UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID AMBROSE, individually and on behalf of all others similarly situated, Plaintiff, v. BOSTON GLOBE MEDIA PARTNERS, LLC, Defendant.	Case No. 1:22-CV-10195-RGS **FIRST AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff David Ambrose ("Plaintiff"), individually and on behalf of all other persons similarly situated, by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge.

NATURE OF THE ACTION

1.   This is a class action suit brought on behalf of all persons with Facebook accounts who have digital subscriptions to, and have watched videos on, bostonglobe.com, a website owned and operated by Boston Globe Media Partners, LLC ("Defendant").

2.   Plaintiff brings this action in response to Defendant's practice of knowingly disclosing its subscribers' personally identifiable information—including a record of every video clip they view—to Facebook without consent.

3.   The United States Congress passed the Video Privacy Protection Act ("VPPA") in 1988, seeking to confer onto consumers the power to "maintain control over personal information divulged and generated in exchange for receiving services from video tape service providers." S. Rep. No. 100-599, at 8. "The Act reflects the central principle of the Privacy Act

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of 1974: that information collected for one purpose may not be used for a different purpose without the individual's consent." *Id.*

4.   Defendant violated the VPPA by knowingly transmitting Plaintiff's and the putative class's personally identifiable information to unrelated third parties.

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FACTUAL BACKGROUND

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I.   The VPPA

5.   The origins of the VPPA begin with President Ronald Reagan's nomination of Judge Robert Bork to the United States Supreme Court. During the confirmation process, a movie rental store disclosed the nominee's rental history to the Washington City Paper, which then published that history. Congress responded by passing the VPPA, with an eye toward the digital future. As Senator Patrick Leahy, who introduced the Act, explained:

> It is nobody's business what Oliver North or Robert Bork or Griffin Bell or Pat Leahy watch on television or read or think about when they are home. In an area of interactive television cables, the growth of computer checking and check-out counters, of security systems and telephones, all lodged together in computers, it would be relatively easy at some point to give a profile of a person and tell what they buy in a store, what kind of food they like, what sort of television programs they watch, who are some of the people they telephone. I think that is wrong.

S. Rep. 100-599, at 5-6 (internal ellipses and brackets omitted).

6.   The VPPA prohibits "[a] video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider." 18 U.S.C. § 2710(b)(1).

II.   Defendant Is A Video Tape Service Provider

7.   Just like "department store[s]," "golf shop[s]," and "continuity club[s]," Defendant is a video tape service provider. *See* S. Rep. 100-599, at 12-13.
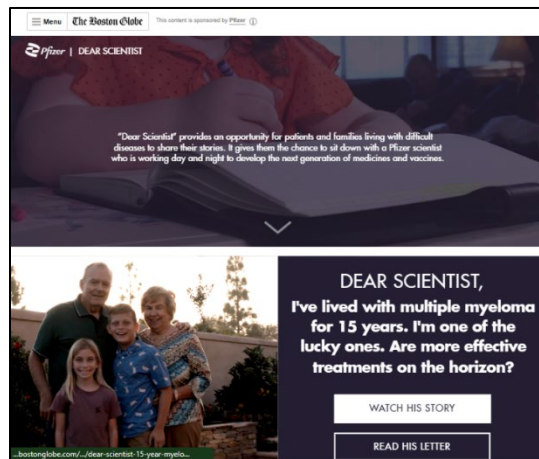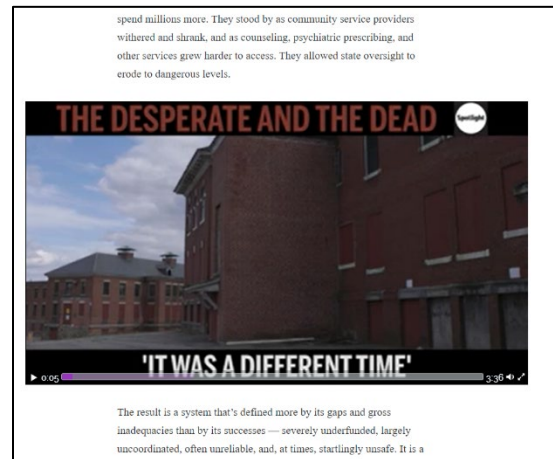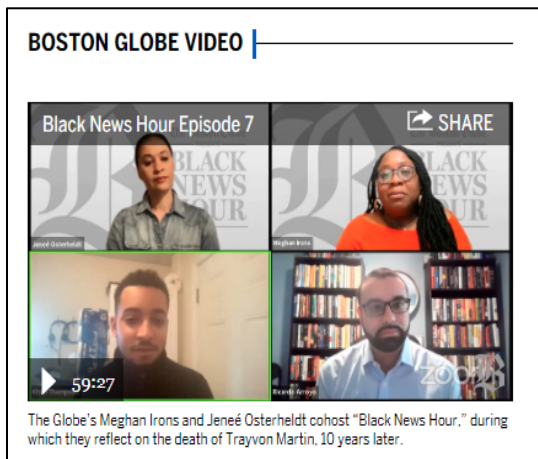
8.   Defendant is a self-described "multimedia organization that provides news,

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entertainment, and commentary across multiple brands and platforms."[1]

9.   One such platform is bostonglobe.com, a website featuring "national and local content daily."[2] This content includes "news articles, photographs, images, illustrations, audio clips and video clips."[3]

10.   Through bostonglobe.com, Defendant creates, hosts, and disseminates hundreds, if not thousands, of videos.

11.   These videos serve various roles: Defendant posts them as stand-alone content, as supplements to articles, and as content sponsored by advertisers.


