

1. Introduction: The multifaceted nature of the book's phenomenon

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1 POSITIONING INFLUENCER LABOUR: BETWEEN SOCIETAL AND LEGAL IMPLICATIONS

The meteoric rise of the content creator economy has redefined several industries, such as entertainment, consumer and marketing. Beyond that, it has also reshaped the careers and career aspirations of many hopefuls. Influencing has evolved into a social media reflection of our worlds and professions. It is no longer limited to the classic celebrity full-time influencer. Now, everyday professionals, whether they be lawyers, electricians, kindergarten teachers, construction workers or journalists, are currently working at the intersection of offline and online – a development referred to as the ‘influencer creep’.¹ They describe, live and share their professions and experiences on social media, often using it as a new marketing channel, and entering into what this book calls the *hashtag hustle*. Many hobbyists exist now at the periphery of the influencer economy, displaying their creativity online in the hopes of making a living from the business of influence by becoming internet famous.²

A career within social media becomes a real possibility for the select few who manage to fill a niche or break into some form of stardom. However, the real outliers are those who manage to expand beyond the entertainment shores of the industry and into genuine entrepreneurial pursuits. Apart from earnings facilitated by social media platforms, creators have been diversifying their

¹ Sophie Bishop, ‘Influencer Creep: How Artists Strategically Navigate the Platformisation of Art Worlds’ (2023) *New Media & Society*.

² Gillian Brooks, Jenna Drenten and Mikolaj Jan Piskorski, ‘Influencer Celebrification: How Social Media Influencers Acquire Celebrity Capital’ (2021) 50 *Journal of Advertising* 528.

portfolios with skincare and makeup lines, crypto-businesses, apps, games, and a wide range of products.³ One notable example is Mr Beast, the highest grossing influencer of 2022 according to *Forbes*, who rose to fame with his elaborate giveaways and challenges.⁴ He is also projected, by the same publication, to become the first billionaire YouTuber.⁵ Notwithstanding success stories, the business of influence remains vaguely regulated and fraught with legal risks and exploitation opportunities. What might have begun as aspirational work, a hobby performed for the sake of expression, has now become a full-time occupation demanding due care by both participants and regulators.

The influencer economy has evolved into a phenomenon that resists simple categorisations. It is increasingly difficult to distinguish creative labour from pure marketing, or in other words, the production of original ‘authentic’ content from integrated sponsored and monetised content.⁶ In this regulatory limbo, what thrives is an array of entrepreneurial opportunities only limited by the imagination of its partakers. From the evils of exploitative labour⁷ of non-consenting minors⁸ and influencer-driven scams to the uplifting power of communities organising for the greater good: the online space facilitates it all.

³ Steffi Cao, Matt Craig and Alexandra S. Levine, ‘Forbes Top Creators 2023’ (*Forbes*, 2023) <https://www.forbes.com/sites/stevenbertoni/2023/09/26/top-creators-2023/>, accessed 23 June 2024.

⁴ Ibid.

⁵ Ibid.

⁶ See for instance Arunesh Mathur, Arvind Narayanan and Marshini Chetty, ‘Endorsements on Social Media: An Empirical Study of Affiliate Marketing Disclosures on YouTube and Pinterest’ (2018) 2 Proceedings of the ACM on Human-Computer Interaction 1.

⁷ See for instance Zoë Glatt, ‘The Platformised Creative Worker: An ethnographic study of precarity and inequality in the London influencer industry’ (*LSE theses*, 2023) https://etheses.lse.ac.uk/4577/1/Glatt_the -platformised -creative -worker.pdf, accessed 23 June 2024.

