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CHALLENGES TO PRIVACY PROTECTION ON YOUTUBE*

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Functioning as both a media platform, a social media platform and a new public space, YouTube allows instant sharing, but also multiplying and re-uploading the same content by different users which makes videos virtually indestructible. Children and minors are especially vulnerable, either because they are too young to be asked for a consent to appear in their parents' videos or because they are not yet able to decide for themselves which private information can be made public. Laws in Serbia are failing to protect privacy on YouTube which leaves individuals to the mercy of YouTube's own privacy policies. The aim of this paper is to investigate new challenges to privacy protection by analysing its own policies, Serbian law and content uploaded by users. The goal is also to help in raising awareness of this problem and stress out the importance of educating children on digital privacy.

KEYWORDS: privacy / YouTube / social media / media / privacy protection

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1. NEW MEDIA, NEW PUBLIC SPACES AND NEW DEFINITIONS OF PRIVACY

Being a "high-volume website, a broadcast platform, a media archive and a social network" YouTube is often defined as a new type of media and, in fact, a new type of television (Burgers, Green, 2009: 5, Grainge, 2011: 3). Since it blends together different types of traditional and non-traditional media and also functions as a means of communication, it could also be perceived as the epitome of the Web 2.0 culture which tends to unify various technologies (Uricchio, 2009: 24). However, just like any social media, YouTube is not the creator of its own content, but a platform that offers "user-generated content" (Postigo, 2014: 332) and this is the reason why it is still debatable whether it should be treated as a media company in a traditional sense, such as broadcast media or a publishing company. While testifying in front of the United States Congress, Mark Zuckerberg has stated that he sees Facebook as a "technology company" and not as a media company¹, and the same can be said for YouTube. But the fact that this question has even been raised in the first place proves that such internet platforms don't really fall into any of the classical categories or that they are blurring the lines between these categories which makes them difficult to regulate.

YouTube and other social media are creating new public spaces which are transforming the whole realm of social. Can the ideas of public reason as conceptualised by Kant (Kant, 1974: 44.) and that of public sphere as defined by Habermas (Habermas, 1993: 1) be applied to the social media which are products of the Web 2.0 such as YouTube, Facebook and Twitter? Authors such as Nick Couldry offer an optimistic vision of the social power of these platforms as if they are fully capable to provide this ideal public realm. Couldry claims that these platforms open up possibilities for "new voices" to be heard. It is not just "more voices than before, but the voice in public for a vastly increased range of people", he says (Couldry, 2010: 140). On the other hand, authors such as Christian Fuchs accuse these internet platforms of being exploitative. Noting that new technologies are "deeply embedded into the history of capitalism, colonialism, warfare, exploitation and inequality", Fuchs proposes a critical inquiry of the social media and asks which power structures are influencing the use of social media, implying that their free use and unbiased approach is questionable (Fuchs, 2014: 8-10). This resonates with Hannah Arendt's thought that freedom requires both private sphere as a personal space protected from public opinion and public sphere sheltered from private interests (Arendt, 1977).

These new media platforms are perhaps threatening both private and public sphere because they are blurring the line between private and public (Burgers and Green, 26, Fuchs, 2014: 36). Offering a myriad of private, public as well as semi-private and semi-public spaces with fluctuating borderlines, they are making the two categories

¹ Guardian News (10/04/2018) *Mark Zuckerberg Testifies Before Congress – watch live*. Retrieved from YouTube https://www.youtube.com/watch?v=mZaacc_m1q9M

hardly recognisable and distinguishable. Moreover, it is commonly perceived that they are threatening privacy in two distinct ways. The first one is their usage of users' personal data and the second one is the content itself which often touches and exposes the private sphere in ways that were previously unthinkable.

The problem of use and abuse of personal data on the internet has been widely discussed, while the question of privacy violations within video content on YouTube has not been properly addressed in Serbia. As a platform that enables virtually anyone to upload any video without going through some official editing or censorship process, it allows for a wide array of misuses including publishing video material that violates someone's privacy. Children and minors are the most vulnerable groups and yet they make the majority of YouTube users² in all countries of South-eastern Europe including Serbia.

