

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

NETCHOICE, LLC d/b/a NETCHOICE, a
501(c)(6) District of Columbia organization; and
COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION d/b/a CCIA, a
501(c)(6) non-stock Virginia corporation,

**Civil Action No.
4:21-cv-00220-RH-MAF**

Plaintiffs,

v.

ASHLEY BROOKE MOODY, in her official
capacity as Attorney General of the State of
Florida; JONI ALEXIS POITIER, in her official
capacity as Commissioner of the Florida
Elections Commission; JASON TODD ALLEN,
in his official capacity as Commissioner of the
Florida Elections Commission; JOHN MARTIN
HAYES, in his official capacity as
Commissioner of the Florida Elections
Commission; KYMBERLEE CURRY SMITH,
in her official capacity as Commissioner of the
Florida Elections Commission; and PATRICK
GILLESPIE, in his official capacity as Deputy
Secretary of Business Operations of the Florida
Department of Management Services,

Defendants.

**PLAINTIFFS' NOTICE OF DECLARATION
OF ALEXANDRA VEITCH
(YouTube)**

The undersigned, on behalf of Plaintiffs, NetChoice, LLC d/b/a NetChoice
and Computer & Communications Industry Association d/b/a CCIA, hereby files

this Declaration of Alexandra Veitch, Director of Public Policy for the Americas at YouTube in support of Plaintiffs' Motion for Preliminary Injunction.

Dated: June 3, 2021

Respectfully submitted,

/s/ Douglas L. Kilby

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CERTIFICATE OF SERVICE

Counsel certifies that the foregoing document was electronically served on all counsel of record via the CM/ECF system on this 3rd day of June, 2021. In addition, because counsel for Defendants have not yet appeared in this case, I caused a copy of this filing to be delivered today via e-mail to the following, by agreement with counsel:

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Respectfully submitted,

/s/ Douglas L. Kilby

I, Alexandra Veitch, declare as follows:

1. I am the Director of Public Policy for the Americas at YouTube. As part of my role, I lead a team that advises the company on public policy issues around online, user-generated content. My team advises on YouTube's content moderation policies and practices, identifies when changes to our policies or their application are required in response to new challenges, and assesses policy proposals and legislation, such as Florida's Senate Bill 7072, that would affect YouTube's ability to moderate content.

2. The statements contained in this declaration are based on my personal knowledge. I am over 18 years of age and competent to make the statements set forth herein.

Content Moderation at YouTube

3. YouTube is an online platform that allows users to create, upload, and share videos with others around the world. YouTube strives to be a community that fosters self-expression on an array of topics as diverse as its user base, and to nurture a thriving creative and informational ecosystem. Over two billion logged-in users visit each month, and over 500 hours of content are uploaded every minute by an extraordinarily diverse community of creators, who span over 100 countries and 80 languages. On a daily basis, users watch over a billion hours of video on YouTube. YouTube LLC does business in Florida.

4. With this volume of users comes a significant responsibility to protect those users. Since the beginning, YouTube has always had policies that govern how people may use the service, including restrictions on the types of content that they may post. These policies are designed and regularly updated to make YouTube a safer and more enjoyable place for users and creators. For many years, YouTube's number one priority has been the responsibility to maintain

its community as a positive, open, and useful space on the Internet. The health of our community and the success of our business depends on it.

5. YouTube makes content moderation decisions seeking to strike the right balance between fostering freedom of expression and lessening the likelihood that users will encounter harmful content on our platform. YouTube's approach generally is to remove content that violates our policies (developed with outside experts to prevent real-world harms), reduce the spread of harmful misinformation and content that brushes up against our policy lines, and raise authoritative and trusted content. These moderation efforts, described below, are critical to cultivating a vibrant and healthy YouTube community by identifying and removing any material that violates our policies and harms our users.

