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The stigma around porn work: inhibiting the enforcement of health and safety regulations

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ABSTRACT

Laws around occupational health and safety are not enforced in the gig economy porn industry. From nine semi-structured interviews with UK-based adult content creators (ACCs) it emerges that, while working on online platforms, they receive no training and are not supported with regard to the work-related risks they encounter while performing sex. ACCs self-regulate how to perform sex in the safest manner and avoid the risk of catching sexually transmitted diseases and infections, at their own expense and in their free time. Yet a doctrinal analysis of UK health and safety laws reveals that platforms should be obligated to provide ACCs with paid training, and personal protective equipment such as tests and condoms, to provide them with a safe work environment. Even self-employed individuals in fact have a right to be protected at work and to ensure that third parties are not harmed because of their work. I therefore argue that the lack of enforcement of health and safety regulations on online porn platforms is triggered by the stigma around porn work. Selling sex is perceived as a taboo activity; stigma is a powerful tool which relegates ACCs to the margins of society, while relegating porn platforms to lawless territories.

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Introduction

While UK labour law (Employment Rights Act 1996, section 230(3)) primarily protects employees in a subordinated contractual relationship with an employer and workers who contract directly with third parties while being integrated into someone else's business, maintaining a safe environment is a managerial liability towards anyone who might be harmed in the workplace (Freedland and Adams-Prassl 2017; Deakin 2020, 193). Crucially, self-employed individuals, who run their businesses independently, also have a right to be safe at work (Adams et al. 2021, 335). This implies that adult content creators (ACCs) whom porn platforms classify as self-employed should be adequately protected in terms of their occupational health and safety (OHS) – even without clarification of their employment status, akin to the Supreme Court ruling that drivers work for the Uber app (*Uber BV and others (Appellants) v. Aslam and others (Respondents)* 2021 UKSC 5).

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While the literature addresses the issue of employment status in the gig economy (Atkinson and Dhorajiwala 2022; Davidov and Alon-Shenker 2022), it has also begun to explore the OHS risks associated with gig economy work (Howard 2017; Lobel 2017; Bajwa et al. 2018; Christie and Ward 2019; Williams, McDonald, and Mayes 2022). However, there is a notable gap in the discussion regarding OHS law as it pertains to porn work within the gig economy (Bernier et al. 2021; Buchanan, Kim, and Eickhoff-Shemek 2023; Sanders et al. 2023; Wamai et al. 2023). To address this gap, this article seeks to advance the discussion on the need to enforce OHS laws for a broader range of workers engaged in unconventional gig economy work, such as sex workers, influencers, and content creators (Van Driel and Dumitrica 2021; Hoose and Rosenbohm 2023). Through a socio-legal doctrinal analysis of UK OHS laws and nine semi-structured interviews with UK-based ACCs, this article examines ACCs' right to a safe working environment. Although legally there is little to prevent platforms from being included under the scope of OHS laws, I argue that the current difficulty in enforcing such rights is attributable to the stigmatized nature of sex work, which renders it invisible to the public – relegated to the private domestic sphere.

Following an initial methodological clarification, this article begins by examining how stigma marginalizes ACCs in the context of porn work, thereby inhibiting the enforcement of ACCs' labour rights. The article then argues that ACCs should be provided with paid training and economic support to control the transmission of sexually transmitted infections (STIs) from online platforms. UK and EU legislation already offer relevant examples of how to impose obligations on platforms, regardless of their jurisdiction.

Methodology

My argument that stigma inhibits the enforcement of existing labour rights in the UK porn industry is grounded in methodological triangulation. In 2021, I conducted nine semi-structured interviews with UK-based ACCs who provide a broad understanding of sexually explicit content on porn platforms (i.e. mainstream porn, webcamming, BDSM content, and ethical pornography).¹ These interviews were originally part of a broader research project investigating the potential recognition and enforcement of ACCs' labour rights under UK law (Nocella 2024). While the primary focus of that project was to explore the possibility of recognizing ACCs as workers under the 1996 Employment Rights Act (see Introduction), an intriguing parallel finding emerged: UK law does not restrict the enforcement of OHS rights to traditionally subordinate employment contexts. This indicates that even if ACCs are not recognized as employees in the conventional sense, they can still be entitled to OHS protections.

Driven by the insights gained from the interviews, I hypothesize that the lack of OHS enforcement for ACCs might be attributed to societal stigma. To investigate this hypothesis, I employed critical discourse analysis to examine the interview transcripts (Fairclough 2001, 122). This method allowed me to dig deeper into the discourse, considering not only the explicit content but also subtleties such as hesitations, pauses, and *anacolutha*, which may reveal underlying power dynamics and stigmatizing attitudes that are not immediately apparent from the text alone (Hannabuss 1996, 28).

The interviews were conducted online via Microsoft Teams, each lasting approximately one hour. I introduced myself to the participants as a sex worker ally focused on exploring

how labour law might empower ACCs. Participants were recruited through a snowball sampling method facilitated by two key gatekeepers: members of the Sex Workers Advocacy and Resistance Movement (SWARM) and SNAP Together, which are organizations supporting sex workers and ACCs in the UK porn industry. Social media platforms such as Twitter, Instagram, and WhatsApp played a crucial role in further participant recruitment via snowball sampling.

