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SOCIAL MEDIA PLATFORMS IN INTERNATIONAL CRIMINAL INVESTIGATIONS

*Rebecca J. Hamilton*¹

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In the summer of 2017, hundreds of thousands of videos of the Syrian conflict suddenly disappeared from YouTube.² The videos had been published on channels like the Aleppo Media Center, the Shaam News Agency, and the Violations Documentation Center in Syria, which are run by Syrian civil society groups that have been documenting war crimes and other human rights violations since the conflict began in 2011.³ In a war zone that has been extraordinarily difficult for outside investigators to access, the videos provided crucial evidence that many hoped would eventually lead to international criminal prosecutions.⁴

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1. Associate professor of Law, American University Washington College of Law.
 2. Malachy Browne, *YouTube Removes Videos Showing Atrocities in Syria*, N.Y. TIMES (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/world/middleeast/syria-youtube-videos-isis.html> [perma.cc/YF4X-SFVA].
 3. Tech Advocacy: Amount of Content Preserved, Made Unavailable and Restored, Syrian Archive, <https://syrianarchive.org/en/tech-advocacy> [https://perma.cc/TFF9-FEMX]; Dia Kayyali, Vital Human Rights Evidence in Syria is Disappearing from Youtube, WITNESS (Aug. 30, 2017), <https://blog.witness.org/2017/08/vital-human-rights-evidence-syria-disappearing-youtube/> [https://perma.cc/SK84-P879].
 4. See, e.g., Protocol of Cooperation Between the International, Independent and Impartial Mechanism and Syrian Civil Society Organisations Participating in the Laussane Platform, https://iiim.un.org/wp-content/uploads/2018/04/Protocol_IIIM_-_Syrian_NGOs_English.pdf [https://perma.cc/9JM8-BJVW]. There is already precedent for the use of social-media evidence in international criminal prosecutions. See Prosecutor v. Al-Werfalli, ICC-01/11-01/17, Warrant of Arrest, ¶ 3 (Aug. 15, 2017), https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF

One can readily imagine that any of the perpetrators whose crimes were caught on these videos would have had an interest in their disappearance. But in this case at least, no one in Syria was responsible. The disappearance of the videos was the work of YouTube's software engineers.⁵ Employees of the Silicon Valley-based social media platform had no intention of deleting potential war crimes evidence; they were trying, in fact, to fight terrorism online.⁶ They had introduced a new algorithm to improve the rate at which YouTube could detect and remove terrorist content⁷ – but the algorithm had been unable to consistently distinguish propaganda posted by ISIS from war crimes documentation posted by human rights activists.⁸

In response to media coverage, many of the videos were subsequently restored.⁹ But the incident was illustrative of a more fundamental, and less appreciated, development: the influx of new actors into the landscape of international criminal investigations.

YouTube employees, like many of the other new actors in this space, do not enter this landscape with the same set of professional norms or operate according to the same priorities as the court-appointed investigators who have traditionally dominated this work. Indeed, for YouTube and other social media companies that have become important repositories of war crimes evidence, international criminal investigations are not something they ever intended, or anticipated, being involved in.¹⁰

[<https://perma.cc/54D9-6VJN>] (relying on video posted to social media in the issuance of the arrest warrant).

