

*Before the*  
FEDERAL TRADE COMMISSION  
Washington, DC 20580

In the Matter of )  
)  
Complaint and Request for Investigation )  
of Deceptive Practices in connection )  
with Google's YouTube Video )  
Hosting Platform )  
)  
)

COMPLAINT AND REQUEST FOR INVESTIGATION

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Mr. Andy Parker, by his attorneys, the Georgetown Law Civil Rights Clinic, asks the Federal Trade Commission (“FTC”) to bring an enforcement action against YouTube and its parent company, Google, for YouTube’s violations of its own Terms of Service. YouTube violates its Terms by hosting videos that graphically depict people being murdered, capitalizing on their final moments for pure shock value and entertainment. The platform’s Terms of Service proclaim that violent content is not allowed, leading users to reasonably believe that they will not encounter it. In reality, these videos are commonplace on the platform, and many of them have remained there for several years. YouTube claims that it polices its platform for these violent and disturbing videos, when in truth it requires victims and their families to do the policing—reliving their worst moments over and over in order to curb the proliferation of these videos. And, even when victims abide by YouTube’s deceptively burdensome process for reporting these videos, the site utterly fails to adhere to its own requirement that they be removed. In Mr. Parker’s case, even videos of his daughter’s murder that were uploaded on the day of her death—nearly five years ago—and have been reported repeatedly since then, remain on the site to this day.

Through this behavior, YouTube knowingly violates its own Terms of Service and Community Guidelines.<sup>1</sup> In so doing, YouTube violates Section 5 of the FTC Act by engaging in deceptive trade practices.<sup>2</sup> YouTube’s misrepresentations deceive consumers about the safety of the platform, the prevalence of graphic violence on the platform, and the difficulty of users securing the removal of violative content. These deceptions are material: if consumers knew just how ubiquitous violent content is on YouTube, how very likely they and their children are to encounter that content, or how they the consumer bear the burden of policing the site for this

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<sup>1</sup> *See Terms of Service*, YOUTUBE, <https://www.youtube.com/static?template=terms> (last visited Feb. 19, 2020); *Community Guidelines*, YOUTUBE, <https://www.youtube.com/about/policies/#community-guidelines> (last visited Feb. 19, 2020).

<sup>2</sup> Federal Trade Commission Act, 15 U.S.C. § 45 (2018).

content, they would not use the platform. Further, if they knew that YouTube retraumatizes the families of murder victims by requiring them to repeatedly watch their family members die if they want the video of that death removed from the Internet, they would not use the platform.

It is indisputable that YouTube has the capacity to effectively police its platform for this content in adherence with its own Terms. Though YouTube chooses to enforce its policies for some types of content, in instances of moment of death and hoaxer content it ignores those policies in pursuit of financial gain. It is incumbent on YouTube to protect victims of violent crime in the same way it protects victims of revenge pornography and child exploitation. Andy Parker and families who have experienced similar tragedies do not deserve to endure the pain of knowing others are deriving pleasure and profit from the deaths of their loved ones. Since YouTube has for years failed to meet its own obligations, FTC action to prevent continued harmful consumer deception, including children's exposure to graphic, violent content, is both appropriate and necessary.

## **I. Factual and Legal Background**

### **A. Videos of Alison Parker's Murder**

Mr. Parker's daughter, Alison Parker, was working as a TV news reporter for a CBS affiliate station in Roanoke, Virginia on August 26, 2015. That morning, Alison was conducting a live interview in Moneta, Virginia covering an upcoming celebration of the 50<sup>th</sup> anniversary of Smith Mountain Lake. At 6:46 a.m., in the middle of the interview, Alison Parker and her cameraman, Adam Ward, were suddenly and brutally shot to death on live television by a mentally ill, disgruntled former reporter. After murdering Alison, the gunman touted his heinous



act by posting a self-recorded GoPro video showing him approaching his victims, firing at least eight shots, and then beginning to chase down Alison as she fled.

At the time, Mr. Parker had a YouTube account containing publicly available videos from his previous work as an actor. Mere hours after learning of his daughter's murder, Mr. Parker was inundated with threatening and distressing messages from conspiracy theorists and hoaxers on YouTube. They claimed the shooting was staged and accused him of being a paid actor pretending to be Alison's father.

These conspiracy hoaxers began posting the raw TV and GoPro footage of Alison's murder, both from the TV segment and the GoPro camera, on YouTube to spread their lies and further harass Mr. Parker.<sup>3</sup> Others uploaded the videos to YouTube for pure sadistic entertainment.<sup>4</sup> Mr. Parker, understandably, refuses to watch these videos. He further cannot stand the thought that videos of his daughter's murder are being used to promote dangerous conspiracy theories, for monetary gain, or simply for pleasure or shock value.

Ultimately, videos of Alison's dying moments continue to proliferate on YouTube nearly five years after her murder. These videos have been edited in numerous ways—in almost every case to increase their shock value. Moreover, the users who perpetuate this type of entertainment continue to harass Mr. Parker by discounting his suffering as fake. Yet to this day, Mr. Parker and his family have had only one tool available to defend themselves from such traumatic vitriol and the nightmare of seeing their daughter's death: watch these videos one-by-one in order to report them.

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<sup>3</sup> See, e.g., *WHY I DON'T BELIEVE THE VIRGINIA REPORTER SHOOTING*, YOUTUBE (Aug. 26, 2015), <https://www.youtube.com/watch?v=an0DQEVqGBw>; *Virginia Shooting 1st bullet missing confirmation*, YOUTUBE (Aug. 29, 2015), <https://www.youtube.com/watch?v=wGqqcu8Eako>.

<sup>4</sup> See, e.g., *WDBJ7 TV Reporter and Cameraman Shot Dead in Virginia Live*, YOUTUBE (Aug. 26, 2015), [https://www.youtube.com/watch?v=LWzeSWY6Z\\_k](https://www.youtube.com/watch?v=LWzeSWY6Z_k).

## B. Other Moment of Death and Hoax Videos on YouTube

Videos of Alison's murder are just a drop in the bucket. There are countless other videos on YouTube depicting individuals' moments of death, advancing hoaxes and inciting harassment of the families of murder victims, or otherwise violating YouTube's Terms of Service.<sup>5</sup> These videos include (1) raw footage of Brian Fields,<sup>6</sup> Antonio Perkins,<sup>7</sup> and others<sup>8</sup> being shot critically or fatally; (2) footage of a random murder perpetrated by Steven Stephens, including the bloody depiction of the victim's dead body<sup>9</sup>; (3) images of Bianca Devins' mutilated body in the aftermath of her being stabbed to death<sup>10</sup>; (4) footage of teenage Katelyn Davis as she prepares to hang herself<sup>11</sup>; (5) videos claiming that the murders of Shanann Watts and her children were part of a conspiratorial hoax<sup>12</sup>; and (6) videos promoting the outrageous conspiracy theory that the mass shooting of schoolchildren at Sandy Hook was a staged hoax.<sup>13</sup> A complete list of offending videos cited to in this complaint is located in Appendix A.

Many of these videos have remained on YouTube for several years, despite violating the site's Terms of Service. As such, they have collectively been viewed millions of times.

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<sup>5</sup> There are so many individual links to footage associated with each incident that it would be impossible to catalogue them all or name them here. The specific links cited to in this complaint represent only a few of the most easily accessible versions of each video; they are often available on the first page of results when a victim's name is searched. All videos cited to in this complaint are detailed in Appendix A.

<sup>6</sup> See App. A, Exh. 6.

<sup>7</sup> See App. A, Exh. 7.

<sup>8</sup> See, e.g., App. A, Exh. 9–10.

<sup>9</sup> See App. A, Exh. 8.

<sup>10</sup> See App. A, Exh. 16–18.

<sup>11</sup> See App. A, Exh. 19.

<sup>12</sup> See App. A, Exh. 14–15.

<sup>13</sup> See App. A, Exh. 13.

## C. YouTube's Terms and Practices for Dealing with Violent Content

YouTube is a video sharing platform owned by Google. YouTube alone earns approximately \$16 to \$25 billion in annual revenue.<sup>14</sup> Much of that revenue comes from advertising before, between, and within videos.<sup>15</sup> Additionally, YouTube profits from user's data, including which videos they click on, by using that data to shape its targeted advertisements.<sup>16</sup> Currently, YouTube has roughly 2 billion monthly users,<sup>17</sup> including hundreds of millions of users in the United States.<sup>18</sup> Eighty-five percent of American teenagers use YouTube, making it the most used online platform by American teens.<sup>19</sup> YouTube requires that these teens use the site with their parents' permission.<sup>20</sup>

### 1. YouTube's Terms of Service

Use of YouTube's platform is subject to its Terms of Service.<sup>21</sup> These Terms articulate that any user who does not understand or does not accept any part of the Terms of Service may not use the site.<sup>22</sup> YouTube's broad Terms of Service are outlined in a single web page.<sup>23</sup> They generally discuss permissible uses of the platform, the rights of content uploaders, and

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<sup>14</sup> Daisuke Wakabayashi, *YouTube Is a Big Business. Just How Big Is Anyone's Guess*, N.Y. TIMES (July 24, 2019), <https://www.nytimes.com/2019/07/24/technology/youtube-financial-disclosure-google.html>.

<sup>15</sup> *Id.*

<sup>16</sup> Ben Popken, *Google Sells the Future, Powered by Your Personal Data*, NBC NEWS (May 10, 2018, 4:30 AM), <https://www.nbcnews.com/tech/tech-news/google-sells-future-powered-your-personal-data-n870501>.

<sup>17</sup> Todd Spangler, *YouTube Now Has 2 Billion Monthly Users, Who Watch 250 Million Hours on TV Screens Daily*, VARIETY (May 3, 2019, 10:14 AM), <https://variety.com/2019/digital/news/youtube-2-billion-users-tv-screen-watch-time-hours-1203204267/>.

<sup>18</sup> *YouTube.com Competitive Analysis, Marketing Mix and Traffic*, ALEXA, [https://www.alexa.com/siteinfo/youtube.com#section\\_traffic](https://www.alexa.com/siteinfo/youtube.com#section_traffic) (last visited Feb. 19, 2020).

<sup>19</sup> Monica Anderson and Jingjing Jiang, *Teens, Social Media & Technology 2018*, PEW (May 31, 2018) <https://www.pewresearch.org/internet/2018/05/31/teens-social-media-technology-2018/>.

<sup>20</sup> YouTube requires users to be at least 13 years old. Users between age 13 and 18 require a parent or guardian's permission. *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?template=terms> (last visited Feb. 19, 2020).

<sup>21</sup> *Terms of Service*, *supra* note 20.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

YouTube’s ability to terminate or suspend accounts, as well as a brief covering of other legal rights.<sup>24</sup>

However, YouTube’s Terms also state that use of the service is subject to YouTube’s Community Guidelines and its Policy, Safety and Copyright Policies—counting these together as the “Agreement.”<sup>25</sup> This means that, by using the platform, consumers agree not only to YouTube’s Terms of Service, they also explicitly acknowledge and agree to adhere to the Community Guidelines and separate Policies. However, these two subsidiary sets of terms are contained on separate pages to which users would have to individually navigate.<sup>26</sup> In fact, in order to grasp the full breadth of YouTube’s terms, users would have to navigate through well over twenty different web pages to read each of these policies. For this reason, what the platform chooses to say on the initial “Terms of Service” page is incredibly significant because a majority of YouTube’s users will never navigate beyond this first page. The first pages of the incorporated Community Guidelines and Policies are similarly important for their headline nature.

YouTube acknowledges that content which violates its Community Guidelines also violates its Terms.<sup>27</sup> Because YouTube’s Community Guidelines are incorporated into its Terms of Service, all references to the site’s Terms in this complaint also refer to those Guidelines.

YouTube’s Terms inform consumers that YouTube “may remove or take down” content that they “reasonably believe... is in breach of this Agreement.”<sup>28</sup> The platform’s Community Guidelines identify what kind of content is violative, and therefore warrants removal or account termination. YouTube prohibits “violent or graphic” content, including footage of “physical

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Community Guidelines*, YOUTUBE, <https://www.youtube.com/about/policies/#community-guidelines> (last visited Feb. 19, 2020); *Policy, safety, and copyright*, YOUTUBE, <https://support.google.com/youtube/topic/9223153> (last visited Feb. 19, 2020).

<sup>27</sup> *Terms of Service*, *supra* note 20.

<sup>28</sup> *Id.*



attacks,” “corpses,” and “blood or vomit” if the intent of the video is to “shock or disgust viewers.”<sup>29</sup> The Terms also prohibit “[f]ootage of corpses with massive injuries,” even in the absence of intent to shock or disgust viewers.<sup>30</sup> In addition to explicitly violent content, YouTube’s Terms prohibit “harmful or dangerous content,” including content “[p]romoting or glorifying violent tragedies” such as shootings.<sup>31</sup> In providing examples of prohibited content, YouTube specifically notes that “[f]ootage of violent crimes... that provide no education or explanation to viewers” violates the site’s violent content policy.<sup>32</sup> Importantly, this policy (as with YouTube’s other content regulations) extends not only to videos, but to video descriptions, comments, and “any other YouTube product or feature.”<sup>33</sup> YouTube makes clear that if content violates its Terms due to violence, or for any of the other reasons detailed below, it will “remove the content.”<sup>34</sup>

YouTube’s Terms of Service further prohibit harassment and hate speech. Hate speech includes “promoting violence or hatred” against people who are “victims of a major violent event” or who are related to victims.<sup>35</sup> This prohibition encompasses “dehumanizing” others by “comparing them to animals,” or “[denying] that a well-documented, violent event took place.”<sup>36</sup> YouTube explicitly identifies claiming victims of violence are actors as an example of content that violates its Terms.<sup>37</sup> Prohibited form of “harassment and cyberbullying” include

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<sup>29</sup> *Violent or graphic content policies*, YOUTUBE, <https://support.google.com/youtube/answer/2802008?hl=en> (last visited Feb. 19, 2020).

<sup>30</sup> *Id.*

<sup>31</sup> *Harmful or dangerous content policy*, YOUTUBE, <https://support.google.com/youtube/answer/2801964?hl=en> (last visited Feb. 19, 2020).

<sup>32</sup> *Violent or graphic content policies*, *supra* note 29.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Hate speech policy*, YOUTUBE, <https://support.google.com/youtube/answer/2801939?hl=en> (last visited Feb. 19, 2020).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

“dehumanizing” others and “[d]epicting an identifiable individual being murdered [or] seriously injured.”<sup>38</sup> Hoaxer videos on the platform fall into either or both of these prohibited categories.

## 2. *YouTube’s Removal Policies and Actual Practices*

The headings and other top-level content in YouTube’s Terms of Service do not indicate that community reporting is an integral part of successful content enforcement, do not describe to consumers how to report violative content, and do not divulge that the family members of victims of violence bear the burden of repeatedly watching that violence over and over again if they wish to have it removed from YouTube. Instead, the first page of YouTube’s Terms states that users *can* report content they believe violates the Terms.<sup>39</sup> The Terms do not indicate that this type of reporting is important to content management, as YouTube also states that posting violative content is “not allowed,” and simply that that “[YouTube] remove[s]” content that violates those policies.<sup>40</sup>

Only after navigating through three or four pages to part of YouTube’s support section do users encounter the statement, “[w]e rely on YouTube community members to report content that they find inappropriate.”<sup>41</sup> This page is also the first instance where the site informs potential content reporters that “[w]hen something is reported, it’s not automatically taken down.”<sup>42</sup> “Reported content is reviewed along the following guidelines: Content that violates our Community Guidelines is removed from YouTube.”<sup>43</sup> YouTube’s Terms of Service explain that

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<sup>38</sup> *Harassment and cyberbullying policy*, YOUTUBE, <https://support.google.com/youtube/answer/2802268> (last visited Feb. 19, 2020).

<sup>39</sup> *Terms of Service*, *supra* note 20.

<sup>40</sup> *See, e.g., Violent or graphic content policies*, *supra* note 29; *Hate speech policy*, *supra* note 35; *Harassment and cyberbullying policy*, *supra* note 38.