The Globe's Meghan Irons and Jeneé Osterheldt cohost "Black News Hour," during which they reflect on the death of Trayvon Martin, 10 years later.


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[1] Boston Globe Media Group, *Boston Globe Media Launches New Reporting and Business Development Fellowship*, PR Newswire (May 5, 2022).

[2] Boson Globe Media Group, About the Globe, https://www.bostonglobemedia.com/bostonglobe.

[3] Boston Globe, Terms of Service, https://www.bostonglobe.com/about/help/terms-service/?p1=BGFooter.

12.   The duration of these videos—whether embedded, standing alone, or sponsored—

varies markedly.
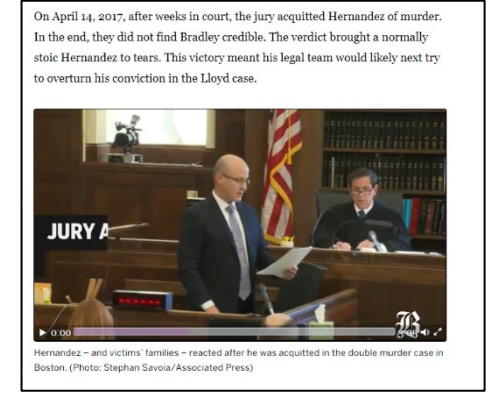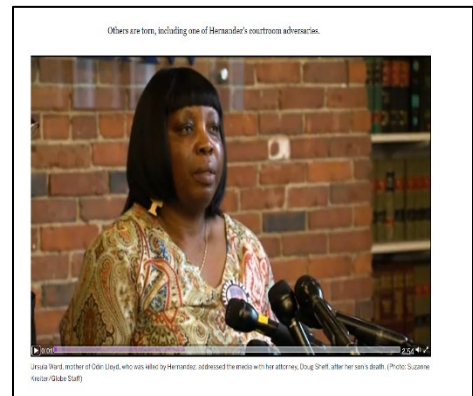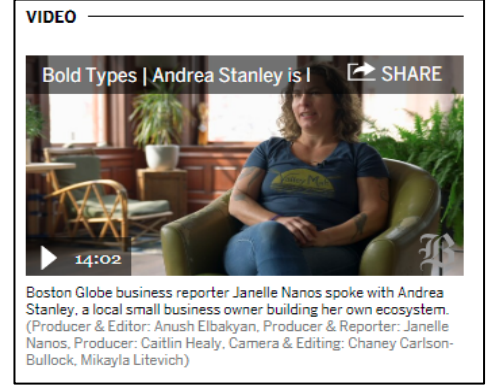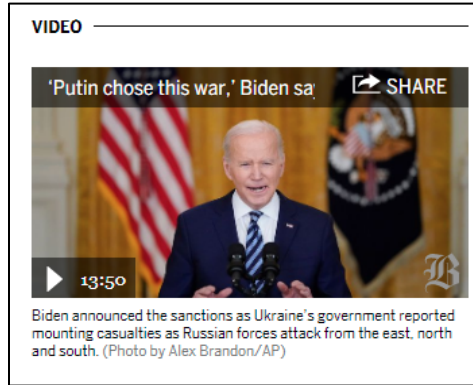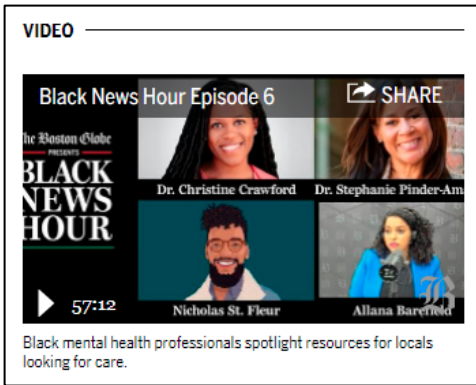
13.   Defendant creates and hosts these videos so it can increase revenues through

advertisements and subscriptions.

14.   To access content, one must pay for a subscription. Defendant offers three types:

print only; digital only; and digital plus print.

15.   Defendant measures success by counting the number of digital subscriptions, which it considers "the most important metric."[4]

16.   A print-only subscriber cannot access Defendant's audio and video clips; only a digital subscriber can do that.

17.   Defendant creates this exclusively digital content in an effort to increase the number of digital subscriptions.

18.   This digital content is an essential part of Defendant's expansion "from a newspaper into a modern multimedia company."[5] Indeed, as noted by Dan Krockmalnic, Defendant's executive vice president and general counsel, well-produced digital content "means subscription, advertising, licensing, and production revenue – a perfect example of what we aspire to when we talk about a modern media company."[6]

III.   Plaintiff and Class Members are Consumers

19.   To access content on bostonglobe.com, individuals must share identifying information and pay money on a recurring basis. By doing so, individuals subscribe to Defendant's website.

