

# *Producing BDSM content on porn platforms: a day in the life of Countess Diamond*

Article

Published Version

Creative Commons: Attribution 4.0 (CC-BY)

Open Access

Nocella, R. R. ORCID: <https://orcid.org/0000-0002-7859-6081>  
(2023) Producing BDSM content on porn platforms: a day in  
the life of Countess Diamond. Porn Studies. ISSN 2326-8751  
doi: <https://doi.org/10.1080/23268743.2023.2221243> Available  
at <https://centaur.reading.ac.uk/112161/>

It is advisable to refer to the publisher's version if you intend to cite from the work. See [Guidance on citing](#).

To link to this article DOI: <http://dx.doi.org/10.1080/23268743.2023.2221243>

Publisher: Taylor & Francis

All outputs in CentAUR are protected by Intellectual Property Rights law, including copyright law. Copyright and IPR is retained by the creators or other copyright holders. Terms and conditions for use of this material are defined in the [End User Agreement](#).

[www.reading.ac.uk/centaur](http://www.reading.ac.uk/centaur)

**CentAUR**

Central Archive at the University of Reading

Reading's research outputs online



# Producing BDSM content on porn platforms: a day in the life of Countess Diamond

Rebecca Rose Nocella

To cite this article: Rebecca Rose Nocella (2023): Producing BDSM content on porn platforms: a day in the life of Countess Diamond, Porn Studies, DOI: [10.1080/23268743.2023.2221243](https://doi.org/10.1080/23268743.2023.2221243)

To link to this article: <https://doi.org/10.1080/23268743.2023.2221243>



© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group



Published online: 13 Jul 2023.



Submit your article to this journal [↗](#)



Article views: 270



View related articles [↗](#)



View Crossmark data [↗](#)

# Producing BDSM content on porn platforms: a day in the life of Countess Diamond

Rebecca Rose Nocella 

School of Law, University of Reading, Reading UK

## ABSTRACT

This article explores the case of Countess Diamond, a BDSM adult content creator who wears the hats of both producer and performer within the gig economy where adult content creators distribute pornographic material via the mediation of porn platforms. While Countess Diamond is self-employed, her business is very unstable due to the arbitrary changes made by porn platforms over what content they are willing to host and sell. The platforms control and monitor core aspects of Countess Diamond's work reality, placing her in a limbo where she is unsure of whether her work will be sold to clients at her own rate. I argue that although adult content creators are self-employed and might wish to remain so, they could operate in a more stable working environment and invest more in their business if given labour rights as workers for the porn platforms.

## ARTICLE HISTORY

Received 31 January 2023  
Accepted 21 April 2023

## KEYWORDS



Adult content creators; porn platforms; self-employment; worker status; labour rights; invest

Oh my God, it's a fear. It hangs over you. It hangs over you like a guillotine. Your income, your livelihood could just be stopped because you don't respect our terms of service and your profile's closed now. (Countess Diamond, personal communication, 19 January 2023)

## Introduction

Countess Diamond is a professional dominatrix producing BDSM (bondage and discipline, dominance and submission, sadochism and masochism) content via porn platforms as a full-time job. Her 'erotic capital, wit and personality'<sup>1</sup> satisfy the high demand for her services and has made her a UK Fetish Producer AVN content award winner with *Dommes in Cars* in 2020.<sup>2</sup> Diamond wears both the hat of a producer and a creator in the gig economy as she owns her own company in Bristol.

In this article, by centring the case of Diamond, I argue that adult content creators (ACCs) should be recognized as workers for porn platforms. In UK labour law, worker status is given to individuals who are not working for an employer as employees but are independent workers. Yet they lack the typical prerogatives owned by self-employed

**CONTACT** Rebecca Rose Nocella  r.nocella@pgr.reading.ac.uk  School of Law, University of Reading, Reading UK. Current affiliation: Oxford Brookes University, UK

© 2023 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group

This is an Open Access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited. The terms on which this article has been published allow the posting of the Accepted Manuscript in a repository by the author(s) or with their consent.

individuals as they are integrated into someone else's business who monitors their work, and worker status therefore provides them with basic labour law protections. While Diamond is an independent entrepreneur, I maintain that she also works for the platforms who limit her capabilities of freely selling her sex work brand.

My investigation relies on a triangular methodological approach based on two interviews with Diamond collected at a 1-year interval from each other, on 23 February 2022 and 19 January 2023, via Microsoft Teams and online ethnographic observations. An evaluation of the terms of use of the porn platforms OnlyFans, Clips4Sales, LoyalFans and Adultwork, which are used by Diamond, triangulates case law elucidating where UK courts draw the line between genuine self-employment and worker status. While I save the possibility of conducting a thorough doctrinal analysis on the different indicators looked for by courts to rule out genuine self-employment for later purposes, the scope of the present analysis is to focus only on the Supreme Court Uber decision.<sup>3</sup> This decision provides significant insights to denounce the control exercised by platforms over non-genuine self-employed workers like Diamond in the gig economy. Rather than looking in detail at why Diamond might be a worker for the platforms, I will just touch the tip of the iceberg around the monitoring power of platforms that hinders her entrepreneurial capacity. The first section looks at how ACCs like Diamond classify themselves as self-employed, foreshadowing the discussion in the following section on the control of porn platforms over their work. The final section concludes that the recognition of platforms as ACCs' employers would stabilize the uncertainty around their jobs allowing them to invest in their business without undermining their self-employed status.

## ACCs in the gig economy

The current digital environment characterizing the gig economy has changed the way the porn industry functions (Hunt 1993, 11, 81, 261; Kendrick 1996, 11); few workers operate in professional porn studios or productions, while the majority produce content and stream it through porn platforms (Paasonen and Saarenmaa 2007, 23). Therefore, rather than being called porn performers, this relatively new category of porn workers labels itself as ACCs. Thanks to the gig economy, ACCs can produce heterogeneous types of porn, such as amateur, pro-amateur and professional pornography, to satisfy the demand on a global scale (Abbott 2009, 48).