<sup>41</sup> *Report inappropriate content*, YOUTUBE, <https://support.google.com/youtube/answer/2802027> (last visited Feb. 19, 2020).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

“YouTube staff review reported videos 24 hours a day, seven days a week. A video can be reported at any time once uploaded to YouTube, and then it is reviewed by YouTube staff. If no violations are found by our review team, no amount of reporting will change that and the video will remain on our site.”<sup>44</sup> However, in some cases, YouTube’s content moderators incorrectly assess a violative video upon first review, and it wrongly stays on the platform until flagged.<sup>45</sup> And, in nearly all cases, the number of reports a video receives matters—according to volunteers who spend time locating and flagging violative videos, a single flag will not result in action from YouTube, while “mass reporting” has a higher chance of being effective.<sup>46</sup>

The following instructions, which are available only after navigating through at least three web pages in YouTube’s Terms, are available for how to report videos that violate YouTube’s rules:

- Sign in to YouTube;
- Below the player for the video you want to report, click More;
- In the drop-down menu, choose Report;
- Select the reason that best fits the violation in the video;
- Provide any additional details that may help the review team make their decision, including timestamps or descriptions of the violation.<sup>47</sup>

These are not the only reporting tools YouTube asks consumers to use. YouTube also offers a “reporting tool” and a webform for reporting “moment of death or critical injury

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<sup>44</sup> *Report inappropriate content: Report a video*, YOUTUBE, <https://support.google.com/youtube/answer/2802027> (last visited Feb. 19, 2020).

<sup>45</sup> Interview with *Anonymous*, Video Flagging Volunteer, HONR Network (Feb. 12, 2020) [hereinafter HONR Volunteer Interview]. App. B, Exh. 7.

<sup>46</sup> *Id.*

<sup>47</sup> *Report inappropriate content: Report a video*, *supra* note 44.

footage.”<sup>48</sup> These forms, like instructions on flagging videos, are difficult to find—requiring users to navigate through either three or four webpages knowing what they are looking for—and burdensome to complete. Describing the moment of death reporting webform, YouTube states, “We attempt to respect the wishes of families in regards to footage of their loved ones being critically injured. If you've identified content showing a family member during the moment of death or critical injury, and you wish to request removal of this content, please contact us using our webform.”<sup>49</sup>

The Moment of Death Content Removal webform itself states: “If you've identified content showing your family member during moment of death or critical injury, and you wish to request removal of this content, please fill in the information below. We carefully review each request, but please note that we take public interest and newsworthiness into account when determining if content will be removed. Once you've submitted your report, we'll investigate and take action as appropriate.”<sup>50</sup> To report moment of death content the webform requires the family members enter: their full legal name, email address, their relationship to the victim, and the URL(s) of the video(s) in question.<sup>51</sup> Family members are not able to flag content by subject or by the event it depicts, and cannot flag whole channels of violative content. Instead, they are forced to identify, watch, and flag each individual video depicting their family member’s death.

YouTube tells consumers that it reviews flagged content 24 hours a day, seven days a week,<sup>52</sup> and that reported content, once reviewed, is removed from the site if it violates the

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<sup>48</sup> *Report inappropriate content*, *supra* note 41.

<sup>49</sup> *Report inappropriate content: Moment of death or critical injury footage*, YOUTUBE, <https://support.google.com/youtube/answer/2802027> (last visited Feb. 19, 2020).

<sup>50</sup> *Moment of Death Content Removal*, YOUTUBE, <https://support.google.com/youtube/contact/momentdeath> (last visited Feb. 19, 2020).

<sup>51</sup> *See id.*

<sup>52</sup> *Report inappropriate content: Report a video*, *supra* note 44.

platform's Terms.<sup>53</sup> In reality, YouTube does not responsively or consistently address the content flagged by users.<sup>54</sup> Volunteers who spend hours each week monitoring YouTube for violative content often have to organize "mass reporting" efforts that can take days or weeks before any response from the platform; even after these efforts, videos often remain on the site.<sup>55</sup> As detailed below, there are videos which have been reported to YouTube, which violate the site's Terms, and which are several years old, but which nevertheless remain on the platform. This response is inconsistent with YouTube's stated policy of 24/7 review and removal of violative content.

#### **D. HONR Network**

To this day, Mr. Parker cannot bear to watch the video footage of his daughter's murder. Since reporting the videos to YouTube through their site is currently Mr. Parker's only recourse to get them removed, and since the reporting process requires that he watches the last moments of his daughter's life over and over, a group of volunteers has stepped in to help Mr. Parker, flagging videos one-by-one on his behalf. These volunteers donate their time to the unending cycle of tracking down videos of Alison's murder, similar violent and graphic content, and conspiracy-fueled diatribes harassing victims of this violence, and then navigating through YouTube's unresponsive reporting system to attempt to remove the videos.

The hundreds of volunteers who do this on behalf of Mr. Parker and other families in his unenviable position are known as the HONR Network. Started by Lenny Pozner in the wake of his son Noah's death in the 2012 Sandy Hook Elementary School shooting, the HONR Network is the only organization of its kind helping victims with this unexpected consequence of

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<sup>53</sup> *Report inappropriate content*, *supra* note 41.

<sup>54</sup> HONR Volunteer Interview, *supra* note 45.

<sup>55</sup> *Id.*

tragedy.<sup>56</sup> Immediately on the heels of Mr. Pozner’s loss of his young son, he was confronted with another terrible source of grief: he was aggressively targeted by conspiracy theorists who posted videos on YouTube claiming Noah’s death was a hoax and Mr. Pozner was a crisis actor.<sup>57</sup> Mr. Pozner, finding himself in Mr. Parker’s current position, began the torturous process of watching and reporting each video himself, reliving the worst moments of his life and weathering some of the most toxic hate the internet has to offer.<sup>58</sup> Through the HONR Network, Mr. Pozner now has roughly 400 volunteers who help him with the burdensome task of flagging violent and hateful videos.<sup>59</sup>

The Network has proved to be an invaluable tool: YouTube rarely, if ever, responds to a single instance of flagging, so when one volunteer finds a video, it’s link is circulated to the broader network so that each volunteer can add to the volume of flags.<sup>60</sup> To flag a video with sufficient specificity to have even a chance of taking action these viewers must view the disturbing content in its entirety and make precise note of violative content.<sup>61</sup> Even in these instances, YouTube’s response is inconsistent. With certain types of videos—particularly those involving copyright claims—YouTube’s response tends to be more swift and come after fewer reports have been made.<sup>62</sup> When reporting other content like murder videos or dangerous hoaxes, however, “mass reporting” is required to have even a chance of removal.<sup>63</sup> Conspiracy theories

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<sup>56</sup> Sandy Hook, HONR, <https://www.honrnetwork.org/sandy-hook> (last visited Feb. 19, 2020).

<sup>57</sup> *Id.*

<sup>58</sup> Since the Network’s inception in 2013, the group has secured the removal of thousands of videos on behalf of victims’ families. Lenny Pozner continues to manage the flagging and tracking of each video himself. *Id.*; Marc Sallinger, *Organization Scrubs Internet of Harassing Posts, Helps Family of Shanann Watts*, 9NEWS (Jan. 16, 2020, 5:04 PM), <https://www.9news.com/article/news/special-reports/watts-case/organization-scrubs-internet-of-harassing-posts-helping-family-of-shanann-watts/73-7598b0f8-c4b9-4daf-9a9d-ae4d3b5d2358>.

<sup>59</sup> Marc Sallinger, *supra* note 58.

<sup>60</sup> Individuals wishing to flag videos without access to or knowledge of such a network are simply a drop in the bucket. They must wait until other users stumble across the offending content and hopefully report it. *Id.*

<sup>61</sup> HONR Volunteer Interview, *supra* note 45.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

and hoaxes, despite promoting harassment and making threats towards victims of violence and their families, are among the hardest to successfully report and remove.<sup>64</sup>

Mr. Pozner personally remains at the helm of this effort. He is the only person in the Network who has been granted YouTube’s so-called “trusted flagger” status, which allows for expedited review of reported videos and enables the flagger to view the status of videos they have reported.<sup>65</sup> Without this position, other volunteers—and the average YouTube consumer—lack key information on the status of videos they have flagged. Therefore, for the network to provide effective assistance to victims, Mr. Pozner must continue to personally report and monitor each of the videos that HONR volunteers flag.

Astoundingly, even with this trusted flagger status, the removal of videos flagged by Mr. Pozner is spotty at best, and communication from YouTube remains opaque and often unhelpful. When flagging videos, Mr. Pozner and HONR Network volunteers must meticulously identify specific time stamps noting where in the video violent content takes place and writing descriptions of that violence. If they do not, YouTube will deny their requests out of hand.<sup>66</sup> To the dismay of Mr. Pozner and HONR Network volunteers, even when they repeatedly go through this process for videos of Alison’s murder, which clearly violate YouTube’s Terms, those videos are often not removed.<sup>67</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *YouTube Trusted Flagger Program*, YOUTUBE, <https://support.google.com/youtube/answer/7554338?hl=en> (last visited Feb. 19, 2020).

<sup>66</sup> *See* HONR Volunteer Interview, *supra* note 45.

<sup>67</sup> *Id.*

## **II. YouTube’s Terms of Service and Community Guidelines contain representations and omissions that are likely to materially mislead reasonable consumers, and therefore constitute deceptive trade practices**

YouTube’s Terms of Service both misrepresent and omit information critical to reasonable consumers’ decision to use the platform. The Federal Trade Commission's 1983 Policy Statement on Deception noted that in all deception cases, “there must be a representation, omission, or practice that is likely to mislead the consumer,”<sup>68</sup> and that such a representation, omission or practice must be material to a reasonable consumer.<sup>69</sup> In examining whether a representation, omission, or practice is likely to mislead the consumer, the FTC looks to both express and implied claims. In cases of express claims, the representation itself establishes its meaning and whether or not that meaning is misleading.<sup>70</sup> In cases of implied claims, the FTC examines the representation itself, but also looks to the extrinsic evidence to evaluate whether the implied claim is misleading.<sup>71</sup> In addition to representations, the FTC also considers cases involving the omission of material information as a potentially misleading practice where disclosure of certain information would be necessary to prevent practices or other claims from being misleading.<sup>72</sup>

When evaluating a consumer’s reasonableness, the FTC examines the entire advertisement, transaction or course of dealing to evaluate whether the act or practice is likely to mislead.<sup>73</sup> In general, the FTC considers many factors in determining the reaction of the ordinary consumer to a claim or practice. Omission cases are no different: the Commission examines the

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<sup>68</sup> Letter from James C. Miller I, Chairman, Fed. Trade Comm’n, et al., to Rep. John D. Dingell (Oct. 14, 1983), reprinted in *Cliffdale Assocs., Inc.*, 103 F.T.C. 110 app. (1984), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm> [hereinafter Deception Policy Statement].

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*



failure to disclose in light of expectations and understanding of the typical buyer regarding the claims made.<sup>74</sup>

The FTC defines a material representation as one which is likely to affect a consumer's choice or conduct regarding a product.<sup>75</sup> Certain categories of representation are presumptively material, including (1) express claims<sup>76</sup>; (2) claims where the seller knew or should have known that the claim was false<sup>77</sup>; (3) intentionally implied claims<sup>78</sup>; (4) claims or omissions that significantly involve health, safety, or together areas with which a reasonable consumer would be concerned.<sup>79</sup> If a claim is not material *per se*, the FTC will nevertheless find it material in fact if there is evidence (including, for example, a reliable survey of consumers, credible testimony, or other similar sources) that the claim or omission is likely to be considered important by consumers.<sup>80</sup>

Here, YouTube has made three primary misrepresentations and omissions to its consumers that constitute deceptive trade practices. First, YouTube, through its Terms of Service, misrepresents to consumers that they will not encounter violent or dangerous content on the platform, and that such content is not common on the platform. Second, YouTube omits from its representations to consumers the fact that the burden is on those consumers—and often on the families of victim of violence—to police and secure the removal of violent or dangerous content on the platform. And third, YouTube, through its Terms of Service, misrepresents to consumers that when violent and dangerous content is found on the platform, and particularly when it is flagged or reported by consumers, it will actually be removed in accordance with YouTube's

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

policies. These misrepresentations and omissions deceive consumers acting reasonably under the circumstances, and are material both *per se* (both because they involve express claims and because they implicate consumer health and safety) and in fact (because consumers would not use YouTube or would not allow their children to use YouTube if they knew the truth about violent and dangerous content on the platform). As such, YouTube’s behavior constitutes a deceptive trade practice in violation of the Federal Trade Commission Act.

**A. YouTube’s Terms of Service represent to consumers that they will not encounter violent or otherwise dangerous content, and that such content is not common on its platform**

YouTube makes a number of claims throughout their Terms of Service that give the reasonable impression that violent and hoaxer content does not proliferate on their site, and that the company is proactive and responsive in removing it. The Community Guidelines expressly prohibit “violent or graphic”<sup>81</sup> content, including footage of “physical attacks”<sup>82</sup> and “corpses;”<sup>83</sup> footage of “violent crimes... that provide no education or explanation to viewers,”<sup>84</sup> or that “[p]romot[es] or glorif[ies] violent tragedies”<sup>85</sup> like shootings; and content “promoting violence or hatred” against people who are “victims of a major violent event.”<sup>86</sup> YouTube makes clear that if content violates these and related Terms, “[YouTube will] remove the content.”<sup>87</sup> Critically, statements about the need for community members to monitor and enforce YouTube’s own Terms of Service do not appear near these straightforward claims. Even when YouTube

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<sup>81</sup> *Violent or graphic content policies, supra note 29.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Harmful or dangerous content policy, supra note 31.*

<sup>86</sup> *Hate speech policy, supra note 35.*

<sup>87</sup> *E.g., Violent or graphic content policies, supra note 29; Harmful or dangerous content policy, supra note 31; Hate speech policy, supra note 35.*

provides links for consumers to learn more about enforcement procedures, they in no way indicate the critical role of reporting in removing violative content, leaving the impression that YouTube removes this content through a robust, proactive enforcement process. Collectively, these express and implied claims, taken in context of the entire Terms of Service text, mislead consumers by creating the impression that this content is not on YouTube and that YouTube is responsible for removing that content.

In reality, YouTube is rife with content that violates these Terms but which YouTube has not removed. Violent content is commonplace on YouTube's platform. In addition to Alison's violent murder, footage of several other shooting deaths is easily accessible on YouTube, despite violating numerous provisions of its Terms of Service. For example:

- In 2016, Brian Fields was shot while live streaming on Facebook. Later, the raw, unedited footage of this attack was uploaded to YouTube.<sup>88</sup> The footage depicts Fields being shot, and then shows the gunman run into the frame and repeatedly fire his weapon. Later in the video, the gunman walks over the frame once again before standing on top of the phone. This footage has been on YouTube, featured in dozens of videos, since 2016.
- In 2016, Antonio Perkins was shot and killed while live streaming on Facebook, and the raw footage of the murder was uploaded to YouTube.<sup>89</sup> The footage shows Perkins's face as he is shot and falls to the ground, and then provides a view of his killer as the killer drives away. Later in the video, the camera moves as Perkins attempts to get up, before ultimately dying. This footage, accessible in numerous links, has been on YouTube since 2016.

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<sup>88</sup> *Facebook live shooting Chicago man shot while streaming live - Graphic Warning*, YOUTUBE (Apr. 1, 2016), [https://www.youtube.com/watch?v=lulQI1O3S20&has\\_verified=1](https://www.youtube.com/watch?v=lulQI1O3S20&has_verified=1).

<sup>89</sup> *Man Gets Shot Live On Facebook In Chicago Again!*, YOUTUBE (June 16, 2016), [https://www.youtube.com/watch?v=8NgJtWCB12E&has\\_verified=1](https://www.youtube.com/watch?v=8NgJtWCB12E&has_verified=1).

- In 2017, Steve Stevens filmed himself randomly approaching a man named Robert Goodwin on the street and shooting him to death. Footage of this incident is currently accessible on YouTube.<sup>90</sup> This YouTube video, uploaded in 2017, shows Stevens approaching Goodwin and pointing a gun at Goodwin's head. It depicts Stevens, at point blank range, pulling the trigger and shooting Goodwin to death. And it shows nominally blurred video footage of Goodwin's corpse, including a large stream of blood from the lethal bullet wound.
- In 2018, a man named Prentis Robinson, who had been working to reduce drug use in his community, was streaming on Facebook when a gunman raced up to him and shot him to death. This video, too, is easily accessible on YouTube.<sup>91</sup> Videos on the platform show the gunman running at Robinson while pointing a gun at his head. The footage goes on to show the gunman walking over Robinson's fallen body, gun in hand.