IV.   Defendant Discloses Subscribers' PII to Facebook

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[4] Dan Kennedy, *Globe editor McGrory: It's time to rethink everything we do*, MEDIA NATION (Apr. 7, 2016) (quoting then-editor Brian McGrory who described Defendant as "leading the league in digital-only subscribers—the most important metric"); *see also* BOSTON GLOBE, AN INTERVIEW WITH DAN KENNEDY, http://lab.bostonglobe.com/2013/06/kennedy_interview.html ("Dan Kennedy is an assistant professor of journalism at Northeastern University in Boston and a nationally known media commentator who writes for the Nieman Journalism Lab, The Huffington Post, and other publications.").

[5] Dan Kennedy, *Boston Globe Media eyes expanding into TV, films, broadcast, and radio*, MEDIA NATION (Dec. 24, 2021) (quoting an internal memo written by Dan Krockmalnic), https://dankennedy.net/2021/12/24/boston-globe-media-eyes-expanding-into-tv-films-broadcast-and-radio/.

[6] *Id.*

20.   Defendant discloses subscribers' PII to Facebook. At a minimum, Defendant does this through the Facebook Tracking Pixel.

A.   Facebook and the Facebook Tracking Pixel

21.   Facebook is the largest social networking site on the planet, touting 2.9 billion monthly active users.[7] Facebook describes itself as a "real identity platform,"[8] meaning users are allowed only one account and must share "the name they go by in everyday life."[9] To that end, when creating an account, users must provide their first and last name, along with their birthday and gender.[10]

22.   Facebook generates revenue by selling advertising space on its website.[11]

23.   Facebook sells advertising space by highlighting its ability to target users.[12] Facebook can target users so effectively because it surveils user activity both on and off its site.[13] This allows Facebook to make inferences about users beyond what they explicitly disclose, like their "interests," "behavior," and "connections."[14] Facebook compiles this information into a

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[7] Sean Burch, *Facebook Climbs to 2.9 Billion Users, Report 29.1 Billion in Q2 Sales*, YAHOO (July 28, 2021), https://www.yahoo.com/now/facebook-climbs-2-9-billion-202044267.html

[8] Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

[9] FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY, https://www.facebook.com/communitystandards/integrity_authenticity.

[10] FACEBOOK, SIGN UP, https://www.facebook.com/

[11] Mike Isaac, *Facebook's profit surges 101 percent on strong ad sales.*, N.Y. TIMES (July 28, 2021), https://www.nytimes.com/2021/07/28/business/facebook-q2-earnings.html.

[12] FACEBOOK, WHY ADVERTISE ON FACEBOOK, https://www.facebook.com/business/help/205029060038706.

[13] FACEBOOK, ABOUT FACEBOOK PIXEL, https://www.facebook.com/business/help/742478679120153?id=1205376682832142.

[14] FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS, https://www.facebook.com/business/ads/ad-targeting.

generalized dataset called "Core Audiences," which advertisers use to apply highly specific

filters and parameters for their targeted advertisements.[15]

24.   Advertisers can also build "Custom Audiences."[16] Custom Audiences enable

advertisers to reach "people who have already shown interest in [their] business, whether they're

loyal customers or people who have used [their] app or visited [their] website."[17] Advertisers can

use a Custom Audience to target existing customers directly, or they can use it to build a

"Lookalike Audiences," which "leverages information such as demographics, interests, and

behavior from your source audience to find new people who share similar qualities."[18]   Unlike

Core Audiences, Custom Audiences require an advertiser to supply the underlying data to

Facebook. They can do so through two mechanisms: by manually uploading contact information

for customers, or by utilizing Facebook's "Business Tools," which collect and transmit the data

automatically.[19] One such Business Tool is the Facebook Tracking Pixel.

25.   The Facebook Tracking Pixel is a piece of code that advertisers, like Defendant,

can integrate into their website. Once activated, the Facebook Tracking Pixel "tracks the people

and type of actions they take."[20] When the Facebook Tracking Pixel captures an action, it sends

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[15] FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK, https://www.facebook.com/business/news/Core-Audiences.
[16] FACEBOOK, ABOUT CUSTOM AUDIENCES, https://www.facebook.com/business/help/744354708981227?id=2469097953376494.
[17] FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE, https://www.facebook.com/business/help/366151833804507?id=300360584271273.
[18] FACEBOOK, ABOUT LOOKALIKE AUDIENCES, https://www.facebook.com/business/help/164749007013531?id=401668390442328.
[19] FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE, https://www.facebook.com/business/help/170456843145568?id=2469097953376494; FACEBOOK, CREATE A WEBSITE CUSTOM AUDIENCE, https://www.facebook.com/business/help/1474662202748341?id=2469097953376494.
[20] FACEBOOK, RETARGETING, https://www.facebook.com/business/goals/retargeting.

a record to Facebook. Once this record is received, Facebook processes it, analyzes it, and assimilates it into datasets like the Core Audiences and Custom Audiences.

