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D.C. Circuit Narrows Who Qualifies as a "Consumer" Under the VPPA

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To bring a claim under the Video Privacy Protection Act (VPPA), a plaintiff must qualify as a "consumer," which the statute defines as any renter, purchaser, or subscriber of goods or services from a video tape service provider. In Pileggi v. Washington Newspaper Publishing Company, LLC, the D.C. Circuit clarified that this definition requires a direct subscription to video content. Simply subscribing to another product or service, such as an email newsletter, does not suffice if the videos are offered separately on the company's website. The plaintiff in Pileggi subscribed to the Washington Examiner's newsletter, but her complaint alleged only that her viewing activity on the website's videos was shared with a third party. It did not claim that the Washington Newspaper transmitted video content to a third party from the newsletter itself. Because her subscription was limited to the newsletter and not to videos available on the website, the court held that she had not established the necessary consumer relationship under the VPPA. Accordingly, the D.C. Circuit affirmed the lower court's dismissal of the case.

The bottom line:
The ruling significantly narrows the pool of potential VPPA plaintiffs and defendants. The ruling is likely to reduce lawsuits using the VPPA as a mechanism for challenging the use of pixels and tracking technologies on websites. Companies that make videos available as a secondary feature of their websites now face less risk, provided users have not subscribed to video services themselves. Notably, plaintiffs continue to file hundreds of privacy complaints each week, so the decision may signal a shift away from VPPA claims but not a broader slowdown in pixel-related litigation.

What you need to do:
Businesses should evaluate how they host and distribute video content and use website tracking technology, along with how their consent practices are structured. Plaintiffs may attempt to test the limits of the ruling by arguing that integrated offerings (e.g., newsletters with embedded or linked videos) still create a qualifying consumer relationship. Companies facing VPPA lawsuits should also take note of Judge Randolph's concurrence, which argued that the Washington Examiner did not qualify as a "video tape service provider" under the VPPA at all. He described the statute as outdated and "largely obsolete" in today's digital environment, a signal that may make other courts challenge the VPPA's relevance. Questions? Our Privacy Team is available to assist.