ACCs upload videos on the platforms for the users, but they can also directly interact with them by tailoring their performances to a specific demand. The direct interaction with clients puts ACCs in the position of having to work on their personality, looks and emotions to be successful and get remunerated (McDowell 2009). While porn platforms make jobs in the porn industry more competitive because content is cheaper, customers' reviews and ratings influence ACCs' careers (Van Doorn and Velthuis 2018, 187–188). Amateur porn facilitates the entrance into the porn industry at the cost of increasing competitiveness on porn platforms where ACCs must be willing to stay online longer and be versatile in their productions to gain adequate profits (Van Doorn and Velthuis 2018, 178). The vulnerability associated with the interactive nature of porn work is strengthened by the triangular relationship between ACCs, clients and porn platforms; porn platforms control ACCs' incomes and expect a percentage from their work (Albin 2013, 185). This leads ACCs to juggle different skills and jobs in 'porn's satellite industries', such as strip clubs or so-

called ‘full-service’ businesses such as escorting or street prostitution, where they are highly demanded among customers because they can sell the ‘porn star experience’ (Berg 2016, 163; Schieber 2018, 1–3). The economic instability of ACCs benefits porn platforms, which profit the most from the multifaceted tasks they perform (Berg 2016, 161).

As I have argued in the context of ACCs’ copyright (Bak and Nocella *forthcoming*), gig economy porn platforms allow them to preserve their autonomy and flexibility through self-employment. While formalizing and destigmatizing the sex work nature of their jobs (Berg 2016, 163; Webster and Zhang 2020, 122; Butler 2021, 366), it also puts them in a highly precarious work position under the control of platforms (Albin 2013, 185; Berg 2016, 161; McKee 2016, 110; Schieber 2018). Yet although the literature denotes the vulnerability of working in the porn industry, more work is needed around ACCs’ jobs and position in the labour market (Voss 2012, 391–396).

In the next subsection, I turn to look at ACCs’ employment reality by focusing on the case of Diamond.

### *Diamond’s employment reality*

Diamond is a famous BDSM content creator who reached her peak of success during the 2020 coronavirus pandemic lockdown when she was ‘turning over about \$10,000 a month’ (Diamond, pers. comm., 23 February 2022). As well as being on porn platforms, she has a TikTok account with more than 48,000 followers and 22 million views. Among her most appreciated content is *Kinky Kitchen*, in which Diamond uses her sex toys and spanking tools as innocuous kitchen tools to cook and bake.

For tax and social security law purposes (Adams, Freedman, and Prassl 2018), Diamond is self-employed as she directly interacts with her clients and hires two assistants to help her with social media and content creation. However, as I will explain in the next section, for labour law purposes she might be classified as a worker, which is a third category in between self-employment and employee status. Although she does not work under a contract of employment, nor does she have to regularly work in an employer’s premises regardless of whether actual work is available (Davies 2009, 93),<sup>4</sup> Diamond has an atypical working reality; she does not perform ‘personally any work or services’ for a direct ‘client or customer’,<sup>5</sup> because she is integrated into the business of porn platforms. This seems to indicate that she is not genuinely self-employed but more likely a worker for the platforms. Worker status would support Diamond in receiving a minimum wage, not working more than what is permissible under the law and to be overall protected, along with her assistants, in her health and safety while on the platform producing content.

As well as being dependent on the platforms, Diamond pays her assistants whenever she is invoiced and ‘they feel like employees’ because they work for her to improve her business:

So I have one assistant ... And her income has risen with my incoming. So every time I make a bit more, I make sure that she’s getting paid more because she’s part of the sex worker name ... As someone who is using the kind of circular economy, I pay her to help me to get better and provide a better service. (Diamond, personal communication, 23 February 2022)

Diamond claims she has the mental well-being of her assistants at heart and that even if they are freelancers working on their own schedule, she ensures they take breaks and are

able to sustain the 'mental workload' of being dominatrixes (Diamond, personal communication, 19 January 2023). This mental workload is typical of BDSM productions:

You have to be in many people's lives and influencing and adjusting their circumstances and their lives to your interests because as a dominatrix I don't just provide a service, I expect them to provide a certain level of dedication. (Diamond, personal communication, 23 February 2022)

Dedication is not only expected by Diamond, but also by clients who want:

some very deep, engaging and captivating content ... I can't just post a pretty picture with a little heart emoji. It has to be immersive. (Diamond, personal communication, 23 February 2022)

Diamond's work is therefore mentally and physically exhausting:

Like my cheeks hurt from smiling so much. Some days I'm just like Oh my God, my body. And also when you're a performer and when you're doing sex acts on, you know like on Cam and stuff like that ... It's exhausting. It's exhausting to physically be doing this ohh ... things like oh ... It is knacker. (Diamond, personal communication, 19 January 2023)

Because Diamond's sex work brand is very popular, she feels the pressure of her labour and wants to make sure that she maintains the high quality of her products while preserving her assistants' well-being. Yet Diamond fears that her need to invest more in the company is hindered by the power that porn platforms exercise on her own work, which increases her own expenses, physical and mental energy without supporting her from a labour law perspective. Diamond navigates such lack of labour protections by selling her videos for no less than US \$20. She follows a so-called 'price model' according to which she presents her content as expensive and high quality. By doing so, clients:

will not take your content and run with it and publish it to other websites because they paid their top money for that. They respect that that content was crafted and curated and cost money to produce. So they won't then go and sell it, you know on a clip resale website or something like that. (Diamond, personal communication, 19 January 2023)

