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# YouTube is Unsafe for Children: YouTube’s Safeguards and the Current Legal Framework are Inadequate to Protect Children from Disturbing Content

*Heather Wilson\**

For America’s children, the amount of screen time they consume has not changed much over the years. Children under eight have steadily spent about two hours a day in front of a screen,<sup>1</sup> with those under age two averaging 42 minutes a day.<sup>2</sup> Children from low-income families spend roughly an hour and forty minutes longer in front of a screen.<sup>3</sup> According to the American Academy of Pediatrics, screen time should be limited to two hours a day for children ages two to five; whereas, for those youngest children—under two years—they recommend zero screen time.<sup>4</sup>

While the average amount of screen time has remained constant over the years, the medium used during such screen time has rapidly shifted from the television to mobile devices. Screen

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<sup>1</sup> 2017 *The Common Sense Census: Media Use by Kids Age Zero to Eight*, COMMON SENSE MEDIA 14 (2017), [https://www.commonsensemedia.org/sites/default/files/uploads/research/csm\\_zerotoeight\\_fullreport\\_release\\_2.pdf](https://www.commonsensemedia.org/sites/default/files/uploads/research/csm_zerotoeight_fullreport_release_2.pdf) [https://perma.cc/N7KQ-EXRX].

<sup>2</sup> *Id.* at 37.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Children and Media Tips from the American Academy of Pediatrics*, AM. ACAD. OF PEDIATRICS (May 1, 2018), <https://www.aap.org/en-us/about-the-aap/aap-press-room/news-features-and-safety-tips/Pages/Children-and-Media-Tips.aspx> [https://perma.cc/AEQ3-2WXL].

media consumption on a mobile device used to occupy only 4% of a child's screen time; in 2017, it grew to 35%. The increasing prevalence of mobile devices (smartphones and tablets) in the home certainly explains this change in screen time habits. In 2011, less than 1% of children under the age of eight had their own tablet device.<sup>5</sup> In 2013, the number rose to 7%, and by 2017, that number had skyrocketed to 42%.<sup>6</sup>

Over the past decade, YouTube has both created and taken over the online video streaming market. However, the company has grown so rapidly, and the platform is so large and uncontrollable, that YouTube is struggling to keep inappropriate content from children.

Part I explores the ways in which children interact with YouTube, including YouTube Kids, and it addresses many of the consequences of the platform's algorithm. Part II surveys the safeguards and policies that YouTube implements and analyzes their effectiveness. Part III assesses the current legal framework regarding the protection of children online. Part IV proffers potential solutions to be taken by the federal government, YouTube, and parents.

#### PART I: YOUTUBE

YouTube was founded in 2005 in the midst of the rise of social media.<sup>7</sup> Roughly a year later, Google acquired the online video company for \$1.65 billion share exchange.<sup>8</sup> Many argued that the price Google paid for the acquisition was too much relative to YouTube's value at the time.<sup>9</sup> But what began as an online repository for users' home videos has morphed into an online video behemoth. Google's acquisition of YouTube is now regarded as one of the smartest in tech industry history, with Morgan Stanley

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<sup>5</sup> COMMON SENSE MEDIA, *supra* note 1, at 3.

<sup>6</sup> *Id.*

<sup>7</sup> GOOGLE PRESS, Google to Acquire YouTube for \$1.65 Billion in Stock, GOOGLE (Oct. 9, 2006), [http://googlepress.blogspot.com/2006/10/google-to-acquire-youtube-for-165\\_09.html](http://googlepress.blogspot.com/2006/10/google-to-acquire-youtube-for-165_09.html) [<https://perma.cc/SF2Y-4PKZ>].

<sup>8</sup> *Id.*

<sup>9</sup> Victor Luckerson, *A Decade Ago, Google Bought YouTube—and It Was the Best Tech Deal Ever*, RINGER (Oct. 10, 2016), <https://www.theringer.com/2016/10/10/16042354/google-youtube-acquisition-10-years-tech-deals-69fdbelc8a06> [<https://perma.cc/YTT6-KWJ3>].

recently valuing YouTube at \$160 billion.<sup>10</sup> Today, users upload roughly 400 hours of content to the site every minute.<sup>11</sup>

### A. Children and YouTube

Astonishingly, an estimated 80% of kids ages 6-12 watch YouTube every day.<sup>12</sup> Many television networks that focus on children's programming, such as Nickelodeon and Cartoon Network, have their own channels on YouTube where audiences can watch online clips of their favorite full-length shows. But these networks are not creating the vast majority of children's content on YouTube.<sup>13</sup> Instead, independent "content creators" fulfill demand with a steady supply of knock-off videos—using characters from recognizable programs in unsanctioned ways.<sup>14</sup> These videos tend to superimpose many characters into one video; for example, in one bizarre video Frozen's Elsa joins Spiderman, the Joker, and the Hulk.<sup>15</sup> Sometimes these content creators are animators, but other times videos are generated with software.<sup>16</sup>

Many of the most popular videos geared toward children are known as "unboxing" videos. Among the most notorious are the "Surprise Egg" videos. For example, one video entitled "20 Surprise Eggs, Kinder Surprise Cars 2 Thomas Spongebob Disney Pixar" has more than 900,000,000 views.<sup>17</sup> In the video, a pair of adult hands unwraps a Kinder chocolate egg that has a small, cheap toy inside.<sup>18</sup>

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<sup>10</sup> Greg Sandoval, *Morgan Stanley Values YouTube as a \$160 Billion Entity*, BUS. INSIDER (May 18, 2018), <https://www.businessinsider.com/morgan-stanley-values-youtube-160-billion-dollars-2018-5> [<https://perma.cc/6JZM-AHH7>].

<sup>11</sup> *Lesson: Search and Discovery on YouTube*, YOUTUBE CREATORS, <https://creatoracademy.youtube.com/page/lesson/discovery> [<https://perma.cc/HXP5-S7HY>].

