

ADVOCATES FOR ANIMALS

Solicitors

Making full use of the law to help animals



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By email: susan@google.com

Dear Ms Wojcicki

Animal abuse videos

1. We act for Lady Freethinker (LFT), a US not-for-profit, and Action for Primates (AfP), a UK not-for-profit.
2. LFT and AfP are both members of the Asia for Animals Coalition (Asia for Animals), which was in correspondence with you last year about animal abuse videos (see below). However, this letter is written on behalf of LFT and AfP in their individual capacities.

3. Both of our clients are concerned about YouTube's *laissez-faire* attitude to the posting of animal abuse videos and its failure to enforce its guidelines. We believe that YouTube is thereby committing criminal offences in the UK and we will explain why.

What we mean by 'animal abuse videos'

4. By 'animal abuse videos', our clients mean videos showing gratuitous cruelty to animals, particularly where the cruelty was perpetrated with a view to the footage being shared on YouTube or other online platforms, whether for reward or otherwise. We exclude footage taken or shown in the public interest to expose those responsible for cruelty to animals, as with an undercover investigation.
5. One type of video involves fake rescues, where an animal is placed in apparent danger – thereby causing a high level of stress – only to be 'rescued' by the perpetrator. Fake rescues not only cause immense suffering to animals but represent a fraud on the viewing public. Other videos involve animal fighting or forcing animals to undergo sexual acts. LFT gave further examples in its 2020 report *YouTube: Profiting from Animal Abuse* (the LFT report) (attached). The list is not exhaustive. It appears that some of those viewing the videos may obtain sexual gratification: that is not necessary to meet our clients' definition but is relevant to one offence which YouTube is facilitating.

YouTube's encouragement to share videos

6. It is integral to YouTube's business model that the YouTube community should be encouraged to share videos. That inevitably leads to more views and more revenue from advertisers for creators and YouTube alike.
7. For example, YouTube publishes a tutorial about how to get started, to brand and to make money.¹ There are incentives to join the YouTube Partner Program:² one of the criteria is to have more than 1,000 subscribers to a channel and more than 4,000 'watch' hours in the last 12 months. Membership enables subscribers to share in advertising revenue.

Previous correspondence with Asia for Animals

8. Asia for Animals wrote to you on 6 May 2020. The letter focused for illustrative purposes on one particular YouTube Channel entitled *Captive Baby Monkeys*, which

¹ <https://creatoracademy.youtube.com/page/lesson/jumpstart?cid=bootcamp-foundations&hl=en-GB#strategies-zippy-link-1>

² <https://support.google.com/youtube/answer/72851>

had been live since 2012 and had had over a million views. The letter explained that reporting a video as being in violation of YouTube standards was not easy because the 'animal abuse' option was layered beneath 'violent or repulsive content'. Despite multiple complaints, videos on the *Captive Baby Monkeys* channel had simply been flagged as 'inappropriate for some viewers' and remained in place for a long time.

9. Asia for Animals asked for two things. First, the removal of the channel and others like it (citing a 'playlist' and another channel). Second, that YouTube adopt a no tolerance policy of content violating the animal cruelty policy and enforce it vigilantly and proactively. Videos reported as containing cruelty should be promptly removed.
10. The YouTube Support Team replied on 13 May. It said that it could not share details of action taken on other users' channels but said that it had reviewed the content the coalition had flagged and removed any content found to violate its policies. It pointed out that it only terminated channels if they received three strikes in a 90-day period (which is, in fact, not strictly accurate: see below).
11. Asia for Animals replied on 20 May 2020, pointing out that YouTube had removed just one video from one of the channels referenced in the 6 May letter. It continued (with references):

'A twenty-minute browse of the channel "Captive Baby Monkeys" on May 14, 2020 revealed that the image of the man slitting a monkeys' throat remains on the site, as do dozens of videos containing cruelty and illegal activity. This channel links to multiple other channels and videos dedicated to animal torture, including a video in which a young monkey is buried alive. This video has been live for less than six months but has already received over four million views, and contains advertising, indicating that it has been monetized. YouTube is thus rewarding the video's creators for uploading videos showing extreme cruelty, in direct violation of your policies. Similar (and also monetized) channels "Monkey Raging" and "SR Monkey Daily" have each been live for many years. Further examples are easy to find and far too numerous to list here'.