Diamond believes in the price model because being the breadwinner while her husband looks after her two children means she must ensure that she earns enough to take care of her whole family. This implies producing high-quality content that will keep her clients satisfied. She fully invests in her business by paying her assistants, an editor, a cameraman and a personal gym trainer, who every day from 7.00am to 8.00am helps her maintain the body shape that is required for content production. Starting at 6.00am, she messages her clients, ensures her office is clean, applies make-up and the right outfits to 'look the part' ... 'that sets' her 'up for success throughout the day' so that she is ready to take up calls (Diamond, personal communication, 19 January 2023); clients are not 'just looking for a onetime thing', but for 'relationships and emotional connections' (Diamond, personal communication, 19 January 2023; Xantidis and P McCabe 2000, 174; Sanders 2006, 2434; 2008, 407; Garofalo Geymonat 2019, 214). She spends her day 'jumping between social media, filming at home', 'doing work' on all her platforms, updating her 'website or writing a press release' and organizing 'the filming days' by getting 'hotels and flights booked' (Diamond, personal communication, 19 January 2023). Her full-time job is an enormous physical and mental job, which she has her full hands on, as she also

ensures leaving at least 5 h a day for parenting. While expecting her second child, she took only 2 weeks maternity leave and also produced content where she was featured pregnant:

I would love to have taken more time off, but I don't believe that it would have been possible to return to my brand in the same way because they want to see me and they want to talk to me and there's no one else that can replace that. I mean, an assistant can speak in my in my voice, can type in my way, but they want me. So as much as I can fill in the gap, it felt important for my family that I continue the income ... I need to sustain you know my childcare costs which are like £1 and a half/1000 a month and then keep them in nursery. So I needed to keep that up and if I were to take an extended period of leave like six months or something like I did with my first pregnancy, I don't think I would have come back to the same level of momentum and interest. (Diamond, personal communication, 19 January 2023)

While working around her home life balance, her biggest challenge is not really the fact that she has to put such a mental and physical workload in producing her content, but the platforms' blockers:

The content that you create that is desired by the consumer is not always permitted on some websites. So, for example, lots of people enjoy the forced coercion of, let's say, a blackmail fantasy. Now I'm a professional. There is no way I'm going to do anything that puts my subscribers or my fans at risk, and there is nothing I would do that would harm them in real terms. (Diamond, personal communication, 19 January 2023)

Despite the fact that Diamond ensures no one is harmed in her content and she merely role plays and merely performs inflicting pain to her assistants, she was threatened twice by OnlyFans and AVN Stars that all her content would be taken down from the platform:

AVN Stars literally just like said, you are going to be gone in one month and immediately saw my income drop that day. And I had a month left to create a whole new home essentially. (Diamond, personal communication, 19 January 2023)

BDSM content creators' freedom of production is impacted by the incompatibility to consent to harm under English law (Dymock 2012, 56).<sup>6</sup> I have argued (Nocella and Chiaro 2023) that both the vague definition of extreme pornography, which includes realistic depictions of life-threatening acts and acts that might harm bodily parts (McGlynn and Bows 2019, 481), and the 2014 Audiovisual Media Services Regulations prohibition – even through role play – of on-demand porn consumption involving pain, leaves female-dominant pornography worse off (Willson 2018, 428, 436)<sup>7</sup> The new Online Safety Bill, which will soon impose a duty of care upon regulated user-to-user services to take steps to minimize the risk of harm through illegal content (Egan 2022, 213–214; Giles, Ashford, and Brown 2022, 281), is already impacting BDSM production which bends the boundaries between fantasy and reality representing 'extreme sexualities' (Tibbals 2014, 131; Mondin 2017, 287; Smith and Luykx 2017, 433):

When you create fantasy content and you talk about the fantasy worlds and the fantasy of this potential thing happening, you are trying to make it feel as real as possible. ... They want you to believe that this is really happening. So you create this world and you pay people to film you. You spend your time filming it. You then send that to your editor, who then edits it. You send it to your assistant and she then uploads it. And then you find that suddenly that word is banned. And you can't put that content online because that one word is banned. And the content that you have been lovingly creating for an audience



that are ready to buy it is suddenly just not allowed. Just gone. ... So that's a struggle. (Diamond, personal communication, 19 January 2023)

The lack of specific guidelines on what can be exactly permissible on porn platforms leaves Diamond with the only certainty that (Beresford 2014, 380; Barnett 2016, 37; Dymock and Lodder 2016, 320; Petley 2019, 241; Bronstein 2021, 368):

... change will happen. You know change is going to happen. You don't know when you just need to be prepared for it. (Diamond, personal communication, 19 January 2023)

In this article, I argue that the uncertainty of Diamond's job is linked to the control of platform over her work.

## The control of platforms

Even if Diamond is satisfied with her self-employed status, she recognizes the employer-like power exercised by platforms over her work. They determine how she should perform her content but also the price at which she should sell it. These elements seem to support the fact that porn platforms act in one of the ways courts have traditionally described employers' control over what and how employees should perform their work (Keane 2016, 84).<sup>8</sup> Crucially, the fact that ACCs benefit from flexibility and independence is not incompatible with the idea that platforms have employer-like power; courts now say that employers might leave their workers with some autonomous control over their work, freeing them from a day-to-day type of control as long as employers can step in to give directions.<sup>9</sup>

UK courts have dismantled the fake intermediary status of porn platforms in the case of Uber – the digital app providing ride services. Uber is an employer which hides its status behind the direct service/payment interaction between workers and clients infringing basic labour law protections stemming from the Employment Rights Act (Tomassetti 2018, 19–20, 23, 41–44, 55; Zhang 2019, 471)<sup>10</sup> Similarly porn platforms hide their control behind ACCs' flexibility and independence, freeing themselves from labour law liability. Some of the indicators used to establish that drivers work for Uber are analogous to Diamond's reality and are mainly related to the control that platforms exercise over ACCs.

