Corporate Social Responsibility and Crowdwashing in the Gig Economy

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SYMPOSIUM

LAW, TECHNOLOGY, AND THE ORGANIZATION OF WORK

**CORPORATE SOCIAL RESPONSIBILITY AND CROWDWASHING
IN THE GIG ECONOMY**

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INTRODUCTION

Within this Article, I elaborate on the term "crowdwashing," a neologism. Even though many online platforms describe themselves as "communities" that are part of the "sharing economy," this "sharing" terminology is largely a misnomer when describing the activities of larger commercialized on-demand platforms.[1] Rather than referring to volunteer efforts for collective benefit, many

1. There is certainly more analysis to be done on market segmentation in the on-demand economy, where both small cooperative businesses and large companies with high market capitalization and global reach coexist. *See* Ryan Calo & Alex Rosenblatt, *The Taking Economy: Uber, Information, and Power*, 117 COLUM. L. REV. 1623, 1625 (2017) ("Sharing economy rhetoric tends to lump together small enterprises motivated by a common social bond, such as local food and housing cooperatives, with billion-dollar global businesses like Uber and Airbnb that readily integrate the language of sharing and connectivity into their branding. . . . We, however, draw a distinction between the variety of businesses the rhetoric of the sharing economy evokes, like selling grandma's pies on the corner, and the billion-dollar companies that operate for profit at a global scale."). As will be set out later in this Article, the conflation of these two types of businesses is likely not a mistake; as some amount of the confusion may be based on clever language or evasion. For a discussion of how the sharing economy is a misnomer because participants are actively trying to make money, see Giana M. Eckhardt & Fleura Bardhi, *The Sharing Economy Isn't about Sharing at All*, HARV. BUS. REV. (Jan. 28, 2015), https://hbr.org/

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references to "sharing" in the "sharing economy" refer to the concept of commodification of previously underutilized assets.[2] For example, consider receiving money for the rental of a spare bedroom through AirBnB or the sale of small, previously unproductive periods of time to complete tasks on Amazon's Mechanical Turk. In these examples, what is "shared" is the previously unproductive asset or wasted time, and then technology is used to value and monetize that asset.[3] There is nothing of altruism in this.

Even though describing something vastly different from what most people believe actual "sharing" to mean, the term "sharing economy" has provided a halo effect for platforms, even though some platforms engage in hyper-commodification.[4] Unfortunately, the language of "sharing" serves to cover up many of the problematic labor practices that are a common experience of many crowdworkers today.[5] In this context, the terminology of sharing has moved from reality to what might be, at best, empty rhetoric,[6] and, at worst, a strategy

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2015/01/the-sharing-economy-isnt-about-sharing-at-all [https://perma.cc/BHR9-NR44]. *See also* Erez Aloni, *Pluralizing the "Sharing" Economy*, 91 WASH. L. REV. 1397, 1406-1408 (2016).

2. *See* Matthew Yglesias, *There is No Sharing Economy*, SLATE: MONEYBOX (Dec. 26, 2013, 10:02 AM), http://www.slate.com/blogs/moneybox/2013/12/26/myth_of_the_sharing_economy_there_s_no_such_thing.html?via=gdpr-consent [https://perma.cc/32SX-LKF3] (arguing that the term "sharing economy" is "a dumb term, and it deserves to die.").

3. *See* Eckhardt & Bardhi, *supra* note 1, at 2 ("Sharing is a form of social exchange that takes place among people known to each other, without any profit. Sharing is an established practice, and dominates particular aspects of our life, such as within the family. By sharing and collectively consuming the household space of the home, family members establish a communal identity. When "sharing" is market-mediated — when a company is an intermediary between consumers who don't know each other — it is no longer sharing at all. Rather, consumers are paying to access someone else's goods or services for a particular period of time. It is an economic exchange, and consumers are after utilitarian, rather than social, value.").

4. *See generally* PHIL ROSENZWEIG, THE HALO EFFECT . . . AND THE EIGHT OTHER BUSINESS DELUSIONS THAT DECEIVE MANAGERS (2007).