12. The letter pointed out that there was no mechanism for reporting channels as opposed to videos and complained again about the non-user-friendly nature of the reporting mechanism. Asia for Animals again asked for pre-emptive action by YouTube to prevent unsuitable content being uploaded and repeated that in some cases YouTube was financially rewarding users who uploaded violent, abusive, cruel and often illegal content.
13. I understand that YouTube has not replied to this letter. I attach the correspondence.

14. LFT had also written to you about the *Captive Baby Monkey* video on 13 April 2020, without response. It has also reported the channel and multiple videos using the online reporting system, again without response. We understand that the *Captive Baby Monkey* channel was eventually taken down, but not before it had received a very large number of views. The *Monkey Raging* channel changed its name to Abang Satwa. The individual responsible for it was convicted of animal cruelty in Indonesia. We understand that the police ordered deletion of the videos. YouTube itself had failed to act: you told LFT in an email on 5 April 2021 that it did not violate the three strikes policy (see below).
15. AFP had also written to you about *Captive Baby Monkey* and *Monkey Raging* in May 2020 and February 2021, with no response.
16. *SR Monkey Daily* is still live, albeit with some modification of content. The YouTuber repeatedly put glue, chili and other irritants into the food of captive macaques, set off fireworks near them and fielded requests for further acts of cruelty in the comments section on his videos after soliciting donations. A YouTube employee told LFT that the *SR Monkey Daily* did not qualify for a 'strike' (see below), which seems incomprehensible.

The LFT report

17. In November 2020, LFT published its report.
18. As part of its methodology, LFT searched YouTube for animal abuse videos in April and May 2020, revisiting the videos in July 2020, and found nearly 1.2 billion views of roughly 2,000 videos glorifying animal cruelty according to its definition (excluding undercover investigations). LFT used a number of keywords to identify the videos. The vast majority of the videos meet the definition of 'animal abuse videos' used in this letter.³
19. 91% of the videos were still live on YouTube at the end of the investigation. Only 185 of the videos were removed, accounting for some 136 million of the 1.2 billion views. LFT estimate that, when monetised, the videos could earn the makers of the videos nearly \$15 million and YouTube itself over \$12 million in advertisement revenues alone.⁴ The animals used were wildlife, companion animal and farmed

³ Videos involving farmed animals display graphic, violent actions toward animals, deliberate cruelty not filmed as part of an undercover investigation or cockfighting. Videos of hunting only qualify where other animals (usually dogs) are used to hunt other animals

⁴ Based on what is described as an average taken from a *Business Insider* survey:

<https://drive.google.com/drive/folders/1HCEVK-R6bdHZllJA4tbe-vWBr69Fo2rZ>

LFT's methodology was as follows. The average was taken from all 16 YouTube stars mentioned in the Business Insider report. From those numbers, LFT calculated a CPM (cost per 1,000 views). The report states that YouTube takes 45%, with the remainder paid to the creators. The average cost per 1,000 views

animals. Over 70% of the videos are still live, several months later, with over 700 million views.

20. The report discusses offences committed under US and UK law and suggests potential zoonotic diseases which may be spread by the filmed activities. This is, of course, of particular relevance in the context of Covid-19.
21. LFT sent the report to YouTube's US headquarters, by 'signed for' mail and email, on 29 October 2020. YouTube has failed to respond and has refused several requests for a meeting.
22. The report was featured in the UK national newspaper *The Guardian* on 19 December 2020.⁵
23. Since it was published, LFT has continued to monitor videos on YouTube. For example, it identified well over 400 videos in April and the first half of May this year, with tens of millions of views. These include fake rescues and monkey torture. Examples are given below.

The World Animal Protection report

24. World Animal Protection (WAP) recently produced its own report about fake rescues.⁶ The report, which referenced the LFT report, found:

'In total, we found over 181 different fake animal rescue videos published on YouTube between October 2018 and May 2021. The 50 most viewed videos alone had collectively been viewed 133.5 million times and secured 13 million subscribers to their channels.

Despite YouTube's public pledge on March 25th 2021 to address this animal abuse, between March 26th and June 1st 2021 we identified an additional 47 videos, posted across 15 different channels, that had already collectively acquired over 7 million views and 2.7 million subscribers on YouTube ...'.