First, Diamond reports that, while clients arbitrarily move from one content creator to another, her only stable relationship is with the porn platforms (Davidov 2004, 728), which control her earnings. Whereas OnlyFans<sup>11</sup> and LoyalFans<sup>12</sup> retain 20% of all earnings, including tipping, AdultWork retains 30%. Clips4Sale and LoyalFans warn their users that they will retain a fee from their payments<sup>13</sup> because:

... it's pretty much standard across the board that you will get 80% pay out from the platforms that you work on ... and they also take the VAT which you can claim back. You also have to pay a facility fee, which is another couple of percentage. And then you have to claim your tax back. (Diamond, personal communication, 19 January 2023)

Not only do platforms retain fees from such payments but also from clients' tips. If clients' accounts remain unused for 365 consecutive days, Clips4Sale retains 1% of them and a fee of US \$10 every month.<sup>14</sup> Similarly to full-service sex workers such as strippers, ACCs' earnings are at the mercy of porn platforms which, as well as retaining a service fee from their

invoices, also encourage the cost of their content (Williams 1989; Cruz, Hardy, and Sanders 2017, 278; Cruz 2018, 77; 2020, 200):

So Adultwork once emailed me and said, ‘you know, dear Countess Diamond, your clips are too expensive. No one will buy them at this price. They need to be cheaper’. And I was thinking, but that’s the price that they cost, that’s the price that access to my intimate body will cost. I’m not gonna sell it any cheaper. So I pulled a lot of my content from their website and I don’t know whether they still have that clause, but that just felt like such an employers thing to say, you know, you’re going to do this and you’re going to charge him that much. And I’m thinking, no, I set my own rate. Access to my body costs this much and I won’t go lower. (Diamond, personal communication, 19 January 2023)

Second, beyond the payment system, drivers’ performance is monitored through a rating system which gives Uber the power to terminate the agreement with the user when the rating is not adequate.<sup>15</sup> Clients’ positive reviews facilitate Diamond’s success on the platforms; platforms expect her to spend time ‘entertaining, picking up the tips they want’ her to earn, but she only earns depending on the purchases of her content rather than for the whole time she is logged onto the platforms (Diamond, pers. comm., 19 January 2023).

Finally, Uber ensures that the drivers do not interact with the clients without its app, which is a type of control and loyalty that employers would expect from their employees.<sup>16</sup> Although it may seem that platforms adopt a similar policy to prohibit prostitution and sex trafficking, ACCs are not allowed ‘to arrange face-to-face meetings outside the Website or offline with any creator or other user’ in ‘any form of interaction’,<sup>17</sup> not even ‘to share personal contract details’.<sup>18</sup>

I am not permitted to discuss meeting them. If I go to a Fetish event that is happening in, I think it’s July in Florida and then I message somebody and I say it was wonderful to meet you. You’re done. I could get in so much trouble. (Diamond, personal communication, 19 January 2023)

Diamond feels that the prohibition of face-to-face encounters is made to block her own opportunity of being invoiced full price without the platforms retaining fees:

I think we are all adults in this industry and we are all very aware of what our bodies are capable of doing and the terms of service are not gonna protect us from being exploited in any sexual way because we already exploited ourselves. But what it does do when you say I want to meet you and you can’t say that, it does protect the site because it’s much more likely that that person is going to then pay in a different way than that content creator is going to be sexually exploited. (Diamond, personal communication, 19 January 2023)

In the same way that Uber drivers’ accounts can be blocked by the app, porn platforms reserve the right to suspend, block or terminate Diamond’s account at their discretion and for any violations of the terms of use just like employers.<sup>19</sup>

The Uber Supreme Court followed *Autoclenz v Belcher & Ors*<sup>20</sup> and examined the substance of the employment relationship over what was agreed in the terms of use with the aim of protecting vulnerable workers (Bogg 2019, 225; Bogg and Ford M 2019, 353).<sup>21</sup> In other words, parties’ intention are at the core of any working reality as the true nature of the contractual relationship, which should always be favoured over any written agreement (Bogg 2019; Bogg and Ford M 2019, 350–351).<sup>22</sup> The terms of use of porn platforms should equally be put aside because they arbitrarily establish their intermediary status leaving users with no bargaining power, meaning with no opportunity to contract in their best interest.<sup>23</sup> Clip4Sale defines itself as a marketplace facilitating interactions

and transactions between customers and studios, but not a part of the latter's contractual agreement.<sup>24</sup> LoyalFans claims to be a mere payment intermediary outside the 'Fan/Creator Transaction',<sup>25</sup> and AdultWork protects itself from any potential liability for transactions and interactions between customers and advertisers.<sup>26</sup> Yet ACCs' limited control over their work suggests that porn platforms act more like employers rather than intermediary agents (Cohen 2017, 185). Following the Supreme Court, such clauses excluding or limiting the protections of the Employment Rights Act should be made void (Bogg 2021).<sup>27</sup> Consequently, I suggest that the genuine self-employed status of ACCs is undermined by the concrete reality of their work arrangements which are controlled by porn platforms. Therefore, the provision of labour protection could strengthen their freedom of trade in the market.