26.   Advertisers control what actions—or, as Facebook calls it, "events"—the Facebook Tracking Pixel will collect, including the website's metadata, along with what pages a visitor views and what buttons a visitor clicks.[21] Advertisers can also configure the Facebook Tracking Pixel to track other events. Facebook offers a menu of "standard events" from which advertisers can choose, including what content a visitor views or purchases.[22] An advertiser can also create their own tracking parameters by building a "custom event."[23]

27.   Advertisers control how the Facebook Tracking Pixel identifies visitors. The Facebook Tracking Pixel is configured to automatically collect "HTTP Headers" and "Pixel-specific Data."[24] HTTP Headers collect "IP addresses, information about the web browser, page location, document, referrer and persons using the website."[25] Pixel-specific Data includes "the Pixel ID and cookie."[26]

B.   Boston Globe and the Facebook Pixel

28.   Boston Globe hosts the Facebook Tracking Pixel and transmits five distinct events to Facebook:[27]

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[21] *See* FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED, https://developers.facebook.com/docs/facebook-pixel/advanced/; *see also* FACEBOOK, BEST PRACTICES FOR FACEBOOK PIXEL SETUP, https://www.facebook.com/business/help/218844828315224?id=1205376682832142.
[22] FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS, https://www.facebook.com/business/help/402791146561655?id=1205376682832142.
[23] FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS, https://www.facebook.com/business/help/964258670337005?id=1205376682832142.
[24] FACEBOOK, FACEBOOK PIXEL, https://developers.facebook.com/docs/facebook-pixel/.
[25] *Id.*
[26] *Id.*
[27] This data derives from a tool created and offered by Facebook.
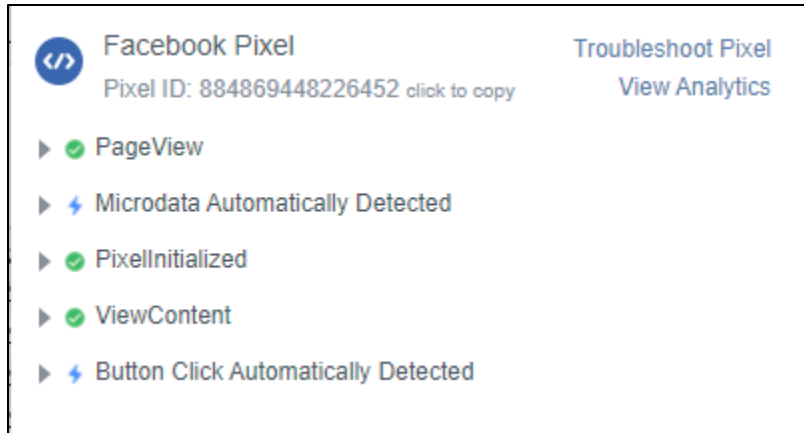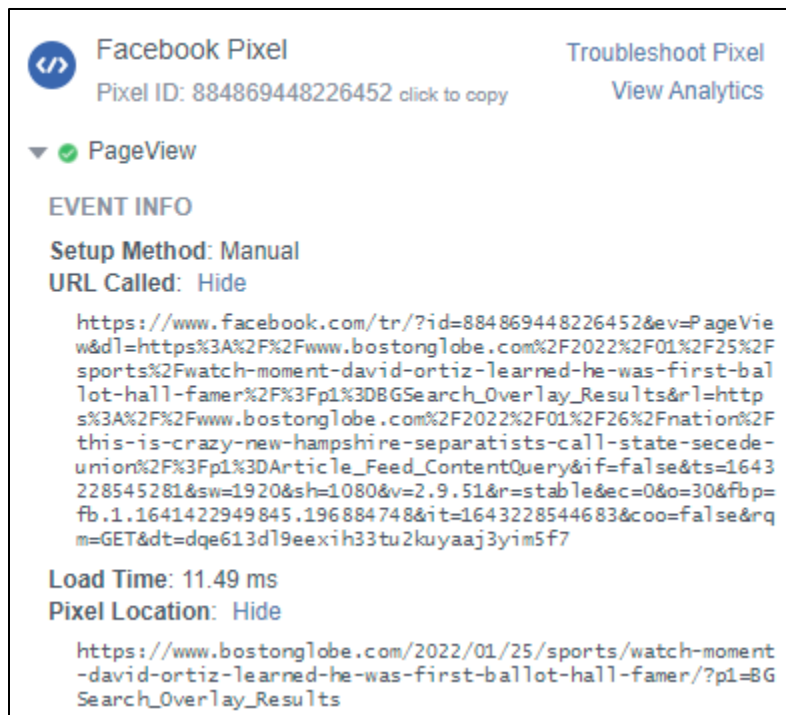
29.   PageView transmits the Uniform Resource Locator ("URL") accessed, which shows what webpage the visitor visited:

30.   Microdata transmits the title and description of the webpage:

31.   Button Click registers every time a visitor views a video:

32.   This event data, jointly and independently, permit an ordinary person to identify what video an individual has watched.

