

What Drives IP without IP? A Study of the Online Adult Entertainment Industry

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This work-in-progress is an empirical study of content production incentives in the online adult entertainment industry. Existing copyright policy is based largely on the utilitarian theory of incentivizing creative works. A trend of recent industry-specific studies assesses the relationship between intellectual property (IP) and creation incentives in individual markets in practice. This bottom-up approach could eventually prove useful in helping to optimize IP and innovation policy. Generally, these studies focus on creation incentives in fields where formal IP-protection is not available to, or rejected by, creators.¹ This project aims to make a significant contribution to the literature by analyzing a large entertainment content industry where IP protection has become nearly unenforceable in the digital age. Because content producers have been unable to recoup their investment costs through formal IP rights, they are effectively operating in *IP's negative space*.²

My qualitative interviews with industry specialists and representative content producers support the hypothesis that IP enforcement is prohibitively difficult. As a result, many producers have developed alternative strategies to recoup their investment costs. Similar to the findings of other scholarly work on IP's negative space, I find a shift toward the production of *experience goods*. This insight applies across most entertainment industries. I also find that industry-specific attributes, such as consumer privacy preferences, consumption habits, and optimally low production costs, may play a role in sustaining content production. While these attributes do not necessarily translate to other industries, determining such factors and their limits brings us toward a better understanding of innovation mechanisms.

¹ Such as in medical research, open-source software, fashion, culinary art, stage performance, etc.

² A term coined by Sprigman and Raustiala, see Raustiala, K., Sprigman, C., *The Piracy Paradox: Innovation and Intellectual Property in Fashion Design*, 92 Va. L. Rev. 1687 (2006) p. 1762-1765.