6. The company has hired over 10,000 people who are responsible for moderating content on YouTube. Those reviewers work with technology—machine learning (using algorithms)—that YouTube has developed with significant investment. In Q4 2020 alone, YouTube removed over 2 million channels and over 9 million videos for violations of YouTube's policies.¹ Further statistics (including others discussed in this declaration) may be found in the YouTube Community Guidelines enforcement report, updated quarterly.

<https://transparencyreport.google.com/youtube-policy/removals>.

7. We estimate that 0.16-0.18% of the views on YouTube in Q4 2020 came from violative videos.²

¹ Of those videos, more than 30,000 contained misinformation about the Covid-19 vaccine, part of YouTube's larger effort to remove medical misinformation about the virus resulting in the removal of 1,000,000 videos related to dangerous or misleading Covid-19 information since February 2020.

² In other words, out of every 10,000 views on YouTube in Q4 2020, 16-18 came from videos that violate our content policies. This metric, "Violative View Rate" (VVR), is an estimate of the proportion of video views that violate our Community Guidelines in a given quarter (excluding spam). Jennifer O'Connor, *Building greater transparency and accountability with the Violative*

8. Yet even this small amount of content can have a huge impact, both in potential harm to our users, as well as a loss of faith in the open model that has enabled YouTube's creative community to thrive. Failure to consistently address harmful content uploaded to the site not only threatens the safety of our users and creators, but also threatens the safety and reputation of our advertising partners' brands. Harmful content on our platform makes YouTube less open, not more, by creating a space where creators and users may not feel safe or comfortable to share. YouTube's business depends on the trust of our users and our advertisers. S.B. 7072 significantly limits our ability to make content moderation choices and would subject YouTube to harm by frustrating our ongoing efforts to make YouTube a far more accessible and welcoming place.

YouTube's Community Guidelines

9. Our Community Guidelines provide clear, public-facing guidance on types of content not allowed on the platform.³ The Community Guidelines prohibit a variety of harmful, offensive, and/or unlawful material, such as pornography, terrorist incitement, false propaganda spread by hostile foreign governments, promotion of fraudulent schemes, spam, egregious violations of personal privacy like revenge pornography, violations of intellectual property rights, bullying and harassment, conspiracy theories, and dangerous computer viruses. A full list of YouTube's Community Guidelines is available at:

<https://www.youtube.com/howyoutubeworks/policies/community-guidelines/>

10. YouTube has never allowed pornography, incitement to violence, or content that would harm children. Still, YouTube revises the Community Guidelines from time to time to

View Rate, YouTube Blog (Apr. 6, 2021), <https://blog.youtube/inside-youtube/building-greater-transparency-and-accountability/>

³ We communicate our practices to all users through YouTube's Community Guidelines, which are incorporated into our Terms of Service. A user must agree to both in order to create an account and upload materials to YouTube.

account for new and different content or behavior that YouTube deems unacceptable, unsafe, or unwelcome on its service.

How YouTube Approaches Content Moderation

11. YouTube takes a multi-faceted and nuanced approach to moderating content, working to distinguish those posts that are truly problematic, those that are borderline, and those which contribute positively to the YouTube community. We have developed a diverse set of moderation tools for use in different circumstances including: age-gating, limiting access to borderline content, appending warnings, posting restrictions, showing information panels, removing video and comments, and suspending and/or terminating an account.

12. Given YouTube's scale, it is not surprising that some users do not always abide by the Community Guidelines--so YouTube enforces them using a variety of methods, including human review and machine learning. We employ an array of remedial actions when enforcing our policies, ranging from required education and warnings, to service-usage penalties such as temporary suspensions of uploading rights and permanent termination of accounts.

13. Moderation can also include affirmatively providing users with information to help them make choices about whether or not to interact with certain kinds of content. There are occasions when it is helpful to provide viewers with additional context about the content they are watching, and we display a variety of information panels that provide users with context on content relating to topics and news prone to misinformation, as well as the publishers of the content themselves. One example is an information panel displayed on videos from a channel owned by a news publisher.⁴ YouTube's information panels have been shown billions of times; COVID-19 information panels alone have been shown over 400 billion times.