The semi-structured nature of the interviews allowed for flexibility; while I had a set of pre-established questions, I encouraged participants to guide the conversation towards topics they found significant (Blee and Taylor 2002, 96,100). As a legal scholar interested in the intersection of law and sex work, I triangulated the interview data with a doctrinal analysis of UK OHS laws. This multi-method approach provided a comprehensive understanding of the legal and social challenges faced by ACCs.

My findings suggest that stigma plays a significant role in the inadequate enforcement of OHS rights for ACCs. In fact, while research on OHS in the Californian porn industry suggest that the presence of sex has triggered the need for legal interventions due to stigma, the UK context seems quite different (Webber 2024, 135); UK OHS law is applicable to any work environment. Yet it seems that, despite the legal framework allowing for such protections, societal prejudices and the marginalization of sex workers contribute to a lack of recognition and enforcement of their rights. By highlighting these dynamics, this research underscores ACCs' need for occupational training and testing to work in a work environment which is in line with OHS law. In order to enforce such existing laws, this article suggests acknowledging and addressing the impact of stigma on enforcement by placing liability on porn platforms through the provision of training and STI test kits for UK-based ACCs.

The stigma of the porn industry

Before examining research participants' perceptions of the risks associated with producing sexually explicit content on online platforms and analyzing the relevant UK OHS law, this section establishes the theoretical framework for the article. It situates the discussion of the absence of OHS enforcement by the British Health and Safety Executive on porn platforms within the concept of stigma, drawing on the foundational work of Erving Goffman (1963).²

Goffman (1963, 11) differentiates between normal individuals, who conform to community expectations, and those who are stigmatized due to possessing discrediting attributes. The term stigma, derived from Greek etymology, originally referred to bodily signs that exposed individuals' potentially out-of-the-ordinary and perceived negative moral status (Goffman 1963, 11). However, stigma is not triggered merely by discrediting attributes themselves but by the interaction between normal and stigmatized individuals (Goffman 1963, 13). Link and Phelan (2001, 370) argue that a stigmatizing process is characterized by an 'us' versus 'them' dichotomy, wherein 'they' are perceived as threatening 'us' due to their immoral, lazy, and predatory undesirable attributes, making them essentially different individuals. These labels are seen as justified by the real differences attributed to stigmatized individuals, which leads to their stereotyping as a category of 'not really human' people sharing the same 'bad characteristics' (Link and Phelan 2001). This results in a loss of social status and discrimination, as stigmatized

individuals are placed lower in the social hierarchy and excluded from access to public services (Link and Phelan 2001, 373; Jones 2022).

Goffman (1963, 14) identifies three types of stigmas: body defects, tribal membership (such as ethnic origin and religious affiliation), and a third category that helps explain why ACCs are perceived as outcasts engaged in taboo activities (Nocella 2024). ACCs deviate from societal values regarding sex as an activity practised in intimate, private relationships. Consequently, they bear a physical and moral stigma associated with the 'dirt' of selling sex (Toubiana and Ruebottom 2022, 517). Sex work is labelled as 'dirty work' (Toubiana and Ruebottom 2022, 517).

Interestingly, Goffman (1963, 93, 170) refers to sex workers as 'the core of social deviants' because they carry an 'important stigma'. They are engaged in what Goffman describes as a collective denial of the social order, as they refuse to follow the approved pathways for advancement in society, displaying 'disrespect for their betters', lack of piety, and overall 'failures in the motivational scheme of society' (Goffman 1963, 171). ACCs possess such so-called 'blemishes of individual character' which are perceived as unnatural (Goffman 1963, 14) because they are viewed as immoral, anti-social, and deviant (Hammond and Kingston 2014, 331). Their personal identity, defined by the sum of 'positive marks or identity pegs', is unique and negatively distinguishes them from the rest of society (Goffman 1963, 73). This is because their identity is entangled with debates about the potential dangers of sex work rather than its empowering aspects (Bak and Nocella 2023, 434–436), which induces panic and anxiety (Attwood and Smith 2011; Attwood et al. 2018; Ahearne 2023) and obscures other aspects of their identity (Grittner and Walsh 2020, 1654). Such debates attach negative 'sticky' emotions, such as stigma and disgust, to sex work (Ahearne 2015, 28).

As stigmatized individuals, ACCs are not only negatively perceived by society but are also deprived of community citizenship (Grittner and Walsh 2020, 1653). They experience public stigma that limits their social opportunities through neglect by 'social structures, institutions, community organizations, and individuals working to reinforce social norms' (Grittner and Walsh 2020 1658). There is, therefore, a link between stigma and 'social, economic, and political power – it takes power to stigmatize' (Link and Phelan 2001, 375). Although often overlooked and taken for granted, power is 'essential to the social production of stigma' (Link and Phelan 2001). Stigma is a potent tool reinforcing negative social perceptions of sex work, as it is the underlying reason why porn work is not recognized as legitimate employment (Jarke 2022). It allows dominant views to dictate expected behaviour and social standards while justifying the marginalization of sex work in society.

ACCs are subjected to 'discrimination and negative labelling', which socially excludes them and hinders their access to support services, rendering their working environments unsafe (Grittner and Walsh 2020, 1673). I argue that while existing OHS laws in the workplace could extend to workers in the online porn industry, the lack of enforcement for such regulations for ACCs exemplifies the burden of their stigma (Voss 2012).

