Online video platforms and social-media networking sites have become part of the fabric of communication for human rights issues—platforms for demonstrating injustice and calling for action and opportunities to share powerful testimony and images in ways that were never possible before. In this essay, I will focus on largely undiscussed issues of human rights principles and practice that have been given additional prominence by visual media: issues of privacy, anonymity, informational self-determination, dignity, safety, consent, and intention that originate at the moment of filming and that reverberate through patterns of use and reuse of the visual media. How does ubiquitous video update our understanding of privacy and of the ability to communicate anonymously?

Forty-eight hours of video are uploaded to YouTube every minute. A small, but significant percentage of this material is social-justice and human rights documentation and advocacy, on, from, or about human rights violations or crises. In “The Participatory Panopticon and Human Rights: WITNESS’s Experience Supporting Video Advocacy and Future Possibilities” in this volume, I explore this human rights media ecosystem at length, but YouTube’s news and politics editor, Steve Grove, supplies a useful brief summary reminder of the types of content creators who use such video-sharing spaces: “citizen reporters” shooting and uploading videos, clip cutters who grab the “salient moments” from news coverage, “mash-up artists, video bloggers, admakers and musicians” making video commentaries, “curators” who gather and discover interesting content and “embed, tweet, e-mail and share it on Facebook,” and of course, a multitude of “viewers” who watch, rank, share and comment. To these categories I would add the advocacy video creators who craft the material into narratives for action.

The possibilities of creating change via video have been vigorously promoted in the past few years, but the risks for those who do so in all the above categories
also have been equally well demonstrated. Some of the most notable and most publicized examples include what happened during and after the Saffron Revolution in Burma and during the Syrian “Arab Spring” protests, when intelligence agents scrutinized photographs and video footage to identify demonstrators and bystanders, and in Iran, where the government took to crowd sourcing the identification of protestors via facial pictures grabbed from YouTube, which they then placed on a website with a request that the public identify them.

So what comes next? How do we ensure that the evolving online mobile and ubiquitous video environment becomes safer for human rights defenders and for those who experience or witness human rights abuses? At the heart of this challenge is the question of how we establish online and other participatory cultures that create and share social-justice and human rights material in a manner that balances the right to privacy (and the integrity of the person) with the right to freedom of expression for both those filmed and those doing the filming and that hold onto a consideration of the very real dangers to human rights defenders and victims or survivors.

How could support for human rights defenders be better integrated into the “terms of service” built into user interfaces and integrated into the institutional policies of online video platforms? What steps could online service providers and facilitators of video take to enable human rights content and to address key emerging concerns about anonymity, dignity, and avoiding revictimization? More broadly, how could we place key human rights values front and center as people film, share, comment, remix, and annotate footage from the front lines of human rights crises, large and small, in the Global North and the Global South?

The underlying challenge for any consideration of social-justice advocacy in ubiquitous video spaces is that most of the services used by the broader public are “public” spaces only insofar as their corporate owners permit it. As the Internet commentator Ethan Zuckerman has put it, “Hosting your political movement on YouTube is a little like trying to hold a rally in a shopping mall. It looks like a public space, but it’s not—it’s a private space, and your use of it is governed by an agreement that works harder to protect YouTube’s fiscal viability than to protect your rights of free speech.” The implications of this corporate basis for online spaces become apparent in the context of business–social responsibility conflicts over potentially illegitimate legal requests from governments to reveal user identities or to take down content unless companies want to risk exclusion from markets or, more problematically, face criminal charges for their employees on the ground.

These private spaces largely make user interfaces as friction-free as possible, an approach that may be at odds with important considerations with human rights content such as issues of consent and contextualization. In general, the human rights user has been deprioritized as a consumer and user (and indeed, human rights is a minor category in terms of the relative quantity of postings) in relation to other users of these mass public platforms. Yet any progress in addressing human rights questions must be informed by a dialogue between the closed, proprietary sector and the human rights and open-video communities, one that includes the technology providers of services, hardware, and software, in both the online and mobile areas. Proprietary platforms dominate too much of the space and are used by too many of the grassroots activists and citizen documentors creating human rights video to be ignored in favor of niche or specialized spaces that seem more immediately aligned either ideologically or in terms of their noncorporate ownership or content focus.

THE HUMAN RIGHTS AT STAKE

At stake here are foundational principles found in the Universal Declaration of Human Rights (UDHR) and subsequent binding covenants such as the International Covenant on Civil and Political Rights (ICCPR). “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers,” UDHR Article 19 declares, and “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence...” UDHR Article 12 insists. ICCPR Article 19 adds that restrictions on the right to freedom of opinion and expression “shall only be such as provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or public health and morals.” Following from this and from the subsequent Johannesburg Principles on National Security, Freedom of Expression and Access to Information, governments can limit the free flow of information only in order to protect certain narrowly determined interests such as national security and public morals. The World Summit on the Information Society reaffirmed the importance of the rights to freedom of opinion and expression as “an essential foundation of the information society.” International declarations on the rights of human rights defenders also emphasize the capacity to disseminate and receive information on human rights topics.

