

A new approach to regulating speech on social media: Treating users as workers

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Social media has proven difficult to regulate for the last 20+ years, in large part because First Amendment considerations present a significant obstacle to regulating platforms. Arguments for and against regulating

speech on social media tend to view platforms as offering content and connectivity and users as consumers of a service, exacerbating First Amendment concerns.

But what if the "user-as-consumer" characterization misconstrues the business model of social media, and [platform](#) users actually behave more like workers?

"[Social Network as Work](#)," a paper by Francesca Procaccini, Assistant Professor of Law at Vanderbilt Law School, establishes a novel paradigm for regulating speech on social media—by equating the use of social media with labor.

"Reorienting how we think about social media by framing users as workers suggests that legal frameworks from labor and employment are especially productive for governing social media," she writes.

Social media as a form of labor

User engagement—in the form of posts, scrolls, clicks, likes, etc.—generates content and data that social platforms repackage and sell to advertisers. As compensation, platforms provide social, informational, and entertainment benefits to users. While this arrangement differs from traditional [workplace](#) models, Procaccini argues that the essential characteristics of work factor directly into the platform-user relationship: "(The) defining economic and power dynamics between employers and workers are analogous to those between platforms and users."

Platforms supervise user activity and enjoy an informational advantage, all while operating in "an otherwise socially collegial environment," similar to most workplaces. Users and workers alike are potentially subject to safety hazards, discrimination, harassment, and

misinformation.

"Social media users share analogous structural conditions, risks, and harms as traditional workers, and are in need of analogous statutory protections as employees," she writes.

Protections for speech in the workplace

The First Amendment permits ample regulation of speech in the workplace.

"The same words in different contexts carry different levels of First Amendment protection, largely in accordance with the varying power and information asymmetries that define the setting," Procaccini explains. In the workplace setting, speech rights of employers and workers have long been diminished, "to protect the efficacy of the employment relationship and the rights and dignity of those in it."

Many of the features that justify regulating speech in the workplace are present in social media as well. Both are confined settings that present considerable alternatives for speech. The "inherently coercive nature" of each environment creates a greater risk of harm. Importantly, speech in the workplace and social media is "inextricably bound up with commercial conduct."

"Circumscribing constitutional protection in the private workplace to account for these dynamics is quite sound under the First Amendment," Procaccini writes, "because doing so actually maximizes the freedom of speech by augmenting private citizens' capacity to speak and contribute to the marketplace of ideas."

The paper details federal and state regulations on employer and employee speech, including bans on discriminatory, abusive, false, and

coercive speech, proselytizing, and undue influence on political and labor choices. Employers are in many cases required to disclosure factual information like legal rights and health and safety warnings. Workers are regularly protected from employer reprisal for whistleblowing and other forms of speech. These work laws address the competing interests and rights of employers, workers, and co-workers to eliminate unjust social stratification and subjugation.

"This is exactly the type of law social media needs," Procaccini writes.

Regulating speech on social media

Procaccini uses these speech-related work laws to develop a framework for social media regulation. The paper advocates for measures such as stricter prohibitions on discriminatory, harassing, false, and coercive [speech](#) between users, stronger mechanisms to combat abuse on platforms, broader disclosure and disclaimer requirements, and prohibitions on child social networking.

While work law motivates her proposal, Procaccini notes that it should not apply in full to social media. Social media is not work under current labor and employment law," she writes. "But it is enough like work—and produces harms that map onto those in the workplace so tightly—that work law offers a surprisingly generative framework for regulating [social media](#) consistent with the First Amendment."

"Social Network as Work" is forthcoming in the Cornell Law Review.

More information: Francesca Procaccini, [Social Network as Work](#) (2024)

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