YouTube policies

25. As you will know, YouTube's *Community Guidelines and Policies* are set out at https://support.google.com/youtube/answer/2802008?hl=en&ref_topic=9282436

was \$12.50, or \$0.0125 per view, for the creators. LFT then extrapolated YouTube's 45% share (around \$10.20 per 1,000 views)

⁵ <https://www.theguardian.com/world/2020/dec/19/youtube-must-remove-videos-of-animal-cruelty-says-charity>

⁶ *Views that abuse: The rise of fake "animal rescue" videos on YouTube* (: https://dkt6rvnu67rqj.cloudfront.net/cdn/ff/c1Fmr-ttEl3g_y3asoNQNJOGNMT9YbmKeHVVbqCxAb0/1625064348/public/media/ViewsthatAbuse-YouTubeReport2021.06.28.pdf

One of the set of guidelines is headed *Violent or Graphic Content Policies* and it is within this that the specific policy about animal abuse is found:

'Animal abuse or violence

- *Content that includes a human maliciously causing an animal to experience suffering when not for traditional or standard purposes such as hunting or food preparation.*
- *Content featuring animal rescue that has been staged and places the animal in harmful scenarios.*
- *Content where animals are encouraged or coerced to fight by humans.*

Animal abuse content

Animal abuse refers to content depicting the malicious infliction of physical harm causing an animal or group of animals to experience suffering. This means that there's no purpose to the depiction of animal suffering other than to shock or disgust. We may make exceptions for content depicting generally accepted practices like: hunting, trapping, pest abatement, food preparation, medical treatment, or animal slaughter that depict harm on an animal or group of animals.

The following types of content are not allowed on YouTube:

Dog fighting, cockfighting, or other videos in which human onlookers are forcing animals to attack each other. We do allow content featuring animals fighting in the wild, such as in a nature documentary.

Non-educational, documentary, scientific, or artistic content that shows animal suffering for the purposes of shock.

Bullfighting with bulls being harmed (such as swords in the bull).

Hunting using illegal practices like bombing or poison.

Content depicting animal rescue that has been staged and places the animal in harmful scenarios.

This is not a complete list'.

26. The reference to staged rescues is a recent change. The recognition that these videos represent a particular problem is welcome, but of course is worthless unless the guidelines are properly enforced.
27. We note in passing that, surprisingly, YouTube appears to tolerate a human being maliciously causing suffering to an animal if it is in the context of food preparation or hunting. Perhaps you would clarify whether that is your intention. If not, the wording needs to be changed.

Enforcement

28. YouTube claims to take both a proactive and reactive approach to enforcement of its guidelines.

Proactive

29. The *Detecting Violations* section of the YouTube website says: ⁷

'How does YouTube identify content that violates the Community Guidelines? With hundreds of hours of new content uploaded to YouTube every minute, we use a combination of people and machine learning to detect problematic content at scale. Machine learning is well suited to detect patterns, which helps us to find content that is similar to other content that we've already removed, even before it's viewed. We also recognise that the best way to quickly remove content is to anticipate problems before they emerge. Our Intelligence Desk monitors the news, social media and user reports to detect new trends surrounding inappropriate content, and works to make sure that our teams are prepared to address them before they can become a larger issue.'

30. The *Enforcing Guidelines* section confirms the approach: ⁸

'Machine-learning systems help us identify and remove spam automatically, as well as remove re-uploads of content that we've already reviewed and determined violates our policies. YouTube takes action on other flagged videos after review by trained human reviewers. They assess whether the content does indeed violate our policies, and protect content that has an educational, documentary, scientific or artistic purpose. Our reviewer teams remove content that violates our policies and age-restrict content that may not be appropriate for all audiences'.

31. The *Managing harmful content* section then explains that 'once [content violating our policies] is identified, human review verifies whether it violates our policies. If it does, the content is removed and used to train our machines for better coverage in the future'. ⁹

32. The *Progress on managing harmful content* section ¹⁰ says:

'Our Community Guidelines outline what we allow and don't allow on YouTube. A key part of our commitment to responsibility is enforcing these guidelines and removing

⁷ <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/#detecting-violations>

⁸ <https://www.youtube.com/howyoutubeworks/policies/community-guidelines/#enforcing-policies>

⁹ https://www.youtube.com/intl/ALL_uk/howyoutubeworks/our-commitments/managing-harmful-content/

¹⁰ https://www.youtube.com/intl/ALL_uk/howyoutubeworks/progress-impact/responsibility/

policy-violating content. We've put together a few key data points to show you how we're progressing with our responsibility efforts – if you'd like to know more, you can find details on our dedicated Community Guidelines Enforcement Report.