33.   A visitor who is logged into Facebook while watching a video on Boston Globe will transmit the c_user cookie to Facebook. The c_user cookie contains that visitor's unencrypted Facebook ID. When accessing the above video, for example, Boston Globe compelled the browser to send twelve cookies, eleven of which are visible here:

presence	C%7B%22t3%22%3A%5B%5D%2C%22...	.facebook.com
spin	r.1004981734_b.trunk_t.1643228256_s.1...	.facebook.com
fr	0wb0QzFkwbfHryyjH.AWXkNaADw0rkE...	.facebook.com
xs	49%3AwXbpXFZIKGR_Iw%3A2%3A1643...	.facebook.com
_fbp	fb.1.1642172799804.273610913	.facebook.com
sb	vnjUYXzfkar3Y9up1wdkI6HN	.facebook.com
locale	en_US	.facebook.com
wd	1920x937	.facebook.com
usida	eyJ2ZXIiOjEsImIkIjoiQXI2YnJxNzEzcnRrY...	.facebook.com
c_user	**100035966074568**	**.facebook.com**
datr	puvVYbIXaHVAAIbERd0zteUt	.facebook.com

34.   When a visitor's browser has recently logged out of Facebook, the Boston Globe will compel the browser to send a smaller set of cookies:

fr	**0iMYNYQyOU77dqmj5.AWXhVwf08Of4r...**	**.facebook.com**
_fbp	fb.1.1642172799804.273610913	.facebook.com
sb	vnjUYXzfkar3Y9up1wdkI6HN	.facebook.com
wd	1277x919	.facebook.com
locale	en_US	.facebook.com
datr	puvVYbIXaHVAAIbERd0zteUt	.facebook.com

35.   The fr cookie contains, at least, an encrypted Facebook ID and browser identifier.[28] The _fbp cookie contains, at least, an unencrypted value that uniquely identifies a

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[28] DATA PROTECTION COMMISSIONER, FACEBOOK IRELAND LTD, REPORT OF RE-AUDIT (Sept. 21, 2012), http://www.europe-v-facebook.org/ODPC_Review.pdf.

browser.[29] The datr cookies also identifies a browser. [30] Facebook, at a minimum, uses the fr

and _fbp cookies to identify users.[31]

36. If a visitor has never created a Facebook account, three cookies are transmitted:

_fbp	fb.1.1643728740956.138387526	.bostonglobe.com
fr	0SQBnR6axkK3AAhMW..Bh-U9I.8q.AAA....	.facebook.com
sb	aE_5YeNYWNmYwsOT1IuY-uNW	.facebook.com

37. Without a corresponding Facebook ID, the fr cookie contains, at least, an

abbreviated and encrypted value that identifies the browser. The _fbp cookie contains, at least,

an unencrypted value that uniquely identifies a browser. Facebook uses both for targeted

advertising.

38. The fr cookie will expire after 90 days unless the visitor's browser logs back into

Facebook.[32] If that happens, the time resets, and another 90 days begins to accrue.[33]

39. The _fbp cookie will expire after 90 days unless the visitor's browser accesses the

same website.[34] If that happens, the time resets, and another 90 days begins to accrue.[35]

40. The Facebook Tracking Pixel uses both first- and third-party cookies. A first-

party cookie is "created by the website the user is visiting"—*i.e.*, Boston Globe.[36] A third-party

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[29] FACEBOOK, CONVERSION API, https://developers.facebook.com/docs/marketing-api/conversions-api/parameters/fbp-and-fbc/.

[30] FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, https://www.facebook.com/policy/cookies/.

[31] FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, https://www.facebook.com/policy/cookies/.

[32] *See* FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, https://www.facebook.com/policy/cookies/.

[33] Confirmable through developer tools.

[34] *See* FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES, https://www.facebook.com/policy/cookies/.

[35] Also confirmable through developer tools.

[36] PC MAG, FIRST-PARTY COOKIES, https://www.pcmag.com/encyclopedia/term/first-party-cookie. This is confirmable by using developer tools to inspect a website's cookies and track network activity.

cookie is "created by a website with a domain name other than the one the user is currently visiting"—*i.e.*, Facebook.[37] The _fbp cookie is always transmitted as a first-party cookie. A duplicate _fbp cookie is sometimes sent as a third-party cookie, depending on whether the browser has recently logged into Facebook.

41.   Facebook, at a minimum, uses the fr, _fbp, and c_user cookies to link to Facebook IDs and corresponding Facebook profiles.

42.   A Facebook ID is personally identifiable information. Anyone can identify a Facebook profile—and all personal information publicly listed on that profile—by appending the Facebook ID to the end of Facebook.com.