2. THE KEY CHALLENGES TO PRIVACY PROTECTION ON YOUTUBE

In Serbian law, YouTube is not regulated either by the Law on Public Information and Media according to which social media and internet platforms are not defined as media³ or by the Law on Electronic Media which concerns only media companies that are physically located in Serbia⁴. The right to privacy in the context of YouTube is not protected by Serbian privacy laws either. Since Serbia is not an EU member state, its citizens are not protected by the General Data Protection Regulation, while the current Law on Personal Data Protection is considered to be outdated and unable to "respond to challenges posed by the development of information technologies"⁵.

How can privacy on YouTube be protected? One of the key principles of the currently prevalent international model for privacy protection on the internet is the principle of consent (Bechman, 2015: 21, Politou and others, 2018: 1, Voss, 2017: 224, Carolan, 2016: 462). This principle stipulates that it is allowed to collect and process sensitive personal information only if this is approved by the law or if the person in question has given his or her consent. The definition of this principle is provided in the General Data Protection Regulation⁶ and even though this legislation is applied only to citizens of EU countries, it has a global impact because it is in fact applied

² N1, *Crvena Linija: kako žive neki od najpoznatijih influensera u regiji*, 24 mart 2018, https://www.YouTube.com/watch?v=zC3Qe95DJGM&index=3&list=PLZXr2RpggkrwU_sBnUb87hootOEGzpi3Q&t=15s (Accessed: 27/10/2018)

³ Law on Public Information and Media (Zakon o javnom informisanju i medijima), Sl. Glasnik RS, No. 83/2014, 58/2015 and 12/2016 https://www.paragraf.rs/propisi/zakon_o_javnom_informisanju_i_medijima.html (Accessed 27/10/2018)

⁴ Law on Electronic Media (Zakon o elektronskim medijima) Sl. Glasnik RS, no. 83/2014 and 6/2016 https://www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html (Accessed 27/10/2018)

⁵ Commissioner for Information of Public Importance and Personal Data Protection, Report on Implementation of the Law on Free Access to Information of Public Importance and the Law on Personal Data Protection in 2017 <https://www.poverenik.rs/en/commissioners-report.html> (Accessed: 27/10/2018)

⁶ GDPR, Key Issues: *Consent*, <https://gdpr-info.eu/issues/consent/> (Accessed: 27/10/2018)

around the world and concerns every internet platform that caters for customers from the EU countries.

YouTube's Privacy Policy is also based on the principle of consent. Its Community Guidelines on privacy stipulate that someone's privacy is being violated if their private data are published without their consent.⁷ These guidelines are intended for creators and all other users of the platform and they define private information in YouTube videos as any information that makes an individual "uniquely identifiable by image, voice, full name, government identification number, bank account, contact information (e.g. home address, email address), or other uniquely identifiable information"⁸. The fact that an information has to be "uniquely identifiable" means that it is not enough that someone recognises himself or herself within a video, but that he or she has to be also identifiable by others. YouTube offers protection to anyone who finds that a certain video violates their privacy by providing them with the opportunity to go through the privacy complaint process unless the author of the video removes the content upon their request. The platform also suggests that every creator should, as a rule of thumb, always ask for a permission before filming other people or posting their personal information⁹.

Given that YouTube users in Serbia are not protected either by domestic laws or by EU's General Data Protection Regulation, they rely on YouTube's privacy policy. YouTube claims that it is "serious" about protecting its users "by addressing potential privacy concerns" and also states that "while the video in question may not violate your country's laws, it may still violate YouTube's privacy guidelines", however, they also take "public interest, newsworthiness and consent into account when determining if content should be removed for a privacy violation"¹⁰. This means that such platform takes the responsibility for protecting the privacy of millions of users across the world, but also that it occasionally acts as an editor-in-chief who ultimately decides which videos will be removed and proving that it inevitably has similarities with the traditional media even though it is not considered to be a media company.

There are several problems with YouTube's privacy protection mechanism. The platform only offers a possibility to have a certain video that violate someone's privacy deleted within 48 hours which, in the absence of any legal mechanisms, doesn't allow the person whose rights have been violated to get any sort of compensation and allows plenty of time for the same video to be viewed many times and possibly even be re-uploaded by other users on the platform. There is also the problem of the unsurmountable size and complexity of the platform itself which currently has over 1.5 billion users worldwide and more than 400 hours of content is being uploaded every minute¹¹. Safeguarding privacy of millions of users across the

⁷ YouTube, *YouTube Privacy Guidelines* <https://support.google.com/youtube/answer/7671399> (Accessed: 27/10/2018)

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Statista <https://www.statista.com/topics/2019/YouTube/> (Accessed: 27/10/2018)

world becomes an increasingly difficult task and requires relying on artificial intelligence which in itself prompts the question of who is actually making decisions that are shaping this unique digital public sphere (Helbing, 2018: 47).