<sup>12</sup> See SMARTY PANTS, 2017 BRAND LOVE STUDY: 2017 KID & FAMILY TRENDS 7 (2017), [https://daks2k3a4ib2z.cloudfront.net/5435eb4d1e426bb420ac990f/5a316f4f4a2f7d000196532b\\_2017%20Kid%20and%20Family%20Trends%20Report%20EXCERPT.PDF](https://daks2k3a4ib2z.cloudfront.net/5435eb4d1e426bb420ac990f/5a316f4f4a2f7d000196532b_2017%20Kid%20and%20Family%20Trends%20Report%20EXCERPT.PDF) [<https://perma.cc/PY3T-NLWY>].

<sup>13</sup> James Bridle, *The Nightmare Video of Children's YouTube and What's Wrong With the Internet Today*, TED TALK (Apr. 2018), [https://www.ted.com/talks/james\\_bridle\\_the\\_nightmare\\_videos\\_of\\_childrens\\_youtube\\_and\\_what\\_s\\_wrong\\_with\\_the\\_internet\\_today/transcript?language=en](https://www.ted.com/talks/james_bridle_the_nightmare_videos_of_childrens_youtube_and_what_s_wrong_with_the_internet_today/transcript?language=en) [<https://perma.cc/RZ3J-XA9Z>].

<sup>14</sup> See Steven Melendez, *Creepy Kids Videos Like These Keep Popping Up On YouTube*, FAST CO. (Nov. 6, 2017), <https://www.fastcompany.com/40492370/creepy-disney-knockoff-videos-are-saturating-kids-youtube> [<https://perma.cc/WKL7-NKGL>].

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

<sup>16</sup> *Id.*

<sup>17</sup> *20 Surprise Eggs, Kinder Surprise Cars 2 Thomas Spongebob Disney Pixar*, YOUTUBE (June 27, 2013), <https://www.youtube.com/watch?v=6QG4n3-rKTs> [<https://perma.cc/SS59-ZGFM>].

<sup>18</sup> *Id.*

The hands hold it up for the viewer to see, they set it down, and then they move on to opening the next Kinder egg.<sup>19</sup>

Other unboxing videos follow the same formula. These massively popular videos are essentially product placement advertisements. Traditionally, a television viewer would watch a show and see the show's characters use or consume a product, like Ross Gellar from *Friends* drinking a can of Coca-Cola.<sup>20</sup> This advertising model was often criticized as deceptive because before the rise of product placement advertising, branded items were blurred onscreen.<sup>21</sup> The essential difference between product placement in sitcoms and on children's media is that adults are able to understand that companies are using sitcoms and movies to reach them for advertising purposes, whereas small children "don't have the cognitive capacity to know how they are being targeted."<sup>22</sup> For young children, these "unboxing" videos replicate the sensation of opening presents on Christmas morning, and much like the real thing, the rush that follows the toy reveal is fleeting. Another hit must soon follow or the child will become bored and move on—to the next video.

### B. YouTube's Algorithm

According to YouTube, the goals of its video recommendation algorithm, which it calls its "search and discovery system," are twofold: "to help viewers find the videos they want to watch, and to maximize long-term viewer engagement and satisfaction."<sup>23</sup> The stated goal of the algorithm in the "suggested video" section is to "maximize engagement for the viewer."<sup>24</sup> In order to achieve this goal, YouTube's extensive learning algorithm offers a highly personalized experience for users, which partly answers for why it is notoriously difficult to quantitatively track what the algorithm recommends.<sup>25</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> See Neda Ulaby, *Taking Product Placement Another Step*, NPR (Sept. 22, 2008), <https://www.npr.org/templates/story/story.php?storyId=94851729> [<https://perma.cc/68FQ-BXEN>].

<sup>21</sup> See Brien Steinberg, *FCC to Weigh Requiring Disclosures for Product Placement*, ADAGE (June 27, 2008), <https://adage.com/article/madisonvine-news/fcc-weigh-requiring-disclosures-product-placement/128060> [<https://perma.cc/LYU5-X4KW>].

<sup>22</sup> Vicki Ortiz, *My Preschooler is Addicted to YouTube*, CHI. TRIB. (Mar. 11, 2016), <https://www.chicagotribune.com/lifestyles/columnists/ct-healy-column-hf-0316-20160311-column.html> [<https://perma.cc/H6EH-FVP6>].

<sup>23</sup> YOUTUBE CREATORS, *supra* note 8.

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

<sup>25</sup> Alexis C. Madrigal, *How YouTube's Recommendation Algorithm Really Works*, ATLANTIC (Nov. 8, 2018), <https://www.theatlantic.com/technology/archive/2018/11/how-youtubes-algorithm-really-works/575212/>

The company has released some information about what data is fed into the algorithm. Users are suggested videos based on (1) their past watch history and (2) the topic or channel of the video currently playing. However, YouTube uses the phrasing, “[s]ignals that contribute to these recommendations”—suggesting that other factors or data points not listed could be also be fed into the algorithm.<sup>26</sup> For example, the algorithm might also prioritize view count in making its suggestions. A Pew study found that the algorithm “system learns from a video’s early performance, and if it does well, views can grow rapidly.”<sup>27</sup> In one case, a highly recommended kids’ video went from 34,000 views . . . in July to 30 million in August.”<sup>28</sup> This example suggests that that the algorithm might also prioritize view count in making its suggestions.<sup>29</sup>

YouTube’s algorithm affects both the creator and user experience. Natalie Clark, co-creator of Toys Unlimited, a YouTube channel with more than seven million subscribers, explained that because of the platform’s algorithm, content creators get boxed into reproducing similar content as each other, and those who choose to stray do so at their own risk.<sup>30</sup> According to a senior editor at TechCrunch, “[T]he YouTube medium incentivizes content factories to produce click fodder to both drive ad revenue and edge out other content by successfully capturing the attention of the platform’s recommendation algorithms to stand a chance of getting views in the first place.”<sup>31</sup>

In order to have the best shot at getting a video past the algorithm and in front of a viewer, creators tag and title the video with popular search terms like “Surprise Eggs,” “Frozen,” and “Disney.” Often, this tagging leads to absurd video titles like “30 Surprise Eggs!!!! Disney CARS MARVEL Spider Man Spongebob

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[<https://perma.cc/N898-7QUH>].

