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Flawed Theory: District Court Refuses to Dismiss Video Privacy Claim Challenging Use of Meta Pixel Web Tracking Technology

In [Lee v. Springer Nature America, Inc.](#), Judge Lewis J. Liman in the Southern District of New York held that a longtime subscriber to Scientific American plausibly alleged, on behalf of a putative class, that the website violated the Video Privacy Protection Act of 1988 (VPPA) based on its use of website tracking technology.

The plaintiff, a 10-year subscriber, filed a complaint alleging that Scientific American unlawfully installed a code known as “Meta Pixel” on its website. The Meta Pixel supposedly transmitted information to Meta (formerly known as Facebook) about the subscriber’s use of the site (including Facebook ID, URLs accessed, and titles of videos viewed) in exchange for Meta providing advertising capabilities to Scientific American.

Scientific American moved to dismiss the complaint on two grounds: first, that the plaintiff lacked standing because he had not suffered an injury, and second, that the plaintiff did not plead the elements required to state a claim under the VPPA. Judge Liman rejected both arguments.

Citing the Second Circuit’s recent decision in [Salazar v. National Basketball Association](#), Judge Liman held that the plaintiff’s allegations that he was a subscriber to Scientific American, that Scientific American disclosed to Meta the plaintiff’s personal information (Facebook ID, URLs accessed, and titles of videos viewed), and that Meta used this information without authorization for its own commercial benefit were sufficient to establish standing. These allegations bore a relationship, wrote Judge Liman, to the “common law claim of public disclosure of private facts.”

Judge Liman also held that the plaintiff satisfied, at the pleading stage, each of the four elements for VPPA liability:

- The plaintiff was a “subscriber” within the meaning of the VPPA, because the plaintiff provided consideration in the form of his personal and payment information for access to the videos.
- Scientific American’s website was “substantially involved” in conveying video content to subscribers, and the site was “significantly tailored to serve that purpose.” The site offered videos for viewing, users had to subscribe to watch more than three videos, and access to the videos enhanced a user’s experience.
- Personally identifiable information in the form of the plaintiff’s Facebook ID and viewing activity had been transmitted without consent, because it was “information . . . capable of identifying an individual.”
- And the transmission was “knowing,” because Scientific American installed the Meta Pixel and, thus, opened the digital door and invited Facebook to enter. Judge Liman wrote that “[t]he fact that the information is provided through a tool, rather than directly, does not make the disclosure any less knowing.”

Judge Liman’s opinion is part of a trend of privacy-related cases that have proliferated over the past year. Plaintiffs’ attorneys are relying on federal and state privacy statutes, as well as the common law to target third-party websites that rely on Meta Pixel and other web tracking technologies. Website operators should take notice and act now to protect against future claims and strengthen their defenses.

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