A complement to the freedom of expression is the right to freedom from arbitrary and unlawful interference with one’s privacy and correspondence, recognized both in Article 12 of the UDHR and in Article 17 of the ICCPR. The right to privacy is usually understood to include both the individual’s right to a zone of autonomy within a “private sphere” such as the home and in personal choices within the public sphere.
It is in exercising such choices that problems arise. Critical to active rights to free expression and to privacy is the ability to choose to communicate anonymously. This is not an absolute right (since anonymity can also be used, for example to cover criminal activity), but the possibility of expressing one’s opinions anonymously, with no a priori restrictions, enables freedom of expression and supports the right to privacy. Most contemporary discussions about anonymous communication on the Internet focus on online identity and data protection—on options for encryption or for using proxy servers and circumvention approaches such as the anonymizing network Tor to conceal both the person communicating and the data being transmitted. This focus is based on concerns about the handover of user information to repressive governments (such as Yahoo in China providing the details of journalist Shi Tao) or about the ability of governments to access and track user personal data and communications. Alongside this, there is also a tendency to assert that privacy is a thing of the past online and that societal trends and social norms are moving away from assumptions of privacy and anonymity, as has been claimed, for example, by Mark Zuckerberg, CEO of Facebook.

But with visual human rights media a predominant and largely unaddressed question involves the identification of people who speak and the people who appear, intentionally or not, in a video as it circulates from situations of individual or mass human rights violations. Consider, for example, the persecution later faced by bystanders and people who stepped in to film or assist Neda Agha-Soltan as she lay dying during the election protests in Iran in 2009. Here, the current methods of enhancing privacy in electronic communications are largely inadequate—for example, concealing the IP address from which you sent a video. People in videos can be identified by old-fashioned investigative techniques, by crowd sourcing (as with the Iran example noted in the introduction), or by facial recognition tools. In addition, the metadata of location and creator is embedded in the image, and there are no ready options either in the capture of footage or the upload options to video-sharing and social-media platforms to anonymize or conceal the identity of those who speak out or those who are accidentally caught in “incriminating” circumstances. There are few options to preserve what we might term “visual privacy” and improve the choices we make about protecting our personal visual identity or holding onto “visual anonymity.” “Visual anonymity” may sound like a contradiction in terms, but people often wish to speak out and to “be seen,” but still wish to conceal their face, the background of their home, and so on. And in an era of increasing facial-recognition capabilities, the one time when you choose to say something politically unpopular, blow the whistle on an abuse or abuser, or speak out in some other manner can be correlated, whether you like it or not, with the other 99 percent of your online identity. Similarly, people caught in the background of a video often are unaware they are even being filmed at that moment. At the policy level, there is relatively limited discussion of either the right to one’s visual identity or the right to informational self-determination over how that identity is disseminated and used.

In addition to the issues of the right to freedom of opinion and expression and to privacy, as recognized in international human rights law, other fundamental human rights and underlying human rights values are both promoted and problematized by the ubiquity of the new media. These include respect for individual dignity and personal integrity and the valorization of survivors of human rights violations and their intentions in speaking out in a world in which so many people are filming and in which the appropriation, remixing, and reuse of imagery and voices may conflict with these core values and even lead to psychological or physical revictimization.

Respect for human rights is grounded as a practice in a conception of the dignity, agency, worth and integrity of every person, each of whom is possessed of rights. “All human beings are born free and equal in dignity and rights,” the Universal Declaration of Human Rights declares in Article 1, and the primary principle that every human being is possessed of “inherent dignity” runs through every right included in the UDHR. Human rights documentation processes place a heavy emphasis on both presenting and protecting the evidentiary or testimonial voice or experience of victims, survivors, and locally based advocates. Contemporary thinking about the nature of testimony, witnessing, and trauma also emphasizes the responsibility of the witness of abuse to represent it responsibly and with ethical integrity—to be, so to speak, the “ethical witness” who carries the responsibility to share the traumatic experience “in a manner that empathizes with, rather than violates, the silent victim.”

Both the principle of the integrity of the victim/survivor’s experience and that of the role of the ethical witness are made problematic by the possibilities for remixing, reappropriation, and recirculation and by contemporary trends toward circulation, rather than distribution. As Henry Jenkins has noted, a key aspect of contemporary media practice that captures this distinction is the idea of spreadability. There is a “constant tension at this moment between wanting to lock down content… and wanting to empower consumers to help spread the word,” and that for content today, “if it doesn’t spread, it’s dead.”