5. Bernhard Warner, *Tech Companies Are Deleting Evidence of War Crimes*, THE ATLANTIC (May 8, 2019), <https://www.theatlantic.com/ideas/archive/2019/05/facebook-algorithms-are-making-it-harder/588931/> [<https://perma.cc/9RCD-JZGD>].
6. Kent Walker, *Four Steps We're Taking Today to Tighten Terrorism Online*, GOOGLE (June 18, 2017), <https://www.blog.google/around-the-globe/google-europe/four-steps-were-taking-today-fight-online-terror/> [perma.cc/XN6G-SD34].
7. Tim Mak, *Critics Say YouTube Hasn't Done Enough to Crack Down on Extremist Content*, NPR (Nov. 27, 2018), <https://www.npr.org/2018/11/27/671285261/critics-say-youtube-hasnt-done-enough-to-crack-down-on-extremist-content> [perma.cc/2QBG-PP6D].
8. Armin Rosen, *Erasing History: YouTube's Deletion of Syria War Videos Concerns Human Rights Groups*, FAST COMPANY (Mar. 7, 2018), <https://www.fastcompany.com/40540411/erasing-history-youtubes-deletion-of-syria-war-videos-concerns-human-rights-groups> [perma.cc/HDG2-7YQ9].
9. *Id.*
10. YouTube is not the only social media platform where such evidence has been uploaded. See, e.g., *Prosecutor v. Al-Werfalli*, ICC-01/11-01/17,

INVESTIGATING ATROCITIES

The first major criminal investigations of atrocity crimes in the post-Nuremberg period began with the UN-created ad hoc tribunals of the nineties. The tribunals for the former Yugoslavia and Rwanda took as a given that gathering evidence would require in-person contact between their staff and the victims and witnesses of the crimes they sought to prosecute.¹¹ The same was true with the International Criminal Court (ICC), established in 2002¹² – although access difficulties meant the ICC soon began to rely on a network of human rights groups and UN-affiliated agencies to help them gather evidence in places the Court’s staff could not reach.¹³

As others have documented, the introduction of these so-called “intermediaries” into the investigative process caused significant challenges, culminating in the ICC’s first case almost being derailed on the opening day of trial.¹⁴ Such problems were a harbinger of the challenges that now loom as technology promises to transform the investigatory landscape beyond recognition.

In 2007, Apple’s launch of the iPhone – and the cheaper alternatives that subsequently flooded the market – set the course for a major disruption in the way that international criminal investigations operate.¹⁵ Soon, millions of people across the world – including in areas

Warrant of Arrest, ¶ 11 (Aug. 15 2017), https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF [<https://perma.cc/54D9-6VJN>] (indicating Facebook has been used to upload such videos).

11. See, e.g., INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA & UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE, ICTY MANUAL ON DEVELOPED PRACTICES 15–27 (2009), http://www.icty.org/x/file/About/Reports%20and%20Publications/ICTY_Manual_on_Developed_Practices.pdf [<https://perma.cc/EN5S-GYP7>] (discussing the ICTY’s “information gathering” techniques).
12. See Understanding the International Criminal Court, INTERNATIONAL CRIMINAL COURT, <https://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> [perma.cc/Z2VP-A77K] (referring to the “field work” of the Court and its obligation to ensure security to the “individuals who interact with them,” implying in-person contact).
13. For a survey of this development, and the problems that arose from it, see generally Elena Baylis, *Outsourcing Investigations*, 14 UCLA J. INT’L FOREIGN AFF. 121 (2009).
14. See *id.* at 123; Caroline Buisman, *Delegating Investigations: Lessons to be Learned from the Lubanga Judgment*, NW. J. INT’L HUM. RTS. 30, 37 (2013).
15. See Rebecca Hamilton, *New Technologies in International Criminal Investigations*, PROCEEDINGS OF THE ASIL ANNUAL MEETING, 112, 131–33 (2018).

where atrocities were underway – had a video camera in their pockets virtually 24/7.¹⁶ This created the possibility of user-generated evidence – digital documentation done in or near real-time by those at the scene of the crime – being produced on a mass scale.¹⁷ And with the advent of social media, people began posting this documentation online.¹⁸

This conflagration of developments first came together during the conflict that followed the uprising against Syrian President Bashar al Assad in 2011.¹⁹ As Google product manager, Justin Kosslyn, put it: “The Syrian civil war is in many ways the first YouTube conflict in the same way that Vietnam was the first television conflict.”²⁰ The user-generated evidence that Syrians posted on social media became an invaluable resource for the human rights groups that the Syrian government refused to allow into the country.²¹ Advocates of international criminal justice began thinking how they could harness the material that Syrians were, in many instances, risking their lives to record.