Other instances of content depicting gruesome non-shooting deaths are also easily accessible on YouTube, such as the brutal stabbing of Bianca Devins and the tragic suicide of Katelyn Davis. On July 14, 2019, Bianca Devins was stabbed to death and was nearly beheaded in the process. The killer uploaded gruesome images of her dead body to Instagram, and later uploaded images of his attempted suicide as he sliced his own throat. Though the images were ultimately removed from Instagram, videos containing the images are rampant on YouTube. Videos show uncensored or nominally censored images of Bianca's corpse covered in blood, her

<sup>90</sup> *USD\$ 50,000 To Find Facebook Killer*, YOUTUBE (Apr. 18, 2017), <https://www.youtube.com/watch?v=EoGI3204Wys>.

<sup>91</sup> *Prentis Robinson shot while live on Facebook*, YOUTUBE (Feb. 18, 2019), <https://www.youtube.com/watch?v=Htiko8NsfDM>; *Prentis Robinson Livestreams His Own Death*, YOUTUBE (Feb. 26, 2019), [https://www.youtube.com/watch?v=S8r9YtNIW\\_k](https://www.youtube.com/watch?v=S8r9YtNIW_k).

torn throat, and her killer’s suicide attempt.<sup>92</sup> Some of these videos are artificially brightened to make the violent content *more* visible and shocking to viewers.<sup>93</sup>

In 2016, twelve-year-old Katelyn Davis committed suicide by hanging herself, recording the event on video. Footage of her suicide is still accessible on YouTube.<sup>94</sup> One so-called “reaction video,” which shows a side-by-side of Katelyn’s suicide and the uploader’s response to the event, includes over five minutes of disturbing footage.<sup>95</sup> The video shows Katelyn securing a noose to a tree and wrapping it around her neck before repeatedly testing its effectiveness by jumping off of the tree. The video cuts to black only an instant before the final, successful jump. Imposed over this footage are various viewer comments that sexualize this twelve-year-old girl and call into question whether her suicide actually occurred. These comments include viewers saying “that gave me a HUGE erection!” or that they had “just jerked” to the footage, and that they “reckon it’s a fugazi [fake].”<sup>96</sup> Despite the video’s disturbing content and inappropriate messages, that violate YouTube’s terms of service, it has remained on YouTube for over two years.


Additionally, YouTube allows dangerous hoaxer content to exist on its platform in spite of that content’s explicit violation of YouTube’s hate speech and harassment Terms of Service, which prohibit “dehumanizing” members of protected classes including by comparing them to

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<sup>92</sup> *FACTS & TRUTH about her death - BIANCA DEVINS*, YOUTUBE (July 15, 2019), <https://www.youtube.com/watch?v=wpBuxVPtiZ8>; *[VIRAL] Teka teki di balik pembunuhan tragis Bianca Devins! DI PENGG4AL KEPALANYA!*, YOUTUBE (July 15, 2019), [https://www.youtube.com/watch?v=j9\\_QQ0ABbSI](https://www.youtube.com/watch?v=j9_QQ0ABbSI).

<sup>93</sup> *Bianca Devins texts lightened & closer up PLUS other convos*, YOUTUBE (July 20, 2019), <https://www.youtube.com/watch?v=gIoPNpWELGo>.

<sup>94</sup> *12 Year Old YouTuber Ends Her Life Live on Live.Me*, YOUTUBE (Jan. 4, 2017), [https://www.youtube.com/watch?v=wi4ZhJjVAeg&has\\_verified=1](https://www.youtube.com/watch?v=wi4ZhJjVAeg&has_verified=1) (cutting away from the video footage right at the moment of death, but playing full audio of Katelyn dying and many silent minutes until the moments right before her body is found).

<sup>95</sup> *Katelyn Nicole Davis - ONE YEAR LATER* , YOUTUBE (Dec. 30, 2017), <https://www.youtube.com/watch?v=dlu3LJoFyZM&bpctr=1581029183>.

<sup>96</sup> *Id.*

animals, and “deny[ing] that a well-documented, violent event took place.”<sup>97</sup> YouTube, by its own Terms of Service, includes “victims of a major violent event and their kin” as members of a protected class,<sup>98</sup> yet it repeatedly fails to protect this class. This includes videos that relate to brutal and tragic acts of violence, including the massacre of schoolchildren at Sandy Hook Elementary School. One video, which attempts to incite harassment against Lenny Pozner and the HONR Network by claiming that they are aggressive toward hoaxers, includes images of YouTube comments by the uploader calling Pozner a “sad broken man” and an “old man with an allegedly dead son, lulz.”<sup>99</sup> In the video description, the uploader complains that he “never got an answer” to whether there were original death certificates to prove that the massacre in fact happened.<sup>100</sup> This video has been on YouTube since 2017.

Lastly, several videos have been uploaded to YouTube which promote conspiracy theories associated with the tragic murder of Shanann Watts and her children. One video entitled “Fake Chris Watts Murders all an act! Wake Up People!”, which has been available on YouTube for nearly a year, claims that Chris Watts is a “paid actor” and that his murders of Shanann and her children was “fake news 100%.”<sup>101</sup> The video continues by showing various public records searches and news footage to support this hoax theory by claiming Chris Watts is not in a real prison and that Shanann and her children have “no death certs.”<sup>102</sup> Another similar video claims the murders may have been “a hoax, a PSYOP [a government psychological operation], a sort of

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<sup>97</sup> *Harassment and cyberbullying policy*, *supra* note 38; *Hate speech policy*, *supra* note 35.

<sup>98</sup> *Hate speech policy*, *supra* note 35.

<sup>99</sup> *Sandy Hook Facts & HONR Network Delete Comments*, YOUTUBE (Mar. 11, 2017), <https://www.youtube.com/watch?v=SI8eQsyFKmY&feature=youtu.be>, at 3:13.

<sup>100</sup> *Id.*

<sup>101</sup> *Fake Chris Watts Murders all an act! Wake Up People!*, YOUTUBE (Apr. 21, 2019), <https://www.youtube.com/watch?v=NeQEdY8VwNA>.

<sup>102</sup> *Id.* at 3:45–4:30.

a military operation [or] a complete media distraction.”<sup>103</sup> The uploader continues to question “if this was staged [or] if they were all crisis actors,” and even questions whether they “aren’t actually dead.”<sup>104</sup>

All of these videos represent clear violations of YouTube’s Terms. But despite depicting violence and promoting conspiracy theories, these videos are not only available on YouTube, they have been for years. Though YouTube represents to consumers that this content is prohibited, will rarely be encountered, and is removed from the site, in reality murder videos and hoax content are commonplace on the site and remain accessible long after they are uploaded. In fact, nearly two-thirds of parents report that their children have encountered inappropriate content on the site.<sup>105</sup> This reality flies in the face of YouTube’s express representation to consumers.

The platform’s statements that violent content and hate speech are “not allowed”<sup>106</sup> and that “[they]’ll remove it” are express claims about YouTube’s product and content. The meaning of express claims is drawn from their face value.<sup>107</sup> Undeniably, these statements convey the plain message that this content is not available on YouTube. This failure to perform the promised service of removal is precisely the type of behavior that the FTC considers deceptive.<sup>108</sup> By failing to honor its express promises to consumers, YouTube violates its own Terms and misrepresents the reality of how pervasive violent and dangerous content is on the platform.

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<sup>103</sup> *WATTS HOAX! Fact or Fiction?*, YOUTUBE (July 22, 2019), <https://www.youtube.com/watch?v=o8coNtyxDbE> at 0:55.

<sup>104</sup> *Id.* at 3:52–3:56.

<sup>105</sup> *Common Sense and SurveyMonkey Poll Parents on YouTube and Technology Addiction*, COMMON SENSE MEDIA (Feb. 22, 2018), <https://www.common-sense-media.org/about-us/news/press-releases/common-sense-and-surveymonkey-poll-parents-on-youtube-and-technology>.

<sup>106</sup> *E.g., Violent or graphic content policies*, *supra* note 29.

<sup>107</sup> Deception Policy Statement, *supra* note 68.

<sup>108</sup> *See id.*

Examining the factors surrounding these claims in order to garner the “net impression,” as the FTC did in *American Home Products*, buttresses this plain meaning.<sup>109</sup> The entire document, taken as the many-paged Terms of Service Agreement, does very little to counter the impression left by these cut-and-dry statements. In *Firestone*, the FTC found that scrupulous detail and accuracy were required in claims regarding a product’s safety.<sup>110</sup> Claims regarding the prevalence of harmful and violent content on YouTube are a matter of the site’s safety. Yet, any statements describing user reporting in any detail are not presented until pages after those that create the impression that this content is proactively removed by YouTube, and even those do not amount to scrupulous detail about the burden of this process.<sup>111</sup> Further, the Terms never explicitly say that it may take months or years to take down videos—instead they imply the opposite by saying that YouTube “carefully reviews” the content 24 hours a day, 7 days a week.<sup>112</sup> Taken together, these statements are far more than likely to mislead consumers.

While YouTube expressly makes these representations to consumers, it also implies to consumers that this content is prohibited and promptly removed from the site. The mere existence of YouTube’s flagging and reporting processes imply that the company removes violative content, because if it did not, there would be no point to consumer reporting. Additionally, extrinsic evidence—from YouTube touting so-called success in removing violative content<sup>113</sup> to its statements to the press boasting about its “immediate action” to delete

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<sup>109</sup> See *American Home Products*, 98 F.T.C. 136, 374 (1981), *aff’d*, 695 F.2d (3d Cir. 1982).

<sup>110</sup> *Firestone*, 81 F.T.C. 398, 456 (1972), *aff’d*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973).

<sup>111</sup> See *Terms of Service*, *supra* note 20; *Report inappropriate content*, *supra* note 41.

<sup>112</sup> *Community Guidelines*, *supra* note 26.

<sup>113</sup> *YouTube Community Guidelines enforcement*, YOUTUBE, <https://transparencyreport.google.com/youtube-policy/removals?hl=en> (last visited Feb. 19, 2020).



content violating its “clear policies.”<sup>114</sup>—paints a picture of a concerted effort by YouTube to represent to its consumers that this content is not just prohibited, but consistently and quickly removed from its platform. This is not true, and the falsity amounts to an unlawful deception of consumers under the FTC Act.

**B. YouTube engages in a deceptive omission by failing to represent that average users and family members of victims of violence bear the responsibility of flagging offensive content**

YouTube’s Terms of Service purposefully mislead consumers about the nature of content removal on its site. The labyrinthian nature of the collective Terms, which requires users to navigate at least three web pages of dense Terms of Service that for a reasonable consumer may as well be 100 pages before obtaining information about the reporting process functions as an omission. Companies deceive their consumers and violate the FTC Act when their omissions likely lead consumers to reach false beliefs about the product.<sup>115</sup> This happens when disclosure of withheld information is necessary to prevent a transaction from being misleading.<sup>116</sup> Thus, providing incomplete information can constitute a material deception if consumers would draw incorrect conclusions from what partial information they are given.<sup>117</sup>

YouTube deceives consumers by omitting information that consumers need from the most visible portions of its Terms of Service. The platform omits (1) the fact that consumers will likely encounter this content and are largely responsible for flagging videos and enforcing YouTube’s policies, and (2) the fact that the flagging process is incredibly burdensome and

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<sup>114</sup> Julia Alexander, *YouTube terminates more than 400 channels following child exploitation controversy*, THE VERGE (Feb. 21, 2019), <https://www.theverge.com/2019/2/21/18234494/youtube-child-exploitation-channel-termination-comments-philip-defranco-creators>.

<sup>115</sup> Deception Policy Statement, *supra* note 68.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

inconsistent, particularly for videos involving harassment and moment of death footage. These omissions are materially deceptive because this information is vital to consumers' decisions to use YouTube and because the partial information provided in its place is misleading when not accompanied by these additional necessary details.

The first page of YouTube's Terms of Service states only that users "can report" content they believe does not comply with terms.<sup>118</sup> This statement does not imply that any onus for removing content lies on consumer reporting. This is especially true in light of language on the same page, letting content generators know that "[YouTube] may remove" content that is in breach—implying the platform is that the reins of the removal process.<sup>119</sup> Consumers navigating only to this first page of the Terms can easily feel as though they had an understanding of the primary policies of the platform, and that YouTube itself was entirely managing the offensive content on the site. User reporting is portrayed as above and beyond—a function for the most sensitive consumers.

Consumers who do navigate further into the Terms of Service, following the link to the page for Community Guidelines, do not have this impression changed, and in fact would reasonably have strengthened their conviction that YouTube diligently takes down the content. On the second page of their Terms of Service, in describing each category of violative content, YouTube repeats that that form of content is "not okay to post."<sup>120</sup> Were users to click through one more page to examine the specific categories of content that YouTube identifies as disallowed, they would see that each category is "not allowed" and that YouTube states flatly, "we'll remove it."<sup>121</sup>

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<sup>118</sup> *Terms of Service*, *supra* note 20.

<sup>119</sup> *Id.*

<sup>120</sup> *See, e.g., Harassment and cyberbullying policy*, *supra* note 38.

<sup>121</sup> *See, e.g., id.*

Only when a user has navigated through three or four pages of the Terms of Service, to the page titled “Report Inappropriate Content” do they encounter the admission that YouTube relies on community members to report content. It is flatly unreasonable to expect reasonable consumers to navigate to the page about reporting content in order to realize that this burden falls much more heavily on users than YouTube lets on. By leaving out the fact that viewers play an integral role in moderating the content on the platform, YouTube perpetuates an omission of material information that amounts to deception. Disclosure of the large burden of reporting that falls to consumers—especially of moment of death and hoaxer content—is as a baseline necessary to prevent consumers from being misled about the role that they play in content removal. Omission of such a disclosure is far more misleading in the face of the many statements on the three pages consumers navigate through in order to get to the eventual admission. Not only are consumers deceived by omission in the headline Terms of Service, their deception is deepened by repeated omission on the subsequent two pages through which they navigate and by affirmative statements that contradict the eventual admission.

Even once the few consumers who will ever make it to YouTube’s “Reporting Content” page realize that YouTube relies on consumers to report material, the Terms are misleading. Nowhere does YouTube disclose to consumers just how prevalent this content is and therefore how big a reporting burden they are putting on users. Even by the time a user has navigated to the reporting instructions, they have only encountered statements that make YouTube’s internal removal process seem robust and efficient—such as “[YouTube] will remove”<sup>122</sup>—and make consumer reporting seem a rarity but an option—“you can report it to us.”<sup>123</sup> To remedy the deceptive impression left by these statements, YouTube never discloses to users, not anywhere

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<sup>122</sup> See, e.g., *Violent or graphic content policies*, *supra* note 29.

<sup>123</sup> *Terms of Service*, *supra* note 20.

on its many-layered Terms of Service, that this content continues to proliferate on the site. The single statement atop their Community Guidelines page that “you might not like everything you see on YouTube”<sup>124</sup> effectively downplays the volume of disturbing content on its site, omitting the vital information that offensive content is widespread and easy to access and that much of the content users may come across does in fact violate YouTube’s terms of service, but has not been taken down.

Nor does the site provide any information to counter the misleading impression consumers garner from repeated language that the platform will take offending content down. The effect of these omissions is that consumers believe that YouTube itself is screening and taking down all disallowed videos and thus that offending content only rarely ever makes it to users’ screens. In the face of evidence of how much of this content continues to proliferate on the site and that YouTube is not driving the removal process as fervently as they represent, these omissions are flatly deceptive.

The site further omits necessary information by failing to meaningfully divulge how average users must report content and that the burden of removing harassing hoax videos and moment of death videos falls to those affected. Even after navigating the three or four pages to YouTube’s “Report Inappropriate Content” page, users are not presented with a full accounting/disclosure of whom the burdens of removal rest on.<sup>125</sup> This information is so buried that users would only find it if they went looking, which almost exclusively happens when they find themselves a victim. This form of omission is analogous to the incomplete marketing of a product that the FTC has already found deceptive. YouTube’s failure to disclose how harassment and moment of death videos are taken down is practically the same as Ford’s failure to disclose a

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<sup>124</sup> *Community Guidelines, supra* note 26.

<sup>125</sup> *Report inappropriate content, supra* note 41.

potential mechanical issue upfront.<sup>126</sup> In *Ford Motor Co.*, the omission of the information from the company’s communications with consumers constituted deception despite the fact that the problem would not present to every user.<sup>127</sup> Here, not every YouTube consumer will find themselves needing to report the very videos harassing them or showing the death of a family member, but the possibility and implications of being the victim of this type of content is significant to consumers.