These possibilities of circulation, remixing, and reappropriation pull the material further and further from its source testifier and/or witness and from its original context, the event or violation being documented, and also away from the original intentions of its creators. As I note in “The Participatory Panopticon,” video distribution in and of itself can also contribute to creating further layers of victimization. Here we encounter concerns about psychological revictimization and the
preservation of individual human dignity, as distinguished from more collective terms of cultural dignity that intertwine for example with religious sensitivities.

We also confront the paradox that the misuse of material gathered in a specific setting may increase the chances that the footage will find an audience (even an unexpected one) that may be willing and able to respond to either the broader human rights context or even sometimes to the specific situation and intentions of its creator. Circulatory systems online now encourage such recontextualizations, reuses and remixes of video footage. Yet much human rights footage comes from specific locations where people have taken risk to speak out with a particular purpose in mind. How do we preserve their agency?

Within the broader universe of open video, one option might be a licensing system that recognizes intentionality, for example, “You may use this video in any way you like, provided you push for redress for human rights abuses in Burma.” This would be of value to people concerned about how human rights video material is used who want to conceive of ways in which an item (often from a place of great crisis) can circulate and spread while still holding onto the motivations that generated the material in the first place. Such a system would add to approaches that recognize intellectual property rights (using copyright law) and/or creative commons approaches that offer choices of a degree of commercial or noncommercial use and remixing. Similarly, a system of embedded metadata or tagging created or added at the moment of filming, uploading, or contextualization might highlight key considerations of intention to be considered when reusing or circulating the footage or media item. A further dimension to the issue of how material is used in ways that are unanticipated by the creators or people featured is the issue of informed consent and how this translates for new visual cultures. In human rights organizations, there are strong traditions focused on the protection of victims and survivors, and the largest organizations, such as Amnesty and Human Rights Watch, have rededicated themselves to this tradition. WITNESS’s own practice focuses on supporting the ability of individuals to make informed choices about if, how, where, and when their image is used. We have at times also tried to encourage use of a “worst-case scenario” model for consent. This is a digital-era adaptation of traditional consent approaches. It assumes that all media, once it is "out there," is infinitely copiable and circulatable. When Naw Paw Paw, a villager in Karen State, Burma, spoke out against the Burma military junta’s abuses in a clip produced by a human rights organization from the refugee camps of the Thai-Burma border, could she anticipate that three years later, a million people on YouTube would have seen her? More importantly, could she also have anticipated that the successful circulation of the video probably means that the very same people responsible for the violations in her area will see the video and her challenge to their power? Indeed we should probably assume this with any video that makes claims of accountability.

However, this “worst-case scenario” model of consent is difficult enough to promote (and also heavily contested) in the “professional” documentary world and in the mainstream news world and the human rights community. It is impossible to maintain in the online participatory culture of user-generated media if one anticipates that in ten years, 90 percent of human rights media shot and/or created will be made by nonprofessionals outside of the professional practices of human rights documentors, news journalists, or documentary makers. It is also increasingly difficult to sustain in its current form as questions of ethical responsibility transition from being part of binary relationship between documentor and subject to an ethics of an image in circulation being reused, combined, and framed in ways unexpected by the original creators and in contexts distant from the people who filmed and were filmed.

So consent can never be assured in a world of uploaded content from relatively anonymous sources. However, there are potential technological approaches and innovations within these spaces that can help address challenges posed by the issues of consent, representation, and safety — balancing openness and transparency with an active response to real risks. As we move increasingly to a
smart-phone-based mobile environment in which mobile phones are the primary visual documentation tools, we can investigate how devices could conceal faces and backgrounds, either during or shortly after shooting (as WITNESS has been doing with its ObscuraCam project [fig. 2; see also fig. 1]) and how server-based approaches could similarly support doing so in environments where on-the-fly visual anonymization is not possible. Just as a filming process conducted using an app can prompt for embedding metadata information about intention, so too, a filming app/platform approach can provide prompts on obtaining consent during those filming/upload processes. Alongside these tools, the development, promotion, and dissemination of learning materials and spreadable guides to security approaches could reinforce awareness of the need to safeguard the rights, dignity, and lives of those being filmed.

In mass online sharing spaces, the use of dedicated human rights categories and curation and the institution of enhanced governance and review policies for material that is placed within these categories can both help address the problems of unjustified take-downs of human rights material and help provide services for anonymization and protection, as was suggested by YouTube users in a moderated conversation that WITNESS and YouTube coordinated on this topic and explored further in a WITNESS report, “Cameras Everywhere.” However, these remedies might face the same problem that has afflicted dedicated social-justice spaces—they are more easily targeted and blocked because content self-selects or is placed into a space that is easier to censor, block, or knock down with a denial of service attack.