Providing adequate privacy protection on the internet is a global problem and constantly faces new challenges in the ever-changing digitalised world, but the case of YouTube is unique because this platform allows instant sharing of video content that is reproducible, virtually indestructible and can lead to different types of privacy violations. Platform's own privacy policy is not a sufficient safeguard that can protect millions of people against privacy violations which is why citizens of countries like Serbia which do not have adequate privacy or media laws that guarantee the respect of the right of the privacy and whose citizens are not protected by the GDPR are especially vulnerable.

Since YouTube allows minors to have their own channels, upload their own videos, monetise them, work with sponsors and ultimately earn their monthly salary, it is inevitable to raise the question who is responsible for their content and who is responsible for protecting their right to privacy if these children and their parents are not capable of making decisions about what should be published and what should be kept private. Even though YouTube itself has its own privacy guidelines, it is not the author or the editor of the content and it is not a media company but merely a platform for user-generated content, and therefore it isn't clear what kind of a role it should really take.

3. KIDS ON YOUTUBE

YouTube is a platform that enables self-promotion or branding oneself through a personal channel and nurtures the culture of amateur videos that are portraying personal lives (Burgers and Green, 26; Khamis, Ang and Welling, 2016: 191). Parents filming their children are facing a moral dilemma whether they should make private lives of their children public even though they are not old enough to be able to give their consent. While many vloggers in Germany¹² are editing their videos by using obfuscation methods such as adding blur to their children's faces in order to make them unidentifiable and some vloggers from the UK have even organised debates on whether "vlogging children is a bad thing"¹³, vloggers in Serbia¹⁴ rarely use similar

¹² Examples include: Don't Trust the Rabbit (04.03.2018) *Raising a Trilingual Child in Germany*. Retrieved from YouTube <https://www.youtube.com/watch?v=1NmnKiHqXU8>; Rebekah Wing (11/08/2018) *INSTAGRAM bestimmt BACK TO SCHOOL SHOPPING...* Retrieved from YouTube https://www.youtube.com/watch?v=v4yTR8BEdeQ&t=0s&list=PLZXr2Rpggkrwt1Lh_HHsuOmmOzSAPvGkL&index=48; Isabeau (21/08/2018) *Vorbereitung Einschulung | Tierpark Berlin & Heimwekren in Haus | Isabeau* Retrieved from YouTube <https://www.youtube.com/watch?v=qA8G6zuHERQ>

¹³ JustMarcus (07/09/2018) *Is Vlogging Children a Bad Thing? Ft. Louise Pentland*. Retrieved from YouTube <https://www.youtube.com/watch?v=Yzk-Kx1FqYw>

¹⁴ Examples include: Emilija Milojević <https://www.youtube.com/channel/UCimWMtrcOU3jUFttunAuzeQ>; Milicina Mama <https://www.youtube.com/channel/UCbH-ZzxRV8z7eKAOUxgh8ow>; Ena Luna

methods to protect their children's privacy or engage in public debates over the ethical implications of filming children for YouTube.

Parents filming their children and sharing these videos online are choosing to expose their privacy on the internet without their consent and this leads to an important question: how to define the privacy of children in the age of social media (Steinberg, 2017: 16), and even more so in the time of expansion of YouTube. Many YouTube creators from Serbia seem to be unaware of the issue while privacy laws are failing to grasp this problem.

Exposing one's own private life can also be a problem if content creator is a minor who is not fully aware of potential dangers and does not have a mature opinion on what should be kept as private and what can be shared publically. One of the most famous cases of such misjudgement is the video of a girl from Bosnia and Herzegovina who has created a very personal video about a boyfriend who has broken up with her¹⁵. Unaware of the possibility that this video could be seen by many people, she has uploaded it on YouTube and faced a tremendous backlash after it had become viral and widely criticised.