<sup>26</sup> *Search and Discovery on YouTube*, YOUTUBE CREATOR ACADEMY, <https://creatoracademy.youtube.com/page/lesson/discovery#strategies-zippy-link-3> [<https://perma.cc/QUJ4-95JW>].

<sup>27</sup> Alexis C. Madrigal, *How YouTube’s Algorithm Really Works*, ATLANTIC (Nov. 8, 2018), <https://www.theatlantic.com/technology/archive/2018/11/how-you-tubes-algorithm-really-works/575212/> [<https://perma.cc/5XA5-EYVV>].

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

<sup>29</sup> *Id.* at 11.

<sup>30</sup> Adrienne LaFrance, *The Algorithm That Makes Preschoolers Obsessed With YouTube*, ATLANTIC (July 25, 2017), <https://www.theatlantic.com/technology/archive/2017/07/what-youtube-reveals-about-the-toddler-mind/534765/> [<https://perma.cc/RU24-ALCC>]; Toys Unlimited, YOUTUBE, <https://www.youtube.com/channel/UCzIdYMdAtTsWucGCZyZvN6w> [<https://perma.cc/FQ7M-JA5U>].

<sup>31</sup> Natasha Lomas, *I Watched 1,000 Hours of YouTube Kids Content and This is What Happened*, TECHCRUNCH (Nov. 12, 2017), <https://techcrunch.com/2017/11/12/i-watched-1000-hours-of-youtube-kids-content-and-this-is-what-happened/> [<https://perma.cc/9NM5-4B4V>].

HELLO KITTY PARTY ANIMALS Lps My BEST.”<sup>32</sup> This video has nearly 400 million views.<sup>33</sup> As James Bridle, an author who covered the issue of children’s content on YouTube in a TED Talk, explained, “[t]his is content production in the age of algorithmic discovery—even if you’re a human, you have to end up impersonating the machine.”<sup>34</sup> Even if the content creators wanted to make better, more educational videos for children, the algorithm and monetization scheme essentially ties their hands. Instead, they are relegated to “gaming the algorithm” to get clicks and up their view count in order to increase monetization on their channel. As Clark notes: “You have to do what the algorithm wants for you.”<sup>35</sup>

The algorithm has been known to take on a life of its own.<sup>36</sup> In one investigation conducted by the Wall Street Journal, YouTube often “fed far-right or far-left videos to users who watched relatively mainstream news sources” and that such extremist tendencies spanned many different topics.<sup>37</sup>

For example, the algorithm recommended anti-vaccination conspiracy videos after one user searched for information on the flu vaccine.<sup>38</sup> After viewing Donald Trump rallies, a different user was recommended rants from white supremacists and Holocaust denial videos; after watching Hillary Clinton and Bernie Sanders rallies, the algorithm recommended videos about secret government agencies and 9/11 conspiracies.<sup>39</sup> The recommendation algorithm had the same effect with non-political topics as well: the algorithm recommended veganism videos after users watched vegetarianism videos, and also recommended ultramarathon videos after users watched running videos.

YouTube’s recommendation algorithm has similar effects with children’s content on the platform. For preschool-aged children who cannot yet read, they must rely either on autoplay or the recommendation panel to decide which videos to watch next. But

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<sup>32</sup> mymillionTV, *30 Surprise Eggs!!!! Disney CARS MARVEL Spider Man Spongebob HELLO KITTY PARTY ANIMALS Lps My BEST*, YOUTUBE (June 14, 2015), <https://www.youtube.com/watch?v=WSVSzWV3DL4> [https://perma.cc/YV7G-43YF].

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

<sup>34</sup> James Bridle, *Something is Wrong on the Internet*, MEDIUM (Nov. 6, 2017), <https://medium.com/@jamesbridle/something-is-wrong-on-the-internet-c39c471271d2> [https://perma.cc/R9ZU-4MJ6].

<sup>35</sup> LaFrance, *supra* note 30.

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

<sup>37</sup> Jack Nicas, *How YouTube Drives People to the Internet’s Darkest Corners*, WALL STREET J. (Feb. 7, 2018), <https://www.wsj.com/articles/how-youtube-drives-viewers-to-the-internets-darkest-corners-1518020478> [https://perma.cc/EU3N-EVD4].

<sup>38</sup> *Id.*

<sup>39</sup> Zeynep Tufekci, *YouTube, the Great Radicalizer*, N.Y. TIMES (Mar. 10, 2018), <https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html> [https://perma.cc/78CL-PZBQ].

neither of these options is necessarily safe for children because the algorithm keeps recommending more extreme versions of the initial chosen content. So even though it may seem like the child is choosing their next video, it is chosen for them; unfortunately, a rabbit hole of extreme content exists for children's videos as well.

The same way that a content creator can tag a video to lump it in with "surprise eggs" or "Disney" videos, the creator can game the algorithm to slip in extreme content masquerading as children-appropriate videos. These videos often use lesser quality, unlicensed versions of favorite characters from children's television shows or films to operate under the radar.