5. The terminology seems to be working, at least among the general public. For example, a research study by the Pew Foundation found that 40% of those surveyed focused on "sharing" rather than "economy." Aaron Smith, *How Americans Define the Sharing Economy*, PEW RES. CTR. (May 20, 2016), http://www.pewresearch.org/fact-tank/2016/05/20/how-americans-define-the-sharing-economy/ [https://perma.cc/4QSK-WLL8]. *See also* PWC, THE SHARING ECONOMY: CONSUMER INTELLIGENCE SERIES 9 (2015), https://www.pwc.com/us/en/industry/entertainment-media/publications/consumer-intelligence-series/assets/pwc-cis-sharing-economy.pdf [https://perma.cc/6AT5-Z2YT] (reporting that 76% of adults responding to survey thought the sharing economy was good for the environment).

6. For more on the rhetoric of the "sharing economy," see Abbey Stemler, *The Myth of the Sharing Economy and Its Implications for Regulating Innovation*, 67 EMORY L.J. 197, 199 (2017) (noting that sharing economy companies "convince communities, regulators, and courts that they are facilitating altruistic activities that utilize excess capacity, support job growth, and alter how we consume. This myth helps these Platforms avoid everything from employment laws . . . to liability for consumer harm . . . ."). In the article, Professor Stemler argues that both rhetoric and framing have been used to advance the cause of platform exceptionalism, and that consumers who become users are then enlisted to advocate for light regulation of these platforms.

used to evade minimum regulatory standards in the areas of tax, tort liability, and labor and employment law.[7] Indeed, the "sharing" doublespeak has been so effective that it took years for many to recognize that there was a labor and employment problem with the work structures created by the platforms.[8] And it is not just the platforms themselves that have been misnamed. Platforms refer to their workers as "Ninjas," "Turkers," "Rabbits," "Taskers," and even, perhaps most pathetically, "Friends"— almost any term will do, except "employees."[9] Indeed, as set out below, an entire alternate vocabulary of terms including "onboarding" and "deactivation" are standing in for labor and employment legal terms like "hiring" and "firing." And this artful terminology is being used to cover up abusive labor practices.[10]

Unfortunately for many workers, the promises of the "sharing" economy have largely been revealed to be illusory. Indeed, in jurisdictions around the world, workers have sued platforms for denial of minimum wages or other benefits they would be entitled to under traditional labor and employment law.[11] Many commentators have criticized working conditions in the gig economy for the failure to comply with basic labor standards.[12] Yet these problematic labor practices are often obscured by the rhetoric of "sharing," the workers are often invisible behind the digital façade of the platform, and their concerns go unrecognized by a legal system that seems to place online work on a lesser footing than its equivalent in the real world. [13] It is this disconnect between rhetoric and reality, and the consequent propensity for deception accompanying

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7. *Id.* at 199. The present treatment engages only with the labor and employment law aspects. Although tax law and liability law are important aspects, they are beyond the scope of this Article.

8. Miriam A. Cherry, *Working for (Virtually) Minimum Wage: Applying the Fair Labor Standards Act in Cyberspace*, 60 ALA. L. REV. 1077, 1093–94 (2009). At the time the article was published, the author had difficulty persuading people that work completed on the Internet actually was work, rather than just a computer game or an activity undertaken as a hobby or leisure.

9. However, the test for employee status depends less on the terms that are used and instead, the substances of the relationship. *See generally* Miriam A. Cherry, *Beyond Misclassification: The Digital Transformation of Work*, 37 COMP. LAB. L. & POL'Y J. 577, 582–83 (2016).

10. *See infra* Part III.

11. For a listing of the ongoing litigation surrounding the on-demand economy in the U.S., see Cherry, *supra* note 9, at 584–85, and for further discussion of such litigation, see Valerio De Stefano, *The Rise of the "Just-in-Time Workforce": On Demand Work, Crowd Work and Labor Protection in the "Gig-Economy"*, 37 COMP. LAB. L. & POL'Y J. 471, 489 (2016).