Even though YouTube itself blurs boundaries between private and public to such extent that it allows a public video to become private and vice versa, this protection system does not work if a video becomes viral. After her story ended up even in the official media, the girl has deleted the video along with her YouTube channel, but the content she has published has already been re-uploaded many times by other users and also appeared in many commentary videos on YouTube including Serbia. It stirred a debate among YouTubers and has become one of the most talked-about videos in 2017 in the entire Balkan region. The copy of this video even to this day exists on YouTube and can be viewed on other channels¹⁶.

This video opens up the question about the privacy of minors on YouTube and responsibility for such content which cannot even be removed from the platform or the rest of the internet once it becomes viral. The key question is who is responsible for the content which discloses the privacy of a minor who may not be aware of all the consequences of publishing such content online. The fact that any content published on the internet can be copied and re-uploaded *ad infinitum* which is why it is appropriate to ask "how to protect minors from themselves" (Cullen, 2018: 36) and how to protect their right to privacy (Hall, 2018: 121).

Traditional journalism in Serbia has also been criticised for failing to protect the child's right to privacy and prioritising the public interest to get information (Stevanović, 2017: 266), but the expansion of the new media such as YouTube leads

<https://www.youtube.com/channel/UCj8okEjePGLhAS--RJ5trDg; Ana2Cats>

https://www.youtube.com/channel/UCXEoaTTqYoN_sKWf3vjdXhg

¹⁵ Wranka, M. (19.04.2017) "Kako je djevojčica iz BiH probudila ono najgore u ljudima" Tportal <https://www.tportal.hr/tehnolo/clanak/kako-je-djevojčica-iz-bih-probudila-ono-najgore-u-ljudima-20170419> (Accessed: 27/10/2018)

¹⁶ SOMA (17. 04. 2017) *OSTAVIO ME DECKO* (Nije gotovo dok ja ne kazem da je gotovo) <https://www.YouTube.com/watch?v=5XCTz2ub95g>

to privacy violations that were unimaginable prior to the rise of the Web 2.0 culture and are essentially related to self-exposure in the cyberspace (Rebane, 2018).

4. VLOG AND THE QUESTION OF RESPONSIBILITY

Due to the very nature of a digital image and the delicate issue of privacy in the age of instant sharing, thinking about YouTube inevitably leads us to think about responsibility. A decision whether to post something on YouTube comes with huge responsibility as there can be a number of unpredictable consequences, especially when it comes to vlog which is, due to its free, unstructured form capable of inadvertently capturing even things, faces or information that should remain unseen.

YouTube is challenging the concept of privacy just like photography did at the beginning of the nineteenth century when the Eastman Kodak company started selling their first hand-held cameras. This significant event in human history provoked attorneys Warren and Brandeis to formulate the first definition of "the right to privacy" as the right to be left alone (Parsons, 2012: 105). It was this "explosion" of private into public and "publicity of private" which photography enabled (Barthes, 1980: 98) that made these authors rethink the boundary between these two spheres.

Just like modern social media, photography was considered to be intrusive and posed threat to privacy back then, but has it actually levelled the private and public and made the difference between them irrelevant? It seems that Barthes thinks that it only confirmed the boundary between private and public and strengthened the concept of privacy precisely because it was at stake. Similarly, we can see the expansion of YouTube and the social media in general as a motivation to review and redefine the concept of privacy and not as an ultimatum to dismantle the entire private/public divide. German vloggers offered a model for constructing vlogs with privacy issues in mind, however, this model is supported by German privacy laws¹⁷ which are strictly forbid filming in public without obtaining consent from people appearing in the video.

The responsibility of YouTube creators is much bigger than the responsibility of photographers in the age of analogue photography because the digital image is sometimes difficult to delete or destroy. When American vlogger Logan Paul filmed a video in Japanese suicide forest Aokigahara and accidentally captured a dead body, he was not aware of all possible consequences of publishing this video. After he has blurred the dead body and uploaded his vlog, he was convinced that the content is in line with YouTube's guidelines¹⁸ and that he does not violate American or Japanese laws. However, the video received a lot of criticism not just in the YouTube

¹⁷ Bundesdatenschutzgesetz 30. Juni 2017 (BGBl. I S. 2097)

¹⁸ Youtube Policies <https://www.youtube.com/yt/about/policies/#community-guidelines> (Accessed 27/10/2018)

community, but also in the press and other traditional media. Accused of insulting Japanese culture, he deleted the video, but it has been re-uploaded and is still available on the platform¹⁹.