For example, a child who begins a viewing session with a Peppa Pig video on the official Peppa Pig channel can eventually be recommended a video that shows Peppa Pig eating her dad or drinking bleach.<sup>40</sup> Parents have found their children watching all matters of violent, abusive, or sexual content with their children's favorite characters committing the atrocious acts. Some examples include characters resembling Mickey Mouse "shooting one another in the head with guns,"<sup>41</sup> a claymation Spider Man urinating on Elsa from Frozen, Nick Jr. characters at a strip club, and a PAW Patrol video showing some characters dying and "one walk[ing] off a roof after being hypnotized by a likeness of a doll possessed by a demon."<sup>42</sup>

In a blog post from February 2019, one pediatrician warned parents about other videos on the site: "a Minecraft video depicting a school shooting, a cartoon centered on human trafficking, one about a child who committed suicide by stabbing and another who attempted to commit suicide by hanging."<sup>43</sup> The danger of these videos lies not only in the fact that children are viewing this extreme content in the first place, but it is delivered to them by characters who they know and love and are therefore more likely to trust and emulate.

It was also discovered in early 2019 that pedophile rings had been lurking and communicating with each other in the comment sections of otherwise innocuous videos with young children in them. As one former content creator explained:

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<sup>40</sup> Bridle, *supra* note 34.

<sup>41</sup> LaFrance, *supra* note 30.

<sup>42</sup> Sapna Maheshwari, *On YouTube Kids, Startling Videos Slip Past Filters*, N.Y. TIMES (Apr. 11, 2017), <https://www.nytimes.com/2017/11/04/business/media/youtube-kids-paw-patrol.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer> [<https://perma.cc/V3CD-MZCN>].

<sup>43</sup> Lindsey Bever, *A Pediatrician Exposes Suicide Tips for Children Hidden in Videos on YouTube and YouTube Kids*, WASH. POST (Feb. 24, 2019), [https://www.washingtonpost.com/technology/2019/02/24/pediatrician-exposes-suicide-tips-children-hidden-videos-youtube-youtube-kids/?utm\\_term=.e2facd9faef6](https://www.washingtonpost.com/technology/2019/02/24/pediatrician-exposes-suicide-tips-children-hidden-videos-youtube-youtube-kids/?utm_term=.e2facd9faef6) [<https://perma.cc/9WTB-3ZDC>].



‘They’re providing links to actual child porn in YouTube comments . . . [t]hey’re trading unlisted videos in secret. And YouTube’s algorithm, through some kind of glitch or error in its programming, is actually facilitating their ability to do this.’

...

YouTube visitors gather on videos of young girls doing innocuous things, such as putting on their makeup, demonstrating gymnastics moves or playing Twister. In the comment section, people would then post timestamps that link to frames in the video that appear to sexualize the children. YouTube’s algorithms would then recommend other videos also frequented by pedophiles. ‘Once you enter into this wormhole, now there is no other content available,’ [the creator] said.<sup>44</sup>

After learning in early 2019 about pedophiles in the comment sections, YouTube disabled all comments on videos that feature minors.<sup>45</sup>

YouTube also announced a new “comments classifier”—presumably an algorithm—that will identify and remove twice as many individual comments on the remaining videos.<sup>46</sup> While disabling comments might put parents’ minds at ease, content creators are not happy about the policy change.<sup>47</sup> They often rely on comments to interact directly with viewers and foster a sense of community on their individual channels, which can increase user engagement (and advertising revenue).<sup>48</sup> YouTube assured creators that the new classifier will not interfere with the video’s monetization.<sup>49</sup>

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<sup>44</sup> Matthew S. Schwartz, *Advertisers Abandon YouTube Over Concerns That Pedophiles Lurk in Comments Section*, NAT’L PUB. RADIO (Feb. 22, 2019), <https://www.npr.org/2019/02/22/696949013/advertisers-abandon-youtube-over-concerns-that-pedophiles-lurk-in-comments-secti> [<https://perma.cc/962A-AVQY>].

<sup>45</sup> TeamYouTube, *More Updates on Our Actions Relating to the Safety of Minors on YouTube*, YOUTUBE CREATOR BLOG (Feb. 28, 2019), <https://youtube-creators.googleblog.com/2019/02/more-updates-on-our-actions-related-to.html> [<https://perma.cc/7MBS-34LN>].

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

<sup>47</sup> Madison Malone Kircher, *YouTube’s Plan to Keep Kids Safe Shows How Little It Cares About Creators*, N.Y. MAG.: INTELLIGENCER (Mar. 8, 2019), <http://nymag.com/intelligencer/2019/03/youtube-kids-safety-plan-burdens-family-friendly-creators.html> [<https://perma.cc/GM28-9GLN>].

<sup>48</sup> *Update on Our Actions Relating to the Safety of Minors on YouTube* (Feb. 22, 2019), <https://support.google.com/youtube/thread/1805616> [<https://perma.cc/W5QR-CF8X>].

<sup>49</sup> TeamYouTube, *supra* note 45.

It is unlikely that YouTube will ever outright ban children-specific content on their platform in order to address the above concerns because children are an extremely lucrative demographic for YouTube, both as viewers and content creators. “Kids’ videos are among the most watched content in YouTube history.”<sup>50</sup> One video, a six-minute Masha and the Bear episode, has more than 3.5 billion views.<sup>51</sup> And some of the highest generating YouTube stars are children, colloquially referred to as “kidfluencers.” The highest earner in 2018 was a seven-year-old whose channel, Ryan ToysReview, raked in \$22 million.<sup>52</sup> His channel has amassed more than 28 billion views since 2015, and he now has a product line at Walmart and Target.<sup>53</sup>

## PART II: YOUTUBE’S SAFEGUARDS

### A. YouTube Kids

According to YouTube, “[p]rotecting kids and families has always been a top priority for us. Because YouTube is not for children, we’ve invested significantly in the creation of the YouTube Kids app to offer an alternative specifically designed for children.”<sup>54</sup> YouTube launched its YouTube Kids app in early 2015.<sup>55</sup> The app was meant to allow access to the videos on the main YouTube platform, but the company said that they were automatically filtered in order to ensure safe content.<sup>56</sup> The service is provided ad-free for premium subscribers, but free users are shown a limited amount of ads.<sup>57</sup> For all users, the comments feature use in the main site is disabled.<sup>58</sup>

Unfortunately, YouTube Kids has failed to keep children from seeing disturbing content online. In response to this failure, the Campaign for a Commercial-Free Childhood (CCFC) and the

<sup>50</sup> LaFrance, *supra* note 30.

