has collapsed Congress’s separate definitions into an unenacted rule of its own making.

2. Section 2710(a)(4) confirms the phrase “goods or services” is not limited to “prerecorded video cassette tapes or similar audio visual materials.”

Paramount says there is a “direct parallel,” Resp. Br. 1, between Sections 2710(a)(1) and 2710(a)(4). If true, one should be able to substitute subject matters across the two definitions without changing their scope or meaning. That undertaking quickly disproves Paramount’s claim.

The biggest problem is that Section 2710(a)(4) does not mention “services.” Transplanting “prerecorded video cassette tapes or similar audio visual materials” into Section 2710(a)(1) thus erases “services” from that definition. Resp. Br. 1, 18, 19–20, 24, 37 (claiming

“goods or services” takes a meaning that does not include “services”); Pet. App. 2a, 19a (same).

Paramount brushes aside this problem, claiming the VPPA has only “a particular kind of service in mind—the delivery of audiovisual materials via subscription.” Resp. Br. 34–35. But a subscription is just one of the three ways Section 2710(a)(1) says a “consumer” might relate to “services from a video tape service provider.” 18 U.S.C. § 2710(a)(1). Paramount’s reading excludes the possibility that a consumer might be a “renter” or “purchaser” of such services. *Id.*

Its explanation also shows “delivery” is not a “counterpart,” Resp. Br. 24, to “subscriber.” Instead, Paramount needs “delivery of prerecorded video cassette tapes or similar audio visual materials” to function as the “counterpart” of “services.” It then needs portions of that same phrase to serve a second tour—“prerecorded video cassette tapes or similar audio visual materials” is redeployed as the “counterpart” for “goods,” while “delivery” is conscripted as the “counterpart” for “subscriber.”

These provisions do not share a “one-to-one correspondence.” Resp. Br. 37. Once again, the VPPA’s definitions work best when their language is left where Congress placed it.

C. The VPPA twice refers to “goods or services” and “audio visual materials” in the same sentence.

This Court does not assume “Congress silently attaches different meanings to the same term” in a single statute. *Azar v. Allina Health Servs.*, 587 U.S. 566, 574 (2019). Paramount admits its reading causes Section 2710(a)(1)’s “goods or services” to take a

different meaning than Section 2710(b)(2)(D)(ii)'s "goods and services." Resp. Br. 43. And context does not justify its view. *See supra* Parts I.A & I.B.

But there is a more glaring problem. Congress twice used a "goods or services" formulation *in the same sentence* as an "audio visual materials" formulation. 18 U.S.C. §§ 2710(a)(1), (a)(3), (a)(4) (referring to "goods or services," "video materials or services," and "audio visual materials" in one sentence); *id.* § 2710(b)(2)(D)(ii) (referring to "goods and services" and "audio visual material" in another). Congress did not use these terms interchangeably.

Within a given statute, "the same term usually has the same meaning and different terms usually have different meanings." *Pulsifer*, 601 U.S. at 149. The principle applies with greater force in a single sentence, and with greater force still in statutory definitions, where Congress's word choices are "virtually conclusive." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024). There is no reason to believe Congress said "goods or services" in Section 2710(a)(1) when it really meant a narrower term it used elsewhere in the same sentence.

D. The sole "trigger" for Section 2710(b)(1) liability is disclosure.

Paramount describes a "consumer" transaction as a "trigger" for VPPA liability. Resp. Br. 24, 29. It then seeks to ensure consumer status and personally identifiable information arrive together. From the admitted absence of "any temporal limit" between these conditions, Paramount divines a "simultaneity (or near-simultaneity)" requirement. Resp. Br. 26.

The entire exercise is a solution in search of a problem. Congress specified no temporal limit between these conditions because neither triggers liability under Section 2710(b)(1). An individual does not have a “springing” VPPA claim when he becomes a “consumer,” nor even when he “watch[es] a video.” Resp. Br. 17. Instead, as Paramount elsewhere admits, disclosure is the trigger for liability. Resp. Br. 49.