### Worker status to empower diamond's business

ACCs are satisfied with their self-employed status, but platforms substantially control them as employees or workers by seriously limiting their freedom of trade:

If I knew that I could create content, I could publish it freely without fear, I would probably be more inclined to push the envelope. I would film with more people, I would invest more into my filming and I already invest a lot. I have one film in 4 K Netflix quality video because I'm ready for when the next level of streaming comes in 10 years time. My content is going to look just as fresh as those who are filming in 10 years time. (Diamond, personal communication, 19 January 2023)

If Diamond could be sure that her content would be successfully sold via the platforms, she could take her business up a notch by investing even more on its quality:

So I would love nothing more than to invest in getting another assistant to help me create this content, and I would love to open a studio or something like that. But the laws around content creation that are going to be coming in with the Online Harms Bill just feel so intense and the restrictions are only going to get tighter so that only fans are going to protect its audience. Much, much, much harsher in case they get a fine or a fee from Ofcom, in which case they're going to be putting so much more pressure on me, the creator, the producer, to create content that fits within this very narrow margin of sexy, but not too sexy. (Diamond, personal communication, 19 January 2023)

Diamond struggles to take up business risks because the terms of use lack a clear definition of what she is allowed to produce being a dominatrix content producer. The power of platforms over what she can substantially produce and sell puts her in a very unstable position that does not allow her to take any investment risks to improve her sex work brand. In other words, the freedom of trade that should come with entrepreneurship is seriously undermined by the control of platforms:

They [the platforms] honestly think that I am just a little producer sending pictures of my feet to strangers. You know, they think it's real basic stuff, but this I am afraid they haven't quite realised how important their platforms are to my business and they think that by making an arbitrary change or changing the terms of service, no one will care, but it's vital to how I run my work. (Diamond, personal communication, 19 January 2023)

Diamond needs the platforms to outsource her work and find clients (Drahokoupil and Fabo 2016, 1–2), but so do the platforms that rely on her work. Through her content

and clients, they profit on a global scale for unlimited time, but they avoid liability connected with the costs of employment because they brand themselves as mere intermediaries (Rogers 2016, 490). The way their profits are entrenched on ACCs' work could support the view that they have integrated ACCs into their business in a similar way as employers would do (Berg 2021, 1187, 1192). Rather than acting as intermediaries they strongly need ACCs' content, which is the key element of their business even if clients are the ones paying ACCs (Cruz 2013, 472–477; Barbagallo and Cruz 2021, 354). Porn products could not be on the platforms without ACCs' work and capability of attracting customers. Even though Diamond sets and invests in her own business independently, porn platforms could not be successful without her work, showing that her self-employment might be mitigated with protections connected to worker status (Cruz 2013, 472–477; Barbagallo and Cruz 2021, 354; Rogers 2016, 494; Prassl 2018, 2–4; Tomassetti 2018, 48).<sup>28</sup>

The control over ACCs' work could therefore support their recognition of rights connected to worker status (Cruz 2013; Bogg 2020).<sup>29</sup> Although porn platforms do not promise ACCs remunerated work and ACCs have no obligation to work for them (Davies 2009, 87),<sup>30</sup> the factual reality of ACCs conducting their business for them for an extended period of time might prove the existence of an employment reality (Albin and Adams-Prassl 2016, 217). This is because, in line with *Autoclenz*, the way parties concretely conduct their employment relationships prevails over whatever has been agreed between them in writing.<sup>31</sup> From a labour law perspective, retaining percentages from ACCs' payments and blocking ACCs' accounts if they attempt to get paid without the mediation of the platforms show that ACCs are a fundamental part of the platforms and likely workers for them (Cruz 2020).<sup>32</sup> Labour law does not prevent ACCs from being self-employed and workers altogether merely because their work reality is complicated by clients' payment (Bogg 2020).<sup>33</sup>

Diamond's recognition as an entrepreneur, who is both self-employed and a worker, could protect her through worker status rights, such as minimum wage, working time regulations, the Health and Safety Working Regulations and unfair dismissal (Davis 2009, 78; Cruz, Hardy, and Sanders 2017, 286; Freedland and Adams-Prassl 2017).<sup>34</sup> These would support her in navigating the uncertainty of her job on porn platforms; she could invest in her business by, for example, limiting the power of platforms to arbitrarily take down her content and providing Diamond with some economic support and time while transitioning onto new platforms.

## Conclusion

This brief article looks at how ACCs are at the mercy of the control of porn platforms by focusing on the case of Countess Diamond. Diamond is an eager entrepreneur, but she is held back due to the instability caused by platforms which place her in a limbo of not knowing whether her content will pass their controls. As well as giving them percentages of her earnings, Diamond cannot meet her clients without their mediation or her account will arbitrarily be blocked. If, following UK courts, Diamond was to be recognized as both self-employed and a worker for the platforms, core labour law protections could empower her business (like that of many other ACCs) through the needed economic stability and mental security to successfully invest in her sex work brand.

