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Client Memorandum

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Supreme Court to Resolve Circuit Split Concerning Definition of "Consumer" Under VPPA

On January 26, 2026, the U.S. Supreme Court granted certiorari in *Salazar* v. *Paramount Global*, taking on the question of who qualifies as a "consumer" under the Video Privacy Protection Act ("VPPA") of 1988.[1] The Court will decide whether a customer who subscribes only to non-audiovisual offerings (for instance, a digital newsletter published by a company that also provides video content) falls within the VPPA's definition of "consumer."

Specifically, the Court granted review to resolve the question of 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 provider's goods or services or only to its audiovisual ("AV") goods or services. As noted in the petition for writ of certiorari, this question has divided the circuits and challenged courts to think more critically about the availability of remedies for plaintiffs who are navigating a far more expansive and intricate digital landscape than what existed when the statute was first enacted in 1988.[2]

Briefing for *Salazar* v. *Paramount Global* will proceed and argument is expected in the 2026–2027 term.

What You Should Know

- **The Supreme Court's Decision Could Impact the Scope for Class Actions under the VPPA**. Should the Supreme Court adopt a more permissive definition of "consumer," the number of potential claimants under the VPPA could increase, thereby enlarging class sizes and allowing for more claims.
- **Businesses Should Consider Auditing Their VPPA Compliance Posture**. The volume of litigation regarding the VPPA's definition of "consumer" highlights the significance of the law for class action litigants. Regardless of how the Supreme Court rules on the issue, businesses should consider reviewing their VPPA compliance program to mitigate potential litigation exposure.

The VPPA

The VPPA is a federal consumer privacy statute that prohibits "video tape service providers" from disclosing personally identifiable information ("PII") about a consumer's video viewing, rental, or purchase history without the consumer's informed and written consent. In modern contexts, the VPPA has applied to consumer information on streaming applications and AV services. Courts have thus treated account login information, device or user identifiers, IP addresses tied to user accounts, or any other data that would allow a third party to link viewing patterns to an identifiable person as potentially covered PII. With respect to the sharing of AV data, the VPPA restricts companies from disclosing to third parties viewing data tied to users, unless that user has provided clear, opt-in consent.

[1] Salazar v. Paramount Glob., No. 25-459, 2026 WL 189831 (U.S. Jan. 26, 2026).

[2] https://natlawreview.com/article/breaking-video-privacy-set-be-latest-battleground-supreme-court-considers/.

Salazar v. *Paramount Global*

The Supreme Court's grant of certiorari follows a Sixth Circuit decision holding that a subscriber to a free e-newsletter on Paramount's 247Sports platform was not a VPPA "consumer" because they had not subscribed specifically to audiovisual goods or services. Plaintiff alleged that Paramount disclosed a subscriber's Facebook ID and video-viewing history to Facebook via a Meta Pixel website activity tracker after the plaintiff viewed videos on 247Sports.com while logged into Facebook. Plaintiff argued that this disclosure violated the VPPA.[3]

The district court dismissed the action for failure to state a claim, finding that Plaintiff was not a "consumer" because the act of subscribing to a newsletter did not amount to subscribing to goods or services that are "in the nature of" audiovisual materials.[4] In April 2025, the Sixth Circuit affirmed the decision, holding that "consumer" covers only subscribers of audiovisual goods or services from a video tape service provider and not newsletter-only subscribers.[5]

The grant also follows the Court's December 2025 denial of certiorari in *Salazar* v. *National Basketball Association*, a Second Circuit case brought by the same Plaintiff as in *Salazar*, where the Court addressed the same issue regarding the definition of "consumer" and reached the opposite conclusion.[6] In contrast with the Sixth Circuit's decision in *Paramount Global*, the *National Basketball Association* Court agreed with Plaintiff, providing a more expansive interpretation of the term "consumer" as a purchaser or subscriber of any of the provider's "goods or services"—audiovisual or not.[7] The Court's denial has since left the Second Circuit ruling intact.