In 2013, Western donors supported a major conference, convened at UC Berkeley, to figure out how best to use the growing amount of digital evidence being posted online in international criminal investigations.²² Around the same time, former ICC investigator, William Wiley, founded an international criminal investigations non-profit, the Commission for International Justice and Accountability, which trained Syrians on how to document what they were seeing in

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16. See Elizabeth O’Shea and Kelly Matheson, 5 Reasons to Use Video as Evidence for ICC Crimes, COALITION FOR THE INTERNATIONAL CRIMINAL COURT 11 (Nov. 11, 2016), <http://www.coalitionfortheicc.org/news/20161111/5-reasons-use-video-evidence-icc-crimes> [perma.cc/Y5PJ-998Z] (discussing the pervasive use of smartphone video by witnesses to atrocities).
 17. See generally, Rebecca J. Hamilton, *User-Generated Evidence*, 57 COL. J. TRANSNAT’L L. 1 (2018).
 18. *Id.* at 16.
 19. Marc Lynch, et al., SYRIA’S SOCIALLY MEDIATED CIVIL WAR 7 (United States Inst. of Peace, Peaceworks No. 91, 2014).
 20. Rosen, *supra* note 8.
 21. See e.g. *Syria: Coordinated Chemical Attacks on Aleppo Security Council Should Impose Sanctions*, HUMAN RIGHTS WATCH (Feb. 13, 2017), [perma.cc/5S7L-EL75] (discussing Human Rights Watch’s use of video uploaded by the Aleppo Media Center to call attention to a February 2017 chemical weapons attack in Aleppo).
 22. HUM. RTS. CTR. U.C. BERKELEY SCH. OF L., DIGITAL FINGERPRINTS: USING ELECTRONIC EVIDENCE TO ADVANCE PROSECUTIONS AT THE INTERNATIONAL CRIMINAL COURT 1 (2014), https://www.law.berkeley.edu/files/HRC/Digital_fingerprints_interior_cover2.pdf.

ways that would be useful for future international criminal prosecutions.²³

In 2016, the United Nations established an International, Impartial and Independent Mechanism (IIIM) to gather documentation that could potentially be used in future prosecutions of international crimes committed in Syria.²⁴ The IIIM, like other external actors, has thus far been barred from entering Syria by the Syrian government, so it has focused on the collation of digital documentation, even signing a Protocol of Cooperation with Syrian civil society groups that collect digital evidence.²⁵

The growing reliance on digital evidence in international criminal investigations now extends beyond Syria. In 2017, the UN established a Fact-Finding Commission to investigate atrocities against the Muslim minority Rohingya population in Myanmar.²⁶ Prohibited from entering the country by the Myanmar government, its investigation also relied heavily on digital documentation, in particular evidence posted on Facebook.²⁷ Then in 2018, the UN established a new independent body for Myanmar, designed to function like the IIIM for Syria, that would

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23. Melinda Rankin, *The Future of International Criminal Evidence in New Wars? The Evolution of the Commission for International Justice and Accountability*, 20 J. GENOCIDE RES. 392 (2018).
 24. G.A. Res. A/71/L/48, International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (Dec. 21, 2016). Int'l., Impartial Indep. Mechanism, Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform (Apr. 3, 2018), https://iiim.un.org/wp-content/uploads/2018/04/Protocol_IIIM_-_Syrian_NGOs_English.pdf [perma.cc/3K2R-4WSF].
 25. Int'l., Impartial Indep. Mechanism, Protocol of Cooperation between the International, Independent and Impartial Mechanism and Syrian Civil Society Organizations participating in the Lausanne Platform (Apr. 3, 2018), https://iiim.un.org/wpcontent/uploads/2018/04/Protocol_IIIM_-_Syrian_NGOs_English.pdf [perma.cc/3K2R-4WSF].
 26. *Independent International Fact-Finding Mission on Myanmar*, UNITED NATIONS HUMAN RIGHTS COUNCIL, <https://www.ohchr.org/en/hrbodies/hrc/myanmarffm/pages/index.aspx> [perma.cc/M25J-3FAE].
 27. See United Nations Human Rights Council, *Myanmar UN Fact-Finding Mission Releases its Full Account of Massive Violations by Military in Rakhine, Kachin and Shan States* (Sept. 18, 2018), <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23575&LangID=E> [perma.cc/2EZ8-EKAK].