43.   Through the Facebook Tracking Pixel's code, these cookies combine the identifiers with the event data, allowing Facebook to know, among other things, what Boston Globe videos a user has watched.[38]

44.   Defendant also uses "Advanced Matching." With Advanced Matching, Defendant's Pixels "look[s] for recognizable form field and other sources on your website that contain information such as first name, last name and email." [39] That information is recorded, "along with the event, or action, that took place."[40] This information is also "hashed,"[41] meaning it is "[a] computed summary of digital data that is a one-way process." In other words, it "cannot be reversed back into the original data."[42]

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[37] PC MAG, THIRD-PARTY COOKIES, https://www.pcmag.com/encyclopedia/term/third-party-cookie. This is also confirmable by tracking network activity.
[38] FACEBOOK, GET STARTED, https://developers.facebook.com/docs/meta-pixel/get-started.
[39] https://www.facebook.com/business/help/611774685654668?id=1205376682832142
[40] FACEBOOK, ABOUT ADVANCED MATCHING FOR WEB, https://www.facebook.com/business/help/611774685654668?id=1205376682832142.
[41] DEFINITION OF HASH, https://www.pcmag.com/encyclopedia/term/hash
[42] *Id.*

45.   Defendant discloses this information so it can better match visitors to their

Facebook profiles.

> You can use Advanced Matching to help:
>
> - Increase the number of attributed conversions. We can match more of the conversions that happen on your website to people on Meta. This helps you understand the impact of your ads on website conversions.
>
> - Increase your Custom Audience size. We're able to better match your website visitors to people on Meta and increase the size of your Custom Audience.
>
> - Decrease the cost per conversion. Conversion-optimized campaigns become more efficient because we can better identify and deliver ads to the types of people likely to take the actions you care about.

46.   As part of Advanced Matching, Defendant has enabled "Automatic Advanced Matching." That means Defendant's Pixels are configured to scan form fields containing a user's email address, first name, and last name.[43] The highlighted line, along with the line three below it, shows that Defendant has enabled Automatic Matching.

