

# US Supreme Court to Resolve Who Qualifies as a “Consumer” Under Video Privacy Protection Act

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By: Leslie L. Meredith, John P. Ryan

The US Supreme Court has granted certiorari in *Salazar v. Paramount Global*, No. 25-459, to decide a consequential question at the intersection of privacy litigation and digital media: **who qualifies as a “consumer” under the Video Privacy Protection Act (VPPA)?**

The Supreme Court’s resolution will determine whether free newsletter subscribers and other users of non-video offerings from companies that also host videos fall within the VPPA’s protections. The outcome will meaningfully affect the wave of class actions using the statute to target online tracking tools.

The case illustrates a recurring legal challenge that emerges when consumer protection statutes written for older technology (here, video cassettes) are applied to newer technologies (here, tracking pixels). The VPPA’s core definitions tie coverage to providers engaged in the “rental, sale, or delivery” of “prerecorded video cassette tapes or similar audiovisual materials,” a phrase anchored in 1980s technology.

The Supreme Court must now decide whether the statute’s references to “goods or services” should be read to keep pace with digital subscriptions, free newsletters, and data-for-content exchanges, or be confined to transactions closely linked to audiovisual materials.

How the Supreme Court tackles this challenge will have broader implications for the consumer financial services industry, where many major statutes were enacted decades ago and have not been updated to keep pace with changes in technology.

## What the VPPA Says—and Why the Definition of “Consumer” Matters

Enacted in 1988 amid public outcry over the disclosure of Judge Robert Bork's video rentals, the VPPA prohibits a “video tape service provider” from knowingly disclosing “personally identifiable information” about any “consumer” of such provider.

- A “video tape service provider” is defined as a person engaged in the business of the “rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.”
- A “consumer” is defined as “any renter, purchaser, or subscriber of goods or services from a video tape service provider.”

The statute authorizes statutory damages of \$2,500 per violation, which has fueled a wave of class litigation in recent years. Whether a plaintiff meets the definition of a “consumer” often becomes the key issue in VPPA suits targeting modern tracking practices.

## The Email Newsletter Subscription Theory of a VPPA Violation

In this case, the plaintiff alleged that after he subscribed to a free email newsletter, the publisher used an embedded tracking pixel that disclosed information about videos he viewed online without his consent.

The district court dismissed on the ground that the plaintiff was not a VPPA “consumer,” and the Sixth Circuit affirmed, holding that the definition of “consumer” is limited to renters, purchasers, or subscribers of audiovisual goods or services—not subscribers to non-video offerings like newsletters.

In reaching that conclusion, the Sixth Circuit reasoned that the proper contextual reading of the statute limits the term “goods or services” in the definition of consumer to audiovisual mediums, pointing to the fact that the definition of “video tape service provider” incorporates the term “video cassette tapes or similar audio visual materials.” The court emphasized that the plaintiff neither alleged that the newsletter subscription was required to access videos nor that he accessed videos through the newsletter.

The dissent would have adopted a broader, plain-language reading: a person is a “consumer” if they subscribe to any good or service from a provider that is also engaged in delivering audiovisual materials, because the statute does not insert the term “audiovisual” into the phrase “goods or services” in the definition of “consumer.”

Rather, that term only appears in the definition of “video tape service provider.” The dissent’s approach aligns with decisions from the Second and Seventh Circuits in similar VPPA cases involving email newsletters.

## How the Supreme Court Will Resolve the Circuit Split

Courts of appeals are divided on whether the VPPA’s “consumer” definition requires a subscription tied specifically to audiovisual materials:

- **Second and Seventh Circuits’ broader reading:** An individual becomes a VPPA “consumer” by subscribing to any goods or services from a provider that offers video, regardless of whether the subscription relates to

audiovisual materials. This includes free email newsletters in which users provide personal information as consideration.

- Under this approach, the VPPA's purpose of protecting individuals' privacy rights supports treating any subscriber of a provider that delivers video as a "consumer."
- This approach treats email signup and similar exchanges of personal information as consideration consistent with contemporary notions of what a subscription entails.
- **Sixth and DC Circuits' narrower reading:** A person is a "consumer" only if the subscription (or rental/purchase) relates to "goods or services" of an audiovisual nature—"video cassette tapes or similar audio visual materials." Newsletter-only subscribers do not qualify.
  - Under this approach, textual context and legislative materials indicate Congress cabined VPPA protections to audiovisual transactions, therefore, not every product or service offered by a business that also sells or delivers videos is within the statute's scope.
  - This reasoning resists expanding the scope of the VPPA, emphasizing the defined role of "video tape service provider" and pairing of renter/purchaser/subscriber with the rental/sale/delivery of audiovisual materials.

## Bottom Line

- The Supreme Court's decision in *Salazar* will clarify who counts as a "consumer" under the VPPA in the age of tracking pixels and data-for-content exchanges. The decision may also address the scope of who qualifies as a video tape service provider.
- In resolving these questions, the Supreme Court's approach to statutory construction will have effects beyond the VPPA.
- The outcome will also provide guidance and insight on how courts might tackle applying the text of decades-old consumer protection statutes to new technologies.

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## Authors



**Leslie L. Meredith**

Partner

📞 202-979-5273



**John P. Ryan**

Partner

📞 312-704-3464

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