“[b]e able to make use of the information collected by the fact-finding mission and continue to collect evidence.”²⁸

DIGITAL DOCUMENTATION

There is justifiable excitement about what digital documentation can offer international criminal investigations.²⁹ When those who are on the scene during, or soon after, the commission of atrocity crimes record what they see, the access problems facing outside investigators are overcome and evidence that may otherwise be lost or destroyed is instead preserved.³⁰ But as with any new technology, digital documentation in general, and user-generated evidence in particular, raises challenges.

To date, much of the scholarly conversation about the challenges of working with digital evidence has focused on the evidence itself. One key question is whether the evidence can be authenticated.³¹ Unless judges can be assured of the authenticity of digital evidence, its potential value to international criminal investigations will not be realized. And this is a concern that will only continue to grow with the emergence of so-called “deep fakes” – falsified videos that are sophisticated enough to deceive most viewers.³² Another question has involved how to train non-professionals to undertake documentation in a way that will be useful for an international criminal investigator.³³ And more recently, as scholars have begun to grasp the sheer volume of digital documentation being posted online, new concerns have been raised about how to sort through hours of footage and coordinate the transfer of digital evidence to those who may be able to use it.³⁴

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28. Human Rights Council Res. 39/2, U.N. Doc. A/HRC/RES/39/2, ¶ 23 (Sept. 27, 2018).
 29. See, e.g., HUM. RTS. CTR. U.C. BERKELEY SCH. OF L., *supra* note 22.
 30. See Hamilton, *supra* note 17, at 3.
 31. Nikita Mehandru & Alexa Koeing, *Open Source Evidence and the International Criminal Court*, HARV. HUM. RTS. J. (April 15, 2019), https://harvardhrj.com/2019/04/open-source-evidence-and-the-international-criminal-court/#_ftn1 [perma.cc/7GV3-L34G].
 32. See Robert Chesney & Danielle Citron, *Deep Fakes: A Looming Challenge for Privacy, Security and National Security*, 107 CAL. L. REV. 1753 (2019); see also Alexa Koenig, “Half the Truth is Often a Great Lie”: *Deep Fakes, Open Source Information, and International Criminal Law*, 113 AJIL UNBOUND, 250, 251 (2019).
 33. See Jay D. Aronson, *The Utility of User Generated Content in Human Rights Investigations*, in NEW TECHNOLOGIES FOR HUMAN RIGHTS LAW AND PRACTICE 129, 131 (Molly K. Land & Jay D. Aronson eds., 2018) (explaining how most footage captured by citizens shows evidence that a crime occurred, not evidence of who might be responsible).
 34. See Hamilton, *supra* note 17, at 32–33.

All of these issues are worthy of scrutiny. But there is another aspect of the move toward digital evidence that has received less attention, even though its implications are just as significant for the future of international criminal investigations. Specifically, digital evidence does not just bring a new form of evidence into the international criminal justice system, it brings in a host of new actors as well.