## Notes

1. Entrepreneurship, 'When Women Judge Women in the Sex Industry – With Countess Diamond Business', Babies and Bossing It. Accessed 26 January 2023. <https://www.spreaker.com/user/15840955/bbbi-s2-ep-b-edit-1>.
2. In this video series Diamond speaks to other industry professionals while driving a car to ensure her fans get to know her and understand the sex industry from a light-hearted perspective.
3. *Uber BV and others v Aslam and others* Hilary Term [2021] UKSC 5. On appeal from [2018] EWCA Civ 2748 (*Uber*).
4. Employment Rights Act 1996, s 230 (1).
5. *Ibid.*, s 230 (3).
6. Offences Against the Person Act 1861, s 20 and 47; *R v Brown* [1993] UKHL 19; *R v Peacock* (unreported, Southwark Crown Court, 6 January 2012); *R v Walsh* (unreported, Kingston Crown Court, 8 August 2012).
7. British Board of Film Classification guidelines, 24. Accessed 17 June 2023. Available at: <https://www.bbfc.co.uk>.
8. *Yewen v Noakes* [1880] 6 QBD 530 at paras 532–533. A thorough analysis on the determination of employment status would imply looking not only at control but also at integration, economic reality, multiple factor and mutuality of obligation.
9. *Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 2 QB 497 at para. 515; *Troutbeck SA v White & Anor* [2013] EWCA Civ 1171; *Mr G White, Ms K V Todd v Troutbeck SA* Appeal No. UKEAT/0177/12/SM at para. 25.
10. *Uber* (see note 3).
11. OnlyFans, Terms of Service, Terms of Use for Creators, 5. Accessed 17 June 2023. Available at: <https://onlyfans.com/terms>.
12. The information is not present on terms of use, but this was confirmed by the research participant.
13. LoyalFans, Standard Agreement Between Fan and Creator. Accessed 17 June 2023. Available at: <https://www.loyalfans.com/standard-agreement-between-fan-and-creator>; Clips4Sales, Terms of Service Agreement 16.2. Accessed 17 June 2023. Available at: <https://www.clips4sale.com/clips/page/termsofservice>.
14. Clips4Sales, Terms of Service Agreement 16.2 (b). Accessed 17 June 2023. Available at: <https://www.clips4sale.com/clips/page/termsofservice>.
15. *Uber* (see note 3), paras 99–104.
16. *Ibid.*, para. 94.
17. LoyalFans, Terms of Service Agreement, 13. Accessed 17 June 2023. Available at: <https://www.loyalfans.com/standard-agreementbetween-fan-and-creator>.
18. Clips4Sales, Terms of Service Agreement, Prostitution and Sex Trafficking. Accessed 17 June 2023. Available at: <https://www.clips4sale.com/clips/page/termsofservice>.
19. LoyalFans, Terms of Service Agreement, 1.2, 8.6. Accessed 17 June 2023. Available at: <https://www.loyalfans.com/standard-agreementbetween-fan-and-creator>; Clips4Sale Terms of Service Agreement, 1.2. Accessed 17 June 2023. Available at: <https://www.clips4sale.com/clips/page/termsofservice>; AdultWork, Terms of Service Agreement, 1.2. Accessed 17 June 2023. Available at: <https://www.adultwork.com/dlgSCPPage.asp?R=1&SN=TermsOfServiceAgreementV2>; OnlyFans, Terms of Service, Terms of Service for All Users, 5. Accessed 17 June 2023. Available at: <https://onlyfans.com/terms>.
20. *Autoclenz Ltd v Belcher* [2011] UKSC 41; [2011] ICR 1157 (*Autoclenz*).
21. *Ibid.*, para. 1.
22. *Ibid.*, para. 23.
23. *Uber* (see note 3) at para. 2, paras 43–44, para. 65 and paras 76–82. Unfair Contract Terms Act 1997; *Autoclenz* (note 20).
24. Clips4Sales, Terms of Service Agreement, Terms of Sale 16.1. Accessed 17 June 2023. Available at: <https://www.clips4sale.com/clips/page/termsofservice>.

25. LoyalFans. Standard Agreement Between Fan and Creator, last updated: January 06, 2022, 3–4, 16.1. Accessed 17 June 2023. Available at: <https://www.loyalfans.com/standard-agreementbetween-fan-and-creator>.
26. AdultWork, Terms-of-Service Agreement, 15.1. Accessed 17 June 2023. Available at: <https://www.adultwork.com/dlgSCPPage.asp?R=1&SN=TermsOfServiceAgreementV2>.
27. Employment Rights Act (see note 4), s 230 (1).
28. *Harrell v Diamond A Entm't Inc* 992 F Supp 1343, 1352 (MD Fla 1997); *303 W 42nd St Enters 916 F Supp* at 362.
29. *Clyde & Co LLP and another v Bates van Winkelhof* [2014] UKSC 32; *Pimlico Plumbers Ltd and another v Smith* [2018] UKSC 29; *Nowak v Chandler Bars Group Ltd* UKET 3200538/2019 (*Nowak*).
30. *O'Kelly v Trusthouse Forte* [1984] QB 90; see also *Clark v Oxfordshire Health Authority* [1998].
31. *Carmichael v National Power plc* [1999] UKHL 47 at para. \*2047; *Nethermere v Taverna* [1984] ICR 612.
32. *Nowak* (note 29) at para. 66.
33. *Ibid.* at paras 76–77; *Clyde & Co LLP and another v Bates van Winkelhof* [2014] UKSC 32 (*Clyde*).
34. Health and Safety at Work etc Act of 1974; Equal Pay Act 1970; Sex Discrimination Act 1975; Race Relations Act 1976; Disability Discrimination Act 1996; National Minimum Wage Act 1998, ss. 1 and 54(3); Working Time Regulation 1998 (SI 1998/1833) reg. 2(1); Employment Rights Act 1999, s. 10; Trade Union and Labour Relations (Consolidation) Act 1992, s. 146 (and see also s. 145A–B); Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551), reg. 1(2). Workers have now 'some or all employment rights' that were originally reserved uniquely to employees (Section 83(2)(a) of the Employment Equality Act 2010).

## Acknowledgments

I would like to thank Countess Diamond for her generosity and time in providing me with insights on producing porn on online platforms. Special thanks also go to Aleardo Zanghellini and Grace James for their precious feedback on analysing this topic from a socio-legal perspective. Needless to say that any shortcomings are only mine.

## Disclosure statement

No potential conflict of interest was reported by the author.

## ORCID

Rebecca Rose Nocella  <http://orcid.org/0000-0002-7859-6081>

## References

- Abbott, Sharon A. 2009. 'Motivations for Pursuing a Career in Pornography.' In *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, edited by Ronald Weitzer, 48–66. New York: Routledge.
- Adams, Abi, Judith Freedman and Jeremias Prassl. 2018. 'Rethinking Legal Taxonomies for the Gig Economy.' *Oxford Review of Economic Policy* 34 (3): 475–494. doi:10.1093/oxrep/gry006
- Albin, Einat. 2013. 'The Case of Quashie: Between the Legalisation of Sex Work and the Precariousness of Personal Service Work.' *Industrial Law Journal* 2 (2): 180–191. doi:10.1093/indlaw/dwt006
- Albin, Einat and Jeremias Adams-Prassl. 2016. 'Fragmenting Work, Fragmented Regulation: The Contract of Employment as a Driver of Social Exclusion.' In *The Contract of Employment*, edited