Yet, as Goffman (1963, 163–164) argues, stigma is a product of social interactions – in other words, it is a social construct that can be resisted. ACCs already have mechanisms of resistance in place; as will be discussed in the following sections, scepticism about the need for proper training or the downplaying of the need for testing reflects ACCs' strategies to navigate their stigma. While the literature suggests that sex workers emphasize

the labour component of their jobs to cope with stigma (Berg 2014, 699), it is also documented that they fear public interventions that might 'exceptionalise' their jobs and cause further cultural anxiety (Webber 2024, 135). Thus, the discourse around whether porn work is legitimate from ACCs' perspectives is fractured due to the underlying dynamics of stigma power, making it inconsistent. Stigma plays a crucial role both in fostering a close-knit community where members support each other by learning the required skills and in downplaying these skills due to fear of further marginalization in an environment where little attention is given to enforcing their labour rights (Stegeman 2024, 341). In a destigmatized environment, where porn work would be treated like any other job, such coping strategies would be replaced by platforms' enforcement of existing labour rights to provide safer, more secure, and regulated work environments in line with the British Health and Safety Executive's guidelines (Weitzer 2018, 725).

The presence of stigma in the UK porn industry is evident when considering the legal status of sex work in the UK. Sex work is regulated through a 'partial criminalization' approach (Kantola and Squires 2004), meaning it is *de jure* legal but subject to specific laws that criminalize certain sex work-related activities, such as kerb crawling, brothel keeping, and working in partnership with other sex workers (Sexual Offences Act 1956, ss 33–36, ss 51(A), 52(1) 53(A), 54, 56; Street Offences Act 1959, s 1(1); Criminal Justice and Police Act 2001 Section 46 (1)). The state appears to convey that sex work is legally acceptable but should not be conducted openly (Sanders 2009; Della Giusta et al. 2021). The case of pornography further illustrates this issue; pornography is not treated as sex work but, rather, as a final product (Nocella and Chiaro 2023) that requires regulation to protect consumers from material deemed obscene or indecent (Obscene Publication Act 1959 and 1964, 1 (1); Indecent Displays (Control) Act 1981, Chapter 81 s 1 (1); Criminal Justice and Immigration Act 2008, s 63 (7); Online Safety Act 2023). However, no acknowledgement is made of the work environment required to produce this product within the legal industry of pornography. Thus, it can be concluded that the regulation of pornography, like full-service sex work, is one of partial criminalization. It is legal, but Parliament seems unwilling to acknowledge or address the working conditions behind the end product (Wilcoxon 1975; Dworkin 1989; Berg 2018). Stigma power appears to operate in the existing legislation on the porn industry, which is framed around obscenity and censorship. Despite its legal status, the porn industry exists in a grey area between legality and illegality; it is associated with criminal interventions, and the British Health and Safety Executive does not oversee OHS provisions for ACCs. A first step towards dismantling the stigma surrounding the porn industry would involve legislation that recognizes porn not only as an end product but also as a work environment. OHS provisions should be applied to its work environment just as they are in any other job. This article does not aim to propose methods for dismantling the stigma of sex work, as this is a significant objective requiring time, increased awareness among ACCs, and societal campaigns to 'normalize' sex workers. Instead, this article suggests examining how ACCs could be supported within the existing UK context, considering that the porn industry is legal and that existing rights and obligations could be extended to it as well.

Examining porn from a labour law perspective leads to the conclusion that platforms' treatment of ACCs as self-employed and their claim to be intermediaries should not preclude platforms from implementing UK OHS regulations. The peer support currently

aiding ACCs in navigating the hazards associated with porn work would be reinforced by the enforcement of core rights under OHS liability for platforms. Specifically, ACCs appear to need training and economic support to protect themselves from STIs. The next section will therefore explore why ACCs feel the need for training on porn platforms.

ACCs' 'self-help' and community-based training strategies

This section examines OHS legislation with a particular focus on the significance of providing training for workers. In the current circumstances, ACCs are not given training, despite the fact that some of their job-related tasks should necessitate information, support, and instructions on how to perform them without compromising workers' safety. I therefore begin by exploring ACCs' own perceptions of their need for training.

When ACCs handle new equipment based on emerging technology, they are left to learn how to use it safely through their own experience. Particularly noteworthy in this context is the case of porn platforms encouraging ACCs to purchase a specific type of sex toy:

You just buy it yourself and then you can connect it ... The brand of the toys is called Lovense. We have what's called Lush vibes, so they're like interactive toys where they connect to your phone app and then from the phone to the website. The app will then connect to the website so they [clients] can pay to set the toy off to vibrate and however much they pay depends on how ... the intensity and the duration of the toy. Like say like they tipped a dollar, it would be like a very small vibration. Then the more the tip, the stronger it is, and the longer it goes on. (Participant 5, personal communication, 1 December 2021)

Each time a customer tips the ACC, the sex toy vibrates inside them, and the more they are tipped, the longer ACCs are expected to pleasure themselves with the device. Research participants confirmed that they are aware of the risks involved in using such sex toys and expressed a desire for information on how to handle them safely:

I've heard a lot of horror stories my whole life of people in A&E [accident and emergency]³ with different sex toy related injuries. I was quite well prepared with knowledge on that but I know that there's other people where, for example, if they're doing like an anal scene and you have to use a toy with a flared base or it can get lost and then you have to go to the hospital ... I know of a girl that it happened to. But this is not something they [the platforms] warn you about, I suppose, like on sex toy websites or like on packaging or there's you know there's no leaflet inside or anything. (Participant 5, personal communication, 1 December 2021)