<sup>51</sup> Get Movies, *Masha and The Bear - Recipe for Disaster (Episode 17)*, YOUTUBE (Jan. 31, 2012), <https://www.youtube.com/watch?v=KYniUCGPGLs&feature=youtu.be>. [<https://perma.cc/2QK6-T9MJ>].

<sup>52</sup> Natalie Robehmed & Madeline Berg, *Highest-Paid YouTube Stars 2018: Markiplier, Jake Paul, PewDiePie and More*, FORBES (Dec. 3, 2018), <https://www.forbes.com/sites/natalierobehmed/2018/12/03/highest-paid-youtube-stars-2018-markiplier-jake-paul-pewdiepie-and-more/#5ad2d418909a> [<https://perma.cc/6SZJ-CADS>].

<sup>53</sup> Ryan’s World, YOUTUBE, [https://www.youtube.com/channel/UCgJGhZ9SOOHvBB0Y4DOO\\_w/about](https://www.youtube.com/channel/UCgJGhZ9SOOHvBB0Y4DOO_w/about) [<https://perma.cc/A7G7-RK72>].

<sup>54</sup> Madrigal, *supra* note 25.

<sup>55</sup> Davey Alba, *Google Launches ‘YouTube Kids,’ a New Family-Friendly App*, WIRED (Feb. 23, 2015), <https://www.wired.com/2015/02/youtube-kids/> [<https://perma.cc/7P8C-JY9Y>].

<sup>56</sup> *Id.*

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

<sup>58</sup> *Id.*

Center for Digital Democracy (CDD) filed a letter with the Federal Trade Commission (FTC) in May 2015 complaining that YouTube Kids was showing videos that were not only unsuitable but potentially harmful to children.<sup>59</sup> For example, they found:

- Explicit sexual language presented amidst cartoon animation
- A profanity-laced parody of the film *Casino* featuring Bert and Ernie from *Sesame Street*
- Graphic adult discussions about family violence, pornography and child suicide
- Jokes about pedophilia and drug use
- Modeling of unsafe behaviors such as playing with lit matches
- Advertising for alcohol products<sup>60</sup>

Others were able to recreate these findings. For example, *Business Insider* found that the YouTube Kids platform included the same conspiracy theory videos often found on the original site, including videos that said “the world is flat, that the moon landing was faked, and that the planet is ruled by reptile-human hybrids.”<sup>61</sup>

Finally, most young children still use the main YouTube site instead of switching over to the YouTube Kids app. A 2017 study showed that only 25% of children from ages five to seven exclusively use YouTube Kids; 72% still use the main YouTube platform.<sup>62</sup>

### *B. Content Moderation*

To manage the high volume of content on its platform, YouTube deploys three primary tactics: machine learning, user

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<sup>59</sup> Press Release, *Advocates Charge Google with Deceiving Parents About Content on YouTube Kids, Request FTC Action*, CCFC (May 19, 2015), <https://commercialfreechildhood.org/advocates-charge-google-deceiving-parents-about-content-youtube-kids-request-ftc-action/> [<https://perma.cc/X6PY-QL9N>].

<sup>60</sup> Angela J. Campbell, Esq., Commentary, *Comments of Center For Digital Democracy, Campaign for a Commercial-Free Childhood, and the Benton Foundation* (Sept. 24, 2018), [https://commercialfreechildhood.org/wp-content/uploads/archive/devel-generate/daf/IPR%2018-202%20Comment%20Final%20\(With%20Appendix\).pdf](https://commercialfreechildhood.org/wp-content/uploads/archive/devel-generate/daf/IPR%2018-202%20Comment%20Final%20(With%20Appendix).pdf) [<https://perma.cc/MUH6-9JGX>].

<sup>61</sup> James Cook, *The YouTube Kids App Has Been Suggesting a Load of Conspiracy Videos to Children*, *BUS. INSIDER* (Mar. 17, 2018), <https://www.businessinsider.com/youtube-suggested-conspiracy-videos-to-children-using-its-kids-app-2018-3?r=UK&IR=T> [<https://perma.cc/HHC7-4CHB>].

<sup>62</sup> CHILDREN AND PARENTS: MEDIA USE AND ATTITUDES REPORT, OFCOM 83 (Nov. 29, 2017), [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/108182/children-parents-media-use-attitudes-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/108182/children-parents-media-use-attitudes-2017.pdf) [<https://perma.cc/8MZF-5FVH>].

flagging, and human content moderation. Machines monitor content at two main points: when videos are posted and when videos are flagged by users as inappropriate.<sup>63</sup> According to YouTube's own data, its algorithms are fairly effective at removing videos that feature extremism content before it has a chance to rack up more than a few, if any, views.<sup>64</sup> Before it employed the algorithm, only 8% of these videos were removed from the site with fewer than ten views. Unfortunately, machines are not yet wholly effective at monitoring human-generated content and it is doubtful that they will be anytime soon. Free speech concerns prevent current artificial intelligence technology from effectively moderating content because tech companies fear the over-policing of speech on their platforms. Algorithms cannot yet decipher all forms of speech (even strictly English speech) especially the types of informal speech that occur on social media. Consequently, a platform that completely relies on machine learning to moderate its content will end up removing more than what is necessary.