NEW ACTORS IN THE INVESTIGATORY LANDSCAPE

International criminal investigations have traditionally been dominated by trained investigators with professional obligations to a public judicial institution.³⁵ Today though, the composition of actors involved in these investigations is skewing increasingly toward private actors, who have no public-facing obligations.³⁶ These actors include ordinary citizens, civil society groups, and lawyers.³⁷ They also, though perhaps less visibly, include technology companies like Google, which owns YouTube.³⁸

YouTube is part of a social media industry that is largely self-regulated.³⁹ It writes its own rules – or, in YouTube’s terminology, ‘Community Guidelines’, which it uses to determine whether to remove

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35. See CHRISTIAN AXBOE NIELSEN & JANN K. KLEFFNER, A HANDBOOK ON ASSISTING INTERNATIONAL CRIMINAL INVESTIGATIONS 64 (Maria Nystedt ed., 2011), <https://fba.se/contentassets/6f4962727ea34af5940fa8c448f3d30f/handbook-on-assisting-international-criminal-investigations.pdf> [perma.cc/9HV3-D67W].
36. See Mehandru & Koenig, *supra* note 31 (“[C]itizens are increasingly uploading vast amounts of digital imagery and videos to social media platforms to spread awareness of human rights violations and possible war crimes . . .”).
37. See, e.g., Lindsay Freeman, *Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International Criminal Investigations and Trials*, 41 *FORDHAM INT’L L.J.* 283, 332 (2018) (describing international organizations and lawyers’ efforts to collect evidence in Syria, as well as citizen journalism).
38. See *id.* at 318 (discussing the use of Google Earth satellite images); see also Kevin B. Johnston, *Top 4 Companies Owned by Google*, *INVESTOPEDIA* (June 25, 2019), <https://www.investopedia.com/investing/companies-owned-by-google/> [https://perma.cc/GR2E-A7PU] (noting that Google owns YouTube).
39. See generally Tarleton Gillespie, *Governance of and by Platforms*, in *THE SAGE HANDBOOK OF SOCIAL MEDIA* (Jean Burgess, Alice Marwick & Thomas Poell eds., 2017) (discussing the broad safe harbor protections offered to U.S.-based social media platforms, as well as the steps these platforms have undertaken, on their own accord, to regulate content appearing on their sites)..].

content that appears on its platform.⁴⁰ But it is also part of a legally pluralist landscape.⁴¹ Many other actors – including states, civil society groups, and international organizations, argue that different rules or, at a minimum, enforcement priorities, should apply in certain cases.⁴² And it was exactly this contestation over enforcement priorities that lay behind the sudden disappearance of so many Syrian videos from YouTube in the summer of 2017.

The change to YouTube’s algorithm was catalyzed by the U.K government, which, ironically enough, was seeking to respond to an attack on civilians on its territory.⁴³ In May 2017, a radicalized British national, Salman Abedi, launched a suicide bomb attack on a pop concert in Manchester, England, killing 22 concertgoers, including 7 children.⁴⁴ Abedi had reportedly been influenced by a Libyan group that was an Al Qaeda affiliate.⁴⁵ In the aftermath of the bombing, then British Prime Minister, Theresa May, gathered with G7 leaders in Italy to try to strengthen counter-terrorism efforts.⁴⁶

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40. *Policies and Safety: Community Guidelines*, YOUTUBE, <https://www.youtube.com/about/policies/#community-guidelines> [<https://perma.cc/MAB5-67XJ>].
 41. See, e.g., Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C. DAVIS L. REV. 1149, 1153 (2018) (describing a “pluralist model of speech control”); Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1664 (2018) (describing a “pluralistic system of influence” over content moderation). For further development of this concept, see Rebecca J. Hamilton, *Governing the Global Public Square* (on file with author).
 42. See, e.g., James Griffiths, *Governments are Rushing to Regulate the Internet. Users Could End Up Paying the Price*, CNN (Apr. 18, 2019), <https://www.cnn.com/2019/04/08/uk/internet-regulation-uk-australia-intl-gbr/index.html> [perma.cc/7R3H-2A7J] (discussing calls for governmental regulation of social media in Australia, the United Kingdom, and Singapore).
 43. Arjun Kharpal, *Google Outlines 4 Steps to Tackle Terrorist-Related Content on YouTube*, CNBC (June 19, 2017), <https://www.cnbc.com/2017/06/19/google-youtube-tackles-terrorist-videos.html> [<https://perma.cc/FP3J-Q9BV>].
 44. *Manchester Attack: Who Were the Victims?*, BBC NEWS (June 3, 2017), <https://www.bbc.com/news/uk-40012738> [perma.cc/7XUU-ET4H].
 45. Jamie Doward et al., *How Manchester Bomber Salman Abedi Was Radicalized by his Links to Libya*, THE GUARDIAN (May 28, 2017), <https://www.theguardian.com/uk-news/2017/may/28/salman-abedi-manchester-arena-bomber-radicalisation> [<https://perma.cc/V7V2-92HP>].
 46. Anushka Asthana, *G7 Leaders Agree Steps to Tackle Terrorism after Manchester Bombing*, THE GUARDIAN (May 26, 2017), <https://www.theguardian.com/uk-news/2017/may/26/theresa-may-calls-g7-leaders-help-prosecute-foreign-fighters> [perma.cc/U5LE-MARB].