While ACCs self-regulate to avoid potential risks associated with inserting sex toys into their bodies, platforms show little concern for the safety of the workers – despite being vigilant about ensuring that materials posted on the website do not contain prohibited sexual acts or depict minors engaging in sexual activities. Therefore, as mentioned earlier, and likely as a way to cope with the stigma they face, the community of ACCs supports each other, as they are left to learn how to perform work-related tasks on their own at best:

Well training is ... Training is what you've learned. It's like any other self-employed job. It's that you develop your skills and pick up things as you work. You get better because you're self-taught. You learn from other people, but there's no, there's no ... School of online fucking. There's no one there to teach you say: 'Oh yeah, do this, do that'. It's just what

you, what you watch other people, and you learn from them. And yes, sometimes we give you tips and advice and whether you take it and learn from it is up to you. (Participant 3, personal communication, 1 December 2021)

ACCs appear comfortable with the notion that acquiring the necessary skills to perform in the porn industry is their own responsibility. They refer to their training techniques in the first-person plural, using 'we'. They describe their colleagues as 'friends' or 'closest friends' with whom they share more than 10–15 years of experience, enabling them to distinguish 'the bad studios and the bad people and who to work with, who not to work with, who to aspire to work with, who to avoid, et cetera' (Participant 3, personal communication, 1 December 2021). Their language underscores the importance of belonging to a community where creators support each other and self-regulate to protect their OHS. The bounded entitativity that ACCs form to support each other is also perceived as a strategy for coping with the stigma attached to the sex industry by creating a safe haven where they are not othered by society but appreciated (Toubiana and Ruebottom 2022, 533–534). They support each other through a social network of ACCs, providing each other with 'knowledge and skill-building education' (Grittner and Walsh 2020, 1674, 1678). Goffman (1963, 32) argues that stigmatized individuals receive significant support from those who share their own stigma and feel part of the same category through 'instruction in the tricks of the trade', moral support, and comfort. This is particularly evident in the case of female ACCs engaged in webcamming; research participants shared that they relied on a WhatsApp group where they would exchange questions on how to perform confidently with other women:

For me it [training] was all just kind of speaking to other girls and ... Looking online and just looking at what other people do and getting sort of an idea of what kind of works, what doesn't work. Yeah, I thought it was mostly just looking at looking for things myself really. When I first started web camming, I would have guys come in and they would be like 'Oh, would you do such and such with me', and I'm like 'What's that?' and I might try to Google on the side what it is, and I'd read out below ... So like on one of my nights off, I sat down and I asked the girls in the group like kind of what the main fetishes and things are and they sent me like loads of documents on what they put together on fetishes and like what you should say what you should do blah blah blah. So I would definitely say if someone wants to be successful then yes [you need to do some research/training] so that you know what you're doing and you don't look stupid. (Participant 6, personal communication, 2 December 2021)

Research participants seem to agree that gathering information about the types of performances that are trending online and how to execute them in the best possible way is not mandatory. They emphasize that it is their personal choice, driven by a desire to appear assertive, confident, and prepared when interacting with clients. However, this attitude also highlights the need to raise awareness around the fact that porn is work. There is a misconception that performing in porn, particularly at an amateur level, is something spontaneous, requiring no effort or preparation (Easterbrook-Smith 2023, 264–265).

Due to the stigma surrounding sex work, part of the sex work community itself subscribes to the misconception that their job is easy – unlike mainstream jobs outside the sex industry and other forms of sex work. Some ACCs come to believe that if they put effort into their work, it is not because the job demands it, but because it is their personal

choice. Erotic capital, meaning the cultivation of one's aesthetics, is taken for granted, and sex is seen as a spontaneous activity usually performed in intimate relationships (Hakim 2011, 208). My research participants confirmed that the porn industry requires effort in looking good and performing sex because, without this effort, they would not be successful enough to earn a living. As mentioned in the previous section, this is symptomatic of how stigma power has fractured the discourse around porn work.

It appears that ACCs are also employing a denial strategy to resist the stigma of sex work. Goffman (1963, 92, 125) argues that stigmatized individuals use coping strategies such as 'passing' – concealing the stigma from the so-called 'normal' – and 'covering' – sharing the stigma only with 'some confidants'. These coping strategies include isolation with those who share their stigma, as well as resigning 'to their devalued status' and being in denial about the stigma through reinforcement of 'conventional norms' and the promotion of 'dominant interests by legitimising established power hierarchies' (Goffman 1963).

Not only do ACCs collaborate with one another because they share their outsider status, but they also downplay the reality of their work as work. Research participants used negative semantic structures to highlight that they 'didn't do anything specifically to be honest' because they are 'naturally curious, suspicious anyway' (Participant 7, personal communication, 15 December 2021). Despite downplaying their training activities, they all had to invest time, money, and effort into researching 'what sells', 'what the demand is', and 'what people are interested in', because if they want to be popular on the porn platforms, they must ensure their performances meet the demand and tastes of porn consumers (Participant 7, personal communication, 15 December 2021):

In terms of actual trainings, there's nothing that I've done sort of in a sit-down situation specifically and said right dedicating this next hour to purely learn and how to do X Y and Z ... I think with this industry you sort of learn as you go. And you learn on your feet and most of it comes from experience. (Participant 7, personal communication, 15 December 2021)

Under the Management of Health and Safety at Work Regulations 1999 (MHSWR), training should take place 'during working hours' and, 'where appropriate', be repeated periodically and 'adapted to take account of any new or changed risks to the health and safety of the employees concerned' (regulation 13). Yet ACCs are currently managing this themselves when they are not working, often during the night. Not only is this training undertaken in their free time, but it is also at their own expense:

