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New Ruling Demonstrates Just How Silly These New VPPA Cases Really Are

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So a new species of privacy litigation has been plaguing folks across the country and unlike CIPA–which is the scariest stuff out there–the new claims under the Video Protection Privacy Act are just silly nuisance silly nuisances.

And the Court in *Salazar v. 247sports,* 2023 WL 4611819, Case No. 3:22-cv-00756 (M.D. Tenn. July 18, 2023) gives us yet another reason to think these cases are yawnasaurus rexes.

In *Salazar* the Plaintiff claimed 247Sports.com sent Facebook information regarding the videos he was watching on the website via the Facebook pixel. This, he claims, violates the VPPA.

The VPPA has nothing to do with the internet, or pixels and has more application to defunct companies like Blockbuster Video than to social media companies and digital content providers.

The VPPA prohibits a 'video tape service provider'–can we just stop at the word "tape" and be done?– from 'knowingly disclos[ing], to any person, personally identifiable information concerning any consumer of such provider.' " 18 U.S.C. § 2710(b)(1)). The statute means just what it says and literally came into existence following a newspaper's publication of the titles of 146 films Judge Robert H. Bork had rented from a video store—apparently they were so boring that Congress wanted to make sure it never happened again. (Ironically, as a judge Bork had advocated a view that there was no right to privacy so… maybe Congress passed the bill to mess with him?)

Regardless, following the release of all the non-salacious movies Bork had rented Congress passed a law that basically made it impermissible for the video rental store people to release a list of movies–on reflection this is probably because the lawmaker's didn't want their own list of steamy rental titles to see the light of day. Lightbulb moment.

I digress.

The VPPA has been on the books ever since the 80s but only recently has it become something of a darling of plaintiff's lawyers. The theory–obviously–is that when an online video content provider supplies information about YOUR viewing habits with a third-party (say, Facebook) it violates the VPPA.

But, even a quick glance at the statute shows that isn't true. In the first place, digital video isn't a video "tape." In the second, people checking out something online aren't "subscribers." In the third place, a website isn't a Blockbuster video, so stop it.

Anyway in *Salazar* the court dismissed the case finding that the "subscription" at issue in that case was only a subscription to a newsletter offered by 247sports, and not a subscription to the video service itself.

Pause.

Let me say that again.

247sports won precisely because the Plaintiff did not subscribe to its video streaming service, not–as you might expect–because he did.

So, in other words, if you follow TCPAWorld.com and then I insert a pixel on the website–which i would never do–and then I track you watching my awesome Deserve To Win podcasts on Youtube, and then tell Facebook you did that–and why would I do that?–I would be perfectly safe. But *if* you subscribed to my Youtube channel, under the logic of *Salazar* you COULD sue because you would be a subscriber…. and only a subscriber to video content has the right to sue, not just any old subscriber to non-video content.

Weird, no?

Salazar doesn't address all the way more sane reasons the VPPA doesn't apply here, but I'll take a wayward victory over a thoughtful loss any day.

If you offer video content on a subscription basis–or know someone who does–you need to take the VPPA seriously. Otherwise… yawn.

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