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fbq.registerPlugin("884869448226452", {__fbEventsPlugin: 1, plugin: function(fbq, instance, config) { fbq.loadPlugin("inferredevents");
fbq.loadPlugin("identity");
instance.optIn("884869448226452", "InferredEvents", true);
fbq.loadPlugin("jsonld_microdata");
instance.optIn("884869448226452", "MicrodataJsonLd", true);
config.set("884869448226452", "automaticMatching", {"selectedMatchKeys":["em","fn","ln"]});
fbq.loadPlugin("inferredevents");
fbq.loadPlugin("identity");
instance.optIn("884869448226452", "AutomaticMatching", true);
fbq.loadPlugin("iwlbootstrapper");
instance.optIn("884869448226452", "IWLBootstrapper", true);
fbq.loadPlugin("iwlparameters");
fbq.loadPlugin("inferredevents");
instance.optIn("884869448226452", "IWLParameters", true);
fbq.set("iwlExtractors", "884869448226452", []);
fbq.loadPlugin("cookie");
instance.optIn("884869448226452", "FirstPartyCookies", true);
fbq.loadPlugin("inferredevents");
fbq.loadPlugin("microdata");
fbq.loadPlugin("identity");
instance.optIn("884869448226452", "AutomaticSetup", true);
fbq.loadPlugin("automaticmatchingforpartnerintegrations");
instance.optIn("884869448226452", "AutomaticMatchingForPartnerIntegrations", true);
config.set(null, "batching", {"batchWaitTimeMs":501,"maxBatchSize":10});
config.set(null, "microdata", {"waitTimeMs":500});
```

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[43] Facebook provides a corresponding look-up table: FACEBOOK, ADVANCED MATCHING, https://developers.facebook.com/docs/meta-pixel/advanced/advanced-matching.

47.   Defendant has also customized its Pixels to collect and transmit a subscriber's

email address, first name, last name, telephone number, and mailing address.

48.   When first signing up, Boston Globe's interface contains form fields for email

and password:

49.   When paying for a subscription, Boston Globe requires prospective subscribers to enter their card information, which includes their first name, last name, telephone number, and home address:

50.   Defendant discloses a subscriber's email address, first name, last name, telephone number and mailing address when inputted into any of the above form fields. This enables Facebook to then match those identifiers with that subscriber's subsequent activity on the site.

51.   Boston Globe knows that Facebook will match the Advanced Matching parameters with a subscriber's subsequent activity, thereby helping Boston Globe "[i]ncrease the number of attributed conversions," "[i]ncrease [its] Custom Audience size," and "[d]ecrease the cost per conversion."[44]

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[44] FACEBOOK, ABOUT ADVANCED MATCHING FOR WEB,
https://www.facebook.com/business/help/611774685654668?id=1205376682832142.

52.   By compelling a visitor's browser to disclose the Advanced Matching parameters and event data for videos, Boston Globe knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

53.   By compelling a visitor's browser to disclose the c_user cookie and event data for videos, Boston Globe knowingly discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

54.   By compelling a visitor's browser to disclose the fr and _fbp cookies and event data for videos, Boston Globe discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

55.   By compelling a visitor's browser to disclose the fr cookie, other browser identifiers, and event data for videos, Boston Globe discloses information sufficiently permitting an ordinary person to identify a specific individual's video viewing behavior.

56.   Facebook confirms that it matches activity on Boston Globe with a user's profile. Facebook allows users to download their "off-site activity," which is a "summary of activity that businesses and organizations share with us about your interactions, such as visiting their apps or websites."[45] Here, the off-site activity report confirms that Boston Globe identifies an individual's reading and video viewing activities:

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[45] FACEBOOK, WHAT IS OFF-FACEBOOK ACTIVITY?,
https://www.facebook.com/help/2207256696182627

Activity received from bostonglobe.com

ID	1738204496393163
Event	PAGE_VIEW
Received on	January 23, 2022 at 11:52 PM
ID	493062270895851
Event	VIEW_CONTENT
Received on	January 23, 2022 at 11:52 PM
ID	884869448226452
Event	VIEW_CONTENT
Received on	January 23, 2022 at 11:52 PM

57.   The "IDs" shown here match the Pixel IDs for Defendant's Pixel. The Facebook

Pixel ID is a numerical code that uniquely identifies each Pixel.[46] In practice, this means Boston

Globe's Facebook Tracking Pixel has a Pixel ID that differs from all other websites. All

subscribers who view videos on Boston Globe's website can pull their off-site activity report and

see the same Pixel IDs.

C.   Boston Globe and Facebook

58.   Paragraphs 20 through 58 focus on Defendant's use of the Facebook Tracking

Pixel, which can be observed in near real-time while using publicly available tools. Still, upon

information and belief, Defendant utilizes other, less-visible means to disclose PII to Facebook.

This includes, but is not limited to, disclosing a subscriber's first name, last name, email address,

subscription status, and the title of videos watched.[47]

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[46] FACEBOOK, GET STARTED, https://developers.facebook.com/docs/meta-pixel/get-started.
[47] This includes through third-party intermediaries, like, for example, Arc Publishing. *See, e.g.*,
ARC PUBLISHING SIGNS BOSTON GLOBE MEDIA PARTNERS, ARCXP,
https://www.arcxp.com/2021/06/08/the-washington-posts-arc-publishing-signs-boston-globe-

V.   Experience of Plaintiff David Ambrose

59.   In August 2020, Plaintiff Ambrose purchased a digital subscription to the Boston Globe's website.

60.   In 2005, Plaintiff Ambrose created a Facebook account.

61.   Plaintiff Ambrose frequently visits Boston Globe to, among other things, watch videos.

62.   Defendant disclosed Plaintiff Ambrose's email address, first name, last name, and mailing address to Facebook.

63.   Defendant disclosed Plaintiff Ambrose's Facebook ID to Facebook.

64.   Defendant disclosed other identifiers that reasonably and foreseeably identified Plaintiff Ambrose, like an identifier for his browser.

65.   Alongside these identifiers, Defendant also disclosed information stating what videos Plaintiff Ambrose has watched.

66.   Plaintiff Ambrose has been logged into his Facebook account while viewing content on bostonglobe.com, including when he's requested, obtained, or watched a video hosted on Defendant's website.

67.   Defendant knew it was disclosing Plaintiff Ambrose's PII to Facebook.

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media-partners/ (stating that, in 2021, Defendant and Arc Publishing "relaunch[ed] bostonglobe.com," which required "migrat[ing] their entire newsroom workflow, including story authoring, video production, photo management and publishing onto Arc, [thereby] creating a more efficient streamlined process that is dramatically faster and more nimble and lays the foundation for a renewed digital culture"); *see also id.* ("Arc will help accelerate the pace of innovation and experimentation, increase user engagement and improve ad viewability, laying the foundation for audience and revenue growth and positioning them for future digital success.").

68.   Plaintiff Ambrose discovered that Boston Globe surreptitiously collected and transmitted his personally identifiable information in January 2022.

PARTIES

69.   Plaintiff Ambrose is, and has been at all relevant times, a resident of Irvine, California and has an intent to remain there, and is therefore a domiciliary of California.

70.   Defendant Boston Globe Media Partners LLC is a Massachusetts corporation with its principal place of business at 135 Morrissey Boulevard, Boston, Massachusetts. Defendant develops, owns, and operates bostonglobe.com, which is used throughout Massachusetts and the United States.