Uhm, I spent some nights kind of building up to going full time watching webcam girls. I've actually paid webcam girls for advice and things like that. Watch things like porn ... kind of just like research just to know what I should be doing and what goes down well. But again, that was my own personal preference just because I wanted to make sure when it came to it, I didn't like freeze and be like what do I do now that kind of thing, but apart from that? Nothing is mandatory at all. (Participant 6, personal communication, 2 December 2021)

ACCs tend to pay for tailored performances with more experienced ACCs in order to learn from them and be able to ask them specific questions. Participant 8, who is a professional Dominatrix, highlighted the importance of training in her work:

There is no official training, there's no way you can go to get an official documented anything. I personally learned through professional dominatrixes. So I booked sessions with them and I said can I learn this section of this thing you do? When can I learn that thing, what you do? And then I've had ambulance first aid training. (Personal communication, 23 February 2022)

This specific genre of porn requires training. My research participant reported that she enrolled in first aid training because she is aware of the risks connected with the types of sexual activities she engages with:

I'm doing things to them that will hurt them. I'm spanking, hitting, whipping, piercing and things like that. So I have to make sure that I'm not transmitting and being aware of, like infection control whenever their skin is pierced where I hit them on their body needs to be appropriate for their body weight, their interests. And we have to have a safe word. Uhm ... I have to make sure that I don't accidentally, you know, wield this and catch it and flicked something. You know, I have to be very aware of my space and also if there's if there's blood at all at play stops so yeah. Yeah you have to be ... You have to be ... Educated and aware on body or anatomy and things like that. (Participant 8, personal communication, 23 February 2022)

Training is crucial in BDSM-type porn because the consumer expects to see the workers 'pushing boundaries and going wild' (Participant 8, personal communication, 23 February 2022). As a result, ACCs must agree on a safe word or, more often – to avoid interfering with the consumers' fantasies – a small gesture (such as a discreet signal with their finger, that cannot be seen on camera) that the creator should use if they are getting hurt and need to stop filming. Participant 8 mentioned that her shoots can last for 'even three hours of solid domination', during which people have fainted, experienced panic attacks, and bled quite a lot (Participant 8, personal communication, 23 February 2022). She therefore emphasizes the importance of being prepared for such scenes, as well as constantly checking in with her co-workers, providing them with breaks, and generally 'playing safe' (Participant 8, personal communication, 23 February 2022).

While training is an important component of ACCs' jobs, it should be a responsibility of porn platforms in line with OHS provisions (Tran and Sokas 2017, e65). I will now turn to assessing such provisions.

OHS in the porn industry: duty-holders

This subsection examines how even those who run businesses independently, without employing workers, are obligated to meet specific OHS requirements.

Following recommendations from the Robens Report to extend general duties to all workplaces and to the self-employed (Report of the Committee on Safety and Health at Work, Cmnd 5034, 1972), Parliament enacted the 1974 Health and Safety at Work Act (HSWA). This Act makes the 'health, safety and welfare' of employees (section 1(1)) the responsibility of employers within their 'managerial practices' (section 2). The Act aims to 'secure the health, safety and welfare of persons at work' (section 1(a)), encompassing employers, employees, the self-employed, suppliers of work equipment, and those who control work premises (section 51), and to protect others from 'risks to health or safety' caused by those working (section 1(b)). Any individual running a business is now required 'to prepare and, as often as may be appropriate, revise a written' OHS policy statement (section 2(3)). The HSWA stipulates that 'every self-employed person' has a duty to

ensure that they, as well as anyone else ‘not being their employee’, are ‘not exposed to risks to their health or safety’ (section 3(2)). Both employers and self-employed individuals are required to seek and provide information on work-related risks to OHS (section 3(3)). The rationale behind the law is that even self-employed individuals should be held responsible if they pose risks to third parties.

This means that, since platforms are operating a business, they have a responsibility towards their users, both ACCs and, potentially, the clients, to ensure that information is provided to minimize or reduce risks to OHS (Craven 2019). Whether platforms are mere intermediaries (as they claim) (Meijerink and Keegan 2019) or not (as I argue) (Nocella 2023) does not appear to affect the question of who holds this responsibility, as platforms are the only business entity involved. Nonetheless, ACCs themselves may be required to ensure compliance with OHS law when they run their own business (Cefaliello and Inversi 2022, 42); before uploading material onto a platform, they must ensure that their employees meet OHS standards (HSWA, section 7).

ACCs’ training as a OHS requirement

The HSWA requires that, as far as is reasonably practicable, employers provide ‘information, instruction, training and supervision’ to protect employees’ ‘health and safety at work’ (section 2(2)(c)). Training is particularly crucial for ACCs, as many of the physical activities they engage in – requiring confidence, experience, and stamina – may involve using potentially risky equipment, such as sex toys, and could include exposure to blood.