**C. YouTube engages in a deceptive misrepresentation because even when family members and community members go through the meticulous flagging process, content is not taken down in terms with YouTube’s Terms of Service**

Even when violative videos are reported to YouTube—with all the deceptive difficulty that entails—YouTube does not consistently remove those videos. This is in direct contradiction to YouTube’s representation to consumers that “content that violates [YouTube’s] Community Guidelines is removed from YouTube.”<sup>128</sup> As a result, even violative content that has been flagged or reported by the community remains on YouTube for years.

To this day, for example, videos depicting Alison Parker’s brutal murder are easily accessible on YouTube, despite being reported to YouTube countless times. Many of these videos are several years old. These videos are neither educational nor newsworthy, and to the contrary are often explicitly designed to glorify violence, shock and disgust viewers, or promote conspiracies about Alison’s death.

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<sup>126</sup> *In re Ford Motor Company*, 96 F.T.C. 362 (1980).

<sup>127</sup> *Id.*

<sup>128</sup> *Report inappropriate content*, *supra* note 41.

YouTube videos display the raw and often unedited footage of Alison Parker’s live TV murder.<sup>129</sup> In these videos, viewers can see the initial gunshots being fired at Alison, her screaming as she is shot and turning to flee from the gunfire, the camera recording the attack fall to the ground as Adam Ward was also murdered, and the gunman walking through the frame. In at least one instance of a video showing this murder, the video thumbnail depicts an edited image from the shooter’s GoPro footage, with a gun pointed directly at Alison and with a Star of David transposed over Alison’s head with the word “SHOOT” inside of it.<sup>130</sup> This video, which has been reported to YouTube,<sup>131</sup> remains on the site today, and has been on the site since 2015. Other videos edit the murder footage with the sole intent of increasing its shock value; for example, one video depicts the shooting but edits in a curtain of blood and “James Bond” style music to emphasize the violent murder taking place.<sup>132</sup> This video has also been up on YouTube since 2015, despite being reported for its violent content.

Additionally, videos featuring GoPro footage of Alison’s murder, taken by the murderer himself, are widely accessible on YouTube.<sup>133</sup> These videos show the gunman approach Alison and repeatedly point his gun at her head and torso. Ultimately, the footage shows the shooter repeatedly firing at Alison—in some videos, as many as eight times.<sup>134</sup> In the videos you can

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<sup>129</sup> E.g., *Reporteras Asesinadas en Vivo*, YOUTUBE (Aug. 26, 2015), [https://www.youtube.com/watch?v=4bg923tE4bg&has\\_verified=1](https://www.youtube.com/watch?v=4bg923tE4bg&has_verified=1); ※閲覧注意 米記者 生放送中 発砲 事件, YOUTUBE (Aug. 27, 2015), <https://www.youtube.com/watch?v=fiFgdfsbjhc>; *Actual Footage TV Reporter & Cameraman Shot Dead On Live TV*, YOUTUBE (Aug. 29, 2015), [https://www.youtube.com/watch?v=amOvX-rYdJk&has\\_verified=1](https://www.youtube.com/watch?v=amOvX-rYdJk&has_verified=1).

<sup>130</sup> *СТРЕЛЬБА ПО Live TV на пресс ИНТЕРВЬЮ - Бриджуотер Плаза, Вирджиния WDBJ7*, YOUTUBE (Aug. 27, 2015), [https://www.youtube.com/watch?v=w\\_kuxHzCU20&list=WL&index=2&t=0s](https://www.youtube.com/watch?v=w_kuxHzCU20&list=WL&index=2&t=0s), at 0:10.

<sup>131</sup> App. B, Exh. 2.

<sup>132</sup> *WDBJ7 TV Reporter and Cameraman Shot Dead in Virginia Live*, YOUTUBE (Aug. 26, 2015), [https://www.youtube.com/watch?v=LWzeSWY6Z\\_k](https://www.youtube.com/watch?v=LWzeSWY6Z_k).

<sup>133</sup> *Virginia Shooting 1st bullet missing confirmation*, YOUTUBE (Aug. 29, 2015), <https://www.youtube.com/watch?v=wGqqu8Eako>; *Suspect in shooting of Virginia TV crew posts video online*, YOUTUBE (Aug. 26, 2015), [https://www.youtube.com/watch?v=j9Ok708DCbs&has\\_verified=1&bpctr=1580861325](https://www.youtube.com/watch?v=j9Ok708DCbs&has_verified=1&bpctr=1580861325).

<sup>134</sup> *DBJ TV SHOOTING BRYCE WILLIAMS SHOOTER TWITTER VIDEO*, YOUTUBE (Jan. 30, 2016), [https://www.youtube.com/watch?v=uB1Qaakaf8c&has\\_verified=1](https://www.youtube.com/watch?v=uB1Qaakaf8c&has_verified=1).

hear not just the gunfire, but Alison’s screams as she is murdered. Other videos of this footage are edited explicitly to increase their ability to shock and disgust viewers (with at least one also featuring animal cruelty, which also violates YouTube’s Terms of Service).<sup>135</sup> At least one video even transposes this GoPro footage with the live TV footage of Alison’s murder to more graphically and shockingly depict the event.<sup>136</sup> These videos have been accessible on YouTube for years, despite their violent nature and despite reports for violating YouTube’s Terms of Service.

In many other instances, hoaxer content that pertains directly to Alison Parker’s murder remains on YouTube, in spite of frequent reporting of such content. In one video, clearly titled “WHY I DON’T BELIEVE THE VIRGINIA REPORTER SHOOTING,” the uploader describes Alison’s murder as “an orchestrated event” and that “they knew about it ahead of time.”<sup>137</sup> He continues on to refer to Alison as a “stupid cow” and insinuates that she is a member of the Illuminati.<sup>138</sup> Another video refers to supposed inconsistencies between the TV and GoPro footage of Alison’s murder, before stating that the incident is “a bit weird” and that the footage could have been altered or that the event itself may have been “a false flag” event.<sup>139</sup> This video also shows images from both sets of the footage of Alison’s murder, including a gun being pointed at Alison’s head moments before it is fired.<sup>140</sup> These videos have been accessible on YouTube since 2015.

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<sup>135</sup> *Live shooting wdbj (Extra Footage)*, YOUTUBE (Aug. 26, 2015), <https://www.youtube.com/watch?v=k6oMAGGsXrE>. See *Violent or graphic content policies*, *supra* note 29.

<sup>136</sup> See *Shooting of News reporter & cameraman [FULL VIDEO]*, YOUTUBE (Aug. 28, 2015), [https://www.youtube.com/watch?v=SOuUHZOHVok&has\\_verified=1](https://www.youtube.com/watch?v=SOuUHZOHVok&has_verified=1).

<sup>137</sup> *WHY I DON'T BELIEVE THE VIRGINIA REPORTER SHOOTING*, YOUTUBE (Aug. 26, 2015), <https://www.youtube.com/watch?v=an0DQEVqGBw>, at 0:05–0:18.

<sup>138</sup> *Id.* at 0:28–0:30.

<sup>139</sup> #90, *News Reporter & Camera man shot dead*, YOUTUBE (Aug. 26, 2015) <https://www.youtube.com/watch?v=b-T4VgiHyPg>, at 1:23–1:33.

<sup>140</sup> *Id.* at 1:12–1:15.

Mr. Parker, his associates, and the HONR Network have all attempted to flag, report, or otherwise remove this content for years. As a part of these efforts, volunteers are required to watch the entirety of countless murder and hoax videos over and over to flag them individually, meticulously noting timestamps and describing the content in the videos.<sup>141</sup> Nevertheless, YouTube at best inconsistently responds to their efforts, and in many cases it is impossible to tell what action, if any, YouTube has taken. HONR Network volunteers note that it takes “days or weeks” of constant mass reporting before YouTube takes action - if they take action at all.<sup>142</sup> This reporting process is inconsistent and confusing in spite of Lenny Pozner, who heads the HONR Network, having trusted flagger status with YouTube. This status allows the Network a better understanding of which videos they have reported have been viewed and removed by YouTube. Consumers without this trusted status or a network of volunteers, conversely, are left entirely in the dark.

YouTube’s inconsistent and burdensome enforcement practices, even when community members diligently report violent or dangerous content, is a clear deceptive trade practice. In addition to implying to consumers that YouTube proactively and diligently monitors the content on its platform, YouTube’s Terms describe reporting in simple, straightforward ways that emphasize the ease of reporting violative content<sup>143</sup> and state that when content is reported and is violent or dangerous, it *will* be removed.<sup>144</sup> In reality neither of these things are true.

YouTube, in offering flagging and reporting as services for consumers to better their experience on the site, also makes the implied representation that the reporting tools are functional and effective. FTC guidelines state that products offered to consumers come with the

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<sup>141</sup> HONR Volunteer Interview, *supra* note 45.

<sup>142</sup> *Id.*

<sup>143</sup> *Report inappropriate content*, *supra* note 41.

<sup>144</sup> *Community Guidelines*, *supra* note 26.



implication that they are fit for their purported use.<sup>145</sup> Here, the flagging and reporting tools offered by YouTube fail spectacularly in their purported use. Users must organize in large groups to successfully flag content, and even then, the effort takes days, weeks, or is ineffective altogether. Without trusted flagger status, users have no effective way of monitoring their reporting efforts, making it near-impossible to secure removal of content if their first flag is ignored. Such ineffective tools may as well not exist at all, and it is deceptive to imply to consumers that they are a legitimate way to improve users' experience on the site.

**D. These representations and omissions are misleading to reasonable consumers under the circumstances**

To constitute a deceptive trade practice, a representation, omission, or practice must be deceptive to a consumer acting reasonably under the circumstances.<sup>146</sup> A consumer is reasonable if their reaction to or interpretation of the representation, omission, or practice is reasonable.<sup>147</sup> A consumer interpretation is presumptively reasonable if it is the interpretation that a company intended to convey.<sup>148</sup> Further, an interpretation may be reasonable even if it is not the intended interpretation and even if it is not the only reasonable interpretation available to consumers.<sup>149</sup> The FTC examines the reasonable impression upon an “average listener” or “typical buyer,” and as such, accurate information in the text or fine print of a representation may not remedy a deceptive headline.<sup>150</sup> Similarly, accurate information later provided to a consumer may not remedy a deceptive representation at the point of sale or agreement.<sup>151</sup>

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<sup>145</sup> Deception Policy Statement, *supra* note 68.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

Here, YouTube’s representations, omissions, and practices are clearly likely to deceive consumers acting reasonably under the circumstances. The consumer interpretations that (1) users will not encounter frequent, long-present content on YouTube that violates the site’s Terms of Service, (2) inappropriate content that is on YouTube will be proactively removed, and (3) inappropriate content that is on YouTube will be promptly removed in response to community flagging, are presumptively reasonable because it is the interpretation that YouTube intends to convey to consumers. YouTube’s Terms of Service state that users who encounter violative content “can report it,” but in no way indicate that they *must* report it for it to be removed.<sup>152</sup> Indeed, the very Community Guidelines that YouTube incorporates into its Terms state that when “content violates [the policies], we’ll remove the content.”<sup>153</sup> In making this representation to consumers, YouTube in no way indicates that removal in fact depends on community reporting, and that in practice YouTube allows violative content to remain on its platform even long after it has been reported by the community. Instead, YouTube intentionally conveys the impression that violative content will be removed without the need for individual users to frequently encounter and engage with violent or offensive videos—and it certainly conveys the impression that when reported, violative content is promptly removed. By accepting YouTube’s intended impressions, consumers act reasonably, and so are reasonably deceived by the false and incomplete nature of that impression.

Even if not presumptively reasonable, consumers impressions that (1) YouTube proactively regulates the content on its platform, (2) reactively removes violative content in response to community reporting, and (3) as a result, users will not frequently encounter long-present content that violates YouTube’s Terms of Service, are reasonable in fact. The “headline”

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<sup>152</sup> *Terms of Service*, *supra* note 20.

<sup>153</sup> *Violent or graphic content policies*, *supra* note 29.

information in YouTube’s Terms of Service and Community Guidelines states that the site “carefully reviews flagged content... to determine whether there’s a violation” in a video.<sup>154</sup> However, according to YouTube, “flagged content” does not require individual user flagging; the site actually publicly touts the fact that over 90 percent of videos that are flagged are flagged automatically.<sup>155</sup> Given these representations, a consumer can reasonably believe that YouTube will proactively flag and remove violent content using its automatic flagging and subsequent review system, and as such (1) the content will not persist on the platform, and (2) individual user flagging, user engagement with violent or disturbing videos, and repeated, detailed reporting is not necessary for a violative video to actually be removed from the site. As described above, in reality these reasonable impressions are untrue, and are the result of deceptive representations and omissions by YouTube.

#### **E. Representations and omissions in YouTube’s Terms of Service are material**

YouTube’s deceptive behavior materially affects consumers. A company’s representations and omissions are material when they are likely to affect a consumer’s choice or conduct regarding a product.<sup>156</sup> In some instances, a representation or omission may be presumptively material, such as when it involves a company’s express claim or when it implicates issues of consumer health and safety.<sup>157</sup> Even when not presumptively material, a representation or omission is material in fact when extrinsic evidence demonstrates that the misrepresentation may influence consumer behavior.<sup>158</sup>

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<sup>154</sup> *Community Guidelines*, *supra* note 26.

<sup>155</sup> *YouTube Community Guidelines enforcement*, *supra* note 113.

<sup>156</sup> Deception Policy Statement, *supra* note 68.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

Here, YouTube’s misleading representations and omissions are presumptively material, not only because they are express claims, but because the negative effects of exposure to violent content—particularly for adolescents—seriously implicates consumer health and safety. Even aside from this presumptive materiality, the misleading representations and omissions are material in fact, because if consumers knew the truth about violent and dangerous content on YouTube, they would likely choose not to use or allow their children to use the platform.

1. *YouTube’s misrepresentations and omissions are presumptively material because they are express claims and significantly involve consumer health and safety*

YouTube’s Terms of Service are materially deceptive because they lead consumers to make decisions about using YouTube on the basis of information YouTube knows is false. The violations in YouTube’s Terms of Service come from both misleading claims and constructive omissions. Express claims are presumptively material because the company makes them with the intent that they will impact consumer evaluations.<sup>159</sup> Misleading claims and omissions are material if they are “likely to affect the average consumer in deciding” whether to use the product or service.<sup>160</sup> Crucially, materiality extends beyond decisions to purchase a product to include consumers deciding how to act or any other information the consumer is likely to consider important.<sup>161</sup> In fact, materiality exists wherever claims or omissions implicate consumer safety.<sup>162</sup> Information that goes to the quality or warranties of a product is also likely material.<sup>163</sup> YouTube’s express claims and further omissions in its Terms of Service go directly

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<sup>159</sup> *Id.*

<sup>160</sup> Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, 1965, pp. 86-87. 29 FR 8326 (1964).

<sup>161</sup> Restatement on Torts, Second, Section 538(2).

<sup>162</sup> *Firestone*, *supra* note 110.

<sup>163</sup> Deception Policy Statement, *supra* note 68.

to the safety and quality of its product as interpreted by reasonable consumers and are therefore undeniably material.

YouTube's Terms of Service boast that it does not allow graphic or violent conduct on the site. Express claims in this manner are presumptively material because they are stated with the intent that they have an effect on the consumer.<sup>164</sup> Here, such an unequivocal statement, regardless of how it is walked back in subsequent web pages, reasonably leads users to believe that they will not encounter any such material. YouTube makes such a broad statement upfront precisely because it knows this is the message that consumers are looking for and it intends to draw consumers to its service with such a claim.

Moreover, these claims go to paramount safety issues of what consumers and their children will irrevocably be exposed to online. Exposure to violent videos like these has immediate and long-lasting health effects, both to general viewers and to those attempting to report and remove dangerous content. Those closest to this content, like volunteers with the HONR network, note the intense stress caused by initial exposure to murder and hoax videos.<sup>165</sup> Over time, these same viewers become desensitized to the content.<sup>166</sup> There are additional significant health risks associated with this type of desensitization, particularly for adolescent viewers—desensitization due to exposure to violent content correlates with general aggression and anxiety.<sup>167</sup> Further, in the age of livestreamed violence and auto playing videos, there is more to controlling what we and our children are exposed to online than simply the content we

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<sup>164</sup> *Id.*

<sup>165</sup> HONR Volunteer Interview, *supra* note 45.

<sup>166</sup> *Id.*

<sup>167</sup> Policy Statement—Media Violence, 124 AM. ACAD. PEDIATRICS 1495, 1497 (Nov. 2009), <https://pediatrics.aappublications.org/content/pediatrics/124/5/1495.full.pdf>.

click on. With these technologies, the health and safety risks associated with violent content affect even those consumers who do not seek out that content.