In order to supplement the algorithms, Google announced it would hire 10,000 workers to "address violative content" on YouTube.<sup>65</sup> Human content moderation is a growing industry, and it is estimated that at least 100,000 moderators are tasked with reviewing content for social media and cloud service companies globally.<sup>66</sup> If a user flags content as inappropriate, moderators spend about thirty seconds on the flagged post to see if it violates the company's "community guidelines" or terms of service.<sup>67</sup> They repeat the process until the workday ends, usually resulting in up to 400 reviewed posts.<sup>68</sup> YouTube's community guidelines prohibit content from the following categories: nudity or sexual content; harmful or dangerous content; hateful content; violent or graphic content; harassment and cyberbullying; spam, misleading data, and scams; threats; copyright; privacy; impersonation; child safety; and "additional policies."<sup>69</sup>

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<sup>63</sup> YOUTUBE, *More Information, Faster Removals, More People – An Update on What We're Doing to Enforce YouTube's Community Guidelines*, Official YouTube Blog (Apr. 23, 2018), <https://youtube.googleblog.com/2018/04/more-information-faster-removals-more.html> [<https://perma.cc/J36E-7S7E>].

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

<sup>65</sup> *Id.*

<sup>66</sup> Adrian Chen, *The Laborers Who Keep Dick Picks and Beheadings Out of Your Facebook Feed*, WIRED (Oct. 23, 2014), <https://www.wired.com/2014/10/content-moderation/> [<https://perma.cc/3S92-HJ7D>].

<sup>67</sup> Casey Newton, *The Secret Lives of Facebook Moderators in America*, VERGE (Feb. 25, 2019), <https://www.theverge.com/2019/2/25/18229714/cognizant-facebook-content-moderator-interviews-trauma-working-conditions-arizona> [<https://perma.cc/3S2J-HCNR>].

<sup>68</sup> *Id.*

<sup>69</sup> *Policies and Safety*, YOUTUBE, <https://www.youtube.com/yt/about/policies/#community-guidelines> [<https://perma.cc/W4G8-EVUK>].

Despite the wide range of categories, relying on users to flag extreme material is inherently flawed. As one researcher put it, “YouTube relies on viewers to flag content that exceeds the platform’s community standards—and those who watch extremist influencers rarely do that.”<sup>70</sup> Additionally, reliance on human moderators is not an effective solution to the inefficiencies in YouTube’s algorithm. This work is often outsourced to workers in countries like the Philippines, where they collect between \$1–\$3 per hour.<sup>71</sup>

Recently, the demand for human moderators in the tech industry has grown, pushing companies like Facebook to hire workers in California, Texas, Arizona, and Florida.<sup>72</sup> The workers are usually hired as contract workers, often through third-party companies like Cognizant and Accenture, instead of as full-time employees of the social media platforms.<sup>73</sup> Contract workers by default, unlike full-time employees, are not given health insurance, meaning the tech companies are not providing moderators easy access to mental health services. The cost of repeatedly subjecting human beings to violent and conspiratorial content is high. Moderators can experience symptoms of secondary traumatic stress, resulting from the observation of others’ firsthand trauma.<sup>74</sup>

For example, one YouTube moderator recalled having “a much darker view of humanity” after screening videos of animal torture, suicide bombings, and decapitations.<sup>75</sup> In some cases, the moderators have begun to adopt the worldview that they see in the conspiracy theory videos. One Facebook moderator claimed they began “to embrace fringe views” like denial of the Holocaust, thinking Earth is flat, or that 9/11 was not a terrorist attack after continually screening such content.<sup>76</sup>

Despite the flaws inherent in both the algorithmic and human content moderation methods, the alternative—lax moderation—would most definitely be worse. Considering this alternative then begs the question: What happens to the content that YouTube’s algorithms do not catch and is not yet flagged by users on the site for human moderators to review? Well, it stays on the platform in perpetuity.

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<sup>70</sup> Nicas, *supra* note 37.

<sup>71</sup> Sasha Lekach, *The Cleaners’ Shows the Terrors Human Content Moderators Face at Work*, MASHABLE (Nov. 12, 2018), [https://mashable.com/article/the-cleaners-content-moderators-facebook-twitter-google/#5um\\_Awr\\_3PqM](https://mashable.com/article/the-cleaners-content-moderators-facebook-twitter-google/#5um_Awr_3PqM) [<https://perma.cc/AR4X-TAGN>].

<sup>72</sup> Newton, *supra* note 67.

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

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

<sup>75</sup> Chen, *supra* note 66.

<sup>76</sup> Newton, *supra* note 67.

### PART III: FEDERAL REGULATORY FRAMEWORK

The regulatory system that surrounds social media platforms is smaller than one might expect. However, these platforms are in some ways required to do more for children under thirteen. This section discusses the Children's Online Privacy Protection Act of 1998 and section 230 of the Communications Decency Act. Despite the existence of these regulatory safeguards, the legal framework remains insufficient to meet the growing challenges of massive social media platforms like YouTube and to adequately protect children.

#### *A. Children's Online Privacy Protection Act (COPPA)*

The Children's Online Privacy Protection Act of 1998 (COPPA) applies to children under age 13 and regulates the "unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet."<sup>77</sup>

In its Terms of Service, under a section titled "Ability to Accept Terms of Service," YouTube makes the following applicable statement regarding children on its platform:

In any case, you affirm that you are over the age of 13, as the service is not intended for children under 13. If you are under 13 years of age, then please do not use the service. there are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.<sup>78</sup>

While this terms of service statement may ultimately legally protect YouTube, it is insignificant to those children under age 13 who try to use the platform.

In an attempt to address the disconnect between YouTube's Terms of Service and the massive amount of children under 13 who use the platform, nearly two dozen consumer groups filed a joint complaint with the Federal Trade Commission in April 2018, alleging that Google, as YouTube's parent, has profited substantially from the collection and use of personal data from children in violation of COPPA.<sup>79</sup> The complaint argues that even

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<sup>77</sup> 15 U.S.C. § 6502.