⁸ Valerie Verdoodt, Simone van der Hof and Mark Leiser, ‘Child Labour and Online Protection in a World of Influencers’ in Catalina Goanta and Sofia Ranchordás, *The Regulation of Social Media Influencers* (Edward Elgar 2020). See also Allie Volpe, ‘How Parents of Child Influencers Package Their Kids’ Lives for Instagram’ (*The Atlantic*, 28 February 2019) <https://www.theatlantic.com/family/archive/2019/02/inside-lives-child-instagram-influencers/583675/>, accessed 23 June 2024; Chase DiBenedetto, ‘A New Washington State Bill Takes the First Step in Legislating Rights for Child Influencers’ (*Mashable*, 17 February 2023) <https://mashable.com/article/child-influencer-washington-state-bill>, accessed 23 June 2024; Emmanuel Dunand, ‘A Bill Passed to Regulate the Videos of Children “Influencers”’ (*Web24 News*, 13 February 2020) <https://www.web24.news/a/2020/02/a-bill-passed-to-regulate-the-videos-of-children-influencers.html>, accessed 23

Yet, the spectrum of hobby/professionalisation can be deceiving in terms of economic expectations. The economic significance of influencer labour tends to go in three main directions. The first one is the *startup phase*, where labour might be geared towards a creator career, but the volatility of the business makes it difficult for individuals to establish themselves with full intentionality. From a legal perspective, this can be the case of creators who are active on social media without any type of legal blanket in the form of registration or incorporation of their economic activity. Here we also note the highest propensity of legal vulnerabilities, given the generally low legal literacy levels of the aspirants to influencer status. The second direction of influencer labour is the *small entrepreneur phase*, where creators see their economic activities thrive and may register as freelancers, also known as self-employed professionals.⁹ Such a registration may bring some tax benefits, or other subsidisation schemes meant to support personal entrepreneurialism.¹⁰ Registering oneself as a freelancer entails some degree of formality and interaction with public authorities in a given jurisdiction, that it should have an impact on raising awareness that such economic activities have legal implications. These implications do not solely pertain to the creator's patrimony, but also extend towards their clients or consumers. This phase does not per se make it easy to navigate the legal web of obligations, but it can be considered as a starting point for a creator's legal visibility. Lastly, the third phase is the *empire phase*, where creators' success warrants the consolidation of a sophisticated corporate structure. Here we can speak about creators as CEOs, who establish networks of businesses used to diversify their economic revenue, coupled with more serious acknowledgements and awareness of legal obligations.

The reason why these three phases are important is to bring to light the clash between cultural authenticity and legal reality. As individuals nurturing parasocial relationships with their fan base, influencers present their intimacies as individuals, when instead the legal connotations of their activities have them labelled as professional parties. In consequence, whether they are aware of this or not, influencers need to comply with a vast volume of rules, such as media law, consumer protection, financial law, tax law, etc.

June 2024; 'Inside the Lives of Child Instagram Influencers – The Atlantic' <https://www.theatlantic.com/family/archive/2019/02/inside-lives-child-instagram-influencers/583675/>, accessed 23 June 2024.

⁹ See for instance the Dutch government, 'Regulations for Self-Employed Professionals' (Overheid, 2024) <https://business.gov.nl/starting-your-business/starting-as-a-self-employed-professional/regulations-for-self-employed-professionals/>, accessed 23 June 2024.

¹⁰ Ibid.

To make matters even more complex, all these phases reflect the reality that influencer labour currently tables a portfolio approach to business models: creators earn advertising revenue, they sell goods and services, they get money from creator funds, or they get live donations from their audiences in the form of microtransactions. All these revenue models happen at the same time, and they can be said to reflect a level of coping with the volatility of social media platforms, their rankings and engagement pitfalls.

Influencer labour has been thoroughly addressed in the context of the inequalities amplified by platforms and other capitalist actors in the social media ecosystem.¹¹ The scholarship provides a rich critique of how profit maximisation in this market often attracts precarity and discrimination, but it does so in general isolation from the legal realities that have shaped individual protections aimed at making market conditions fairer for the smaller participants such as consumers. This discussion raises intriguing legal questions regarding working as an influencer and how to conceptualise, analyse and apply legal regimes to the broad entrepreneurial portfolio of volatile creative work within the ‘hustle’ of the creator economy. Such questions can reflect the uncertainty around the qualification of influencer labour, as well as the very characteristics of this labour.