...

YouTube relies on teams around the world to review flagged videos and remove content that violates Community Guidelines, restrict videos (e.g. age-restrict content that may not be appropriate for all audiences) or leave the content live when it doesn't violate our guidelines.

This exhibit shows the volume of videos removed by YouTube by the reason a video was removed. These removal reasons correspond to YouTube's Community Guidelines.

Reviewers evaluate flagged videos against all of our Community Guidelines and policies, regardless of why the video was originally flagged'.

33. A chart then shows that, between October and December 2020, YouTube removed 1.9 million videos breaching the *Violent or Graphic* content guidelines (20.6% of the total videos removed). Neither this chart nor the linked *Community Guidelines Enforcement Report*¹¹ shows how many of these videos contained animal abuse.
34. A total of 2,055,515 channels were removed between October and December 2020. Since all the videos on a channel are removed when the channel is removed, 51,078,806 videos were removed in the same period. The figures for January to March 2021 were 2,230,210 channels and 59,301,978 videos.¹² The website says that a total of 9,569,641 videos were removed in the same period (presumably this means in addition to videos removed via removal of channels). The vast majority were removed by 'automated flagging'. 15.6% were for breach of the violent or graphic content guidelines. The webpage gives a breakdown of removed videos by country, explaining that 'The IP address usually corresponds with where an uploader is geolocated, unless they are using a virtual private network (VPN) or proxy server'.
35. The *Legal Removals* section explains that local laws are relevant:¹³

'While our Community Guidelines are policies that apply wherever you are in the world, YouTube is launched in more than 100 different countries - so we also have processes in place to review and appropriately act on valid legal requests based in applicable local laws'

36. There is then a link to enable the reporting of violation of local laws.¹⁴

¹¹ <https://transparencyreport.google.com/youtube-policy/removals?hl=en>

¹² <https://transparencyreport.google.com/youtube-policy/removals?hl=en>

¹³ https://www.youtube.com/intl/ALL_uk/howyoutubeworks/policies/legal-removals/

¹⁴ <https://support.google.com/youtube/topic/6154211?hl=en>

Reactive

37. Each set of specific guidelines has these introductory words:

'The safety of our creators, viewers, and partners is our highest priority. We look to each of you to help us protect this unique and vibrant community ...'

38. The *Flagging content* section of the YouTube website says:

'Though we are determined to continue reducing exposure to videos that violate our policies and have tasked over 10,000 people with detecting, reviewing and removing content that violates our guidelines, the YouTube community also plays an important role in flagging content that they think is inappropriate.

If you see content that you think violates the Community Guidelines, you can use our flagging feature to submit content for review.

We developed the YouTube Trusted Flagger programme to provide robust content reporting processes to non-governmental organisations (NGOs) with expertise in a policy area, government agencies and individuals with high flagging accuracy rates. Participants receive training on YouTube policies and have a direct path of communication with our Trust and Safety specialists. Videos flagged by Trusted Flaggers are not automatically removed. They are subject to the same human review as videos flagged by any other user, but we may expedite review by our teams. NGOs also receive occasional online training on YouTube policies'.

39. LFT applied to be part of the Trusted Flagger scheme in April 2021. Extraordinarily, despite its evident interest and expertise in animal abuse videos, it was told in an email on 11 April that '[the Trusted Flaggers Program] are not actively onboarding flaggers with expertise in the policy areas most relevant to your organisation at this time'. That calls for a proper explanation. The refusal appears to confirm that YouTube does not take its animal abuse guidelines seriously.

40. The *Report inappropriate content* page adds: ¹⁵

'We rely on YouTube community members to report content that they find inappropriate. Reporting content is anonymous, so other users can't tell who made the report'.

