

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CRYSTAL CARTER, SUSAN CIFELLI, and
LETITIA TAYLOR, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

DISCOVERY COMMUNICATIONS, LLC,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Crystal Carter, Susan Cifelli, and Letitia Taylor (“Plaintiffs”), individually and on behalf of all other persons similarly situated, by and through their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their 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 watch videos on hgtv.com and subscribe to HGTV’s newsletter.

2. Discovery Communications, LLC (“Defendant” or “HGTV”) develops, owns, and operates hgtv.com, a website that hosts and delivers hundreds of videos¹ featuring “home and lifestyle content.”² The website’s content is popular among viewers, “attract[ing] an average of 9.9 million people each month.”³

¹ HGTV, VIDEOS, <https://www.hgtv.com/videos>.

² DISCOVERY, HGTV SERIES ‘GOOD BONES’ DELIVERS STRONG SEASON PERFORMANCES IN KEY DEMOS, <https://press.discovery.com/us/hgtv/press-releases/2021/hgtv-series-good-bones-delivers-strong-season-5558/>.

³ *Id.*

3. Defendant monetizes its website by knowingly collecting and disclosing its subscribers' personally identifiable information—including a record of every video clip they view—to Facebook without consent.

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

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

FACTUAL BACKGROUND

I. The VPPA

6. 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, who 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).

7. 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). The VPPA defines personally identifiable information as “information which identifies a person as having requested or obtained specific video materials or services from a video service provider.” 18 U.S.C. § 2710(a)(3). A video tape service provider is “any person, engaged in the business, in or affecting 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).

II. The Facebook Tracking Pixel

8. Facebook is the largest social networking site on the planet, touting 2.9 billion monthly active users.⁴ Facebook describes itself as a “real identity platform,”⁵ meaning users are allowed only one account and must share “the name they go by in everyday life.”⁶ To that end, when creating an account, users must provide their first and last name, along with their birthday and gender.⁷

9. Facebook generates revenue by selling advertising space on its website.⁸

⁴ 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>

⁵ Sam Schechner and Jeff Horwitz, *How Many Users Does Facebook Have? The Company Struggles to Figure It Out*, WALL. ST. J. (Oct. 21, 2021).

⁶ FACEBOOK, COMMUNITY STANDARDS, PART IV INTEGRITY AND AUTHENTICITY, https://www.facebook.com/communitystandards/integrity_authenticity.

⁷ FACEBOOK, SIGN UP, <https://www.facebook.com/>

⁸ 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>.

10. Facebook sells advertising space by highlighting its ability to target users.⁹

Facebook can target users so effectively because it surveils user activity both on and off its site.¹⁰ This allows Facebook to make inferences about users beyond what they explicitly disclose, like their “interests,” “behavior,” and “connections.”¹¹ Facebook compiles this information into a generalized dataset called “Core Audiences,” which advertisers use to apply highly specific filters and parameters for their targeted advertisements.¹²

11. Advertisers can also build “Custom Audiences.”¹³ 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.”¹⁴ 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.”¹⁵ 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

⁹ FACEBOOK, WHY ADVERTISE ON FACEBOOK, <https://www.facebook.com/business/help/205029060038706>.

¹⁰ FACEBOOK, ABOUT FACEBOOK PIXEL, <https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

¹¹ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS, <https://www.facebook.com/business/ads/ad-targeting>.

¹² FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK, <https://www.facebook.com/business/news/Core-Audiences>.

¹³ FACEBOOK, ABOUT CUSTOM AUDIENCES, <https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

¹⁴ FACEBOOK, ABOUT EVENTS CUSTOM AUDIENCE, <https://www.facebook.com/business/help/366151833804507?id=300360584271273>.

¹⁵ FACEBOOK, ABOUT LOOKALIKE AUDIENCES, <https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

for customers, or by utilizing Facebook’s “Business Tools,” which collect and transmit the data automatically.¹⁶ One such Business Tool is the Facebook Tracking Pixel.

12. 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.”¹⁷ When the Facebook Tracking Pixel captures an action, it sends 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.

13. 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.¹⁸ 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.¹⁹ An advertiser can also create their own tracking parameters by building a “custom event.”²⁰

14. Advertisers control how the Facebook Tracking Pixel identifies visitors. The Facebook Tracking Pixel is configured to automatically collect “HTTP Headers” and “Pixel-

¹⁶ 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>.

¹⁷ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

¹⁸ 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>.

¹⁹ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS, <https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

²⁰ FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS, <https://www.facebook.com/business/help/964258670337005?id=1205376682832142>.



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