The FTC understands that claims that go to the health and safety of a product are always central to consumers' decisions to use it. The deleterious effect that this content has on viewers' mental health, and particularly on the mental health of child viewers who use the platform (with parental consent informed by YouTube's Terms) implicate serious public health concerns. YouTube's deception about something with such serious health concerns is material *per se*.

2. *Even if not material per se, YouTube's deceptions are material in fact because consumers would not use YouTube if they knew this content was allowed to proliferate on the platform*

If the Commission does not find presumptive materiality based on the above analysis, it may nevertheless find materiality based on evidence that the claim or omission is likely to be considered important by consumers. Here, there is no shortage of evidence that consumers consider these representations by YouTube material.

All consumers, and especially parents, are widely concerned with violent content across media. About three-fourths of parents believe that the prevalence of violent content in media from movies to TV to video games contributes to violence in society.<sup>168</sup> This belief likely extends to content on YouTube, which is not only analogous to, it often includes, various types of other media—including TV and video game footage—meaning that parents would not be okay with their children encountering violent content on YouTube. However, two thirds of parents currently believe that YouTube is at least “somewhat safe,” more than half believe that

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<sup>168</sup> *Here Are The Results of Survey USA Mkt Research Study #20182*, COMMON SENSE MEDIA (Jan. 7, 2013, 8:15 AM), [https://www.common sense media.org/sites/default/files/uploads/landing\\_pages/full\\_cap-csm\\_report\\_results\\_1-7-13.pdf](https://www.common sense media.org/sites/default/files/uploads/landing_pages/full_cap-csm_report_results_1-7-13.pdf).

YouTube does at least an “acceptable” job of controlling violent content, and only fourteen percent believe their children “frequently” encounter violent content on the site.<sup>169</sup> These beliefs do not reflect the reality of the longstanding prevalence of violent and extreme content on YouTube that this complaint has demonstrated. Instead, these misconceptions are due to the platform’s blatant misrepresentations about the safety of its site.

Given parents’ and other users’ serious concerns about violent content, it follows that many consumers would choose not to use YouTube—or would not allow their children to use YouTube—if they knew the truth about the violent, dangerous content on the platform and how difficult it is to have that content removed (and therefore limit future exposure to it). A consumer or parent deceived by YouTube’s statements that violent or graphic content is “not allowed” on the site, and that “[YouTube will] remove the content” when they find it, may have no problem using, or allowing their teenage child to use, the site. However, that same consumer may very well decide *not* to use or allow their child to use the site if they knew the reality: that YouTube allows murder videos to accumulate views for nearly five years without taking any action to remove them. And that same consumer might *not* use or allow their child to use the site if they knew efforts to report violent and dangerous content, especially on the individual level, would essentially be ineffective.

Additionally, consumers take moral and ethical considerations into account when deciding which products and services to use.<sup>170</sup> Consumers consider corporations’ impacts on groups of people other than themselves when deciding whether to engage with the corporation.<sup>171</sup>

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<sup>169</sup> *Common Sense Media/SurveyMonkey YouTube Poll Topline*, COMMON SENSE MEDIA, <https://www.common sense media.org/sites/default/files/uploads/pdfs/commonsense-surveymonkey-youtube-topline.pdf> (last visited on Feb. 19, 2020).

<sup>170</sup> Bro. Vinai Viriyavidhayavongs & Siriwan Yothmontree, *The Impact of Ethical Considerations in Purchase Behavior: A Propaedeutic To Further Research*, 22 ABAC J. 1, 10 (Sept. 2002), <https://pdfs.semanticscholar.org/6f33/551ff46d2d8cca5addc2d7bff2e410b880ae.pdf>.

<sup>171</sup> *Id.*

For these consumers, YouTube’s deceptions are material because they hide the immoral nature of the platform’s flagging and content enforcement processes. By hiding the fact that the family members of murder victims must individually sift through violent videos and essentially beg YouTube to remove them, and by hiding the nauseating level of detail that users must provide to flag a video, the platform conceals the trauma that it puts its users through. Simply put, a consumer may well not wish to use a service that treats consumers—and especially victims of violence—that way. By deceiving consumers, YouTube robs them of that choice and materially changes their behavior.

### **III. Conclusion**

For years, YouTube has lied to its consumers by setting rules in its Terms of Service but in practice ignoring those rules entirely. Despite telling its consumers that it prohibits and removes violent, dangerous content on its platform, YouTube has allowed murder videos and pernicious conspiracy theories to fester on its site for years. These videos demean victims of heinous crimes, direct harassment toward the families of those victims, and have negative health effects on consumers. Given the serious negative impact of these videos on all consumers, it is unconscionable that YouTube has deceived its consumers about the existence, prevalence, and ability to remove this content. In the continued absence of action of any kind by YouTube, the FTC must step in to end the company’s blatant, unrepentant consumer deception under the FTC Act. We urge the FTC to take swift and strong action to address this harmful behavior.

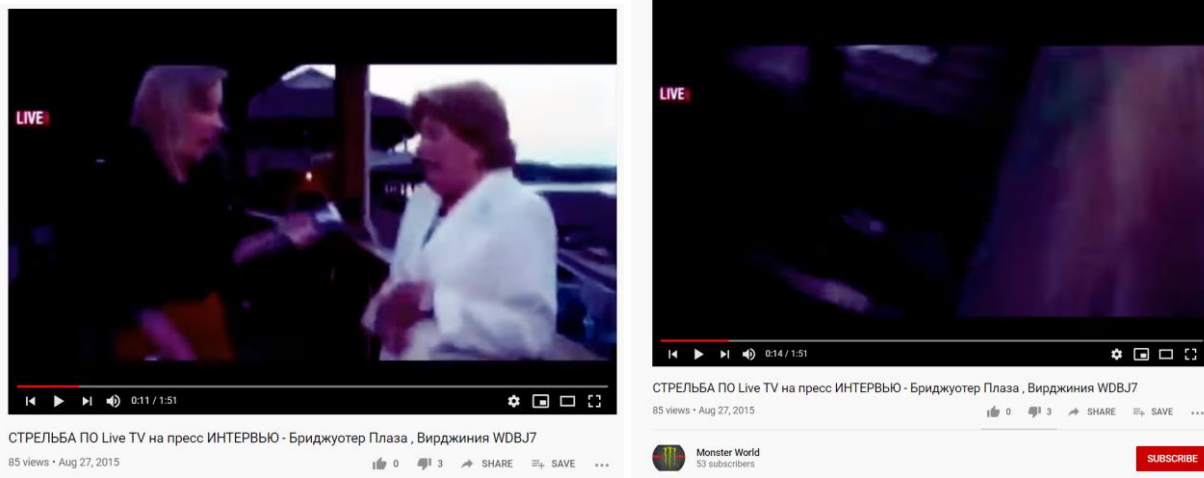
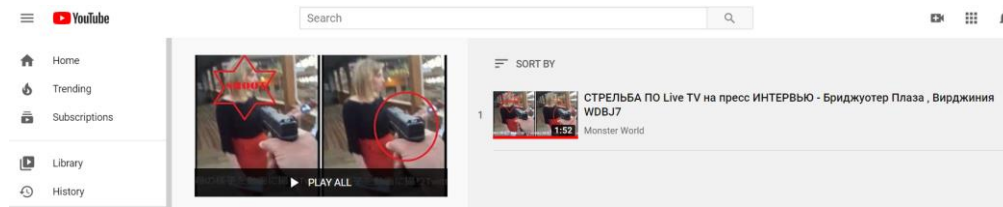




**Appendix A:  
Videos Violating YouTube's Terms of Service**



## Exhibit 1. Alison Parker TV Murder Video #1



In this video, raw TV footage of Alison Parker’s murder, including gunshots, Alison’s screams, and Adam Ward falling to the ground, is repeatedly looped. The video thumbnail displays an image of the gun pointed at Alison’s head, along with a Star of David around Alison that says “SHOOT” inside of it.

Video Link: [https://www.youtube.com/watch?v=w\\_kuxHzCU20&list=WL&index=2&t=0s](https://www.youtube.com/watch?v=w_kuxHzCU20&list=WL&index=2&t=0s)

Video up Since: August 27, 2015

Timestamps: 0:10-0:17, 0:33-0:40, 0:58-1:05

Exhibit 2. Alison Parker TV Murder Video #2



WDBJ7 TV Reporter and Cameraman Shot Dead in Virginia Live

1,653 views • Aug 26, 2015

8 4 SHARE SAVE ...

C Claude Rains

SUBSCRIBE

In this video, viewers see footage of Alison Parker’s murder, including gunshots, Alison’s screams, and Adam Ward falling to the ground. The video is intentionally “shocking” by including music and an animated curtain of blood.

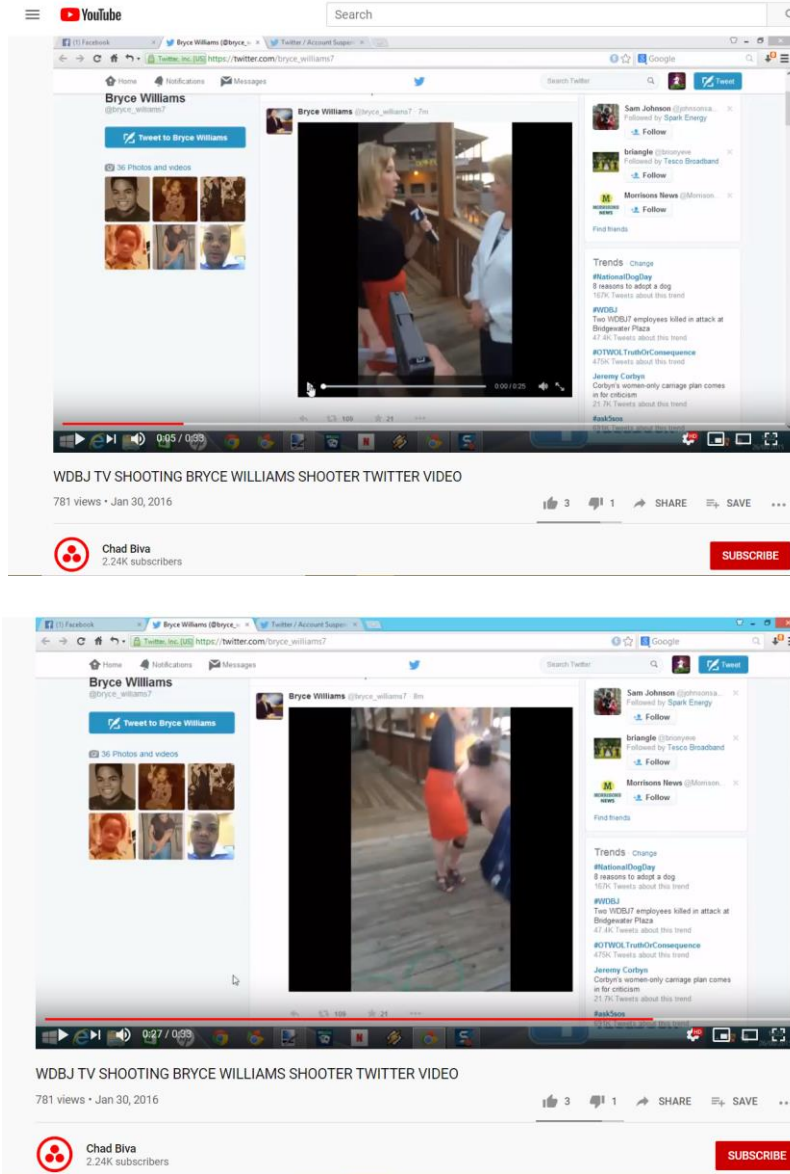
Video Link: [https://www.youtube.com/watch?v=LWzeSWY6Z\\_k](https://www.youtube.com/watch?v=LWzeSWY6Z_k)

Video up Since: August 26, 2015

Timestamp: Entire video.



### Exhibit 3. Alison Parker GoPro Murder Video #1



In this video, viewers see the raw GoPro footage of Alison’s murder, as it was uploaded to social media by the killer himself. The footage clearly depicts the shooter approaching Alison and pointing his gun at her, before firing eight gunshots directly at her as she screams and runs away.

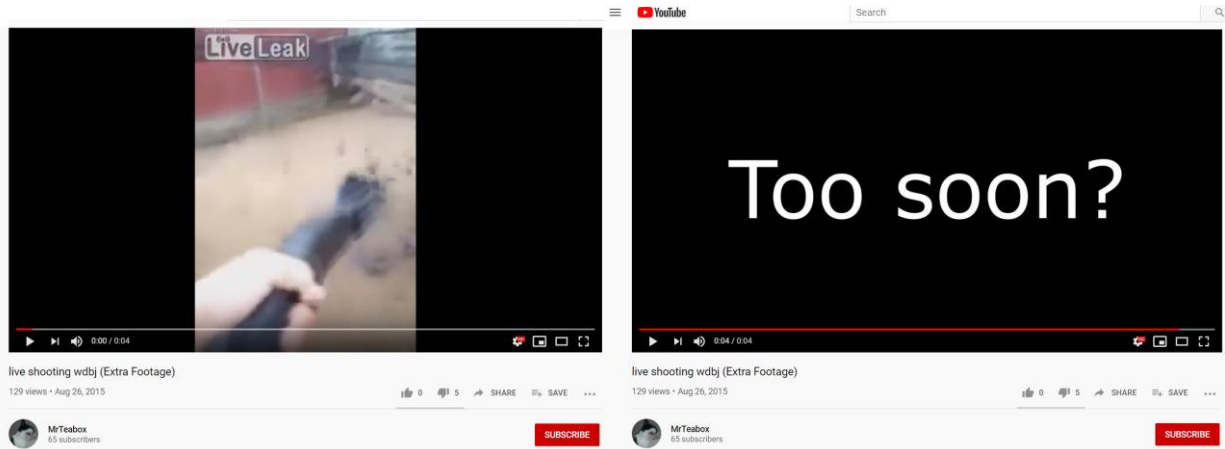
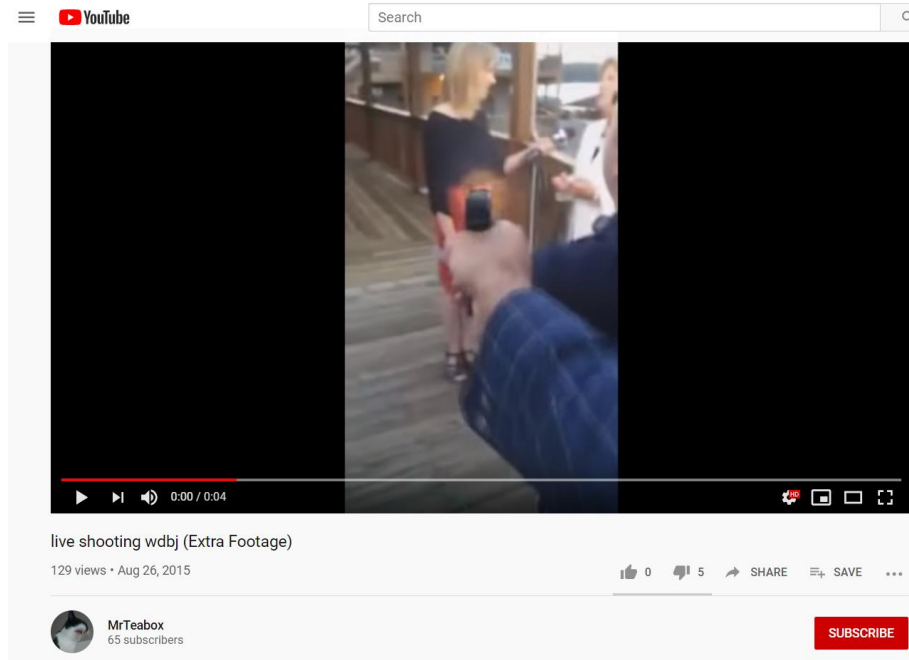
Video Link: [https://www.youtube.com/watch?v=uB1Qaakaf8c&has\\_verified=1](https://www.youtube.com/watch?v=uB1Qaakaf8c&has_verified=1)

Video up Since: January 30, 2016

Timestamps: Entire video.



