

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Ballard v. Insomniac Holdings, LLC

Ballard · No. 25-cv-00811-SI · Decided June 17, 2025

SUMMARY

The United States District Court for the Northern District of California denied Insomniac Holdings, LLC’s motion to dismiss a proposed class action asserting a claim under the Video Privacy Protection Act. The court held that the plaintiff plausibly alleged that Insomniac was a video tape service provider, that he was a qualifying consumer based on his newsletter subscription, and that Insomniac knowingly disclosed personally identifiable information through Facebook and TikTok tracking pixels. The court did not reach the plaintiff’s alternative argument that event-ticket purchases made him a VPPA consumer.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan Illston
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 17, 2025
DOCKET	25-cv-00811-SI
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss plaintiff's proposed class action asserting a claim under the Video Privacy Protection Act.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, and asks whether the complaint states a facially plausible claim for relief. Conclusory allegations, unwarranted deductions, and unreasonable inferences are not accepted as true.
PRECEDENTIAL VALUE	unknown

TOPICS

- motions to dismiss
- consumer protection
- statutory interpretation
- plain meaning rule
- civil procedure

PRACTICE AREAS

civil procedure

consumer privacy

statutory interpretation

consumer protection

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Insomniac was a video tape service provider under the VPPA.
2. Whether Ballard plausibly alleged that he was a consumer or subscriber under the VPPA despite subscribing to Insomniac's newsletter rather than directly to audiovisual content.
3. Whether the complaint plausibly alleged that Insomniac knowingly disclosed personally identifiable information within the meaning of the VPPA.

HOLDINGS

1. The complaint plausibly alleged that Insomniac was engaged in the business of delivering prerecorded audiovisual material because it allegedly offered a substantial library of prerecorded videos and Ballard regularly viewed that content. Whether the videos were more than peripheral to Insomniac's business presented a factual dispute that was premature on a motion to dismiss.
2. The complaint plausibly alleged that Ballard was a consumer under the VPPA because his newsletter subscription was a subscription to goods or services from Insomniac, a video tape service provider. The VPPA does not require that the subscribed goods or services themselves be audiovisual or that the subscription be directly connected to the video content viewed.
3. The complaint plausibly alleged a knowing disclosure of personally identifiable information because it alleged that Insomniac intentionally installed Facebook and TikTok tracking pixels, controlled the data tracked and transmitted, and transmitted personal viewing information together with unique identifiers capable of identifying users.

KEY QUOTATIONS

“The Court agrees with the Second and Seventh Circuits’ plain reading of the statute and finds that the definition of “consumer” in the VPPA is not cabined to “audio visual” goods and services, as Congress chose to omit an “audio visual” clause from the consumer definition.” (Discussion § II)

“The Court holds at this stage that, regardless of any lack of connection between the Insomniac newsletter and the video content plaintiff viewed, his newsletter subscription brings him within the definition of “consumer” under the VPPA.” (Discussion § II)

FACTUAL BACKGROUND

Insomniac operates an electronic dance music festival and events business, along with a website, mobile application, newsletter, and prerecorded video content including trailers, recaps, and Insomniac TV material. Ballard subscribed to Insomniac's newsletter, maintained Facebook and TikTok accounts, and regularly watched prerecorded videos on Insomniac's website while using a browser associated with his Facebook account. He alleged that Facebook and TikTok tracking pixels transmitted video titles, viewing information, and persistent

platform identifiers to those companies without his knowledge or consent, and that Insomniac controlled the data tracked and transmitted.

PROCEDURAL HISTORY

Austin Ballard filed a proposed class action alleging that Insomniac knowingly disclosed users' personally identifiable video-viewing information to Facebook and TikTok. Insomniac moved to dismiss for failure to state a claim. After a June 6, 2025 hearing, the court denied the motion.

DISPOSITION

other

CASES CITED

- Mollett v. Netflix, Inc., 795 F.3d 1062, 1065 (9th Cir.)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir.)
- In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir.)
- Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir.)
- United States v. Ritchie, 342 F.3d 903, 908 (9th Cir.)
- In re Vizio, Inc., Consumer Privacy Litigation, 238 F. Supp. 3d 1204, 1221-22 (C.D. Cal. 2017)
- Cantu v. Tapestry, Inc., 697 F. Supp. 3d 989, 993-95 (S.D. Cal. 2023)
- In re Facebook, Inc., Consumer Privacy User Profile Litigation, 402 F. Supp. 3d 767, 799 (N.D. Cal. 2019)
- Sellers v. Bleacher Rep., Inc., No. 23-cv-368-SI, 2023 WL 4850180, at *1, 6 (N.D. Cal. July 28, 2023)
- Tawam v. Feld Entertainment Inc., 684 F. Supp. 3d 1056, 1057, 1061 (S.D. Cal. 2023)
- Ellis v. Cartoon Network, Inc., 803 F.3d 1251, 1256-57 (11th Cir.)
- Yershov v. Gannett Satellite Information Network, Inc., 820 F.3d 482, 489 (1st Cir.)
- Salazar v. Paramount Glob., 133 F.4th 642, 649-52 (6th Cir. 2025)
- Dublin v. United States, 599 U.S. 110, 110 (2023)
- Sw. Airlines Co. v. Saxon, 596 U.S. 450, 459 (2022)
- Salazar v. Nat'l Basketball Ass'n, 118 F.4th 533, 547-50 (2d Cir. 2024)
- Gardner v. Me-TV National Limited Partnership, 132 F.4th 1022, 1024-25 (7th Cir. 2025)
- In re Hulu Privacy Litigation, No. C 11-03764-LB, 2012 WL 3282960, at *8 (N.D. Cal. Aug. 10, 2012)
- Jackson v. Fandom, No. 22-cv-04423-JST, 2023 WL 4670285 (N.D. Cal. July 20, 2023)
- Ghanaat v. Numerade Labs, Inc., 689 F. Supp. 3d 714, 722-23 (N.D. Cal.)
- Heather v. Healthline Media, Inc., 2023 WL 8788760, at *1-2
- Gardener v. MeTV, No. 22 CV 5963, 2023 WL 4365901, at *4 (N.D. Ill. July 6, 2023)
- Carter v. Scripps Networks, LLC, 670 F. Supp. 3d 90, 99 (S.D.N.Y. 2023)

- Eichenberger v. ESPN, Inc., 876 F.3d 979, 986 (9th Cir. 2017)

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