Logan Paul's deleted vlog evokes the plot from Michelangelo Antonioni's film *Blow-Up*²⁰ which discusses ways in which photography is intrusive, violates privacy and manages to accidentally capture scenes that are meant to be hidden. When the main character secretly photographed a couple that shared a passionate kiss, he has also captured a dead body hidden behind a fence in the park. After he had discovered this by magnifying segments of a photograph in his laboratory, both the photos and the negatives are being stolen and the dead body has been removed which left the photographer with no evidence. Comparison of these two stories emphasises the crucial difference between the old and the new media which boils down to the materiality of the image. While the material analogue picture could have been destroyed, the immaterial digital image is virtually indestructible and continues to live in the public space despite the fact that the author himself has deleted it. This is why digital image entails bigger responsibility, not only because of possible privacy violations but also because of all other negative consequences the author was unaware of while filming or uploading his work.

Even though a vlog can be filmed in such a way to avoid violating anyone's privacy by choosing specific backgrounds and carefully selecting angles, asking for consent or blurring people's faces and all other personal data or features that can make a person identifiable, it is not a commonly accepted way of filming vlogs in most countries around the world including Serbia.

CONCLUSION: PRIVACY AND THE NEW MEDIA

While the traditional media were based on the concept of a passive user who simply consumes contents offered by established media companies that have hierarchical structures, the new media are social, interactive and based on the concept of a user-generated content (Burgers and Green, 2009). Internet platforms such as YouTube have active users who are not just passively consuming content but are also creating content (Montgomery, 2015), either by commenting on videos or by uploading their own content. Since they are popular among children and minors who are growing up with the internet of things and already perceive the media within the framework of a "participatory culture" (Burgers and Green, 2009), the youngest audience is the most vulnerable group when it comes to potential privacy violations.

YouTube as the new television allows anyone to upload video content without any prior check-ups and the only safeguard against privacy violations is their privacy

¹⁹ Carzah (3. 01. 2018) *Logan Paul Japan Deleted Vlog (REUPLOAD) *FULL VIDEO**
<https://www.youtube.com/watch?v=oQaUGD-MtsQ>

²⁰ Ponti, C. (producer) and Antonioni, M. (director). (1967) *Blow-Up* (film) UK, Italy, USA: Bridge Films, Carlo Ponti Production, Metro-Goldwyn-Mayer (MGM)

policy which suggests that nobody's private information should not be disclosed without their consent but does not offer any mechanisms for prevention or solutions to problems when they occur. And while in countries such as Germany where privacy laws are strict and don't allow photographing or filming people in public without their consent, countries with poor and outdated privacy laws such as Serbia have to rely on YouTube's mechanisms for privacy protection.

Instant sharing and possibility to copy and re-upload any content online can have tremendous repercussions and lead to severe privacy violations, and children are the most vulnerable category. This is why new privacy laws should be created with these new technologies and the nature of the digital image in mind. It is also important to raise awareness and educate children about privacy on the internet especially in relation to their own online behaviour on such interactive platforms.

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IZAZOVI ZA ZAŠTITU PRIVATNOSTI NA JUTJUBU

Pošto funkcioniše kao medijska platforma, društvena mreža i novi javni prostor, Jutjub omogućava instant deljenje, beskonačno umnožavanje i ponovno deljenje sadržaja što video materijal čini praktično neuništivim, a to postavlja nove izazove za zaštitu privatnosti. Deca i maloletnici su posebno ranjivi, bilo zato što su previše mladi da bi se od njih zatražio pristanak da se pojave u videima svojih roditelja ili zato što još uvek nisu sposobni da sami sa sebe ocene koje privatne informacije mogu da objave. Zakoni u Srbiji ne uspevaju da zaštite privatnost na Jutjubu ostavljajući pojedince na milost i nemilost politikama privatnosti koje propisuje sam Jutjub. Cilj ovog rada je da istraži nove izazove za zaštitu privatnosti tako što će analizirati polise same platforme, zakonski okvir i sadržaje koje objavljuju korisnici. Cilj je takođe da se pomogne u podizanju svesti o ovom problemu i da se istakne značaj učenja dece i mladih o digitalnoj privatnosti.

KLJUČNE REČI: privatnost / Jutjub / društvene mreže / mediji / zaštita privatnosti