The three strikes policy

41. YouTube normally operates a three strikes policy for channels ¹⁶ but can remove after a single case of severe abuse.

¹⁵ <https://support.google.com/youtube/answer/2802027?co=GENIE.Platform%3DAndroid&hl=en>

¹⁶ <https://support.google.com/youtube/answer/2802032>

Conclusion on enforcement

42. It is clear from all this that YouTube has guidelines in place and the mechanisms, proactive and reactive, to ensure that they are enforced. In particular, it has machine detection, trusted flaggers, complaints procedures and a system of (human) review. The problem is that, in contrast to other types of channels and videos breaching YouTube guidelines, you fail to use them appropriately with animal abuse videos.

Some recent examples of animal abuse videos

43. We attach a spreadsheet updating the LFT report.

44. Here are some further recent examples of sickening animal abuse channels and videos (involving monkey death and torture as well as fake rescues featuring, for example, puppies attacked by snakes). YouTube has failed to remove them, despite multiple reporting during May 2021:

- Monkey Max (channel exclusively featuring baby monkey abuse)
https://youtube.com/channel/UCpwCy_xRvww8Arq3CWwvMrA
- Teacher Bunsom (channel exclusively featuring baby monkey abuse)
<https://www.youtube.com/channel/UCxZpchdwmFcOYEfuUvfBVIA>
- Chara Chin (channel exclusively featuring baby monkey abuse)
<https://youtube.com/channel/UC5QnqMSoq4iQFMMrtIpEJAg>
- Discovery inforest (channel exclusively featuring baby monkey abuse)
<https://youtube.com/user/lemon12121>
- Monkey Leo (channel exclusively featuring baby monkey abuse)
<https://youtube.com/user/Femtehjul>
- Monkey Sana (channel exclusively featuring baby monkey abuse)
https://youtube.com/channel/UCGV_C62WIZp-gK_8-z0gcmA
- Monkey Tisa (channel exclusively featuring baby monkey abuse)
https://youtube.com/channel/UC_Mwo8jUr9qE1HsVmNZ7D0A
- Monkey Sana
<https://youtu.be/eHujQwG3F5o>

- Baby Monkey CLARE Suffocates And Nearly Dies!!! (video featuring baby monkey strangled with bicycle cable) <https://www.youtube.com/watch?v=UJjc3t5Zjog>
- Baby monkey intentionally thrown in ants nest. Pity monkey (video featuring scared, wet baby monkey placed in ant's nest) <https://www.youtube.com/watch?v=YPnFkbmpI9w>
- Pitiful Animals | Rescue Little Dog King Python One Cared _ Rescue puppy Story (video featuring small dog attacked by snake: <https://www.youtube.com/watch?v=V8PzYwXrjO8&t=1s>)
- Rescue puppy from King Snake Python attack crying for help (video featuring small dog attacked by snake) <https://www.youtube.com/watch?v=AykvStXCIFQ> (see about 5:40)

Legal analysis

45. Our clients maintain that, by its systemic failure to enforce its guidelines relating to animal abuse videos, YouTube is committing offences under UK law. In short: it is encouraging or assisting, within section 44 of the Serious Crime Act 2007 (the SCA 2007), the commission of offences under other legislation (the principal offences).

The principal offences

46. There are at least two principal offences which YouTube by its inaction is encouraging or assisting:

i. Obscene Publications Act 1959 (as amended)

47. Section 2(1) of the Obscene Publications Act 1959 (the 1959 Act) provides:

'(1) Subject as hereinafter provided, any person who, whether for gain or not, publishes an obscene article or who has an obscene article for publication for gain (whether gain to himself or gain to another) shall be liable –

...

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding five years or both' (emphasis added).

48. Section 1 provides definitions:

'(1) For the purposes of this Act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In this Act "article" means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.

(3) For the purposes of this Act a person publishes an article who –

(a) distributes, circulates, sells, lets on hire, gives, or lends it, or who offers it for sale or for letting on hire; or.

(b) in the case of an article containing or embodying matter to be looked at or a record, shows, plays or projects it or, where the matter is data stored electronically, transmits that data' (emphasis added).

49. So, the offence is committed where someone either publishes, whether for gain or not, an obscene article or possesses ('has') such an article with a view to gain (for themselves or someone else). An article is obscene if it 'tend[s] to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it'. That would certainly include animal abuse videos. Obscenity is a question for the Magistrates' Court or, on a Crown Court trial, the jury. 'Article' includes film and publishing extends to showing, playing or projecting a visual image and, where data is stored electronically, transmitting it. That would include the sharing of animal abuse videos or simply watching them.