⁴ *Information panel providing publisher context*, <https://support.google.com/youtube/answer/7630512?hl=en>

Algorithms and Machine Learning

14. YouTube uses machine learning—a type of algorithm—to moderate content in two key ways: to proactively identify and flag potentially harmful content uploaded to the site, and to automatically remove content that is identical or substantially similar to violative content that was previously removed. Data inputs are used to train these machine learning systems to identify patterns in content—both the rich media content in videos, as well as textual content like metadata and comments—so our systems can make predictions about new examples to match. Machine learning is well-suited to detecting patterns, which helps us to identify content similar to other content we have already removed, even before it is ever viewed. We also use hashes (or “digital fingerprints”) to automatically identify copies of known violative content before they are ever made available for viewing.⁵ These systems automatically remove content only where there is high confidence of a policy violation—e.g., spam—and flag the rest for human review. Algorithmic detection identifies the vast majority of content deemed to violate the Community Guidelines.

15. Machine learning is critical for content moderation and keeping our users safe. YouTube relies heavily on technology and algorithms to moderate content and cannot feasibly do otherwise, since over 500 hours of video are uploaded to YouTube every single minute of every day. At this massive scale, it would be virtually impossible to remove content that violates our Community Guidelines without the use of algorithmic tools, even with tens of thousands of reviewers watching newly uploaded videos 24 hours a day, 7 days a week. By contrast,

⁵ In Q1 2021, 27.8% of removed videos were taken down before a single view. A further 39% of removed videos had between 1 and 10 views. Transparency Report, *YouTube Community Guidelines enforcement*, https://transparencyreport.google.com/youtube-policy/removals?hl=en&lu=videos_by_views&videos_by_views=detection_sources:ALL

improvements in our machine learning algorithms have resulted in a 70% decrease in the amount of views of videos violating our policies, *see* fn.2.

16. In the first quarter of 2021, YouTube removed 9,569,641 videos that violated the Community Guidelines. The vast majority—9,091,315, or 95% of the total removals—were automatically flagged for moderation by YouTube’s algorithms and removed based on human confirmation of a violation. Less than 5%—478,326 videos—were removed based on initial flags by a user or other human flagger. This removal system is highly efficient: the majority of removed videos were removed before accumulating more than 10 views. In Q1 2021, 53% of the videos removed were due to child safety issues.

17. YouTube also removed over 1 billion comments in the first quarter of 2021, 99.4% of which were flagged for moderation by YouTube’s automated systems. In Q1 2021, 55.4% of those removed comments were due to spam.⁶

18. Our machine learning and human reviewers work hand in hand: machines are effective for scale and volume, whereas human reviewers can evaluate context for more nuanced enforcement of our policies. Once our machine learning systems flag a potentially violative video, human reviewers then remove videos that are violative while non-violative videos remain live. These decisions are in turn used as inputs to improve the accuracy of our automated detection systems so that we are constantly updating and improving the system’s ability to identify potentially violative content. In addition, when we introduce a new policy or alter an existing one, it takes our systems time to improve detection rates and begin accurately detecting violative content at scale. Our enforcement of new policies improves quarter over quarter.

⁶ YouTube uses automated systems to identify comments that are likely spam and allows video creators to permit these comments to be left on their videos or reject them.

19. Given YouTube’s scale, we sometimes make mistakes, which is why creators can appeal removal decisions. YouTube generally notifies creators when their video is removed, and we provide a link with instructions on how to appeal the removal decision. If a creator chooses to submit an appeal, the video goes to human review, and the decision is either upheld or reversed. We are transparent about our appeals process. As reported in our most recent Transparency Report, in Q1 2021, creators appealed approximately 216,000 videos, or 2% of all videos removed. Of those, more than 66,000 were reinstated.