Liability should be placed on porn platforms to ensure their working environments have effective OHS management through proper training mechanisms (Zhang 2024). The MHSWR incorporates a European Directive (EU Council, OSH Framework Directive No. 89/391/EEC [adopted 12 June 1989]) into national law, setting out ‘employers’ obligations in respect of the OHS of workers’ with the main purpose of ensuring they ‘carry out risk assessments’ (Cooper 1998, 358). The MHSWR’s innovative aspect is its expectation that employers take steps to reduce or eliminate ‘risks associated with work equipment and the workplace’ across ‘a wide range of settings’ – including through training – so that employees can work in a safe environment (Cooper 1998). It requires both employers and the self-employed to conduct risk assessments for their employees and for those exposed to OHS risks due to their activities (MHSWR, regulations 3–4). Additionally, there are OHS duties regarding temporary workers, such as providing information on ‘any special occupational qualifications or skills required’, ‘to carry out work safely, and on ‘any health surveillance required’ in accordance with ‘any of the relevant statutory provisions’ (MHSWR, regulation 15). This implies that even gig economy workers (Berg 2016; Nocella 2023) who work for online platforms on a flexible and precarious basis without secure indefinite contracts might be entitled to OHS protection.

Employers are obligated to provide their employees ‘with adequate health and safety training’ upon recruitment, and every time they are ‘exposed to new or increased risks’ due to ‘a change of responsibilities’, ‘the introduction of new work equipment or a change concerning work equipment’, ‘the introduction of new technology’, or ‘the introduction of a new system of work or a change concerning a system of work’ (MHSWR, regulation 13(1)(2)).

Work in the porn industry comes with various OHS hazards, from which ACCs should be protected, irrespective of their employment status. Since OHS legislation extends to the

self-employed, porn platforms bear some responsibility for ensuring that the content distributed through their platforms does not endanger the OHS of ACCs (Behera and Gaur 2022). To ensure an efficient training system, porn platforms should at least ‘define areas of responsibility’ (Cooper 1998, 360), ‘analyse the tasks’, ‘identify the risks’, ‘implement control measures’, and ‘monitor and review’ (Cooper 1998, 359).

To meet these requirements, porn platforms might implement various measures to reduce – or even eliminate – risks, such as providing workers with free online training (Balakrishnan 2022, 59) on how to perform specific sexual acts safely, imposing STI testing not at the workers’ expense, and requiring workers to use protection during sexual acts that could expose them to infection (discussed in the following) (Cooper 1998, 360). These solutions could help address the challenge of enforcing OHS provisions via the internet, which, due to its borderless nature, exposes British ACCs to platforms registered in different jurisdictions. For instance, while OnlyFans is a British company, many other porn platforms operate under different jurisdictions. Nevertheless, recent legal approaches targeting platforms could inspire efforts to support ACCs’ OHS; for example, EU ACCs should be granted employee status if a subordinated dependency is present, regardless of their platform’s jurisdiction (Proposal for a Directive on Improving Working Conditions in Platform Work⁴). Similarly, the 2023 Online Safety Act imposes liability on porn platforms, irrespective of their jurisdiction, to protect UK-based consumers. Thus, the internet should not be a barrier to the protection of UK-based ACCs. However, as discussed in the first section of this article, the stigmatized nature of porn work appears to impede the enforcement of existing rights, leaving ACCs reliant on peer-to-peer support to navigate job-related challenges. They also tend to downplay the need for state support, thereby perpetuating the stigma around their jobs. The next section will analyze the need for ACCs to receive economic support from porn platforms to mitigate the risk of contracting STIs.

Self-regulation and uncertainty around ACCs’ sexual health

While ACCs self-regulate to avoid the risk of transmitting STIs when producing shared content, this section examines the extent to which porn platforms have a responsibility to enforce OHS laws. Before examining this argument, I will outline ACCs’ understanding of the existing rules designed to prevent the spread of STIs.

In the broader context of the porn industry, studios explicitly require performers to arrive on set with a certificate, known as an ‘assert’, proving they have tested negative for conditions such as HIV, syphilis, gonorrhoea, and chlamydia (Participant 3, personal communication, 1 December 2021). In major cities, the NHS operates clinics offering free STI testing; for instance, Dean St Express in Soho, London, is a clinic that is friendly towards sex workers and performers, providing tests at no cost (Participant 3, personal communication, 1 December 2021). If studios mandate specific tests, such as a PCR test rather than an antigen test for HIV, they typically cover these costs, usually amounting to around £99 at a private clinic (Participant 3, personal communication, 1 December 2021). Hence, for this particular aspect of OHS, porn performers outside the gig economy are reasonably well protected.

The situation is different for ACCs, as ‘the only thing that the platform is concerned about is that both people are of age and consent’, with all responsibility for ensuring a

safe working environment falling on the individuals involved (Participant 5, personal communication, 2 December 2021).

When engaging in content creation in collaboration with others, ACCs adhere to an unwritten rule of testing for STIs to safeguard one another and anyone they might employ. However, the linguistic choices made by research participants – how they coin their sentences, the words they use, and the semantic implications – highlight the need for enforcing OHS regulations specifically for ACCs operating within the gig economy context.

ACCs frequently describe their actions to mitigate STI risks using the pronoun ‘we’, reflecting their perception of the content creator community as a close-knit group. Despite the absence of formal regulations mandating STI testing, they feel a collective responsibility to ensure a safe working environment. This underscores how ACCs resist the stigma associated with their perceived ‘dirty’ work through mutual peer support (Goffman 1963, 137).