## Exhibit 4. Alison Parker GoPro Murder Video #2



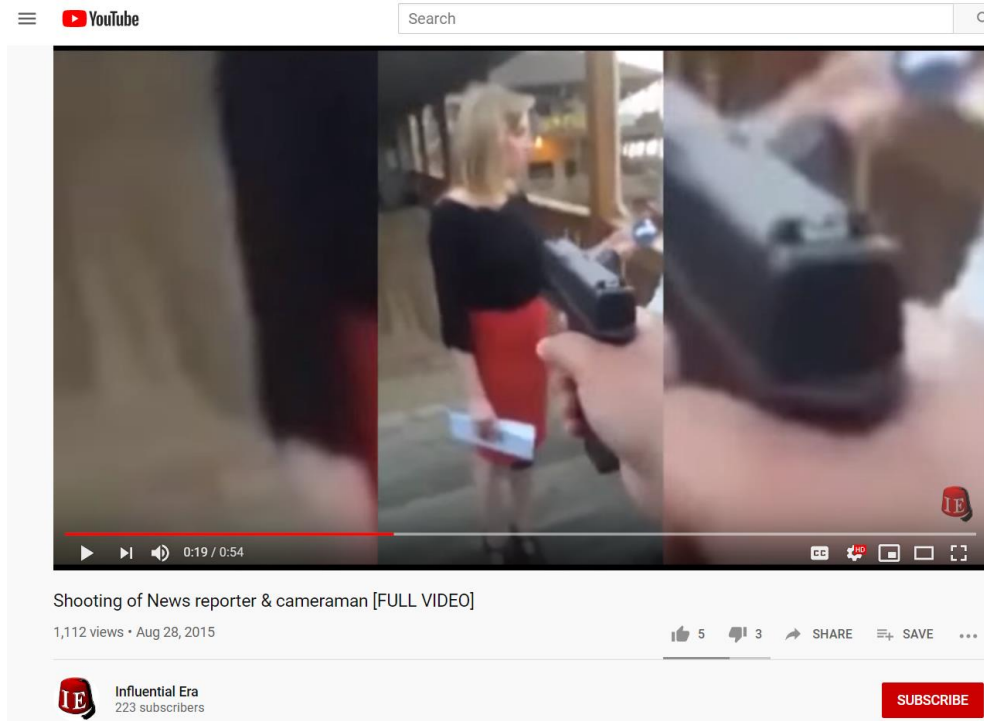
In this video, viewers see a rapid cut between footage of a chicken being shot to death and GoPro footage showing the first gunshot fired at Alison. The video cuts quickly between the images to increase its shock value, and demeans Alison by displaying a blank screen that says “Too Soon?”

Video Link: <https://www.youtube.com/watch?v=k6oMAGGsXrE>

Video up Since: August 26, 2015

Timestamp: Whole video.

## Exhibit 5. Alison Parker Combined Footage Murder Video



In this video, viewers see both the raw TV footage and the raw GoPro footage of Alison Parker's murder, including gunshots, Alison's screams, and Adam Ward falling to the ground. This video combines the two sources of footage to maximize the video's pure shock value.

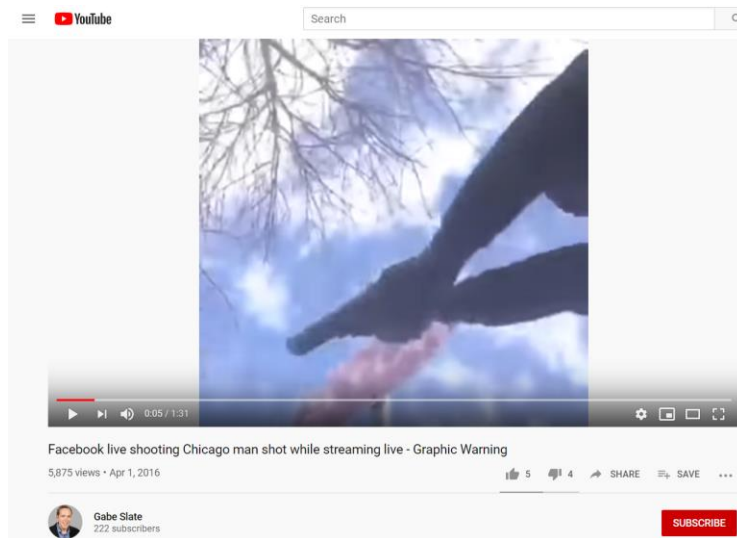
Video Link: [https://www.youtube.com/watch?v=SOonUHzOHVok&has\\_verified=1](https://www.youtube.com/watch?v=SOonUHzOHVok&has_verified=1)

Video up Since: August 28, 2015

Timestamps: 0:19-0:26, 0:41-0:48



## Exhibit 6. Brian Fields Shooting Video



In this video, viewers witness the shooting of Brian Fields as captured while he was streaming to Facebook Live. The video shows Fields being shot and his phone falling to the ground, followed by the gunman running into the frame and firing multiple gunshots at others in the area. Later, the gunman returns and leers into the camera before standing over it.

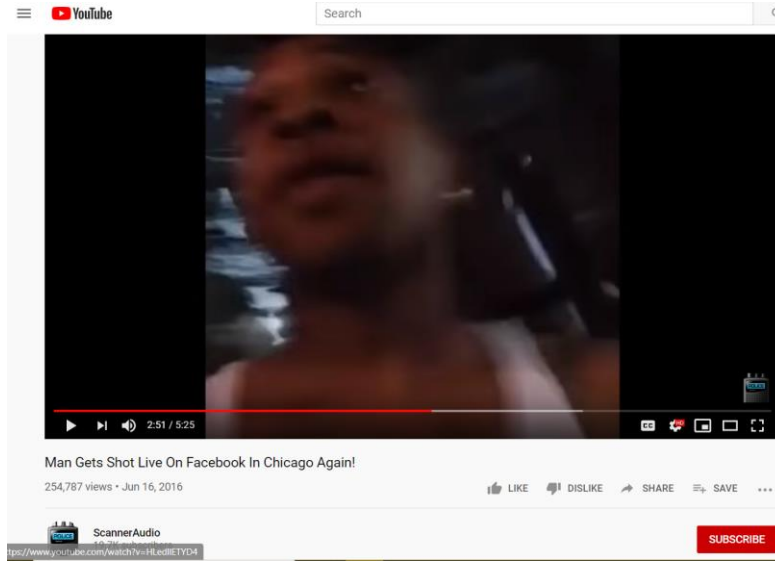
Video Link: [https://www.youtube.com/watch?v=lulQI1O3S20&has\\_verified=1](https://www.youtube.com/watch?v=lulQI1O3S20&has_verified=1)

Video up Since: April 1, 2016

Timestamps: 0:00-0:08



## Exhibit 7. Antonio Perkins Murder Video



In this video, viewers witness Antonio Perkins's livestreamed murder. The video shows Perkins's face as he is shot and falls to the ground. It then displays the murderer driving away, as well as Perkins's attempts to get up, before Perkins ultimately dies.

Video Link: [https://www.youtube.com/watch?v=8NgJtWCB12E&has\\_verified=1](https://www.youtube.com/watch?v=8NgJtWCB12E&has_verified=1)

Video up Since: June 16, 2016

Timestamps: 2:50-3:32





## Exhibit 8. Robert Goodwin Murder Video



In this video, viewers see Steve Stevens film himself shooting and killing Robert Goodwin randomly on the street. Stevens approaches Goodwin, points a gun at his head, and pulls the trigger, killing Goodwin. The video then shows nominally blurred footage of Goodwin's dead body, including a large stream of blood.

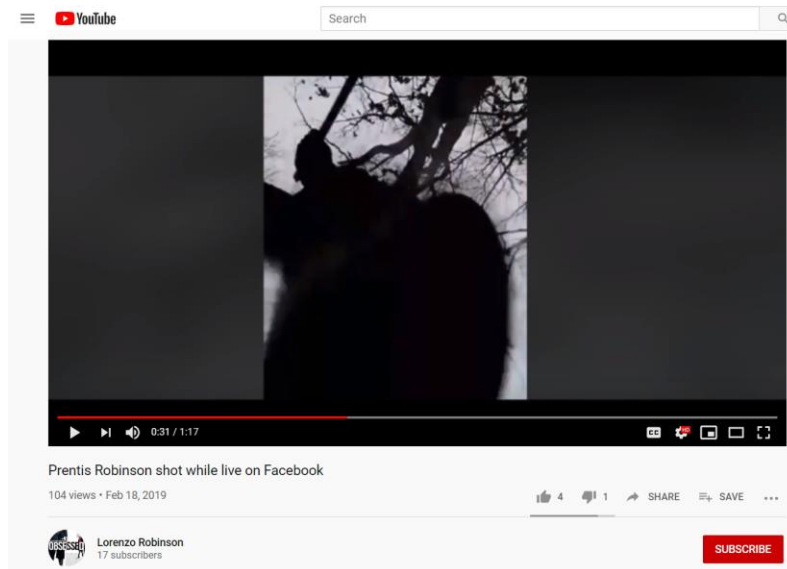
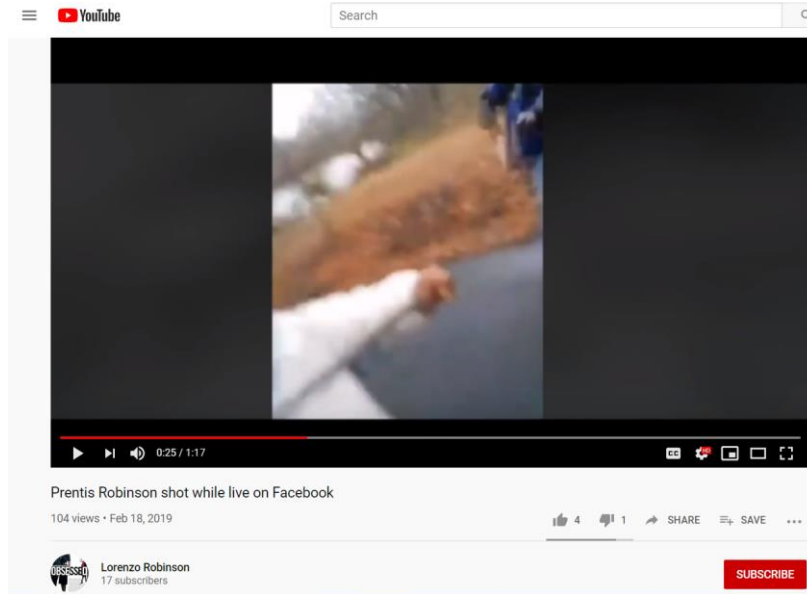
Video Link: <https://www.youtube.com/watch?v=EoGI3204Wys>

Video up Since: April 18, 2017

Timestamps: 0:00-0:12



## Exhibit 9. Prentis Robinson Murder Video #1



In this video, viewers see a gunman run at Prentis Robinson as Robinson walks down the street. The gunman dives at Robinson, pointing and firing a gun. Robinson then falls to the ground, and viewers see the gunman walking over his body.

Video Link: <https://www.youtube.com/watch?v=Htiko8NsfDM>

Video up Since: February 18, 2019

Timestamps: 0:22-0:32



## Exhibit 10. Prentis Robinson Murder Video #2



In this video, viewers see a gunman run at Prentis Robinson as Robinson walks down the street. The gunman dives at Robinson, pointing and firing a gun. Robinson then falls to the ground, and viewers see the gunman walking over his body.

Video Link: [https://www.youtube.com/watch?v=S8r9YtNIW\\_k](https://www.youtube.com/watch?v=S8r9YtNIW_k)

Video up Since: February 26, 2018

Timestamps: 1:30-1:37



## Exhibit 11. Alison Parker Hoax Video #1

The screenshot shows a YouTube video player interface. The video title is "WHY I DON'T BELIEVE THE VIRGINIA REPORTER SHOOTING" with 15,048 views and an upload date of August 26, 2015. The video player shows a video player with a play button and a progress bar. The transcript overlay on the right side of the video player shows the following text:

Transcript

00:06 hi this is an orchestrated event at the  
00:08 very least it wasn't straight all on  
00:10 hoax i don't know i don't care man  
00:11 people die they sure do  
00:13 right but anything on the news is  
00:15 orchestrated and they knew about it  
00:17 ahead of time this is just from CBS News  
00:19 right you know and look it shouldn't be  
00:23 this easy this is their article you  
00:26 scroll down halfway through why is this  
00:29 stupid cows blotter i blotted out why is  
00:33 it blotted out this guy what did you

English (auto-generated)

Up next: Colbert's LIVE Monologue Following Trump's 2020 State...

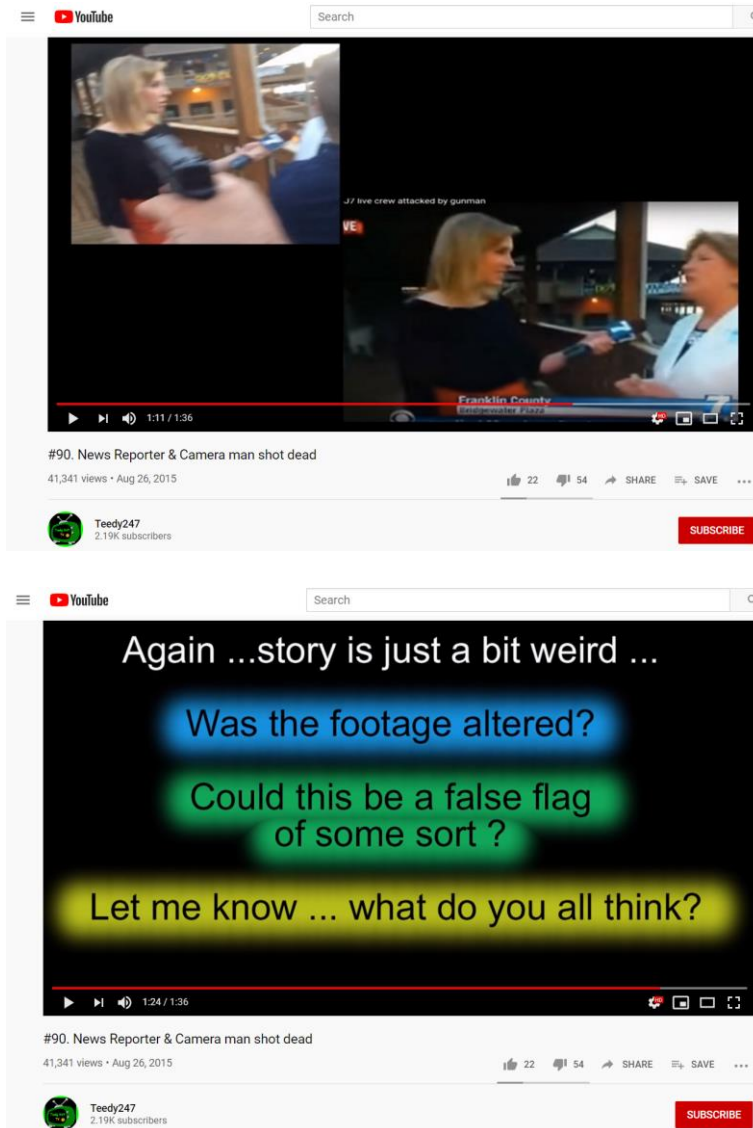
In this video, titled “WHY I DON’T BELIEVE THE VIRGINIA REPORTER SHOOTING,” viewers hear the uploader claim that Alison Parker’s murder was an “orchestrated event” and that she “knew about it ahead of time.” The uploader proceeds to describe Alison as a “stupid cow” who is a member of the Illuminati.

Video Link: <https://www.youtube.com/watch?v=an0DQEVqGBw>

Video up Since: August 26, 2015

Timestamps: 0:05-0:18; 0:28-0:30

## Exhibit 12. Alison Parker Hoax Video #2



In this video, the uploader claims that footage of Alison Parker’s murder may have been “altered” or that the event itself may have been a “false flag” operation. In making these claims, the uploader also shows a still image from GoPro footage of Alison’s murder showing the gun being pointed at her head.