A FRAMEWORK FOR SOLUTIONS TO HUMAN RIGHTS DILEMMAS

As I have suggested above, ways to reduce the downsides of increased human rights media production, sharing, and distribution will likely rely on combinations of approaches that are within the “quasi-public” spaces of online services, as well as on tools and apps that are created outside those spaces.

Importantly, they will also rely on finding ways to evaluate how existing ethical frameworks and approaches from established human rights and documentary practices are made accessible, relevant, and proximate to new online spaces, communities, and “digital natives,” as well as to digital newcomers, since these questions are above all questions of digital media literacy. Just as important as the site architecture of YouTube or an autonomous tool that can blur faces is how existing traditions of informed consent are translated by online communities into new paradigms and standards. As trends in video production move toward direct live streaming, this further emphasizes the urgency not just of tools that are at the point of creation, but more so of norms concerning safety, security, and consent being reemphasized and regenerated anew.

Here, too, I hope that human rights organizations can play a role in supporting the focused aggregation and curation of human rights material, as WITNESS did with its Hub project, demonstrating within their own practice, via test-case projects, how to balance participation, openness, effectiveness, and safety. An additional open question is how well voluntary codes of conduct, sets of principles, and collaborations between civil society, human rights groups, and technology and communications companies such as the Global Network Initiative will further enhance self-regulation, the promotion of effective practices, internal innovation to address challenges, and stronger positions taken by the corporate online and mobile service providers and technologists themselves resisting government pressures.

All this needs to be done while retaining a clear understanding of the danger experienced on the ground in real-life spaces, and not in the apparently safer online environments. It is common to talk about a trend toward openness, transparency, and disclosure and a decline in expectations of privacy. Yet the realities of human rights risks on the ground where videos may be shot and distributed are not connected to these changing online norms, whether they may be real or imagined. It remains as risky as ever to challenge power or to speak out against injustice, and power holders continue to trample people’s rights.

NOTES


Among the rights that I do not address in this article are the rights of participation in cultural life and access to science and culture. Article 27(1) of the UN Declaration of Human Rights states: “Everyone has the right freely to participate in the cultural life of the community and to share in scientific advancement and its benefits.” For more on this in relation to intellectual property and media, see, for example, Lea Shaver, “The Right to Science and Culture,” Wisconsin Law Review 2010.1 (March 6, 2009), p. 121, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1354788. I also do not address here questions of communication rights and the right to access the Internet. For example, legislation in Finland now makes access to broadband Internet a legal right. See “Finland Makes Broadband a ‘Legal Right,’” BBC News, http://news.bbc.co.uk/1/hi/10461048.stm. Nor do I focus on the much-discussed questions of freedom of expression and Internet censorship. See Ronald Deibert, John Palfrey, and...
Rafal Rohozinski, and Jonathan Zittrain (eds.), *Access Denied: The Practice and Policy of Global Internet Filtering* (Cambridge, MA: The MIT Press, 2008), and Ronald Deibert, John Palfrey, Rafal Rohozinski, and Jonathan Zittrain (eds.), *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace* (Cambridge, MA: The MIT Press, 2010). Many of these issues are already being addressed in advocacy spaces by tools providers such as the Tor Project, http://www.torproject.org, by academic research initiatives such as the Berkman Center for Internet and Society at the Harvard Law School, and by coalition initiatives such as the Dynamic Coalition on Internet Rights and Responsibilities (linked to the Internet Governance Forum), http://internetrightsandprinciples.org, and the Global Network Initiative (a “multi-stakeholder group of companies, civil society organizations (including human rights and press freedom groups), investors and academics”), http://www.globanetworkinitiative.org.


4. A number of other corollaries somewhat outside the limits of this essay result from the underlying basis for any commercial video-sharing platform. Many of these have been explored in depth by the Transmission network and others (see for example “Why NOT Just Use YouTube,” http://transmission.cc/node/112). There is the inherent uneasiness one feels when human rights imagery is exploited for commercial purposes (viewing on a commercial platform is subsidized by advertising). There are issues of surveillance by corporations and the state and of the handover of user information, as well as of an editorial and redress process that is not democratic or transparent in large part. Additionally, on a creative level, most commercial spaces are inflexible in their options for downloading, repurposing, and sharing and are navigating the uneasy relationship between intellectual property rights and freedom of expression that is at stake with new forms of cultural production and participation.


10. See https://www.torproject.org.


19. See Ethan Zuckerman, “Intermediary Censorship,” in Deibert, Palfrey, Rohozinski, and Zittrain (eds.), *Access Controlled*, pp. 71–86, including the suggestion of applying common carrier status to online service providers.