Thus, Congress’s two-year time limit applies only after a disclosure has occurred. 18 U.S.C. § 2710(c)(3). Congress also enacted six exceptions to the disclosure prohibition, none of which depends on how long a provider has held onto a consumer’s personally identifiable information. *See id.* § 2710(b)(2).

Still, Paramount worries providers might not be able to identify their own consumers. Resp. Br. 50. It claims Mr. Salazar’s reading might “pressure” companies to “retain more information about their customers,” which it views as “contrary to the whole thrust of the VPPA.” Resp. Br. 50 (citing 18 U.S.C. § 2710(e)). This argument, too, has several problems.

First, the concern is hypothetical. Paramount regularly sent newsletters to Mr. Salazar’s e-mail address. It knew he was a subscriber, and it knew how to reach him. Some other case might involve a provider unsure if an individual has ever rented, purchased, or subscribed to its goods or services. This one does not.

Second, providers are never required to collect, let alone disclose, anyone’s personally identifiable information. EPIC Amicus Br. 6, 24–25. They *choose* to do so because they have found a way to monetize that data. Having made that choice, the paths to avoiding VPPA liability are straightforward: (1) disclose it only

as to non-consumers, or (2) disclose it in a manner consistent with Section 2710(b)(2).

A provider unsure if personally identifiable information in its possession “concern[s] any consumer,” 18 U.S.C. § 2710(b)(1), need not rely on “sprawling identity-matching systems,” Resp. Br. 51. It can, for example, simply obtain the person’s “informed, written consent” prior to the disclosure. 18 U.S.C. § 2710(b)(2)(B). Since the personally identifiable information itself “identifies” the person, *id.* § 2710(a)(3), there is no reason to think the process will prove unmanageable.

Third, while important, Section 2710(e) is not the VPPA’s “whole thrust.” Resp. Br. 50. Nor does it prohibit the collection or maintenance of information that identifies individuals as a provider’s consumers. Instead, after a year, it requires providers to destroy information that identifies anyone—consumer or not—“as having requested or obtained specific video materials or services.” 18 U.S.C. §§ 2710(a)(3), (e). That requirement poses no obstacle here.

In any event, the absence of a temporal limit between the creation of a “consumer” relationship and the collection of “personally identifiable information” is no basis to conclude Congress meant to impose the strictest possible limit. *See Zuni Pub. Sch. Dist. No. 89 v. Dep’t of Educ.*, 550 U.S. 81, 121 (2007) (Scalia, J., dissenting) (“The only fair inference from Congress’s silence is that Congress had nothing further to say, its statutory text doing all of the talking.”).

E. Only ordinary meaning remains.

Ordinary meaning plays an important role when interpreting a statutory phrase. *First*, as a matter of

context, the ordinary meaning of “consumer” is “one of the most important factors [the Court] can consider” when evaluating the meaning of “goods or services.” *Delligatti v. United States*, 604 U.S. 423, 438 (2025) (internal quotation marks and citation omitted). The ordinary meaning of that word imposes no audiovisual limitation. Petr. Br. 19–21. Paramount does not argue otherwise. At the same time, its reading excludes paradigmatic examples of “consumers,” including most of the people ordinary speakers would call “consumers” of large-scale providers like Target, Walmart, and Amazon. Resp. Br. 49.

Second, the ordinary meanings of “goods” and “services” contain no audiovisual limitation. Petr. Br. 15–19. Again, Paramount does not argue otherwise. Nor does it offer any competing definitions. Instead, it simply takes “a red pen to the statute,” *Milner v. Dep’t of Navy*, 562 U.S. 562, 573 (2011), replacing the words Congress enacted into law in Section 2710(a)(1) with narrower words it used elsewhere.

Here, contextual clues and ordinary meanings align. Congress imposed no audiovisual limitation on the “goods or services” that make one a “consumer.” 18 U.S.C. § 2710(a)(1). Because there is no statutory ambiguity—another point Paramount concedes—there is no need to resort to legislative history or the VPPA’s titles and headings, none of which supports Paramount’s position anyway. Petr. Br. 43–47. Nor is there any role for lenity to play. Petr. Br. 48–50.