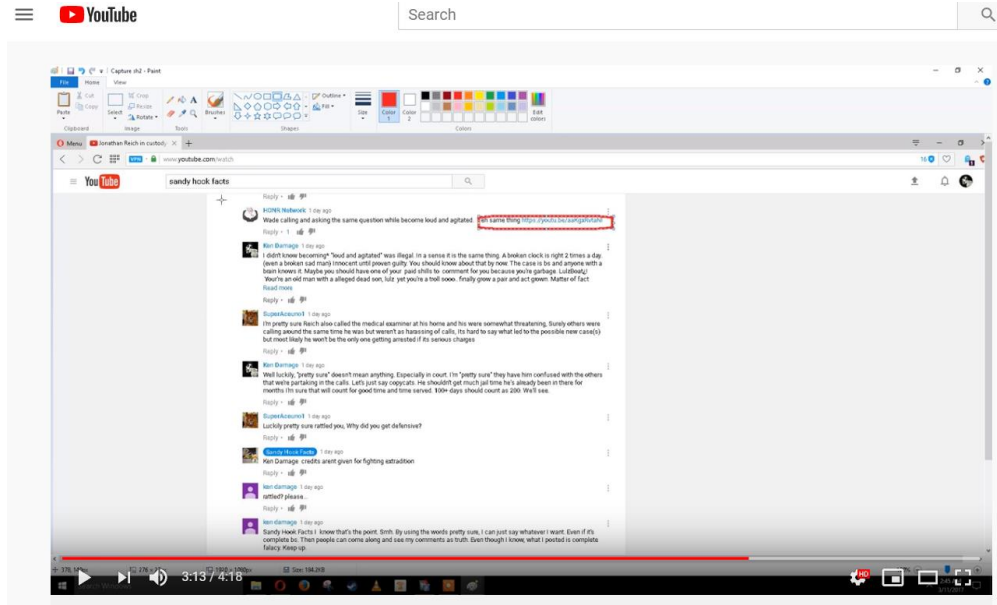
Video Link: <https://www.youtube.com/watch?v=b-T4VgiHyPg>


Video up Since: August 26, 2015

Timestamps: 1:12-1:33



## Exhibit 13. Sandy Hook Hoax Video



 **Ken Damage**

If you don't agree with them they call you a troll, hoaxer, shill. This video just shows some deleted comments. I'm sure Wade could just make re-appear. For the time being they're gone. (on my end anyway) One of the deleted comments shows HONR Network trolling. Posting a link to a video called LULZ BOAT on YT, defaming Reich. Not very professional from a "reputable company." Then I asked why their comments were deleted and HONR responded saying "cuz you're a hoaxer and can photoshop your own". How does that even make sense. If that is their statement how can we believe any of their data isn't being photo shopped. Still never got an answer to if CW Wade has any copies of the death certificates that aren't corrected/amended. I could make a lot of videos like these because my comments are always getting deleted or hidden on certain channels.

Category [People & Blogs](#)

[SHOW LESS](#)

In this video, viewers see images of YouTube comments calling into question whether the deaths at Sandy Hook were legitimate. The images further constitute hate speech seeking to harass the parents of children murdered at Sandy Hook, calling one parent a “sad broken man” and an “old man with an allegedly dead son, lulz.”

Video Link: <https://www.youtube.com/watch?v=SI8eQsyFKmY&feature=youtu.be>

Video up Since: March 11, 2017

Timestamps: 3:13 (plus additional content in video description)



Exhibit 14. Shanann Watts Hoax Video #1



In this video, the uploader describes Chris Watts, who murdered his wife Shanann and their children, as a “PAID ACTOR” and claims that the murders are “FAKE NEWS 100%.” He further claims that subsequent footage of Chris Watts in prison was staged to perpetuate the so-called lie of the murder of Shanann and her children.

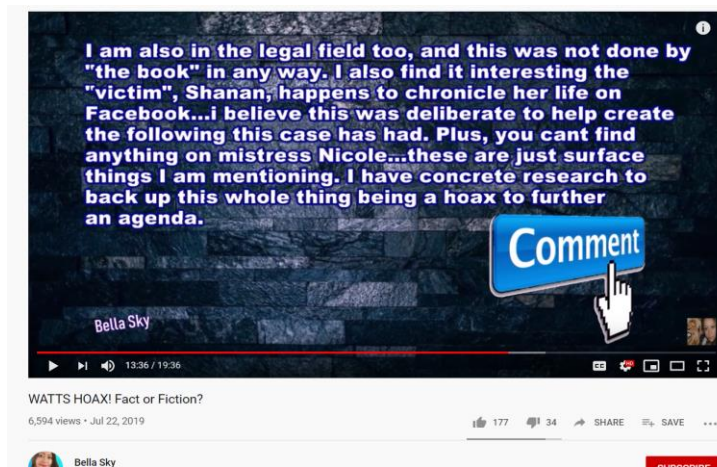
Video Link: <https://www.youtube.com/watch?v=NeQEdY8VwNA>

Video up Since: April 21, 2019

Timestamps: 0:00-0:10; 3:45-4:30



Exhibit 15. Shanann Watts Hoax Video #2



In this video, the uploader claims that the murders of Shanann Watts and her children were potentially “a hoax, a PSYOP, a sort of a military operation, [or] a complete media distraction.” The video continues to claim that people are questioning whether the murders were “staged” or whether “they were all crisis actors,” and that she thinks “the whole thing is a psychological PSYOP.” The uploader then spreads hoaxes about other tragedies, including the “Sandy children hoax.” Quotes from user comments throughout the video perpetuate these hoax statements.

Video Link: <https://www.youtube.com/watch?v=o8coNtyxDbE>

Video up Since: July 22, 2019

Timestamps: 0:50-1:00, 3:48-3:54, 5:29-5:34, 8:23-8:27



## Exhibit 16. Bianca Devins Corpse Video #1



In this video, viewers see images, originally uploaded to Instagram, of the corpse of Bianca Devins, who was brutally stabbed to death and nearly beheaded. The image shows Bianca's dead body covered in blood, along with the bottom of her grievous neck wound. The video title explicitly notes that the images have been altered to be clearer and more shocking to viewers.

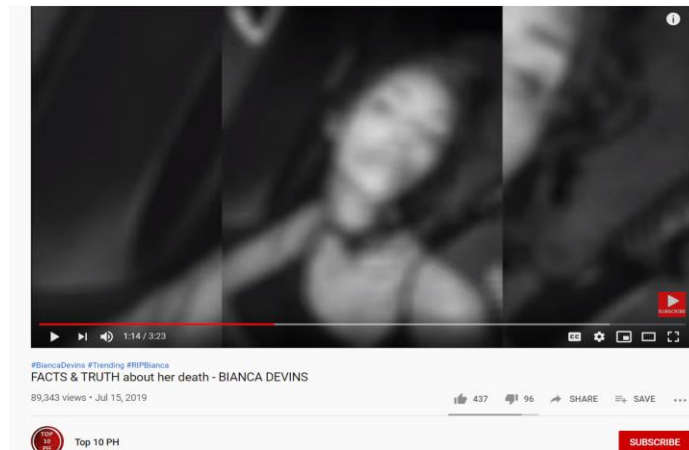
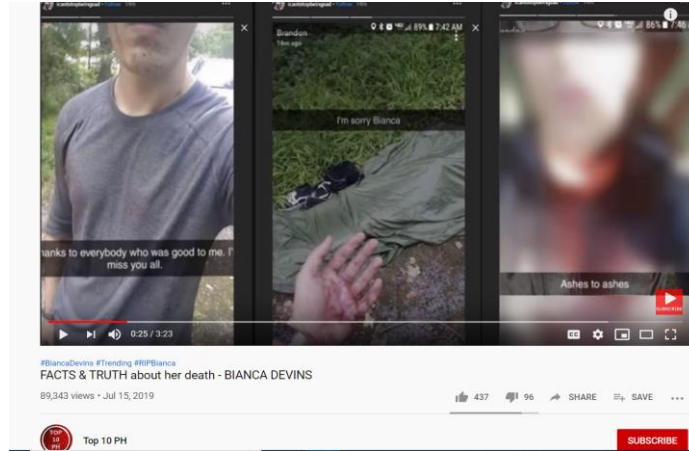
Video Link: <https://www.youtube.com/watch?v=gIoPNpWELGo>

Video up Since: July 20, 2019

Timestamps: 5:17-5:30



### Exhibit 17. Bianca Devins Corpse Video #2



In this video, viewers see images, originally uploaded to Instagram, of Bianca Devins's mutilated corpse, and of the killer attempting to cut his own throat. The video shows Bianca's killer standing over her covered body while himself covered in blood, along with a nominally blurred image of his slit throat after he attempted to kill himself. It further shows a nominally blurred image of Bianca's mutilated and nearly beheaded corpse.

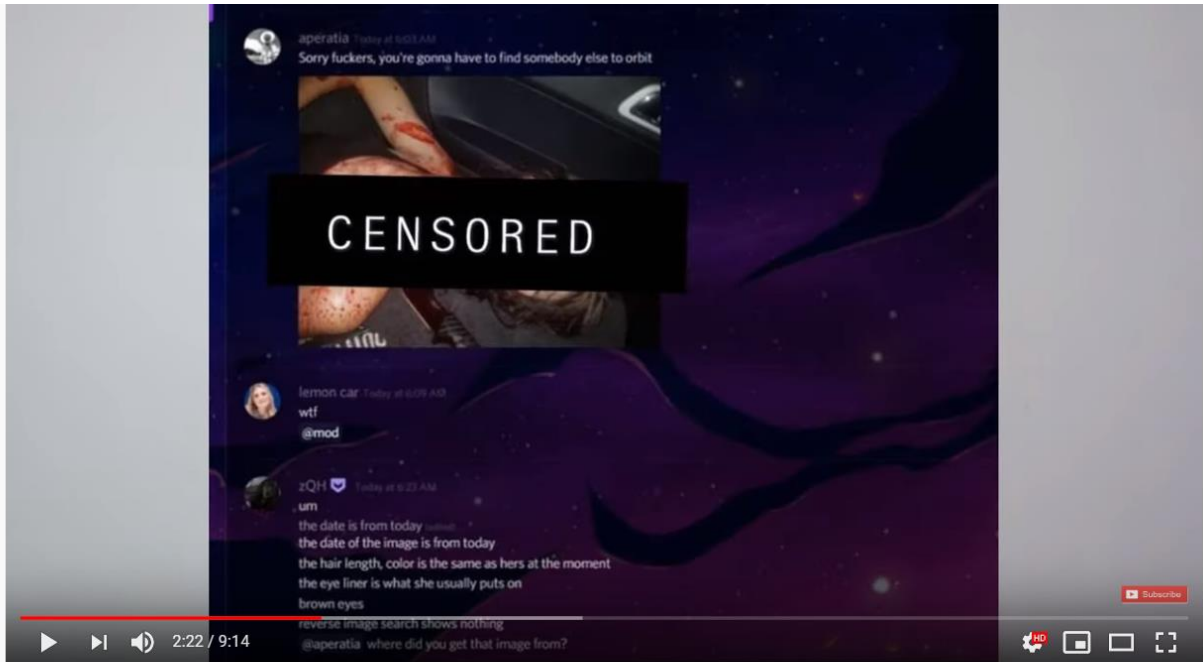
Video Link: <https://www.youtube.com/watch?v=wpBuxVPtiZ8>

Video up Since: July 15, 2019

Timestamps: 0:22-0:36, 1:06-1:15

### Exhibit 18. Bianca Devins Corpse Video #3





[VIRAL] Teka teki di balik pembunuhan tragis Bianca Devins! DI PENGG4AL KEPALANYA!

18,292 views • Jul 19, 2019

329 59 SHARE SAVE ...



andi ss  
7.39K subscribers

SUBSCRIBE

In this video, viewers see a nominally censored image of Bianca Devins's corpse, taken immediately after her murder. The video shows Bianca's dead body covered in blood, along with the knife used in the murder.

Video Link: [https://www.youtube.com/watch?v=j9\\_QQ0ABbSI](https://www.youtube.com/watch?v=j9_QQ0ABbSI)

Video up Since: July 19, 2019

Timestamps: 2:20-2:26



thedesk.matthewkeys.net

## Exhibit 19. Katelyn Davis Suicide Video



In this video, viewers watch the uploader’s “reaction” to Katelyn Davis preparing to hang herself, along with the video footage itself. The video shows Katelyn tying a noose to a tree, repeatedly placing the noose around her neck, and repeatedly jumping off of the tree. It cuts to black the instant before her final jump. The video further demeans and dehumanizes Katelyn and spreads hoaxes about her death by displaying the comments of viewers, which state “that gave me a HUGE erection!” “me too... just jerked...” and “I reckon it’s a fugazi [fake].”

Video Link: <https://www.youtube.com/watch?v=dlu3LJoFyZM&bpctr=1581029183>

Video up Since: December 30, 2017

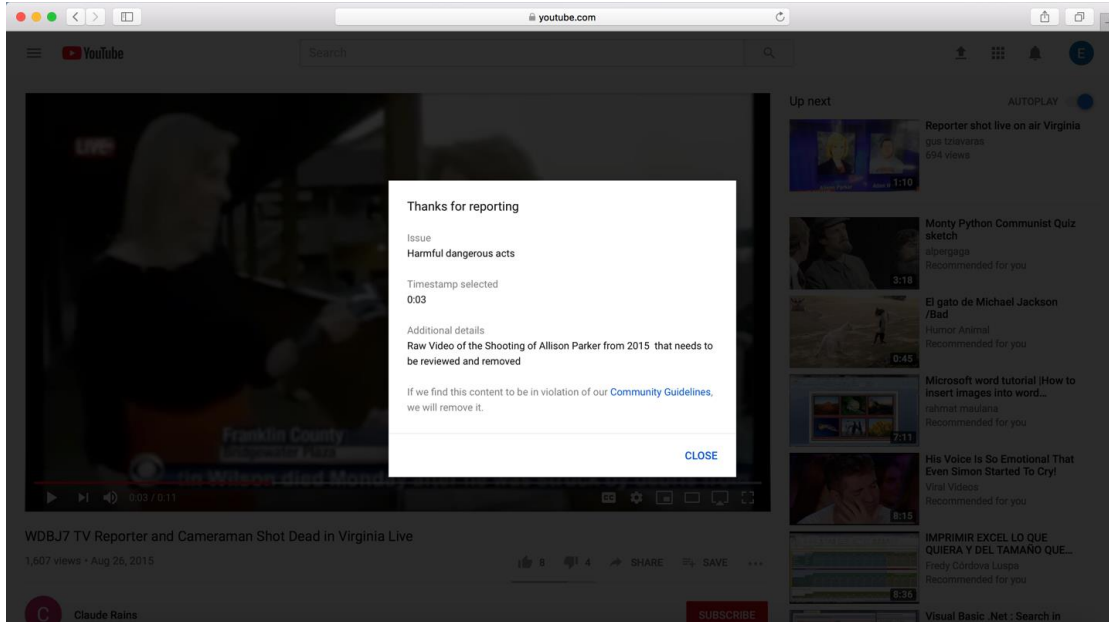
Timestamps: 7:25-12:50



**Appendix B:  
Additional Information on YouTube's Failure to Control Violent,  
Dangerous Content on its Platform**



## Exhibit 1. Evidence of YouTube's Failure to Remove Reported Videos #1



Link to Reported Video: [https://www.youtube.com/watch?v=LWzeSWY6Z\\_k](https://www.youtube.com/watch?v=LWzeSWY6Z_k)

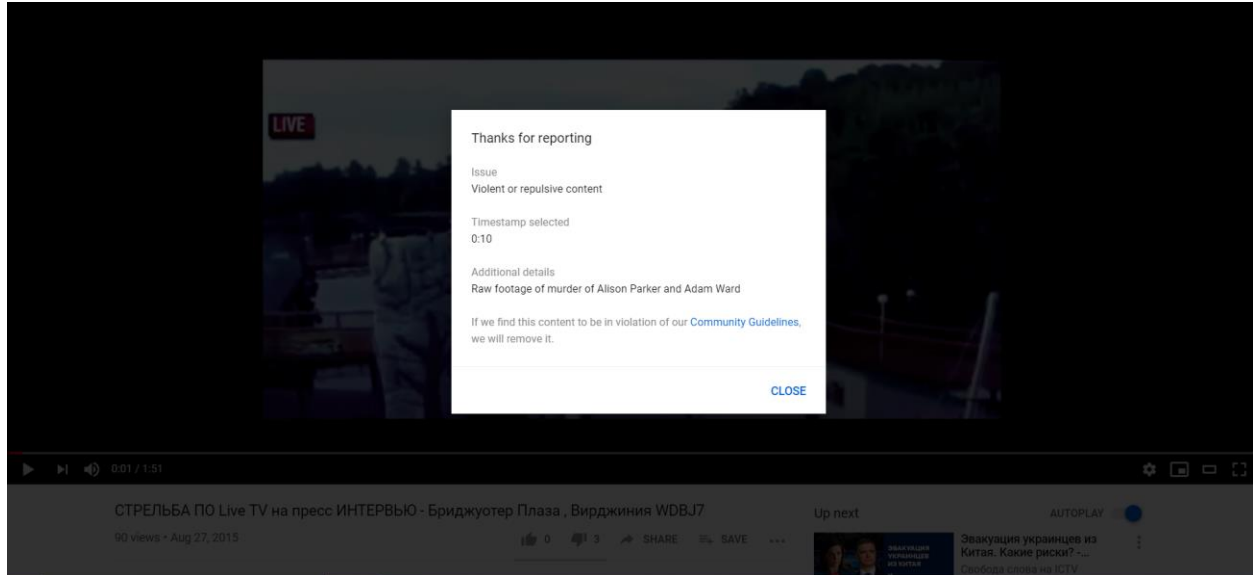
Reported by: Eric Feinberg, Vice President of Content Moderation, Coalition for a Safer Web