The Burdens Posed by S.B. 7072

20. The restrictions of S.B. 7072 would fundamentally burden and undermine YouTube’s ability to operate responsibly and enforce its Community Guidelines. The statute has broad definitions of content moderation activities—in categories called “censor,” “deplatform,” “shadow-ban,” and “post-prioritization”—that would, in many cases, directly prevent YouTube from enforcing critical standards designed to prevent the degradation of users’ experiences on that platform and to ensure their safety, including for children. The text allows users to “opt out of post-prioritization and shadow-banning algorithms” and bans the use of those algorithms for posts by or about a political candidate. In other cases, YouTube would face an impossible choice between (1) risking significant liability by moderating content identified to violate its standards or (2) subjecting YouTube’s community to harm by allowing violative content to remain on the site.

The Need for Evolving Content Moderation Policies

21. S.B. 7072’s prohibition on changing rules more than once every 30 days would significantly limit YouTube’s ability to respond in real-time to new and unforeseen trends in dangerous material being uploaded by users, or new legal or regulatory developments. The

harms of user-generated content are ever-evolving, and YouTube's content moderation policies have necessarily had to evolve to address the same. YouTube must be able to react quickly to promote the safety of its users in changing and emerging contexts. In 2020, YouTube updated its policies related to medical misinformation alone more than ten times, which is in line with historical trends. In 2019, YouTube made over 30 updates to its content moderation policies generally—on average, once every 12 days. The same was true in 2018. Limiting YouTube's ability to update policies, as S.B. 7072 mandates, means that YouTube would be forced to host unanticipated, dangerous, or objectionable content during those windows where the law prohibits YouTube from making any changes to its content policies.

22. Because of the demonstrated need to prevent emerging harm, YouTube has invested significantly in being able to respond quickly. YouTube's Intelligence Desk monitors news, social media, and user reports to detect new trends—such as the Tide Pod challenge—so as to address them before they become a larger issue. YouTube has over 100 people working to develop new policies and improve existing ones.

23. YouTube's judgments evolve over time as social and cultural conditions change or unforeseen threats and challenges arise. For example, after a recent violent military coup in Myanmar, YouTube took action against five existing YouTube channels run by the Myanmar military, terminating the channels to prevent the military from promoting political propaganda.⁷

The Importance of Editorial Discretion for YouTube

24. YouTube needs discretion and flexibility when moderating content because it encounters such a high volume and diversity of content. YouTube's Terms of Service, Community Guidelines and other content-moderation rules include flexible terms that allow

⁷ Paul Mozur, *YouTube Bans Myanmar Military Channels as Violence Rises*, NEW YORK TIMES (Mar. 11, 2021), <https://www.nytimes.com/2021/03/05/business/youtube-myanmar.html>

YouTube to exercise its judgment about specific uses or pieces of content. Yet S.B. 7072 requires that content moderation must be applied “in a consistent manner” with risk of liability. This requirement would limit and burden YouTube’s discretion to find the right balance between free expression on YouTube and responsibility for fostering a safe community for its users.

25. ***EDSA***. Our content policies have an exception for videos that would otherwise be in violation if there is a compelling educational, documentary, scientific, or artistic reason, with visible context, for viewers. YouTube refers to this exception as “EDSA,” which is a critical way to make sure that important speech remains on YouTube, while simultaneously protecting the wider YouTube ecosystem from harmful content.⁸ These decisions depend on a variety of factors impacted by context and requiring nuance, and the bar varies by video and policy category.⁹ For example, hate speech and encouragement of violence violate our policies, but a documentary about WWII that features speeches from Nazi leaders may be allowed if the documentary provides historical context and does not aim to support the despicable views promoted by the Third Reich.

26. ***Borderline Content***. Some problematic content, such as certain kinds of misinformation, comes close to violating our Community Guidelines but may not cross the line—what YouTube calls “Borderline Content.” Borderline content is just a fraction of 1% of what is watched on YouTube in the United States. Because such borderline content may be disturbing or otherwise inappropriate for some viewers, YouTube uses algorithms to reduce its availability including disabling features like sharing, commenting, liking, and placing in

⁸ Michael Grosack, *A look at how we treat educational, documentary, scientific, and artistic content on YouTube* (Sept. 17, 2020), <https://blog.youtube/inside-youtube/look-how-we-treat-educational-documentary-scientific-and-artistic-content-youtube/>

⁹ Some sensitive or egregiously harmful categories are ineligible, such as child endangerment, footage of deadly violence filmed by the perpetrator, or illegal content.