- by Mark Freedland, Alan Bogg, David Cabrelli, Hugh Collins and Nicola Countouris, 209–230. Oxford: Oxford University Press.
- Bak, Basak, and Rebecca Rose Nocella. [Forthcoming](#). 'Unveiling Copyright Law Double Bind Through Pragmatist Feminism: Adult Content Creators as Authors.' *Porn Studies*.
- Barbagallo, Camille and Katie Cruz. 2021. 'Dancers Win at Work: Unionization and *Nowak v Chandler Bars Group Ltd.*' *Studies in Political Economy* 102 (3): 354–375. doi:[10.1080/07078552.2021.2000208](#)
- Barnett, Jerry. 2016. *Porn Panic!*. Oxford: Blackwell's.
- Beresford, Sarah. 2014. 'Obscene Performative Pornography: *R v Peacock* (2012) and the Legal Construction of Same-sex and Gendered Identities in the United Kingdom.' *Porn Studies* 1 (4): 378–390. doi:[10.1080/23268743.2014.958384](#)
- Berg, Heather. 2016. 'A Scene is Just a Marketing Tool': Alternative Income Streams in Porn's Gig Economy.' *Porn Studies* 3 (2): 160–174. doi:[10.1080/23268743.2016.1184478](#)
- Berg, Heather. 2021. 'Porn Work, Independent Contractor Misclassification, and the Limits of the Law.' *Columbia Human Rights Law Review* 52 (3): 1159–1198.
- Bogg, Alan. 2019. 'Taken for a Ride: Workers in the Gig Economy.' *Law Quarterly Review* 135 (2019): 219–226.
- Bogg, Alan. 2020. 'Okedina v Chikale and Contract Illegality: New Dawn or False Dawn?' *Industrial Law Journal* 49 (2): 258–283. doi:[10.1093/indlaw/dwaa008](#)
- Bogg, Alan and Michael Ford M. 2019. 'Between Statute and Contract: Who is a Worker.' *Law Quarterly Review* 135 (3): 347–353.
- Bronstein, Carolyn. 2021. 'Deplatforming Sexual Speech in the Age of FOSTA/SESTA.' *Porn Studies* 8 (4): 367–380. doi:[10.1080/23268743.2021.1993972](#)
- Butler, Yvette. 2021. 'Aligned: Sex Workers' Lessons for the Gig Economy.' *Michigan Journal of Race & Law* 26 (2): 337–370. doi:[10.36643/mjrl.26.2.aligned](#)
- Cohen, Julie E. 2017. 'Law for the Platform Economy.' *U.C. Davis Law Review* 51 (1): 133–204.
- Cruz, Katie. 2013. 'Unmanageable Work (Un)Liveable Lives: The UK Sex Industry, Labour Rights and the Welfare State.' *Social & Legal Studies* 22 (4): 465–488. doi:[10.1177/0964663913484639](#)
- Cruz, Katie. 2018. 'Beyond Liberalism: Marxist Feminism, Migrant Sex Work, and Labour Unfreedom.' *Feminist Legal Studies* 26: 65–92. doi:[10.1007/s10691-018-9370-7](#)
- Cruz, Katie. 2020. 'The Work of Sex Work: Prostitution, Unfreedom, and Criminality at Work.' In *Criminality at Work*, edited by Alan Bogg, Jennifer Collins, Mark Freedland and Jonathan Herring, 192–210. Oxford: Oxford University Press.
- Cruz, Katie, Kate Hardy and Teela Sanders. 2017. 'False Self-Employment, Autonomy and Regulating for Decent Work: Improving Working Conditions in the UK Stripping Industry.' *British Journal of Industrial Relations* 55 (2): 274–294. doi:[10.1111/bjir.12201](#)
- Davidov, Guy. 2004. 'Joint Employer Status in Triangular Employment Relationships.' *British Journal of Industrial Relations* 42 (4): 727–746. doi:[10.1111/j.1467-8543.2004.00338.x](#)
- Davies, Anne. 2009. *Perspectives on Labour Law*. 2nd ed. Cambridge: Cambridge University Press.
- Drahokoupil, Jan and Brian Fabo. 2016. 'The Platform Economy and the Disruption of the Employment Relationship.' ETUI Research Paper-Policy Brief 5 European Economic, Employment and Social Policy, Brussels, June 2016.
- Dymock, Alex. 2012. 'But Femsub is Broken Too! On the Normalisation of BDSM and the Problem of Pleasure.' *Psychology & Sexuality* 3 (1): 54–68. doi:[10.1080/19419899.2011.627696](#)
- Dymock, Alex and Matt Lodder. 2016. 'The Erotics of Injury: Remembering Operation Spanner Workshops 10th–11th September 2015, University of Essex and Royal Holloway, University of London.' *Porn Studies* 3 (3): 320–323. doi:[10.1080/23268743.2016.1148334](#)
- Egan, Mo. 2022. 'Remote Justice: Information Rights as a Tool of Empowerment.' *International Review of Law, Computers & Technology* 36 (2): 202–222. doi:[10.1080/13600869.2022.2060465](#)
- Freedland, Mark R. and Jeremias Adams-Prassl. 2017. 'Employees, Workers, and the "Sharing Economy": Changing Practices and Changing Concepts in the United Kingdom.' *Spanish Labour Law and Employment Relations Journal* 6 (1-2): 16–29. doi:[10.20318/sllerj.2017.3922](#)

