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Client Alert

Data Privacy, Security, Safety & Risk Management

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Supreme Court To Define 'Consumer' Under the VPPA: What's at Stake for Privacy Litigation

By Amy S. Mushahwar, Kathleen A. McGee, Jennifer Fiorica Delgado, and Erich J. Kaletka

Introduction

On January 26, the U.S. Supreme Court granted certiorari in *Michael Salazar v. Paramount Global (d/b/a 247Sports)*, No. 25-459, to decide a threshold question under the federal Video Privacy Protection Act (VPPA): who qualifies as a "consumer." A ruling on the VPPA's consumer definition could meaningfully reshape the trajectory of federal privacy litigation, particularly in cases challenging the use of tracking technologies tied to video content, and expose companies to statutory damages of $2,500 per violation.

The Case

The petition asks whether the VPPA's definition of "consumer"—which includes a "subscriber of goods or services from a video tape service provider"—covers individuals who subscribe to non-audiovisual offerings, such as a digital newsletter, rather than directly to audiovisual content. Salazar alleges that he was logged in to Facebook at the time and that his viewing activities were transmitted by Paramount to Meta without his consent via a Meta pixel on Paramount's website. The case arises amid a continuing wave of VPPA lawsuits targeting website operators for alleged disclosures of video-viewing data through tracking technologies, including social media "pixels" and similar tools.

In the decision under review, the Sixth Circuit held that subscribing to a non-audiovisual newsletter did not make the plaintiff a VPPA "consumer" of the provider's audiovisual services—creating tension with other appellate decisions that have taken a broader view of the statute's consumer definition.

Related Petitions and Why This Grant Matters

This certiorari grant follows the Supreme Court's December 8, 2025, denials of certiorari in two other VPPA matters:

- *National Basketball Association v. Salazar*, No. 24-994, which sought review of whether the VPPA covers individuals who do not rent, purchase, or subscribe to audiovisual goods or services.
- *Solomon v. Flipps Media, Inc.*, No. 25-228, which raised questions about what qualifies as VPPA "personally identifiable information" (PII), including arguments that the data that website pixels collect on consumers who have not logged in to their website does not qualify as PII. The Supreme Court's refusal to hear this case effectively removes this argument from defendants' arsenals in future VPPA matters.

These denials indicate that new classes of websites may be subject to statutory damages under the VPPA. The denials left intact the Second Circuit's October 15, 2024, decision in *Salazar v. NBA*, which revived VPPA claims by a free newsletter subscriber who alleged improper sharing of video-viewing information with Facebook and adopted a broader reading of "consumer."

Why This Matters Now

Enacted in 1988 in response to the publication of then-Supreme Court nominee Robert Bork's video rental history, the VPPA remains a potent privacy statute despite profound technological change. Courts have diverged in applying the statute's definitions to modern digital services and data flows.

The Supreme Court will resolve whether the phrase "goods or services from a video tape service provider" in the VPPA's consumer definition refers to all goods or services offered by a video tape service provider, or only the provider's audiovisual goods or services. That interpretation could either materially expand or significantly narrow the scope of VPPA litigation.

- A *broader definition* could sustain claims against a wide array of sites and services—newsletters, apps, and platforms that offer non-audiovisual subscriptions but also deliver (or are adjacent to) video content—especially where tracking technologies disclose user interactions tied to viewing behavior.
- A *narrower definition* could curb the current wave of VPPA "pixel" litigation by confining the ability to bring suits to individuals who directly rent, purchase, or subscribe to audiovisual content.

Either way, this decision potentially will have a significant impact on the incredible volume of website technology claims currently being filed and litigated, including under the California Invasion of Privacy Act (CIPA) and other state laws.

Until the Supreme Court rules, businesses that deploy analytics, pixels, SDKs, or advertising tools in environments where users access video or video-adjacent content should reassess VPPA risk, consent flows, and data-sharing practices—particularly where data transmitted to third parties could be linked to individuals and to specific video materials or services.

Continued Focus on Pixels, Beacons, and Cookies

The Supreme Court's review of *Salazar* demonstrates a continued focus on, and absence of consistent jurisprudence around, website technologies such as pixels, beacons, and cookies. A ruling for Salazar could lead to an aggressive expansion of litigation and statutory damages, both of which have the potential to significantly increase web platform privacy and the compliance obligations of the companies operating those sites. CIPA has already had this effect.

Steps To Prepare Now

Businesses with hybrid digital offerings—including newsletters or articles with embedded video, platforms mixing social/shopping/streaming features, and apps that intermittently surface video—should consider taking the following steps:

- Conduct a cookie and tracking technologies audit, ensuring that pixels and other trackers are set up in relation to the consent structure of your website.
- Inventory video touchpoints (where and how users access video or video-like content, which can occur over traditional websites, mobile websites, or customer outreach such as email).
- Review pixel/SDK configurations and third-party products to limit transmission of video-related event data to third parties where feasible.
- Segregate video telemetry from broader user data where practicable.
- Reinforce consent and opt-out pathways in user flows relevant to video interactions and related tracking.
- Revisit vendor products to assess downstream use, reidentification, and onward transfers of video-related signals.

Lowenstein Sandler will continue to monitor developments as the Supreme Court addresses this threshold definition that could reset the trajectory of VPPA litigation nationwide. Please contact the authors of this alert with any questions.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

AMY S. MUSHAHWAR
Partner
Chair, Data Privacy, Security, Safety & Risk Management
T: 202.753.3825 / 703.283.3515
amushahwar@lowenstein.com

KATHLEEN A. MCGEE
Partner
T: 646.414.6831
kmcgee@lowenstein.com

JENNIFER FIORICA DELGADO
Partner
T: 646.414.6962
jdelgado@lowenstein.com

ERICH J. KALETKA
Associate
T: 862.926.2792
ekaletka@lowenstein.com

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