2 NEW THOUGHTS – HOW THIS BOOK EXTENDS SCHOLARSHIP

A sizable number of creators managed to develop their content creation into genuine careers – an accomplishment achieved despite influencer labour traditionally being viewed through the lens of media work, as aspirational, but unpaid labour. A focus on labour in media and communication studies has pushed back against the de-legitimisation of the work that influencers do and sought to characterise intentional practices and strategies that typify work

¹¹ Angèle Christin and Yingdan Lu, ‘The Influencer Pay Gap: Platform Labor Meets Racial Capitalism’ (2023) *New Media & Society*; Mariah L Wellman, ‘What It Means to Be a Bodybuilder: Social Media Influencer Labor and the Construction of Identity in the Bodybuilding Subculture’ (2020) 23 *The Communication Review* 273; Grant Bollmer and Katherine Guinness, *The Influencer Factory: A Marxist Theory of Corporate Personhood on YouTube* (Stanford University Press 2024); Lin William Cong and Siguang Li, ‘A Model of Influencer Economy’ (*National Bureau of Economic Research*, May 2023) <https://www.nber.org/papers/w31243>, accessed 23 June 2024; Zoë Glatt and others, ‘A Good Life? Critical Feminist Approaches To Influencer Ecologies’ (2020) *AoIR Selected Papers of Internet Research* <https://spir.aoir.org/ojs/index.php/spir/article/view/11120>, accessed 23 June 2024.

in the industry. In doing so, scholars have developed concepts of particular forms of unpaid labour enacted by influencers including ‘aspirational’, ‘visible’, ‘relational’, ‘immaterial’ and ‘aesthetic’. Here, we must tease out the particularities of practices that generate (perceived) value in the competitive marketplace of the attention economy characterised by changing algorithm recommender systems. Critically, this is labour that is not directly compensated but is part of understanding how influencers experience work and is considered necessary for earning revenue. Thus, scholars approaching labour from this (often Marxist) perspective have critically examined the instability and precarity of labour conditions, power dynamics between influencers and platforms, agencies and advertisers along with inequalities of gender, race and class that affect algorithmic visibility and monetisation opportunities.¹²

Another challenge is the noticeable imbalance of earnings captured by the social media platforms and the users that actually generate their content. These professions exist in a fraught relationship with platforms and other forms of intermediaries such as agencies. While content creators depend on platforms to host their content and agencies to connect them to paid opportunities, they are also the ones to hold the power of influence. Creators that are aware of their position in the industry are characterised by attempts to diversify their entrepreneurial portfolio, expanding beyond platform-based content and minimising their dependency on these platforms.

The dynamic between creators, platforms, and labour has many parallels to earlier discussions on the gig economy and the uncertainty of digitally mediated, on-demand employment. Existing labour laws cover a lot of the ground in this area, even if different jurisdictions come to different conclusions. To understand the symbiotic nature of the relationship between platforms and influencers, it is possible to borrow from the debate surrounding gig workers. However, for those outlier-influencers who manage to professionalise their labour, an added level of complexity is introduced. Holding real influence over a dedicated audience comes with certain obligations, does it not? Agencies, platforms and creators themselves are often severely unaware of their contractual obligations and the status of their working relationships. A situation aggravated by the culture of secrecy in the industry. Specific figures and obligations are mostly locked under confidential bilateral agreements.

The goal of the book is to shed light on the cultural, economic and legal aspects of content creation as labour, including concerns over working conditions, worker protection, and the status of the working relationship. The differing conceptions of influencer labour across disciplines present two opposing, yet complementary, sides of work: labour as an invisible and underappreciated

¹² Ibid.

effort made by influencers, and labour as economic enterprise. On the one hand, influencers carry out a range of unpaid, free practices in the hopes of monetising their content. This work provides content that benefits audiences and platforms, the latter of which is integral to the advertising business model of the platform. On the other hand, when approaching the influencers who earn revenue (due to the success of their unpaid labour practices) by monetising their content and brand, thereby becoming economic actors, they are subject to legal regimes that regulate not only their working conditions, but also stipulate certain obligations for the protection of consumers.