12. *See, e.g.*, JEREMIAS PRASSL, HUMANS AS A SERVICE 51–52 (2018); Antonio Aloisi, *Commoditized Workers*, 37 COMP. LAB. L. & POL'Y J. 653, 654–655 (2016); De Stefano, *supra* note 11, at 471; Orly Lobel, *The Law of the Platform*, 101 MINN. L. REV. 87, 130–142 (2016); Brishen Rodgers, *The Social Costs of Uber*, 82 U. CHI. L. REV. DIALOGUE 85, 98–101 (2015).

13. Miriam A. Cherry, *Virtual Work and Invisible Labor*, *in* INVISIBLE LABOR: HIDDEN WORK IN THE CONTEMPORARY WORLD 71 (Marion Crain, Winifred Poster & Miriam Cherry, eds. 2016).

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it, which prompts the need for a fuller discussion of what I am terming "crowdwashing."[14]

This analysis of crowdwashing will amalgamate two lines of my ongoing research: technology and work, and corporate social responsibility and greenwashing. A roadmap follows. The first section draws on other types of "washes," such as whitewashing, greenwashing, and pinkwashing as precedent for the term "crowdwashing." The second section covers the roots of platform business models to examine how the term "sharing economy" and similar terms entered our lexicon. Section three will discuss how this type of doublespeak came to dominate the discourse of online platforms and how that language has been used to obscure real problems and gaps in the regulatory structures. Finally, the last section envisions what the platform economy would look like if we had robust corporate social responsibility practices and a set of basic protections for online workers. The goal is parity of treatment between online and offline workers. Ultimately, I argue that it is important to concentrate on re-imagining and re-inventing the on-demand economy to address regulatory deficits and leave behind the empty and misleading jargon and "sharing" rhetoric that has failed to serve us well.

I. ON "WASHING"

The neologism "crowdwashing" is derived from the term greenwashing.[15] As for the choice of term, I chose crowdwashing for a few reasons.[16] First, "crowdwashing" is more memorable than the term "sharewashing." The word "crowd" evokes the idea of many physical people standing together. Crowds are often noisy, dirty, and chaotic.[17] People generally tend to avoid situations where there is a large crowd, sometimes to such an extreme that it becomes an irrational fear.[18] The idea of "washing" an entire crowd is one that is "sticky," i.e. it will

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14. *See* Alex Hern, *Why the Term 'Sharing Economy' Needs to Die,* THE GUARDIAN (Oct. 5, 2015, 4:43 PM), https://www.theguardian.com/technology/2015/oct/05/why-the-term-sharing-economy-needs-to-die [https://perma.cc/QWR2-GM9T].

15. This section draws on my earlier work on greenwashing. *See* Miriam A. Cherry, *The Law and Economics of Corporate Social Responsibility and Greenwashing,* 14 U.C. DAVIS BUS. L. J. 281, 284–287 (2014); Miriam A. Cherry & Judd F. Sneirson, *Beyond Profit: Rethinking Corporate Social Responsibility after the BP Oil Disaster*, 85 TUL. L. REV. 983, 985–987 (2011).

16. Journalist Anthony Kalamar preceptively used the term "sharewashing" to describe the phenomenon all the way back in 2013. *See* Anthony Kalamar, *Sharewashing is the New Greenwashing*, OPEDNEWS (May 13, 2013, 6:10 PM), https://www.opednews.com/articles/Share washing-is-the-New-Gr-by-Anthony-Kalamar-130513-834.html [https://perma.cc/BR9S-T69P].

17. *See generally* THOMAS HARDY, FAR FROM THE MADDING CROWD (1874); CHARLES MACKAY, EXTRAORDINARY POPULAR DELUSIONS AND THE MADNESS OF CROWDS (2d. ed. 1852). *But see* JAMES SUROWIECKI, THE WISDOM OF CROWDS 3 (2004).