“We are already working with social media companies to halt the spread of extremist material ... that is warping young minds” said May. “I am clear that corporations can do more. Indeed they have a social responsibility to now step up their efforts to remove harmful content from their networks.”⁴⁷

The change in algorithm at YouTube over the summer of 2017 was part of a response to May’s concerns.⁴⁸ From YouTube’s perspective, the change made sense. Soon after May’s plea, the European Commission pushed for greater regulation of online content,⁴⁹ and as of 2019, YouTube and other major social media companies have just one hour to remove terrorist content that is reported to them.⁵⁰ If they repeatedly fail to do so, they face fines of up to 4% of their global turnover.⁵¹

Scholars have highlighted how so-called collateral censorship – where states get private companies to enforce their regulatory goals for them – leads to over-removal of content.⁵² It makes business sense for YouTube to preemptively remove anything that could potentially be reported as “terrorist content” – even if this comes at the cost of

47. *Id.*

48. Kent Walker, *Four Steps We’re Taking Today to Fight Terrorism Online*, Google (June 18, 2017), <https://www.blog.google/around-the-globe/google-europe/four-steps-were-taking-today-fight-online-terror/> [perma.cc/V7FP-5ZRS]. Subsequently, the European Commission issued a communication on the “prevention, detection, and removal of illegal online content, including hatred, violence, and terrorist propaganda.” European Parliament, *Legislative Train, Area of Justice and Fundamental Rights: Preventing the Dissemination of Terrorist Content Online* (July 2019) [hereinafter European Parliament, Communication on Preventing Online Illegal Content], <http://www.europarl.europa.eu/legislative-train/api/stages/report/current/theme/area-of-justice-and-fundamental-rights/file/preventing-the-dissemination-of-terrorist-content-online> [perma.cc/K24M-KEZR] (proposing legislation requiring major social media companies to remove terrorist content within one hour, under threat of fine).

49. *See* European Parliament, Communication on Preventing Online Illegal Content *supra* note 48.

50. European Parliament Press Release, *Terrorist Content Online Should be Removed Within One Hour, Says EP* (Apr. 17, 2019), <http://www.europarl.europa.eu/news/en/press-room/20190410IPR37571/terrorist-content-online-should-be-removed-within-one-hour-says-ep> [perma.cc/C3UR-9P8K].

51. *Id.*

52. *See e.g.*, Jack M. Balkin, *Old-School/New-School Speech Regulation*, 127 HARV. L. REV. 2296, 2298, 2324 (2014).

removing content that could be used for war crimes prosecutions.⁵³ And YouTube is not the only platform for whom the incentives line up in this way.⁵⁴

After the mainstream media reported on the sudden disappearance of the Syrian videos, YouTube acknowledged that the technical changes it had made required improvements, and explained that “When it’s brought to our attention that a video or channel has been removed mistakenly, we act quickly to reinstate it.”⁵⁵ They urged those who wanted their videos reinstated, or who were worried about future videos being removed, to provide YouTube with additional context explaining why the video was not being posted simply to glorify violence.⁵⁶