II. Paramount’s policy arguments fail.

This Court examines a law’s meaning, not “whether Congress adopted the wisest or most workable policy.” *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 706 (2022). Arguments about policy never “trump the best

interpretation of the statutory text.” *Patel v. Garland*, 596 U.S. 328, 346 (2022). Nor do they provide any basis to “alter the text.” *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002). Paramount’s policy arguments are misplaced and unpersuasive.

A. Congress embraced “advance” consent.

Paramount argues it would be “highly anomalous” to permit a consumer to consent to disclosures before personally identifiable information has been collected. Resp. Br. 15, 25–27, 45. But the VPPA expressly contemplates consent “given in advance for a set period of time, not to exceed 2 years.” 18 U.S.C. § 2710(b)(2)(B)(ii)(II). Paramount cannot recast this legislative choice as an “anomaly.”

Nor is it “perverse” that providers might seek consent before disclosing personally identifiable information. Resp. Br. 17–18, 50. The VPPA encourages that outcome. 18 U.S.C. § 2710(b)(2)(B). Congress also enacted requirements to prevent providers from turning consent into an “empty gesture.” Resp. Br. 50. For example, consent must occur “in a form distinct and separate from any form setting forth other legal or financial obligations.” 18 U.S.C. § 2710(b)(2)(B)(i). If Paramount believes these protections are insufficient, it can ask Congress for more exacting ones. It can also self-impose higher standards. The VPPA sets a floor, not a ceiling.

It is unclear whether “virtually everyone” will “provide consent reflexively” if providers seek it. Resp. Br. 50. Because the case was resolved on a motion to dismiss, nothing in the record supports Paramount’s claim. And its own amici disagree. *See, e.g.*, Wash. Legal Found. Amicus Br. 12 (arguing consumers will

“decline” in such numbers that providers will change business models).

Meta, meanwhile, confirms providers can easily seek consent. Meta Amicus Br. 13–14. They can also easily avoid sharing personally identifiable information. Meta Amicus Br. 4, 8–9, 13.

B. The VPPA covers the Internet, free videos, and Pixel-based disclosures.

That Mr. Salazar watched free online videos, Resp. Br. 17, 27–28, 42, 49, 51, makes no difference. The VPPA says nothing about how, technologically, videos might be “obtained.” 18 U.S.C. § 2710(a)(3). And it mentions the Internet by name. *Id.* § 2710(b)(2)(B); *see also* Resp. Br. 2, 8–9 (agreeing Congress’s 2013 amendments account for “video-streaming services,” “social media platforms,” and providers’ migration “from brick-and-mortar stores to the Internet”). Likewise, the law does not require videos to be “obtained” via payment, nor even obtained at all—just “requested.” 18 U.S.C. § 2710(a)(3).

Nor does the VPPA generally exempt disclosures that support “targeted advertising.” Resp. Br. 47. Instead, it contains a narrow exception for disclosures made “for the exclusive use of marketing goods and services directly to the consumer.” 18 U.S.C. § 2710(b)(2)(D)(ii). Paramount’s disclosures here did not meet that exception’s requirements. It has never argued otherwise.

The VPPA is also silent about the technological means by which disclosures might occur. *Id.* § 2710(b)(1). True, it does not single out the Pixel. Meta Amicus Br. 3, 17. Instead, it broadly prohibits the unauthorized disclosure of “personally identifiable

information concerning any consumer,” 18 U.S.C. § 2710(b)(1), however it occurs—phone, fax, Xerox copy, e-mail, or even the Pixel.²

That the Pixel is “ubiquitous,” and its disclosures “commonplace,” Resp. Br. 47, is likewise irrelevant. The statute means what it says no matter how many providers might be violating it. That their violations generate “an important revenue stream,” Chamber of Commerce Amicus Br. 1, is no virtue.

CONCLUSION

The Court should vacate and remand.

Respectfully submitted,

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² Paramount’s suggestion that Mr. Salazar’s browser made the relevant disclosures, Resp. Br. 11–12, contradicts the operative allegations. Pet. App. 81a–82a, 88a (alleging Paramount disclosed subscribers’ personally identifiable information to Facebook without consent); Pet. App. 91a–93a (devoting an entire section to “How 247Sports.com Disseminates Digital Subscribers’ Personal Viewing Information”).