When ACCs refer to themselves as a community, they use terms such as ‘safe’, ‘lucky’, ‘performer friendly’, ‘we know each other’, ‘nice social thing’, and ‘obviously protected’, suggesting that their sector of the porn industry is a wholesome environment. However, this perception does not fully address the risks. ACCs are still vulnerable to STIs when engaging in sexual activities with individuals outside the industry, who may not adhere to their rigorous testing standards. Consequently, this can introduce STIs into the industry, highlighting the need for more robust OHS enforcement:

We’re all working ideally ... When you talk about performers and hopefully as well, content creators ... We’re all working within the same standards ... So you’d like to say, yeah, we all we all get tested to the same standard as regularly ... The thing with the porn industry as well is it’s quite a closed group and we don’t have a lot of unprotected sex with people outside of the industry because that’s unfortunately how sexually transmitted infections will come into the industry. It’s because people are having sex with people outside the industry who aren’t as careful, aren’t tested as regularly, and that may cause a problem. Not saying it does, it doesn’t happen a lot. But yes, it can happen. (Participant 3, personal communication, 1 December 2021)

The instances where research participants used the pronoun ‘I’ highlight their personal expectations regarding OHS standards and their willingness to differentiate themselves from those who might need to take additional steps to minimize the risk of STI infection. Those who choose not to undergo testing must rationalize their decision, often claiming that they do not face significant risks due to their less frequent interactions with other performers and their trust that collaborators are STI-free. This behaviour reflects a stigma-coping strategy identified by Goffman. Stigmatized individuals sharing certain characteristics often come together as professional representatives of their group (Goffman 1963, 160), striving to portray themselves as ‘more normal’ or as more genuine members of the group compared to others (Goffman 1963). ACCs who do not undergo testing appear to project an image of themselves as a subgroup of professionals who do not require such measures. However, interviews reveal that some ACCs may not have the financial means to visit a private clinic for a certificate of sexual health status.

This situation is underscored by one participant who prefaced her comments about her own OHS practices with ‘to be honest’, indicating her reluctance to admit that she knows she should be testing more frequently. She expressed the difficulties of maintaining a safe

standard due to physical and financial constraints, such as the cost of travelling to London or visiting a private clinic. Ideally, she would prefer to use NHS public health services, but the associated costs render it unfeasible. Consequently, she, as Goffman describes, manages ‘two faces’ – the stigmatized sex worker one and one who complies with OHS practices – in order to be understood and welcomed by me, the interviewer, who does not share the stigma of sex work (Goffman 1963).

ACCs unable to travel to London or other major cities with sex worker-friendly services must conduct tests at home. Several participants described this process as uncomfortable, involving ‘pricking your own finger’ and collecting blood (Participant 4, personal communication, 1 December 2021). One participant described the experience as ‘horrific’ due to her discomfort with the system (Participant 4, personal communication, 1 December 2021). To avoid this, those who can afford it opt for private clinics, with costs reaching up to £300 for the most accurate tests (Participant 4, personal communication, 1 December 2021). This financial burden sometimes leads participants to lose interest in creating shared content or to forego testing altogether.

Participant 4, for instance, no longer tests herself, even though she engages in content creation through full-service sex work with her clients. She trusts her clients, as they are regularly tested by the NHS, do not engage with others, and use condoms, which makes her feel safe (Participant 4, personal communication, 1 December 2021).

Uncertainty around OHS practices is evident in the use of terms such as ‘ideally’, ‘hopefully’, ‘probably’, and ‘doubt’. Participants often use conditional forms to suggest that if they were more engaged in content creation, they would test more regularly. This uncertainty is further highlighted by their use of terms like ‘unfortunately’ and ‘problem’ when discussing unprotected sex with outsiders, which introduces STIs into the industry. Many responses began with hesitations such as ‘uhm’, indicating a lack of confidence about whether more stringent OHS measures are needed. Nonetheless, there was general agreement that it would be ideal for testing to be more frequent and that such measures should be mandated by platforms, despite this not being the case currently.

The need to promote OHS among ACCs is apparent from the uncertainty surrounding their testing practices and the varying opinions on the frequency of STI tests. For instance, Participant 3 suggested a testing window of between 14 and 28 days, while Participant 4 advocated for ‘every 12 weeks’ as a rule of thumb to detect ‘the more serious stuff’ (personal communications, 1 December 2021).

Given that OHS legislation extends to self-employed individuals, platforms could address this issue by collaborating with clinics to provide and send home-testing kits through an online booking system akin to the NHS. They could also offer instructional videos demonstrating how to perform these tests. Next, I will assess the legislation that should impose liability on porn platforms.

Welfare duties upon porn platforms

The British Health and Safety Executive extends the HSWA protection for employees’ ‘health, safety and welfare’ (HSWA, section 1(1)) to gig economy workers, even if they ‘often identify as agency or temporary workers, or self-employed’.⁵ This means that, regardless of whether ACCs are classified as workers, agency workers, or otherwise genuinely self-employed, their OHS at work should be a priority for platforms.

The duty of online platforms to protect gig economy workers' health was confirmed by the High Court in *R (Independent Workers' Union of Great Britain) v. Secretary of State for Work and Pensions* (2020) EWJC 3025 (Admin) (IWUGB), which ruled that the UK had failed to transpose the EU Directive on measures to improve workers' safety and health into national legislation (Cefaliello and Inversi 2022). The case centred on whether gig economy workers were entitled to OHS protections, given their exposure to risks such as contracting SARS-CoV-2 (COVID-19) due to inadequate social distancing and lack of personal protective equipment. Under the Directive, gig economy workers are protected from 'any disadvantage' or 'harmful and unjustified consequences' in the event of 'serious, imminent and unavoidable danger' (Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work article 8(4)). National law, however, seemed to limit such protection uniquely to employees (Employment Rights Act 1996, sections 100, 44). While section 2 of the HSWA requires employers to ensure 'the health, safety and welfare at work of all [their] employees', section 3 imposes only a general duty to protect non-employees from being 'exposed to risks to their health or safety'. This meant that the protection of gig economy workers was restricted to preventing exposure to harm rather than ensuring their welfare at work.