<sup>78</sup> *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?template=terms> [<https://perma.cc/ZC6L-F8EF>].

<sup>79</sup> The Center for Digital Democracy, Campaign for a Commercial-Free Childhood, Berkeley Media Studies Group, Center for Media Justice, Common Sense, Consumer Action, Consumer Federation of America, Consumer Federation of California, Consumers Union, Consumer Watchdog, Corporate

though its terms of service state the YouTube platform is not intended for children under thirteen—in compliance with COPPA requirements—the site is not exempt from the statute because Google has actual knowledge of this data collection.<sup>80</sup> Specifically, “a web site or online service that has the attributes, look, and feel of a property targeted to children under thirteen will be deemed to be a site or service directed to children, even if the operator were to claim that was not its intent.”<sup>81</sup> As of May 2019, the FTC had not publicly responded to the complaint.

Recently, a District Court in South Carolina dismissed a suit against YouTube, Google, and Alphabet.<sup>82</sup> The complaint, which a parent filed on behalf of her child “R.R.” and others similarly situated, alleged that “while viewing only videos via smart phone apps and websites, [they] have had their personally identifying information exfiltrated by the Defendants and their partners, for future commercial exploitation” in violation of COPPA.<sup>83</sup> Plaintiffs also alleged a multi-state class intrusion upon seclusion claim under California’s and North Carolina’s state common law.<sup>84</sup>

However, the court found that COPPA precludes state law and no private right of action exists in the statute: “Plaintiffs’ complaint does not accuse Defendants of conduct beyond that regulated by COPPA . . . Plaintiffs seek to use the vehicle of state law to privately enforce the provisions of COPPA.”<sup>85</sup> Further, Congress clearly “assigned exclusive enforcement of COPPA to the Federal Trade Commission and state attorneys general.”<sup>86</sup> Therefore, it is difficult—if not impossible—for a private citizen to hold YouTube accountable when it violates COPPA in a specific

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Accountability, Defending the Early Years, Electronic Privacy Information Center (EPIC), New Dream, Obligation, Inc., Parent Coalition for Student Privacy, Parents Across America, Parents Television Council, Privacy Rights Clearinghouse, Public Citizen, The Story of Stuff Project, TRUCE (Teachers Resisting Unhealthy Childhood Entertainment), and USPIRG. “Request to Investigate Google’s YouTube Online Serve and Advertising Practices for Violating the Children’s Online Privacy Protection Act.” *In the Matter of Request to Investigate Google’s YouTube Online Service and Advertising Practices for Violating the Children’s Online Privacy Protection Act*, <https://www.law.georgetown.edu/wp-content/uploads/2018/08/Filed-Request-to-Investigate-Google%E2%80%99s-YouTube-Online-Service-and-Advertising-Practices-for-Violating-COPPA.pdf> [https://perma.cc/AAH5-2EXP].

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

<sup>81</sup> *Id.*

<sup>82</sup> *Manigault-Johnson v. Google, LLC*, No. 2:18-cv-1032-BHH, 2019 U.S. Dist. LEXIS 59892 (D. S.C. Mar. 31, 2019).

<sup>83</sup> Demand for Jury Trial, *Manigault-Johnson v. Google, LLC*, No. 2:18-cv-01032-BHH, 2019 U.S. Dist. LEXIS 59892 (D. S.C. Mar. 31, 2019).

<sup>84</sup> *Id.* at ¶1.

<sup>85</sup> *Id.* at ¶13.

<sup>86</sup> *Id.*

instance with a child under 13, especially if the FTC is also unwilling to take action.

### *B. Section 230 of the Communications Decency Act*

Section 230 of the Communications Decency Act of 1998 states: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>87</sup> This provision shields internet platforms like YouTube or Facebook from the posts of its third-party users. Since YouTube does not produce or create all of the videos that make up the site’s content, the company is not liable for any indecencies in the video. That liability remains with the content producer/video uploader.

## PART IV: SOLUTIONS

The problems discussed above are undoubtedly not limited to the children who access YouTube, or even to the YouTube platform, in general. Content moderation is a rapidly growing problem on social media platforms, and algorithms are facilitating the rise of dangerous and extreme content that affects everyone, not just children. However, as a society we have decided that the protection of children is a priority, and the current barriers in place are evidently not sufficient. Below are some solutions that the federal government, YouTube, and parents can implement in order to better protect children from extreme content on YouTube.

### *A. Federal Government*

The first and most obvious place for the federal government to act is enhanced FTC enforcement of COPPA violations. It is difficult for YouTube to argue that it is not subject to COPPA because it has many content creators under the age of 13; it knowingly collects children’s data.

Another possible area for federal regulation is to extend the Children’s Television Act of 1990 to include video broadcasting platforms, like YouTube. Currently, this statute “requires each U.S. broadcast television station to air programming specifically designed to serve the educational and informational needs of children. It also limits the amount of time broadcasters and cable operators can devote to advertisements during children’s programs.”<sup>88</sup>

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<sup>87</sup> The Communications Decency Act of 1998, 47 U.S.C. § 230(c)(1) (2018).

<sup>88</sup> *Children’s Educational Television*, FED. COMM. COMM’N,



Whether or not Congress decides to regulate the content or technical mechanisms of YouTube and other social media platforms, it should create labor standards for the human moderators that the companies employ worldwide. For example, Congress should require companies, whether they employ the labor directly or through a third-party vendor, to provide a minimum level of counseling to its moderators. Currently there is no industry standard for these content moderators and the moderator warehouses are acting as cells that home-grow conspiracy theorists and should not be left unchecked.<sup>89</sup>

Finally, members of Congress have a duty, if not a legal duty, then a moral and ethical duty, to inform themselves of the changing media and technology landscape. For example, when Mark Zuckerberg, Facebook's Co-Founder and CEO, was called before the Senate to testify in April 2018, Senator Orrin Hatch, now retired, began his question by stating that he chairs the Senate Republican High-Tech Task Force. He then asked Zuckerberg how Facebook sustains a business model when its users do not pay for the service, to which Zuckerberg replied, "Senator, we run ads."<sup>90</sup> For the chair of a high-tech task force in the United States Senate to not understand that social media platforms generate revenue with advertising is simply unacceptable.