The Syrian Archive, which coordinates with a number of the Syrian groups doing documentation work,⁵⁷ has worked with YouTube to restore 200,000 of the videos that were removed during the summer of 2017.⁵⁸ But providing YouTube with the context it seeks is time-consuming work, and Syrian civil society groups are already overstretched.⁵⁹ Most simply do not have the capacity to do what YouTube is asking.⁶⁰ Moreover, as Syrian Archive founder, Hadi al-Khatib, explains, there are plenty of instances in which the person who uploaded the content has since been imprisoned or killed.⁶¹ As of January 2019,

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53. *See id.* at 2299 (“Owners of private infrastructure, hoping to reduce legal uncertainty and to ensure an uncomplicated business environment, often have incentives to be helpful even without direct government threats.”).
54. Facebook’s latest algorithms for example, have helped the platform ensure that only 0.04 percent of uploaded content that it believes would fall afoul of its guidelines on terrorist content ever actually appeared online; in other words, its pre-emptive removal rate for this content is a stunningly high 99.6 percent. *See Community Standards Enforcement Report*, Facebook Transparency (May 2019), <https://transparency.facebook.com/community-standards-enforcement#terrorist-propaganda> [perma.cc/T5KW-JPEA].
55. Rosen, *supra* note 8 (quoting a statement released by YouTube in response to concerns about the disappearance of the Syrian videos).
56. *THE IMPORTANCE OF CONTEXT*, YOUTUBE HELP, <https://support.google.com/youtube/answer/6345162?hl=en> [perma.cc/K4RU-AMCN].
57. *See* SYRIAN ARCHIVE, <https://syrianarchive.org/en> [perma.cc/PM3M-XRCX] (“The Syrian Archive is a Syrian-led and initiated collective of human rights activists dedicated to curating visual documentation relating to human rights violations and other crimes committed by all sides during the conflict in Syria with the goal of creating an evidence-based tool for reporting, advocacy and accountability purposes.”).
58. *See* Rosen, *supra* note 8.
59. *Id.*
60. *Id.*
61. *Id.*

some 190,000 of the videos removed in the summer of 2017 remain unavailable.⁶² And the Syrian Archive reports numerous instances of restored content being removed again, with the removal-restoration cycle being repeated multiple times with respect to the same video.⁶³

Even if Syrian activists continue to make progress with the YouTube removals that arose from the 2017 algorithm change, the broader problem is not going away. Social media platforms are operating in a regulatory landscape that is in flux, and they will continue to adjust their content moderation systems to sustain their business model. Sometimes, especially in the face of a media outcry, changes that have a detrimental impact on the preservation of potential war crimes evidence will be reversed. But, unlike the actors who have traditionally comprised international criminal investigations, the technology companies who have unwittingly found themselves in this investigatory space cannot be expected to prioritize the goals of justice and accountability in the face of competing business demands.

YouTube's tagline is "Broadcast Yourself."⁶⁴ People around the world have taken up the invitation, including people whose lives are being lived out in conflict zones. Proponents of international criminal justice have seized upon the resulting material for its evidentiary value, and we are seeing the field of international criminal investigations in the midst of a major transformation as a consequence. There has been plenty of commentary about this transformation in terms of the challenges and opportunities that the evidence itself brings. But less attention has been given to what these technology-driven developments have done to expand the range of actors within the broader ecosystem in which international criminal investigations operate. Relying on digital evidence also means relying on the platforms who host it.

62. *Removals of Syrian human rights content: April 2019*, SYRIAN ARCHIVE (Apr. 2019), <https://syrianarchive.org/en/tech-advocacy/april-takedowns.html> [<https://perma.cc/B927-9H98>].

63. Rosen, *supra* note 8.

64. Alex Hudson, *Is Google Taking the 'You' Out of Youtube?*, BBC NEWS (May 16, 2011), http://news.bbc.co.uk/2/hi/programmes/click_online/9485376.stm [<https://perma.cc/9GN6-55DT>].