

Supreme Court to Clarify Who Qualifies as a “Consumer” Under the Video Privacy Protection Act

Privacy Protection Act

On January 26, 2026, the United States Supreme Court granted *certiorari* in *Salazar v. Paramount Global*,¹ agreeing to resolve a deepening circuit split over the definition of “consumer” under the Video Privacy Protection Act (“VPPA”).² The Court’s decision to hear this case marks a significant development in digital privacy law, as it will be the first time the Supreme Court has interpreted the nearly four-decade-old statute originally enacted during the era of brick-and-mortar video rental stores. The ruling could have significant implications for customers of media companies, streaming platforms, and any business that hosts video content online alongside tracking technologies such as pixels and cookies.

Historical Background of the VPPA

Congress enacted the VPPA in 1988 following a public outcry over the disclosure of then-Supreme Court nominee Robert Bork’s video rental records. While the Senate Judiciary Committee was conducting hearings on his nomination, a reporter obtained and published a

list of 146 films that Judge Bork and his family had rented from a local video store. According to the Senate Report accompanying the law’s passage, Congress passed the Act “to preserve personal privacy with respect to the rental, purchase or delivery of video tapes or similar audio-visual materials.”³

The VPPA prohibits a “video tape service provider” from “knowingly disclosing . . . personally identifiable information” concerning any “consumer” of such provider, except in enumerated circumstances, such as when the consumer has consented.⁴ The VPPA defines “video tape service provider” as “any person, engaged in the business of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.”⁵ Importantly, the statute defines “consumer” as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.”⁶ The VPPA provide for statutory damages of \$2,500 per violation, along with potential punitive damages, attorneys’ fees, and litigation costs.⁷ These remedies are an effective tool for consumers seeking to vindicate

¹133 F.4th 642 (6th Cir. 2025), *cert. granted*, No. 25–459, 2026 WL 189831 (U.S. Jan. 26, 2026).

²18 U.S.C. § 2710.

³S. Rep. No. 100–599, at 1.

⁴18 U.S.C. § 2710(b)(1)–(2).

⁵18 U.S.C. § 2710(a)(4).

⁶18 U.S.C. § 2710(a)(1).

⁷18 U.S.C. § 2710(c).

their rights when companies have violated their privacy and the protections of the VPPA.

The Rise of VPPA Litigation in the Digital Age

Despite its analog origins in the late 1980s, the VPPA has experienced a dramatic resurgence in recent years as litigants applied the statute to modern digital practices and technologies. Aggrieved consumers have brought class actions and arbitrations targeting website operators who use pixels, cookies, and other web-tracking technologies, asserting that these tools unlawfully collect and disclose users' video-viewing histories in violation of the VPPA. Successful class actions and arbitrations have been brought against media companies, entertainment platforms, and other businesses whose website contains playable video content alongside third-party tracking codes. These actions have recovered millions of dollars for consumers.

More recently, several federal courts of appeals have gravitated toward narrower readings of the VPPA, though the panels have relied on different statutory elements of the VPPA when issuing decisions limiting liability. Some courts have focused on what qualifies as "personally identifiable information" ("PII"), while others have examined who counts as a "consumer" under the VPPA. On the "consumer" question specifically, a clear circuit split has emerged, prompting the Supreme Court's intervention.

The Circuit Split on the Definition of "Consumer"

The VPPA case which the Supreme Court has elected to take up, *Salazar v. Paramount Global*, arose from a lawsuit alleging that Paramount's use of tracking pixel technology enabled the company to share plaintiffs' video viewing information and personal data with third parties without consent.⁸ Plaintiff Michael Salazar had subscribed to a free email newsletter offered through 247Sports.com, a Paramount-owned website that reports on college sports recruiting. While Salazar watched videos on the website, he did not purchase, rent, or subscribe to any audiovisual content; rather, he argued that his newsletter subscription was sufficient to make him a VPPA "consumer." The district court dismissed Salazar's claims on July 18, 2023,⁹ which he appealed.

On April 3, 2025, the Sixth Circuit Court of Appeals affirmed dismissal of Salazar's complaint, holding that he was not a VPPA "consumer" because he subscribed only to a newsletter and not to goods or services "in the nature of video cassette tapes or similar audio visual materials."¹⁰ The court emphasized statutory context, reasoning that the VPPA "focuses on privacy protections for records of transactions related to audio-visual goods and services."¹¹ According to the Sixth Circuit, the most natural reading of the statute "shows that a person is a 'consumer' only when he subscribes to 'goods or services' in the

⁸ No. 25-459, 2026 WL 189831 (U.S. Jan. 26, 2026).