To date, at least four Circuits have opined on the definition of "consumer," with two adopting an expansive definition and another two adopting a narrower definition. The Second and Seventh Circuits have adopted a broad view, under which a person becomes a VPPA "consumer" by renting, purchasing, or subscribing to any goods or services from a provider that is a "video tape service provider," even if the subscription is to non-audiovisual offerings. The Second Circuit so held in *National Basketball Association*, as discussed above, and the Seventh Circuit agreed in *Gardner* v. *Me-TV*.[8] The Sixth and D.C. Circuits have adopted a much narrower view, under which a "consumer" must rent, purchase, or subscribe specifically to audiovisual goods or services "in the nature of video cassette tapes or similar audiovisual materials." Thus, newsletter-only subscribers would not qualify. The Sixth Circuit's decision in *Paramount Global* adopted this approach, which the D.C. Circuit followed in *Pileggi* v. *Washington Newspaper Publ'g Co.*[9]

Key Takeaways and Practical Implications

- **Expansive Definitions of "Consumer" Could Increase Class Action Exposure**. The VPPA provides statutory damages of $2,500 per violation and punitive damages, creating substantial class action exposure if newsletter and other non-video subscribers are covered.[10] A broad reading of "consumer" could enlarge class sizes, defendants, and aggregate exposure across industries that present or embed video alongside other content and use pixels/analytics. It would further allow newsletter-only subscribers and other non-AV subscribers to sue where video is present on sites and apps, increasing litigation risk. A narrower reading, on the other hand, would limit claims to users with a direct subscription or other transactional relationship to AV offerings. The volume of VPPA cases concerning the definition of "consumer," sometimes brought by the same plaintiff (as, for instance, in *National Basketball Association* and *Paramount Global*), may suggest the plaintiff bar's view of the significance of the issue for future class action suits.

- **AV Providers Could Mitigate the Impact of the Pending Supreme Court Decision by Maintaining Robust VPPA Compliance Programs**. Companies can proactively mitigate any potential class action risks associated with the broadening of the definition of "consumer" by maintaining compliance measures to comply with the VPPA, including notice and consent processes, regular legal assessments of VPPA compliance, and careful evaluation of online and web activities, including the use of cookies and other tracking technologies against VPPA requirements.

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[3] https://www.scotusblog.com/2026/01/supreme-court-agrees-to-hear-case-on-digital-privacy-reverses-ruling-ordering-new-murder-trial/.

[4] Salazar v. Paramount Glob., 683 F. Supp. 3d 727 (M.D. Tenn. 2023), aff'd, 133 F.4th 642 (6th Cir. 2025).

[5] Salazar v. Paramount Glob., 133 F.4th 642 (6th Cir. 2025), cert. granted, No. 25-459, 2026 WL 189831 (U.S. Jan. 26, 2026).

[6] Salazar v. Nat'l Basketball Ass'n, 118 F.4th 533 (2d Cir. 2024).

[7] *Id*. at 546–48.

[8] *Id.*; Gardner v. Me-TV Nat'l Ltd. P'ship, 132 F.4th 1022 (7th Cir. 2025), reh'g denied, No. 24-1290, 2025 WL 1433664 (7th Cir. May 14, 2025).

[9] Pileggi v. Washington Newspaper Publ'g Co., LLC, 146 F.4th 1219 (D.C. Cir. 2025).

[10] 18 U.S.C.A. § 2710 (West).

- **Companies Should Consider Auditing their Non-AV Offerings**. While a Supreme Court decision in *Salazar* v. *Paramount Global* is pending, providers that deliver video alongside non-video offerings like articles, digital newsletters, or online communities should audit their consumer touchpoints to see what non-audiovisual offerings might increase their "consumer" count under a broader interpretation of the term under the VPPA. Companies should err on the side of caution and review their own policies and practices with regard to their data collection and sharing practices to evaluate their risks and understand how user information might be being shared with third parties, if at all.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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