Legal research has covered some of the implications of influencer labour on children as vulnerable participants in this economy.¹³ Nonetheless, the legal framework applicable to influencer labour in jurisdictions around the world remains a considerable research gap, particularly when linked to the social and cultural implications of the underlying norms. This is due to the entrepreneurial consequences of identity commodification. A wide range of influencers have found themselves in the business of monetising their living experience. Exercising this type of labour can blur the lines between work and play as well as public and private – especially for children. Against the background of a fast-moving digital market, legal scholarship has lagged in the classification and clarification of the legal implications of influencer labour.

This book provides an in-depth understanding of the basic tenets of content monetisation from the perspective of content creators and influencers, who often engage in this space with two overlapping identities: a personal, individual identity speaking to social media's current need for relatability and authenticity, as well as a professional entrepreneurial identity. These two dimensions often bring legal tensions, such as the legal qualification of labour and transactions, and lead to important questions relating to creator culture and marketing. The resulting exploration builds on the earlier volume on the regulation of social media influencers, which took a legally horizontal approach to identifying what legal issues can affect the activity of influencers.¹⁴

3 RESEARCH QUESTIONS AND CONTRIBUTIONS

The goal of this edited volume is to better understand the situation of influencer labour by studying the convergence of media studies, law/regulation and economics. In that effort, it reports and synthesises the vast trends and themes reflected by existing research on the cultural production of content.

¹⁴ Catalina Goanta and Sofia Ranchordás, *The Regulation of Social Media Influencers* (Edward Elgar 2020).

It will then match these findings to the relevant applicable legal frameworks. Generally, this edited volume purports to address three main questions: (i) What are the characteristics of content creation as labour? (ii) What comprises the influencer/creator hustle? What are the implications of content monetisation for influencers and content creators? (iii) How do different jurisdictions around the world deal with influencer labour from a legal perspective, and are current laws sufficiently flexible to reflect the influencer/creator hustle? These three research questions reflect the three separate parts of the book, which is structured as follows.

Part I deals with how identity is built in the influencer economy by and through the commodification and monetisation of digital labour. It reflects an exploration of the multifaceted characteristics of influencer labour, marked by both aspects of commodification and qualification. On one side of the spectrum, for many moderately successful creators, aspects of commodification loom, where individuality becomes second to exchangeable marketing vehicles, tightly governed by industry conventions and contractual obligations enforced by overbearing agencies. In turn, the social and economic expectations from the influencer status have changed dramatically over the years. Even the term ‘influencer’ is perceived as a pejorative term which indicates the prioritisation of commercial gain over authenticity. Influencers are increasingly seen as individuals who lend or sell their opinions and their likeness in exchange for financial gains. It has long been possible, at least in principle, for some creative influencers to approach their work as assets. However, the actual realisation of profits challenges their identity: they are no longer merely the individuals with whom audiences develop intimate parasocial relationships, but they are vehicles of commercial transactions. This marks a transition from a private individual to a commercially registered market actor. Part I brings together three contributions which showcase the wide variation of influencer identities, as well as practices that establish these identities across different groups, geographies, and trends.

Veronica Barassi explores the practice of ‘sharenting’ and the boundaries between parent and child identity that become blurred in terms of privacy, liability and agency for children. By reflecting on the notion of ‘visibility’ as a social category, this chapter revisits these ongoing debates, delving into the complexities that have arisen at a historical juncture where social media data is not merely utilised by artificial intelligence (AI) agents to profile individuals but also serves as the basis for generative AI, capable of producing convincing deepfakes.

Lucia Bainotti provides an investigation of how small content creators (also known as micro-influencers) navigate the complexities and nested precarities of the influencer industry by combining multiple activities, roles, or jobs across various fields or sectors in what she calls ‘composite careers’. The

chapter presents the results of a qualitative investigation based on interviews with micro-influencers. The findings describe three categories of content creators, each embodying a particular composite career: the full-time content creator, the multitasker, and the passionate second-shifter.