YouTube's suggested videos module. After we announced changes in 2019 to our recommendation systems to reduce the spread of borderline content, there was a 70% drop in watchtime on non-subscribed, recommended borderline content in the U.S. that year. Since algorithms help identify and prevent these borderline videos from being suggested to others, S.B. 7072's restrictions on content moderation algorithms would impair YouTube's ability to effectively reduce the availability of borderline content on our site.

Consistency and Algorithms

27. The "consistency" requirement would also undermine YouTube's ability to act quickly to terminate accounts that are clearly seeking to violate our Community Guidelines. When an account uploads content that violates the Community Guidelines, the content is removed and the account generally receives a warning. Subsequent violative content results in a "strike," which temporarily suspends the account's ability to upload content. Three strikes within 90 days leads to the account's termination and deletion of all content uploaded from the account. And in the case of severe abuse (such as predatory behavior, spam, or pornography), YouTube will immediately terminate accounts to protect the YouTube community.

28. The "consistency" requirement would burden YouTube's decisions to protect its communities from harm by removing violative videos quickly. Attempting to comply would result in a significantly higher proportion of content being available on YouTube that violates the Community Guidelines. As noted above, (*id.* ¶19), no content policy enforcement system is perfect, especially at YouTube's scale. Recent examples illustrate the tension that can arise between accuracy when enforcing content policies and the need to limit potentially harmful content accessible on the site. In response to Covid-19, YouTube took steps to protect the health and safety of our extended workforce and reduced in-office staffing. As a result of reduced

human review capacity, YouTube had to choose between limiting enforcement while maintaining a high degree of accuracy, or using automated systems to cast a wider net to remove potentially harmful content quickly but with less accuracy. YouTube chose the latter, despite the risks that automation would lead to over-enforcement—in other words, removing more content that may not violate our policies for the sake of removing more violative content overall. For certain sensitive policy areas, such as violent extremism and child safety, we accepted a lower level of accuracy to ensure the removal of as many pieces of violative content as possible. This also meant that, in these areas specifically, a higher amount of non-violative content was removed. The decision to over-enforce in these policy areas—out of an abundance of caution—led to a more than 3x increase in removals of content that our systems suspected was tied to violent extremism or potentially harmful to children. These included dares, challenges, or other posted content that may endanger minors.

29. For similar reasons, S.B. 7072’s provisions banning the use of certain algorithms (categories named “post-prioritization” and “shadow ban”) as to political candidates, and allowing all users to opt out of those algorithms, would greatly limit YouTube’s ability to utilize machine learning for content moderation purposes. Such limitations on algorithmic enforcement would necessarily result in more views of violative and harmful content on the site while awaiting human review. Over 95% of violative content is currently flagged by algorithms. It would be impracticable for human review to keep pace with 500 hours of video uploaded every single minute of every day.

Other Impact

30. **Age Gating, Restricted Mode, and YouTube Kids.** YouTube provides features, tools, and content-gated offerings to content-sensitive users and organizations (such as libraries

and families with young children). For example, YouTube uses age-gating, a process whereby certain content—such as material featuring sexual situations or graphic depictions of violence—is made inaccessible to users under age 18. YouTube also has a feature called Restricted Mode, an optional setting that sensitive users can choose to use to limit the content they see on YouTube. It is also used by libraries, schools, and public institutions. Videos containing potentially adult content like drugs or alcohol use, sexual situations, or violence are not shown to users in Restricted Mode.¹⁰ YouTube also produces an app called YouTube Kids, which includes only videos that are determined to be suitable for children through a combination of human and algorithmic review, and which blocks access to comments more suitable for adults. Over 35 million weekly viewers in more than 100 countries use YouTube Kids. S.B. 7072 would force Restricted Mode and YouTube Kids to display all content posted by any Florida political candidate, and all content (short of legal obscenity) posted by a “journalistic enterprise,” even if that content would otherwise be violative of YouTube’s policies, or is content that YouTube believes in its judgment to be inappropriate for those audiences. Similarly, YouTube would have to stop age-gating such content. These changes would contradict the purpose of these features and products to give parents options for increased safety, forcing YouTube to make age-inappropriate content available to minors and other users in Restricted Mode.