50. Publishing an obscene article is an offence of strict liability. In other words, although the defendant must intend to publish the offending article, they need not realise that it is obscene, still less intend to deprave or corrupt the reader or viewer.

51. The fact that regular viewers of animal abuse videos might be said already to be depraved and corrupted does not prevent an offence being committed: see the decision of the House of Lords (at that time the highest court in the UK) in *DPP v*

Whyte.¹⁷ Not everyone reading or viewing particular material need be deprived or corrupted in the process; in principle, a single person might suffice.

ii. Criminal Justice and Immigration Act 2008

52. Section 63 of the Criminal Justice and Immigration Act 2008 (the 2008 Act) provides:

'(1) It is an offence for a person to be in possession of an extreme pornographic image.

(2) An "extreme pornographic image" is an image which is both –

(a) pornographic, and

(b) an extreme image.

(3) An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

...

(5A) In relation to possession of an image in England and Wales, an "extreme image" is an image which –

(a) falls within subsection (7) ..., and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(6) In relation to possession of an image in Northern Ireland, an "extreme image" is an image which –

(a) falls within subsection (7) ..., and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following –

(a) an act which threatens a person's life,

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,

(c) an act which involves sexual interference with a human corpse, or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

...

(8) In this section "image" means –

(a) a moving or still image (produced by any means); or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a)

...' (emphasis added).

53. The offence is one of possession. It would undoubtedly apply to some animal abuse videos. It does not matter where the image is created.

¹⁷ [1972] AC 849

54. The offence applies to England, Wales and Northern Ireland but not Scotland. However, section 51A Civic Government (Scotland) Act 1982 creates a similar offence.

The SCA 2007

55. Section 44 of the Serious Crime Act 2007 (the SCA 2007) creates the offence of assisting or encouraging other offences (i.e. what we term principal offences):

'(1) A person commits an offence if –

(a) he does an act capable of encouraging or assisting the commission of an offence; and

(b) he intends to encourage or assist its commission.

(2) But he is not to be taken to have intended to encourage or assist the commission of an offence merely because such encouragement or assistance was a foreseeable consequence of his act' (emphasis added).

56. Section 45 then provides:

'A person commits an offence if –

(a) he does an act capable of encouraging or assisting the commission of an offence; and

(b) he believes –

(i) that the offence will be committed; and

(ii) that his act will encourage or assist its commission' (emphasis added).

57. Section 46 then deals with the situation where the person's belief is that one or more offences will be committed but they do not know which one.

58. Section 47 is an important supplementary provision:

'(1) Sections 44, 45 and 46 are to be read in accordance with this section.

(2) If it is alleged under section 44(1)(b) that a person (D) intended to encourage or assist the commission of an offence, it is sufficient to prove that he intended to encourage or assist the doing of an act which would amount to the commission of that offence.

(3) If it is alleged under section 45(b) that a person (D) believed that an offence would be committed and that his act would encourage or assist its commission, it is sufficient to prove that he believed –

(a) that an act would be done which would amount to the commission of that offence; and

(b) that his act would encourage or assist the doing of that act.

...

(8) Reference in this section to the doing of an act includes reference to –

(a) a failure to act;

(b) the continuation of an act that has already begun;
(c) an attempt to do an act (except an act amounting to the commission of the offence of attempting to commit another offence).
... ' (emphasis added).

59. The effect of subsections (2) and (3) is that the person doing the encouraging or assisting need not know that the act being encouraged or assisted is a crime. Importantly, under subsection (8) assistance or encouragement can encompass a failure to act.
60. Section 50 creates the defence of acting reasonably. However, YouTube would not be able to show that it acted reasonably in failing to enforce its own guidelines.
61. Under section 52(1), where the encourager or assister 'knows or believes that what he anticipates might take place wholly or partly in England or Wales', the fact that they are outside England and Wales at the relevant time does not matter. So, the fact that YouTube has its headquarters in California does not matter since the principal offence would at least partly be committed in England and Wales. In fact, the company has a regional headquarters in the UK.