⁹ *Salazar v. Paramount Glob.*, 683 F. Supp. 3d 727, 745 (M.D. Tenn. 2023).

¹⁰ *Salazar v. Paramount Glob.*, 133 F.4th 642, 650-51 (6th Cir. 2025).

¹¹ *Id.* at 651.

nature of ‘video cassette tapes or similar audio visual materials.’”¹²

A few months later, the D.C. Circuit Court of Appeals adopted a similar approach to the Sixth Circuit’s analysis of how to define “consumer” under the VPPA.¹³ In *Pileggi v. Washington Newspaper Publishing Co.*, the D.C. Circuit held that, in order to be a “consumer” under the VPPA, “the videos for which viewing history is disclosed must be the same video materials or services that the individual purchased, rented, or subscribed to.”¹⁴ *Pileggi* underscored that “[s]ubscribing to an e-newsletter that includes videos and video links, by itself, is not enough to make someone a ‘consumer’ under the [VPPA].”¹⁵

In contrast to the Sixth and D.C. Circuits, the Second and Seventh Circuits have adopted a broader interpretation of the definition of “consumer” under the VPPA. In *Salazar v. National Basketball Association*, the Second Circuit Court of Appeals held that “the VPPA’s text, structure, and purpose compel the conclusion that [the phrase ‘goods or services from a video tape service provider’] is not limited to *audiovisual* ‘goods or services,’ and the NBA’s newsletter falls within the plain meaning of that phrase.”¹⁶ Under this view, an individual becomes a VPPA “consumer” by subscribing to any goods

or services from an entity that provides video content, regardless of whether the subscription relates to audiovisual material. The Seventh Circuit reached the same conclusion in *Gardner v. Me-TV National Ltd. Partnership*, holding that the decisive factor is whether the entity on the other side of a transaction is a “video tape service provider,” not whether the good or service involved is a video or a stream.¹⁷

The Question Before the Supreme Court and Implications for Business and Digital Privacy

The question presented in *Salazar v. Paramount Global* is straightforward: whether the phrase “goods or services from a video tape service provider,” as used in the VPPA’s definition of “consumer,” refers to all of a video tape service provider’s goods or services or only to its audiovisual goods or services.¹⁸

The Supreme Court’s resolution of this issue will have significant practical consequences for companies operating in the digital space and their customers. A broader reading of “consumer,” consistent with the Second and Seventh Circuits’ approach, would expand potential VPPA exposure to companies that make video content available alongside unrelated products or

¹² *Id.* at 650–51.

¹³ *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F.4th 1219 (D.C. Cir. 2025)

¹⁴ *Id.* at 1237.

¹⁵ *See id.*

¹⁶ *Salazar v. Nat’l Basketball Assoc.*, 118 F.4th 533, 537 (2d Cir. 2024) (emphasis in original).

¹⁷ *Gardner v. Me-TV Nat’l Ltd. P’ship*, 132 F.4th 1022, 1025 (7th Cir. 2025).

¹⁸ It is worth noting that prior to granting a petition for *certiorari* to review the Sixth Circuit’s decision in *Salazar*, the Supreme Court declined to take two other VPPA cases in December 2025, when it denied the petitions filed from the Second Circuit’s decisions in both *National Basketball Association v. Salazar*, No. 24–994, 2025 WL 3506972, at *1 (2025) and *Solomon v. Flipps Media*, No. 25–228, 2025 WL 3506993, at *1 (2025).

services, permitting the law to adapt to modern technologies and usage. Under such a consumer-friendly interpretation of the VPPA's definition of "consumer," users would be able to vindicate their privacy rights by showing they have some subscription relationship with the provider, even if that relationship is based upon a free email newsletter sign-up.

Conversely, a narrower interpretation affirming the Sixth Circuit's restrictive definition of "consumer" under the VPPA would substantially limit VPPA claims to individuals with a more direct relationship to a provider's video offerings, likely leaving swaths of previously addressable harms beyond the VPPA's reach. Such a result would highlight an immediate need for Congress to add additional safeguards to legislation protecting consumers' privacy.

Looking Ahead

The Supreme Court's decision in *Salazar v. Paramount Global* will provide the first definitive guidance from the nation's highest court on the scope of the decades-old VPPA in the modern digital era. The case also illustrates a recurring challenge in technology law: how to apply consumer protection statutes drafted for older technologies to newer digital realities. How the Court tackles this interpretive challenge may have implications beyond the VPPA, potentially influencing how courts approach other aging consumer protection statutes that have not been updated to keep pace with technological change.

Labaton Keller Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Keller Sucharow lawyer with whom you usually work or the contacts below.



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