Members of Congress must better equip themselves with knowledge about how these massive companies make money because even though the companies may be committed to enhancing services for their customers, ultimately they are in the business of generating revenue and most decisions that YouTube and other social media platforms make are based on the profit motive. Therefore, in order to effectively regulate them, Congress must be able to at least understand the fundamentals.

### *B. YouTube*

Some of the most effective ways to address these problems could potentially come from design changes on the YouTube and YouTube Kids platforms.

First, at least in relation to children-specific content, a term left undefined in the scope of this paper, YouTube should shift from a defensive monitoring strategy to an offensive monitoring strategy. A more offensive monitoring strategy gives YouTube greater

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<https://www.fcc.gov/consumers/guides/childrens-educational-television>  
[<https://perma.cc/FL46-W3FU>].

<sup>89</sup> See *infra* Part IIB.

<sup>90</sup> NBCNews, *Senator Asks How Facebook Remains Free, Zuckerberg Smirks: 'We Run Ads'*, NBC NEWS (Apr. 10, 2018), <https://www.nbcnews.com/video/senator-asks-how-facebook-remains-free-zuckerberg-smirks-we-run-ads-1207622211889> [<https://perma.cc/HNR5-M4A2>].

control over what content children can access—ensuring compliance with COPPA and FTC guidelines. For example, as discussed above, YouTube primarily waits until content is flagged by a user to remove it from the platform, assuming that its filtering algorithm did not catch it at the upload stage. This reactive and defensive strategy is ineffective to prevent children from viewing dangerous content. Instead, YouTube should switch to a more proactive and offensive monitoring strategy, meaning content would be monitored and deemed safe *before* it is available on the platform for children to watch. Reviewing children-specific content before it is available on the platform is a values-shift for YouTube—from speed of access and volume of content to protection of vulnerable young minds.

In order to best implement a proactive, offensive monitoring strategy, YouTube should consider a few other design changes. First, all children-specific content currently on YouTube should be moved to the YouTube Kids platform, so that YouTube Kids would be the platform where all children's content resides. An algorithm should not be able to pull videos from the main YouTube site to YouTube Kids. Adults would be able to access and view videos on the YouTube Kids app in the same way that they use YouTube; however, comments would not be allowed in order to protect children and prevent communication between children under 13 and possible predators in the comment sections.

Admittedly, a more offensive strategy means that human content moderation is necessary. While certainly has its drawbacks, as discussed in Part II, it is possible that it could be used in conjunction with software and algorithms to lighten the load. For example, YouTube could create an algorithm that identifies animated content. Then, human moderators would screen the animated content and determine its suitability for the YouTube Kids platform. Though human content moderation is not ideal, those moderators at least make an informed choice to view extreme content; children, on the other hand, are exposed to it unwittingly.

Additionally, YouTube could establish a certified educational content system within the YouTube Kids app. Such a system would promote consumption of more quality content, especially if YouTube employed an algorithm to recommend verified educational videos over unknown content creators. This system could also indirectly help with the speed of the proactive content monitoring strategy because videos uploaded from verified accounts are less likely to be problematic.

Finally, the YouTube Kids platform should implement these changes and make them available to users free of charge, instead of making them subscription-based. By continuing to implement a subscription-based service, YouTube is still profiting off children

under 13, especially low-income children who spend more time in front of screens than their middle- and high-income counterparts.

### C. Parents

It is undoubtedly a difficult time for a parent to try to maneuver the minefield of today's internet. Parents are tasked with balancing whether they should let their children online, and if so how much, with allowing their children to participate in modern society, which takes place increasingly online. While some parents who work in Silicon Valley and the tech industry are not allowing their children online, others are dramatically limiting its use.<sup>91</sup>

Parents can educate themselves to learn how the technology and its incentive structures work, so that they can better understand what it is that their children are consuming when they go online. John Lilly, the former CEO of Mozilla and venture capitalist in Silicon Valley, said he tries to explain to his son how the technology is built to manipulate him, "I try to tell him somebody wrote code to make you feel this way — I'm trying to help him understand how things are made, the values that are going into things and what people are doing to create that feeling."<sup>92</sup>

Parents have incredible market and social power. They can use this power to pressure YouTube into making their system controls more effective at protecting children. Parents can also encourage lawmakers or organizations to fund more research about the effects of screen time and other novelties of YouTube and other social media use. We may already be seeing the effects on the youngest generations, Generations Z and Alpha.

## PART V: CONCLUSION

There is no doubt that when the creators of YouTube, or any other social media platform behemoth, sat down and started the company that no one expected it to grow to its current size. With this size comes problems, and though YouTube has tried to address these issues, some of them are fundamental to the platform's design. Social media and the internet are here to stay, and with that fact comes responsibility. There are solutions that YouTube, the federal government, and parents can implement to better protect children on YouTube's main platform. The most vulnerable in our society are currently getting exposed to extreme and inappropriate content.

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<sup>91</sup> Nellie Bowles, *A Dark Consensus About Screens and Kids Begins to Emerge in Silicon Valley*, N.Y. TIMES (Oct. 26, 2018), <https://www.nytimes.com/2018/10/26/style/phones-children-silicon-valley.html> [<https://perma.cc/M7FC-A32X>].

<sup>92</sup> *Id.*

They are the future citizens of this country, and we must take seriously how those minds are being shaped.