Steps in the argument

62. The steps in the argument that YouTube is by its failure to enforce its guidelines assisting the commission of the principal offences are as follows:
- YouTube knows that there is a huge problem with the uploading of videos which breach its animal abuse Community Guidelines: it knows this because of the frequency with which complaints have been made, the LFT and WAP reports and the widespread international news media coverage (including in the UK).¹⁸ The *National Geographic* recently carried a major piece about animal abuse videos, quoting LFT.¹⁹ YouTube appears to do very little if anything to police the guidelines proactively and its enforcement of those guidelines when infringements are brought to its attention is usually wholly inadequate

¹⁸ <https://www.thesun.co.uk/news/14032495/youtube-baby-monkeys-torture-animal-cruelty/>
<https://www.dailymail.co.uk/news/article-9263233/Baby-monkeys-beaten-thrown-lake-tortured-death-horrifying-YouTube-videos.html>
<https://www.dailystar.co.uk/news/latest-news/baby-monkeys-suffering-campaign-sick-23504418>

¹⁹ <https://www.nationalgeographic.com/animals/article/how-fake-animal-rescue-videos-have-become-a-new-frontier-for-animal-abuse>

- Under the 1959 Act, it is an offence to publish (for gain or otherwise) or to possess an obscene film with a view to publishing it for gain. The vast majority of animal abuse videos are obscene because they tend to deprave and corrupt
- The reference to ‘play’ in the definition of ‘publish’ in the 1959 Act indicates that watching a video itself constitutes an offence. In addition, YouTube intends that, within some limitations, videos are to be shared within its ‘community’. Sharing a link constitutes publishing (see section 1(3)(a) and (b) of the 1959 Act)
- By its *laissez-faire* attitude to enforcement of its guidelines – even when the scale of the problem is brought to its attention – YouTube is thereby assisting, if not encouraging, the commission of offences under the 1959 Act: if it enforced its guidelines properly, animal abuse videos would not be available for publishing – playing or sharing – in England and Wales via YouTube. Assisting is a broad term. It is not defined by the SCA 2007 but section 47(8) makes it clear that it can extend to a failure to act. An analogy would be where a security guard looks the other way when a burglary is underway: the guard would properly be described as assisting the burglary ²⁰
- The defences section 50 of SCA 2007 are not available to YouTube
- Under the under 2008 Act, mere possession of extreme pornographic images involving animals is an offence. Downloading a video could therefore constitute an offence. Some animal abuse videos meet the statutory definition. By its *laissez-faire* attitude, YouTube is assisting the commission of an offence under that Act
- YouTube does not actually need to intend or even believe that the principal offences will be committed, merely that people will watch and share the videos which are, as a matter of fact, obscene or extreme pornography and therefore commit offences (see section 47(2) and (3) of SCA 2007)
- Of course, YouTube is not directly assisting in the acts of cruelty: those have already happened by the time it allows the videos to be uploaded and disseminated. But that does not matter. The principal offences are not those of cruelty but of obscene publication and possession of extreme pornography and its failure to enforce its guidelines constitutes assisting in the commission of those offences

²⁰ Section 65(2)(b) SCA 2007 is also relevant:

‘A reference in this Part to a person's doing an act that is capable of encouraging or assisting the commission of an offence includes a reference to his doing so by –

...

(b) failing to take reasonable steps to discharge a duty’

- The principal offences are committed in England and Wales, so it does not matter that YouTube itself is based in the US.

63. The fact that YouTube is benefiting financially from increased views means that it has a clear motive for assisting in the commission of the principal offences by failing to enforce its guidelines, though that is not necessary to establish liability.

64. YouTube knows or can easily ascertain the location of people who are downloading particular videos. Its guidelines acknowledge the relevance of local law, although it is not necessary to show that the company is aware of UK law in this regard.

Prosecution

65. For these reasons, YouTube and its executives are liable to be prosecuted under the SCA 2007. The company can be prosecuted because individuals with the relevant knowledge are its 'directing mind and will'. Similarly, individuals with the relevant authority can be prosecuted.

66. Prosecution can be by the state or by any citizen or organisation.

Next steps

67. Our clients would prefer to resolve the matter through discussion than legal proceedings. Their objective is to ensure that YouTube rigorously polices its guidelines proactively, as well as responding promptly and effectively to complaints, and that therefore the incentive to commit and film the acts of cruelty is removed. Please be in no doubt, however, that our clients will pursue any avenues open to them, including prosecution, to ensure that YouTube acts lawfully.

68. We look forward to hearing from you within 21 days. We would be happy to have a meeting with you and our clients.

Yours sincerely



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