Sijun Shen and Crystal Abidin delve into the phenomenon of *wanghong* (网红), which translates to ‘internet red’ and approximates to a Chinese interpretation of ‘influencer’. The term is used in the Chinese social media industry to refer to internet fame obtained through a variety of means, but usually focused on monetising potential, an important field of inquiry in global influencer studies. This chapter examines two case studies of *wanghong* who were embroiled in prolific scandals situated within the backdrop of *wanghong* governance in the Chinese market. These case studies highlight the strategies and labour of *wanghong* in their attempts to survive scandals and leverage crises as opportunities within China’s precarious digital economy.

Part II of the book tackles its core concept, namely the social media hustle undertaken by influencers/creators. The hustle reflects the entrepreneurial dimensions of content creation, as well as some of the incentives of the actors engaging in it. Related to influencer labour in academic research, an underexplored consideration is the increased competition in this landscape. In the era of authenticity, the size of one’s following is no longer more important than the genuine connections established with their community. A legion of micro (or even nano) influencers is taking over the space once occupied by a select group of mega-influencers. Issues relating to perceived stagnation, or the (shadow-) banning of content need to be considered against this background: the more creators there are, the smaller the market shares they may acquire. At the same time, while parasocial relationships drive creator communities, an important role in these relationships is played by the attraction (physical and psychological) that content creators stimulate in their communities. In this context, the sexualisation of influencer presence on social media may be interpreted as a recipe for popularity.

Influencer labour is nearly ubiquitous across online spaces and industries. In some ways, influencers are involved in supply chains and power imbalances which are reminiscent of the gig economy. Concurrently, the experience of content creators with algorithmic amplification is often determined by what research has called ‘brand safety’, that is, what content is considered inoffensive to the reputation of brands that may want to associate with the platform (or the influencer). Controversial content creators and controversial content are defined, identified and taxed by platforms by means of visibility and accessibility. This results in some virality approaches being detrimental to selected creators. What is defined as offensive is also a point of contention, as many non-white creators report disproportional flagging of their content. And here is the reality of content creation: while, in theory, anyone with a camera

and internet access can partake in the creator economy, not all creators are promoted equally by platforms and within monetisation ecosystems. In Part II, we bring together analyses of entrepreneurship focused on economic incentives, platform and self-governance, and content moderation.

In his chapter, **Daniel Ershov** reviews recent theoretical and empirical studies in economics and management that model the behaviour of content creators and consumers on social media, and that assess the potential effects of regulations on incentives and outcomes in this market. These studies highlight several mechanisms through which certain forms of advertising transparency regulations could distort content creator incentives and ‘backfire’. Empirical evidence from Instagram users in Germany following the strengthening of disclosure regulations provides some evidence for these mechanisms.

Laura Aade analyses how platform discretion in content moderation can pose a threat to streamers who use (or used) to earn their living on the live-streaming platform, by focusing on an empirical study on Twitch streamers. The chapter draws on data gathered from ten semi-structured interviews and addresses the material and immaterial harms that can arise from an abrupt and unilateral termination of affiliate or partnership agreements by Twitch. In doing so, the chapter reveals the contractual and legal frameworks that led to the development of platform discretion in content moderation.

Ziying Meng presents a hybrid approach of digital ethnography and a participant-led comparative walkthrough to showcase an investigation of 16 content creators’ cross-platform work and labour conditions in navigating multiple Chinese and US-based platforms. This research is situated in the context of the Chinese *wanghong* economy and social media entertainment built around Silicon Valley-based platforms. To deal with the challenges and maintain cross-platform autonomy, Ziying Meng shows how creators conduct self-governance tactics such as cross-platform profile management, self-curation of content, distribution and online performance, and navigate what she terms ‘platform poaching’.