Yet, in line with established case law (*Marleasing SA v. La Comercial Internacional de Alimentación SA* 1990, ECR I-4135; *R v. Tangerine Confectionery Ltd* 2011, EWCA Crim 2015), the High Court in IWUGB affirmed that the scope of regulations under section 3 is broad enough to include the protection of non-employees on any issue related to OHS (IWUGB, para. 112). Section 3 should not be interpreted in isolation but in conjunction with regulations 20–25 of The Workplace (Health, Safety and Welfare) Regulations 1992. These regulations impose duties on managers regarding non-employees in areas related to 'welfare', such as sanitary conveniences, washing facilities, drinking water, accommodation for clothing, and facilities for rest and meals (Health and Safety Act 1974 s 2 (2) (e)). Consequently, the High Court concluded that OHS protections must be enforced even within the gig economy (Hobby 2021), consistent with a purposive approach to labour law aimed at extending protection uniformly to the most vulnerable workers across Europe (Davidov and Alon-Shenker 2016; Kountouris 2018).

IWUGB clearly indicates that ACCs are entitled to OHS and welfare protections from platforms, particularly concerning serious infectious diseases, which fall under the welfare heading of OHS. However, platforms often evade these responsibilities by portraying themselves as mere intermediaries rather than employers (Berg 2020; Nocella 2023). This results in ACCs managing OHS risks in an uncertain manner. For example, the risk of STIs could be significantly mitigated if porn platforms provided economic support for STI testing and condoms, similar to practices in the California porn industry (Taylor et al. 2007; Motyl 2014; Gold 2015; Aguilar and Mahackian 2016; Chapkis 2018; Webber et al. 2018).

In California, however, there has been dissatisfaction with mandatory condom use, as it is seen to detract from the erotic fantasies that consumers seek (Webber 2015, 306; 2021; Schieber 2018, 384; Babylon and Berg 2021). Branding the introduction of condoms for ACCs as an OHS provision detracts from the true aim of such provisions, which is to promote public health and educate consumers about safer sex practices (Berg 2018, 218). This regulation is often criticized for treating ACCs as 'vectors of disease' (Babylon and Berg 2021, 635), reinforcing stigmatizing attitudes through 'sticky emotions' of

disgust and failing to address ACCs' own perspectives (Stardust 2016; Hester and Stardust 2020).

Given this, the primary goal of this article is to suggest practical solutions within the existing legal framework. While platforms should offer the option of free condoms, their use should be consensual (Tibbals 2012, 249–250). In contrast, STI testing should be mandatory and funded by the platforms, especially when ACCs collaborate on shared content. Under UK law, platforms are not prevented from implementing OHS provisions (particularly if they operate under UK jurisdiction), yet this legal duty remains unfulfilled due to the stigma associated with the porn industry (Voss 2015). Porn platforms should be regulated like other work environments for gig economy workers, and laws should be enacted to ensure UK-based ACCs are protected, regardless of the platform's chosen jurisdiction.

Conclusion

This article has established that porn platforms have a legal obligation to protect UK ACCs under OHS law. Although existing legal frameworks already encompass ACCs' OHS rights, the stigma attached to sex work may impede the full application of labour laws to the porn industry. As Goffman (1963, 164) notes, 'the normal and the stigmatised are not persons, but rather perspectives' shaped by social interactions. ACCs are marginalized because societal norms dictate a singular, conventional approach to sexuality, viewing the sale of sex as deviant. This stigma may function as a form of social control, excluding porn work from labour law protections. However, despite these stigmatizing barriers, porn work is a legal industry that should be subject to OHS regulations.

The HSWA extends beyond employees to include the self-employed and third parties who may be harmed due to workplace activities. Porn platforms should be mandated to provide adequate training to ACCs, as porn production involves activities that could pose health risks, including sexual acts with sex toys or colleagues and exposure to STIs. The High Court's recognition of online platforms' duty to provide personal protective equipment suggests that mandating platforms to cover the costs of STI testing and condoms is a viable and effective means of safeguarding ACCs under OHS law. Given that the EU and the UK have pioneered ways to hold platforms accountable for consumer protection across jurisdictions, it is reasonable to extend similar protections to ACCs. In sum, it is crucial for Parliament to amend legislation to prioritize labour law protections for the porn industry, shifting the focus from censorship and obscenity to ensuring the welfare of workers.

Notes

1. From a legal perspective, the law applies in the same manner to all forms of online sex work.
2. It is important to note that the lack of enforcement arises from multiple factors. On one hand, there appears to be no explicit concern from the British Health and Safety Executive, which results in the non-application of OHS regulations by porn platforms. On the other hand, the courts have the potential to enforce such regulations through a landmark case; however, this has not yet transpired. Once again, stigma plays a significant role in preventing ACCs from coming forward to seek justice.
3. Emergency room (ER) in American English.

4. European Commission, 9 December 2021. Accessed 30 October 2023. <https://data.consilium.europa.eu/doc/document/ST-14450-2021-INIT/en/pdf>.
5. OHS Executive, 'OHS for Gig Economy, Agency and Temporary Workers'. Accessed 30 August 2022. <https://www.hse.gov.uk/vulnerable-workers/gig-agency-temporary-workers/employer/index.htm>.

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