31. **Unclear User Scope.** YouTube would be unable to determine with confidence whether an account holder is subject to the Act as either (1) a Florida resident or (2) someone claiming Florida domicile (collectively, “Floridian”). A user can create a YouTube account without providing a physical address. While IP geolocation offers clues as to a user’s location,

¹⁰ *Your content & Restricted Mode*, <https://support.google.com/youtube/answer/7354993/your-content-and-restricted-mode#guidelines&zippy=%2Cwill-my-content-show-if-my-viewers-have-restricted-mode-turned-on>

those signals can be obscured by known measures, such as Virtual Private Networks (“VPNs”). And, a user’s location does not identify users who are located out of state but claim domicile in Florida. To prevent liability, YouTube would have to lower its moderation standards broadly for any video and comment that might have been posted by a Floridian subject to the Act, even if the content was neither uploaded nor posted by a Floridian.

32. **Notices.** While YouTube already alerts users when their videos or comments are removed for violating the Community Guidelines or generally when their account is suspended, YouTube does not currently provide notice in every instance where required by S.B. 7072, e.g., Section 4 (1)(b).¹¹ One example is showing information panels, and just one panel, YouTube’s COVID-19 information panel, has been shown over 400 billion times. The complexity of complying at this scale has a further component, since S.B. 7072 mandates that notices provide several “thorough” explanations.

33. **“Political Candidates.”** S.B. 7072’s requirement not to “deplatform” political candidates, nor to apply algorithms for “post-prioritization” and “shadow banning” to content by or about candidates, would preclude YouTube from using Community Guidelines or content moderation efforts to remove harmful content posted by such candidates. It would create a special category of users who, unlike every other YouTube user, could post violative materials harming the YouTube community without consequence. Such a category would contradict YouTube’s curatorial judgment to enforce our content policies regardless of the speaker, political viewpoint, their background, their position, or their affiliations. There is also no clear way for

¹¹ “(b) ‘censor’ includes any action taken by a social media platform to delete, regulate, restrict, edit, alter, inhibit the publication or republication of, suspend a right to post, remove, or post an addendum to any content or material posted by a user. The term also includes actions to inhibit the ability of a user to be viewable by or to interact with another user of the social media platform.”

YouTube’s search results to comply with S.B. 7072’s requirement not to apply “post-prioritization” algorithms to content about political candidates. Simply put, returning any search results requires the use of “algorithms” whose actions would fall into the broad statutory definition of “post-prioritization.”

34. **“Journalistic Enterprises.”** The prohibition against using any moderation action—including those purely by human reviewer without the assistance of algorithms—regarding content posted by “journalistic enterprises” would preclude any enforcement of the Community Guidelines as to those entities. As noted above, objectionable content uploaded by a “journalistic enterprise” would have to be shown in Restricted Mode browsing and in YouTube Kids, greatly diminishing the value of these offerings for users. The prohibition would also require YouTube to create another new category of speakers on YouTube that are immune to the same Community Guidelines applicable to everyone else. And YouTube currently discloses government or public funding for news publishers for over a thousand channels via information panels alongside their videos. YouTube would not know which entities might qualify as a covered “journalistic enterprise” under S.B. 7072, so YouTube would risk significant liability when enforcing its Community Guidelines against entities that may so qualify.

I declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge. Executed on this 2nd day of June, 2021 in Washington, D.C.



Alexandra Veitch