Part III addresses some of the legal implications of influencer labour. Given its complexity and versatility, from a legal perspective, influencer labour has remained somewhat of a mystery. Although regulators around the world are dedicating increasing attention to the question of how to regulate influencers, their attempts often reflect some degree of administrative fragmentation. Influencer labour can have implications for a plethora of legal frameworks and connecting enforcement structures. The most visible legal concern around influencers has been the protection of consumers through the disclosure of advertising. This perspective mostly took consumer interests into account, while vilifying – sometimes reasonably so – the practices of influencers as starting entrepreneurs. The web of rules applicable to influencing as a commercial activity is by no means simple or straightforward. Looking at influ-

encer labour from a more balanced perspective, considering both obligations and rights pertaining to this category of workers, is essential for the debate around the regulation of influencer activities, which has so far remained understudied from a multidisciplinary perspective. In Part III, we select specific jurisdictions that have seen a great rise in influencer marketing (India, Brazil) or where novel regulatory developments have raised a lot of public policy issues (France), to better understand what legal qualifications can be given to influencer labour, and what issues arise from this process. In addition, we also tackle the role of labour in competition from a platform governance perspective (EU).

Claire Marzo addresses the legal frameworks in France and the United Kingdom in terms of influencer labour and social protection. Although case law lags behind, rules tend to be general and apply to influencers. After having defined this activity and considering the diversity of influencers' profiles, the chapter sheds light on the applicable legal regimes to influencer labour.

Malcolm Katrak and **Shardool Kulkarni** tackle the Indian approach to regulating influencer labour, which reveals an emphasis on the obligations of influencers, particularly those regarding disclosures in the context of consumer protection, whilst paying little attention to the protection of their fundamental rights at work as self-employed workers. Policy decisions, such as the ban imposed on TikTok by the Indian government in 2020 without accounting for the livelihoods of numerous working-class influencers, also reflect a disregard for their rights. This chapter seeks to situate the failure to regulate influencer labour in a uniquely Indian context of pervasive informality despite a constitutional mandate for socioeconomic justice.

Andreia de Oliveira provides an analysis of Brazil's burgeoning digital influencer market, including patterns of consumer behaviour and salient regulatory issues. Her chapter delves into the substantive regulatory framework affecting the industry, touching on aspects of consumer protection laws, tax legislation, advertising protocols, and the related oversight by national authorities. Additionally, the chapter reflects on previous and ongoing initiatives to establish regulations specific to digital influencers.

Finally, **Tjaša Petročnik** looks at the supranational level and discusses content creation as digital labour to explore to what extent selected EU regulatory frameworks – platform regulation, consumer protection law, and competition law – are fit to address the exploitation concerns related to the business model of digital platforms and the way in which value thereon is created and realised. In particular, the chapter finds that EU regimes predominantly facilitate fairness in a procedural sense, especially by ensuring more transparency, and highlights the possible, if contested, role of antitrust in ensuring a fairer distribution of value on digital platforms.

4 FUTURE RESEARCH

The contributions collected in this book reflect two specific trends brought to light by the complexity of content creation. First, there are significant doubts relating to the value of influencer labour, particularly the economic value of this activity. Should the time invested in professionalisation be considered as time that warrants compensation? Does it make sense to have different regimes applicable to, for instance, influencers as startups and other startups that might have the same investment of social capital, but without any claims for economic reimbursement? Was entrepreneurialism ever fair, and if we accept a negative answer to this question in the light of the nature of capitalism, should resulting inequalities be remedied? Second, looking at regulation as an intervention that can provide such remedies, what should be an ideal path for lawmakers to bridge eventual deficiencies? Are freelancers the new companies participating in the digital market, and should they benefit from harmonised protections across cultural and legal internet and physical geographies?

These questions are tricky to answer in a reality where creators as entrepreneurs are the victims, but also the winners, of capitalism, and the physical borders of their activity remain difficult to determine and impose. Such questions pave the way towards a broader research agenda on the legal and economic status of influencers, particularly from the perspective of fairness in the digital marketplace. We hope this volume fuels an initial multidisciplinary discussion that can benefit from further insights.

5 ACKNOWLEDGEMENTS

This book was made possible with support from the ERC Starting Grant HUMANads (ERC-2021-StG No 101041824).