(using GIPEC Technology)

Reported on: December 4, 2019



## Exhibit 2. Evidence of YouTube's Failure to Remove Reported Videos #2



Link to Reported Video: [https://www.youtube.com/watch?v=w\\_kuxHzCU20](https://www.youtube.com/watch?v=w_kuxHzCU20)

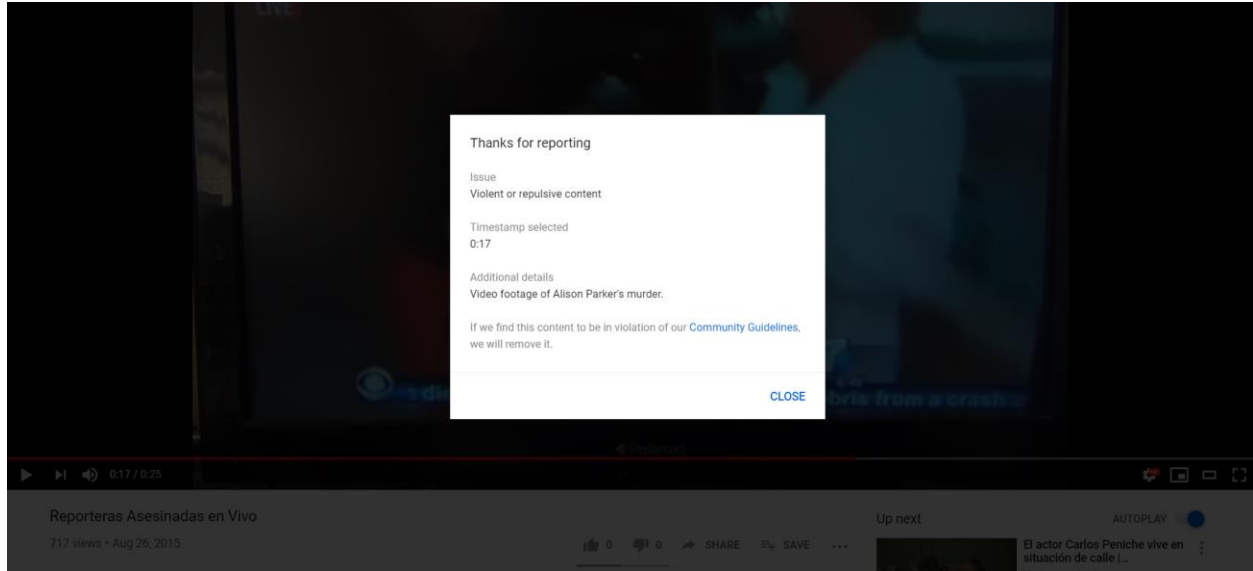
Reported by: Eric Feinberg, Vice President of Content Moderation, Coalition for a Safer Web

(using GIPEC Technology)

Reported on: December 2, 2019



### Exhibit 3. Evidence of YouTube's Failure to Remove Reported Videos #3



Link to Reported Video: [https://www.youtube.com/watch?v=4bg923tE4bg&has\\_verified=1](https://www.youtube.com/watch?v=4bg923tE4bg&has_verified=1)

Reported by: Eric Feinberg, Vice President of Content Moderation, Coalition for a Safer Web

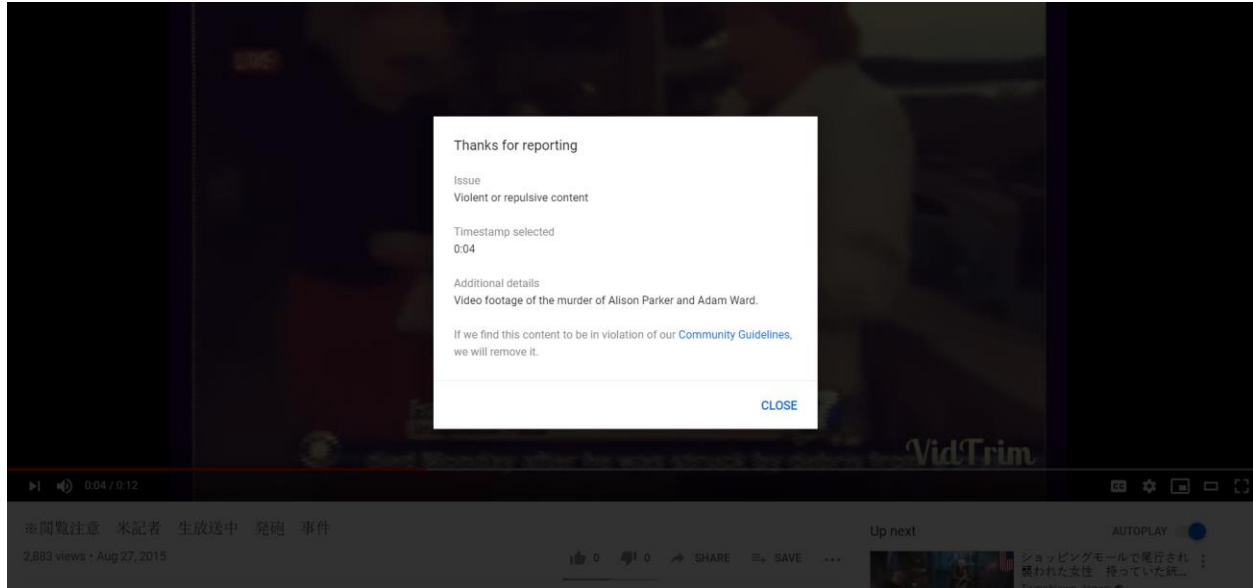
(using GIPEC Technology)

Reported on: December 3, 2019





Exhibit 4. Evidence of YouTube's Failure to Remove Reported Videos #4



Video Link: <https://www.youtube.com/watch?v=fiFgdfsbjhc>

Reported by: Eric Feinberg, Vice President of Content Moderation, Coalition for a Safer Web

(using GIPEC Technology)

Reported on: December 4, 2019



## Exhibit 5. Evidence of Ineffective YouTube Response to Community Reporting

The screenshot displays the YouTube interface with a search bar at the top. On the left, there is a navigation menu with options like Home, Trending, Subscriptions, Library, History, Watch later, and Liked videos. Below the menu, there are sections for 'SUBSCRIPTIONS' (Popular on YouTube, Music, Sports, Gaming) and 'MORE FROM YOUTUBE' (YouTube Premium, Movies & Shows, Gaming). The main content area shows a list of reported videos:

- Journalist, Photojournalist gunned down during live TV show in Virginia, USA** (ABP ANANDA)  
Reported video "Journalist, Photojournalist gunned down during live TV show in Virginia, USA" for this reason: Harmful dangerous acts > Other dangerous acts.  
Video is currently active.
- How ((( they ))) manipulate your psyche & your mind by the porn industry** (Anonymous Rebels United 4)  
Reported video "How ((( they ))) manipulate your psyche & your mind by the porn industry" for this reason: Hateful or abusive content > Promotes hatred or violence.  
Video is currently active.
- Reporter shot live on air Virginia** (gus tzavaras)  
Reported video "Reporter shot live on air Virginia" for this reason: Violent or repulsive content > Physical attack.  
Video is currently active.
- WDBJ7 TV Reporter and Cameraman Shot Dead in Virginia Live** (Claude Rains)  
Reported video "WDBJ7 TV Reporter and Cameraman Shot Dead in Virginia Live" for this reason: Harmful dangerous acts > Other dangerous acts.  
Video is currently active.
- «閲覧注意 米記者 生放送中 発砲 事件** (手登根幸作)  
Reported video "«閲覧注意 米記者 生放送中 発砲 事件" for this reason: Harmful dangerous acts > Other dangerous acts.  
Video is currently active.
- Reporteros Asesinados en Vivo**  
Reported video "Reporteros Asesinados en Vivo" for this reason:

Reporting History of: Reporting History for Eric Feinberg, Vice President of Content Moderation, Coalition for a Safer Web (using GIPEC Technology)



## Exhibit 6. Evidence of Slow YouTube Response to Trusted Flagger Reporting

The screenshot shows the YouTube interface for viewing flagging history. At the top, there is a search bar and a date range filter set from 11/4/18 to 11/11/19. Below this, a list of ten entries is displayed, each representing a video that has been flagged and subsequently removed. Each entry includes a video icon (a grey rectangle with a white play button and three dots), the text "This video no longer exists", the date it was flagged (all on 12/7/18), and the date it was removed (various dates in 2019).

Video Status	Flagged on	Removed on
This video no longer exists	12/7/18	2/14/19
This video no longer exists	12/7/18	3/11/19
This video no longer exists	12/7/18	7/20/19
This video no longer exists	12/7/18	1/31/19
This video no longer exists	12/7/18	12/12/18
This video no longer exists	12/7/18	11/11/19
This video no longer exists	12/7/18	9/6/19
This video no longer exists	12/7/18	6/25/19
This video no longer exists	12/7/18	11/11/19

Reporting History of: Lenny Pozner, HONR Network



Exhibit 7. Interview with an HONR Network volunteer<sup>172</sup>

**Question 1:** In a typical week, about how many videos do you personally engage with, and how much time does that engagement take?

**Answer:** How many videos I personally engage with in a typical week generally varies according to how much free time I have to devote to screening content for removal. I have spent at least a dozen hours per week on the task in the early years due to the sheer numbers of videos to contend with, but over the last couple of years, finding the content is more difficult, as we've had thousands of videos removed since 2014, and I assume the hoaxers have gotten smarter about how to label their videos in order to evade detection while searching for content by key words. Depending on the type of content, videos can take days or weeks of repeated reporting to result in success; if at all. Videos for which we have a signed Internet/Digital Security Agent Agreement authorizing HONR Network to act on a third party's behalf to remove videos that either contain their images or video excerpts, or video that is their intellectual property, are much easier and faster to remove with one or two requests to a dedicated email address for this purpose. It took years to hammer out this process through investigation and trial and error. Reporting videos that contain egregious content where we do not have such an agreement with any person appearing in the video, or any entity which owns video excerpts or images, can only be reported from the "report" function on the video itself through the platform, which requires mass reporting from volunteers to finally result in removal.

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<sup>172</sup> This volunteer has been with the HONR Network since its inception. They spoke to the complainants on the condition of anonymity, but complainants retain the ability to communicate with the volunteer for the purpose of obtaining additional clarifying information and evidence.

**Question 2:** What is your process for finding these types of videos?

**Answer:** Generally, the process for finding these types of videos would include keyword searches on the platform as well as in Internet search engines. When a volunteer finds videos that require removal, we post them in our Facebook group for mass reporting.

**Question 3:** Can you describe the process of how you gather the information you need to flag/report a video after you have already found the video?

**Answer:** As described in question 2, keyword searches are generally how we are able to bring up the content. Fortunately, YouTube suggests similar videos which sometimes result in a successful alert to content that requires removal. As described in question 1, flagging is either done directly off of the video on the platform, or with a more detailed form through email, using the digital agent agreement. This requires viewing the entire video and citing the offending content and the specific timestamp indicating when it appears in the video. If the video requires mass reporting using the “report” tool on the video itself, it is shared with the volunteers.

**Question 4:** Do HONR network volunteers report videos using the Moment of Death Content Removal form linked here: <https://support.google.com/youtube/contact/momentdeath>? If so, what do you put in the "relation to victim" field?

**Answer:** I personally wasn't aware of the Moment of Death Content Removal form you've linked here: <https://support.google.com/youtube/contact/momentdeath> .

**Question 5:** Are certain types of content harder to watch?



**Answer:** For me, the hardest content to watch is that which personally attacks the victims' families and charges that they are frauds who didn't really lose their children or their children never existed. That type of content incites a strong emotional response of extreme anger toward the video's creator, and deep sadness for the victims featured within it. It's even more egregious when they feature living children who resemble the deceased victims, and claim that the children shown are actually the victims, and this proves the victims are still alive. The living children in these videos are at risk of future harassment and online abuse as a result of these videos claiming falsities. The adults featured in these videos are constantly harassed and abused, so we know that the children in such videos are going to eventually suffer the same fate. I imagine how horrifying it will be for these children when they eventually see themselves being portrayed this way, and it's deeply concerning and disturbing.

**Question 6:** Are certain types of content easier or harder to secure the removal of?

**Answer:** Content containing moment of death has been easier to remove, as is content that features children. Disinformation videos featuring adults is more difficult to remove.

**Question 7:** Has engaging with this content had any specific effects on you or on other volunteers?

**Answer:** Engaging with this content has different effects on different people, but everyone finds it time consuming and seemingly endless? Personally, I've experienced a plethora of emotions; anger, outrage, sadness & exasperation are a few that come to mind. Some volunteers burn out after a while and detach from it for that reason, while others have left due to attacks on them personally and their friends and/or family members. The hoaxers are very malicious, and find

ways to find out who our volunteers are and doxx them. It can be a dangerous thing to do this work using one's real accounts, and volunteers who have engaged with hoaxers out of anger have been attacked online.

**Question 8:** How have your impressions of or reactions to this content changed over time?

**Answer:** I think that over time, like anything else, I have definitely become a little bit desensitized to the content. That's probably a good thing because I definitively don't get as stressed out by it as I used to in the earlier years. At the end of the day, getting too desensitized can diminish one's passion to continue this work, so we see volunteers go and new ones come as they are exposed to the reality of the online harassment victims endure.

**Question 9:** How did you originally become involved with the HONR Network?

**Answer:** Originally, I became involved with the HONR Network through my online friendship with Lenny Pozner. It's a deeply personal story for me. After the Sandy Hook Elementary School Shooting, I was mortified over the death of so many small children murdered in their classrooms. I had small children myself; one very close to their age. The tragedy was all over the news for days, but the day the news showed the victims images was traumatizing for me when I saw Lenny's son, Noah, who very much resembled my own son. I was deeply affected, and cried for hours upon hours; day, after day, after day. I had a Twitter account that I never used, but suddenly I was curious to see what people were saying about this shooting, as well as mass shootings in America in general, so I logged in and browsed around. There were no shortage of opinions, and I found myself chiming in. There were many conversations between gun control supporters and gun control opposers. Being Canadian, I had information to add

based on the fact that we share a border and are a very similar society, but our gun laws are much stricter and we have less gun related deaths per capita. Over the course of a couple of weeks, several Newtown residents followed me; including some family members who lost loved ones in the Sandy Hook shooting. One of these followers was Noah's big sister (Lenny's step-daughter). I don't quite remember the specific details, but if I remember correctly, Lenny must have noticed my tweet responses to his step-daughter and looked at my account. He saw a photo on my profile of my son, who resembled his murdered 6 year old son, Noah, and tweeted me about that. We became friends fairly quickly after that. He invited me to join his Google+ tribute page to Noah, where I met other strangers supporting Lenny over the death of his child; some of whom became HONR volunteers. Lenny and I emailed each other regularly, and others friendships in that group were fostered. Lenny's pain was raw at that early time after his son's death; around 6-8 months after the tragedy, and I found myself carrying on long conversations with him, which helped me emotionally, and I hoped that I was helping him too. Soon, the hoaxers started attacking the victims and their families. People like me who took to Twitter and Google+ to defend the victims and their families against this new outrage found themselves attacked as well. The hoaxers carried out malicious campaigns of gang stalking and harassment, and did vile things with our profile pictures. They incited their followers to attack as well; constantly escalating the assault. This is how we discovered the very big problem that is the lowly hoaxer. Lenny ignored them at first, then attempted to answer their questions to put a stop to their defamatory rhetoric. Nothing helped. That's when Lenny conceived the idea of HONR Network.

I worked with him on the website and the recruiting of volunteers, and over the years, our two families have had visits. For me, working with Lenny is deeply personal.



**Question 10:** Since beginning this work, have you noticed any changes in YouTube's behavior with regard to these videos?

**Answer:** Since beginning this work, YouTube's behavior with regard to these videos has improved, but much more needs to be done to protect victims from people with malicious intent.