JURISDICTION AND VENUE

71.   This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under a law of the United States (the VPPA).

72.   This Court has personal jurisdiction over Defendant because Defendant's principal place of business is in Boston, Massachusetts.

73.   Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

CLASS ALLEGATIONS

74.   **Class Definition:** Plaintiff seeks to represent a class of similarly situated individuals defined as all persons in the United States who have a Facebook account, a digital subscription to Boston Globe, and viewed videos on Boston Globe's website (the "Class").

75.   Subject to additional information obtained through further investigation and discovery, the above-described Class may be modified or narrowed as appropriate, including through the use of multi-state subclasses.

76.   **Numerosity (Fed. R. Civ. P. 23(a)(1)):** At this time, Plaintiff does not know the exact number of members of the aforementioned Class. However, given the popularity of Defendant's website, the number of persons within the Class is believed to be so numerous that joinder of all members is impractical.

77.   **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2), 23(b)(3)):** There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class that predominate over questions that may affect individual members of the Class include:

(a) whether Defendant collected Plaintiff's and the Class's PII;

(b) whether Defendant unlawfully disclosed and continues to disclose its users' PII in violation of the VPPA;

(c) whether Defendant's disclosures were committed knowingly; and

(d) whether Defendant disclosed Plaintiff's and the Class's PII without consent.

78.   **Typicality (Fed. R. Civ. P. 23(a)(3)):** Plaintiff's claims are typical of those of the Class because Plaintiff, like all members of the Class, used Boston Globe's website to watch videos, and had his PII collected and disclosed by Defendant.

79.   **Adequacy (Fed. R. Civ. P. 23(a)(4)):** Plaintiff has retained and are represented by qualified and competent counsel who are highly experienced in complex consumer class action litigation, including litigation concerning the VPPA and its state-inspired offspring. Plaintiff and their counsel are committed to vigorously prosecuting this class action. Moreover, Plaintiff is able to fairly and adequately represent and protect the interests of the Class. Neither Plaintiff nor his counsel has any interest adverse to, or in conflict with, the interests of the absent members of the Class. Plaintiff has raised viable statutory claims or the type reasonably

expected to be raised by members of the Class, and will vigorously pursue those claims. If

necessary, Plaintiff may seek leave of this Court to amend this Class Action Complaint to

include additional representatives to represent the Class, additional claims as may be appropriate,

or to amend the definition of the Class to address any steps that Defendant took.

80.   **Superiority (Fed. R. Civ. P. 23(b)(3)):** A class action is superior to other

available methods for the fair and efficient adjudication of this controversy because individual

litigation of the claims of all members of the Class is impracticable. Even if every member of

the Class could afford to pursue individual litigation, the court system could not. It would be

unduly burdensome to the courts in which individual litigation of numerous cases would

proceed. Individualized litigation would also present the potential for varying, inconsistent or

contradictory judgments, and would magnify the delay and expense to all parties and to the court

system resulting from multiple trials of the same factual issues. By contrast, the maintenance of

this action as a class action, with respect to some or all of the issues presented herein, presents

few management difficulties, conserves the resources of the parties and of the court system and

protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the

management of this action as a class action.

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CAUSES OF ACTION

COUNT I
VIOLATION OF THE VIDEO PRIVACY PROTECTION ACT
18 U.S.C. § 2710, *et seq.*

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81.   Plaintiff brings this claim individually and on behalf of the members of the

proposed Class against Defendant.

82.   Defendant is a "video tape service provider" because it has created, hosted, and

delivered hundreds of videos on its website, thereby "engag[ing] in the business, in or affecting

<div align="center">22</div>

interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials." 18 U.S.C. § 2710(a)(4).

83.   Plaintiff and members of the Class are "consumers" because they paid for a subscription to access Boston Globe's website. 18 U.S.C. § 2710(a)(1). This makes them a "subscriber" and therefore a "consumer" under the VPPA.

84.   Boston Globe disclosed to a third party, Facebook, Plaintiff's and the Class members' personally identifiable information. Boston Globe utilized the Facebook Tracking Pixel to compel Plaintiff's web browser to transfer Plaintiff's identifying information, like his Facebook ID, along with Plaintiff's event data, like the title of the videos he viewed and what buttons he pressed when doing so.

85.   Plaintiff and the Class members viewed video clips using Boston Globe's website.

86.   Boston Globe knowingly disclosed Plaintiff's PII because it used that data to build audiences on Facebook and retarget them for their advertising campaigns.

87.   Plaintiff and class members did not provide Defendant with any form of consent—either written or otherwise—to disclose their PII to third parties.

88.   Nor were Defendant's disclosures made in the "ordinary course of business" as the term is defined by the VPPA. In particular, Boston Globe's disclosures to Facebook were not necessary for "debt collection activities, order fulfillment, request processing, [or] transfer of ownership." 18 U.S.C. § 2710(a)(2).

89.   On behalf of himself and the Class, Plaintiff seeks: (i) declaratory relief; (ii) injunctive and equitable relief as is necessary to protect the interests of Plaintiff and the Class by requiring Defendant to comply with VPPA's requirements for protecting a consumer's PII;

23

(iii) statutory damages of $2,500 for each violation of the VPPA pursuant to 18 U.S.C. § 2710(c); and (iv) reasonable attorneys' fees and costs and other litigation expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks a judgment against Defendant, individually and on behalf of all others similarly situated, as follows:

(a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure, naming Plaintiff as representative of the Class, and naming Plaintiff's attorneys as Class Counsel to represent the Class;

(b) For an order declaring that Defendant's conduct violates the statutes referenced herein;

(c) For an order finding in favor of Plaintiff and the Class on all counts asserted herein;

(d) An award of statutory damages to the extent available;

(e) For punitive damages, as warranted, in an amount to be determined at trial;

(f) For prejudgment interest on all amounts awarded;

(g) For injunctive relief as pleaded or as the Court may deem proper; and

(h) For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b)(1), Plaintiff demands a trial by jury of all issues so triable.

Dated: May 20, 2022   Respectfully submitted,

By: */s/ David S. Godkin*
David S. Godkin (BBO#196530)

24

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Pro Hac Vice Application Forthcoming

Attorneys for Plaintiff and the Putative Classes

CERTIFICATE OF SERVICE

I, David S. Godkin, hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 20, 2022.

/s/ David S. Godkin
David S. Godkin