

Creative Labor in the Age of Platform Capitalism

Xiyin Tang

University of California, Los Angeles School of Law

The conventional account of creativity and cultural production is one of passion, free expression, and self-fulfillment, a process whereby individuals can assert their autonomy and individuality in the world. This conventional account of creativity underlies prominent theories of First Amendment and intellectual property law, including the influential “semiotic democracy” literature, which posited that new digital technologies, by providing everyday individuals the tools to create and disseminate content, results in a better and more representative democracy. In this view, digital content creation is largely (1) done by amateurs; (2) done for free; and (3) conducive of greater freedom.

This Essay argues that the conventional story of creativity, honed in the early days of the Internet, fails to account for significant shifts in how creative work is extracted, monetized, and exploited in the new platform economy. Increasingly, digital creation is done neither by amateurs, nor is it done for free. Instead, and as this Essay discusses, fundamental shifts in the business models of the largest Internet platforms, led by YouTube, paved a path for the class of largely professionalized creators who increasingly rely on digital platforms to make a living today. In this new creative economy, monetization—in which users of digital platforms sell their content, and themselves, for a portion of the platform’s advertising revenues—not free sharing, reigns. And far from promoting freedom, such increased reliance on large platforms brings creators closer to gig workers—the Uber drivers, DoorDash delivery workers, and millions of other part-time laborers who increasingly find themselves at the mercy of the opaque algorithms of the new platform capitalism. This reframing—of creation not as self-realization but as work that is both precarious and exploited—has significant implications for intellectual property, First Amendment, and Internet law theories that have long relied on the conventional account. Indeed, as this Essay argues, platform capitalism—that is, the use of digital processes to extract surplus profit—needs the persistence of the conventional account to sustain its very structure, and to increase the value of creative labor exploited.