- Garofalo Geymonat, Giulia. 2019. 'Disability Rights Meet Sex Workers' Rights: The Making of Sexual Assistance in Europe.' *Sexuality Research and Social Policy* 16: 214–226. doi:10.1007/s13178-019-0377-x
- Giles, Cameron, Chris Ashford and Kevin J. Brown. 2022. 'Online Safety and Identity: Navigating Same-Sex Male Social "Dating" Apps and Networks.' *Information & Communications Technology Law* 31 (3): 269–286. doi:10.1080/13600834.2022.2088061
- Hunt, Lynn. 1993. *The Invention of Pornography: Obscenity and the Origins of Modernity, 1500-1800*. New York: Zone Books.
- Keane, Eddie. 2016. 'Are Collaborative Workers Employees?' *Hungarian Labour Law E-Journal* 2: 79–90.
- Kendrick, Walter. 1996. *The Secret Museum: Pornography in Modern Culture*. Berkely: University of California Press.
- McDowell, Linda. 2009. *Working Bodies: Interactive Service Employment and Workplace Identities*. Chichester: Wiley-Blackwell.
- McGlynn, Clare and Hannah Bows. 2019. 'Possessing Extreme Pornography: Policing, Prosecutions and the Need for Reform.' *The Journal of Criminal Law* 83 (6): 473–488. doi:10.1177/0022018319877783
- McKee, Alan. 2016. 'Pornography as a Creative Industry: Challenging the Exceptionalist Approach to Pornography.' *Porn Studies* 3 (2): 107–119. doi:10.1080/23268743.2015.1065202
- Mondin, Alessandra. 2017. "'Tumblr Mostly, Great Empowering Images": Blogging, Reblogging and Scrolling Feminist, Queer and BDSM Desires.' *Journal of Gender Studies* 26 (3): 282–292. doi:10.1080/09589236.2017.1287684
- Nocella, Rebecca Rose and Delia Chiaro. 2023. 'Laughing in the Face of the Law: Humour as a Thermostat Activating Social Change for Porn Workers.' *Law, Culture and the Humanities*, 1–30.
- Paasonen, Susanna and Laura Saarenmaa. 2007. 'The Golden Age of Porn: Nostalgia and History in Cinema.' In *Pornification: Sex and Sexuality in Media Culture*, edited by Kaarina Nikunen, Susanna Paasonen and Laura Saarenmaa, 23–32. Oxford.
- Petley, Julian. 2019. 'Loosening the Gag: The Crown Prosecution Service's Revised Legal Guidance on the Obscene Publications Act 1959.' *Porn Studies* 6 (2): 238–244. doi:10.1080/23268743.2019.1619477
- Prassl, Jeremias. 2018. *Humans as a Service: The Promise and Perils of Work in the Gig Economy*. Oxford: Oxford University Press.
- Rogers, Brishen. 2016. 'Employment Rights in the Platform Economy: Getting Back to Basics.' *Harvard Law and Policy Review* 10: 479–520.
- Sanders, Teela. 2006. 'Female Sex Workers as Health Educators with Men who Buy Sex: Utilising Narratives of Rationalisations.' *Social Science & Medicine* 62 (10): 2434–2444. doi:10.1016/j.socscimed.2005.10.033
- Sanders, Teela. 2008. 'Male Sexual Scripts: Intimacy, Sexuality and Pleasure in the Purchase of Commercial Sex.' *Sociology* 42 (3): 400–417. doi:10.1177/0038038508088833
- Schieber, David. 2018. 'My Body of Work: Promotional Labor and the Bundling of Complementary Work.' *Socius: Sociological Research for a Dynamic World* 4: 1–13.
- Smith, Jesus G. and Aurolyn Luykx. 2017. 'Race Play in BDSM Porn: The Eroticization of Oppression.' *Porn Studies* 4 (4): 433–446. doi:10.1080/23268743.2016.1252158
- Tibbals, Chauntelle Anne. 2014. 'Gonzo, Trannys, and Teens – Current Trends in US Adult Content Production, Distribution, and Consumption.' *Porn Studies* 1 (1-2): 127–135. doi:10.1080/23268743.2013.863659
- Tomassetti, Julia. 2018. 'Digital Platform Work as Interactive Service Work.' *Employee Rights and Employment Policy Journal* 22 (1): 1–58.
- Van Doorn, Niels and Olav Velthuis. 2018. 'A Good Hustle: The Moral Economy of Market Competition in Adult Webcam Modelling.' *Journal of Cultural Economy* 11 (3): 177–192. doi:10.1080/17530350.2018.1446183
- Voss, Georgina. 2012. 'Treating it as a Normal Business': Researching the Pornography Industry.' *Sexualities* 15 (3/4): 391–410. doi:10.1177/1363460712439650



- Webster, Natasha A. and Qian Zhang. 2020. 'Careers Delivered from the Kitchen? Immigrant Women Small-Scale Entrepreneurs Working in the Growing Nordic Platform Economy.' *NORA-Nordic Journal of Feminist and Gender Research* 28 (2): 113–125. doi:[10.1080/08038740.2020.1714725](https://doi.org/10.1080/08038740.2020.1714725)
- Williams, Linda. 1989. 'Fetishism and Hard Core: Marx, Freud, and the "Money Shot."' In *For Adult Users Only: The Dilemma of Violent Pornography*, edited by Susan Gubar, and Joan Hoff, 198–217. Bloomington: Indiana University Press.
- Willson, Jacki. 2018. 'Porn, Pantomime and Protest: The Politics of Bawdiness as Feminine Style.' *Porn Studies* 5 (4): 426–439. doi:[10.1080/23268743.2018.1480411](https://doi.org/10.1080/23268743.2018.1480411)
- Xantidis, Luke and Marita P. McCabe. 2000. 'Personality Characteristics of Male Clients of Female Commercial Sex Workers in Australia.' *Archives of Sexual Behavior* 29 (2): 165–176. doi:[10.1023/A:1001907806062](https://doi.org/10.1023/A:1001907806062)
- Zhang, Chenguo. 2019. 'China's New Regulatory Regime Tailored for the Sharing Economy: The Case of Uber Under Chinese Local Government Regulation in Comparison to the EU, US, and the UK.' *Computer Law & Security Review* 35 (4): 462–475. doi:[10.1016/j.clsr.2019.03.004](https://doi.org/10.1016/j.clsr.2019.03.004)