18. *See Agoraphobia,* PSYCHOLOGY TODAY, https://www.psychologytoday.com/us/condi tions/agoraphobia [https://perma.cc/X6RB-UGXV].

stay in the minds of people trying to describe this phenomenon. Second, the term crowdwashing avoids the problem of using the disputed word "share."[19]

Crowdwashing owes a debt to the previously articulated concept of greenwashing in the environmental and corporate social responsibility ("CSR") context. As noted in my previous work, greenwashing is one of the most significant challenges to achieving CSR in business today.[20] Greenwashing involves a corporation increasing its sales or boosting its brand image through environmental rhetoric or advertising, but in reality not making good on those environmental claims.[21] A firm can increase its reputation legitimately, by investing in sustainable practices or engaging in CSR with its emphasis on the triple bottom line, that is, people, profit, planet. Some firms, however, have responded to CSR by cultivating a green image without evidencing commitment to sustainability.[22]

While apocryphal, many trace the origin of the term "greenwashing" to a 1986 essay by American environmentalist who wrote about a sign he saw during a stay in a hotel.[23] The sign urged patrons to use fewer towels during their stay in order to reduce environmental impact.[24] The author, however, claimed that the real purpose of the sign was to increase hotel profits by saving on the labor costs of washing and changing the linens.[25] As such, the sign evidenced deception—environmental concerns were being falsely enlisted for profits. Instead of "whitewashing," that is, using white paint to cover over dirt in a shallow or transparent way, the essay coined the colorful term "greenwashing."

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19. *See* Kalamar, *supra* note 16. My contention is that it is confusing to include the disputed term in the new term, so "sharewashing" only compounds the problems by endorsing the disputed term "share" or "sharing."

20. *See* Cherry, *supra* note 15, at 284. Note that the next part of the Article draws on this previous work.

21. *See* Tom Wright, *False "Green" Ads Draw Global Scrutiny*, WALL ST. J. (Jan. 30, 2008, 11:59 PM), https://www.wsj.com/articles/SB120163622342426091 [https://perma.cc/6H8P-7C TW]. *But see* Lisa M. Fairfax, *Easier Said than Done? A Corporate Law Theory for Actualizing Social Responsibility Rhetoric*, 59 FLA. L. REV. 771, 796 (2007) (making the provocative and interesting argument, based on psychological research, that corporations are more likely to buy in to CSR philosophies the more CSR rhetoric is repeated).

22. *See* Cherry & Sneirson, *supra* note 15, at 1015.

23. *See* Alice Rawsthorn, *The Toxic Side of Being, Literally, Green*, N.Y. TIMES (April 4, 2010), http://www.nytimes.com/2010/04/05/arts/05iht-design5.html?_r=1&scp=1&sq=jay%20 westerveld&st=cse [https://perma.cc/7DHU-HTEU] (referring to a 1986 Jay Westerveld essay as the origin of term "greenwashing"). While extensive Internet and database searching revealed many secondary references to the Westerveld essay as the genesis of the term, there are no definitive citations provided for the essay. Nor is the Westerveld essay available online. The author sent several emails to an email address associated with Westerveld to confirm a citation, but no reply has been received as of the date of this writing.

24. *Id.*

25. *Id.*

The term stuck and "greenwashing" came to be used to signify misleading claims about environmental impact.[26]

The precursor term "whitewashing" is also useful for our purposes of thinking about crowdwashing and labor practices in the on-demand economy. In 2013, Professor Lesley Wexler generally explored legal definitions of the term "whitewashing."[27] The context for her discussion was the labor and employment practices and gender discrimination lawsuits against WalMart. Wexler's article set forth a useful, and broader, definitional rubric for whitewashing.[28] As noted there, "whitewashing refers to the practice of using low-cost calcium paint to superficially conceal or cover up a structural or substantive defect. Although the painter knows of its problems, a whitewashed wall appears flawless to the untrained eye."[29] Wexler goes on to explain that the essential components of a whitewash are: "an underlying defect, an attempt to conceal the defect by diverting attention, and a failure to fix the underlying defect."[30] Finally, Wexler includes elements of a whitewash that include: "(1) a wrongdoer's (2) deployment and publicity of policies and practices (3) in response to the identification of a legal grievance, (4) which does not address the underlying concern of the aggrieved and (5) is intended to establish, maintain, burnish, or restore institutional reputation."[31] Another way to think of the concept of a "wash" is that it is intended as a diversionary tactic from the real harm that is actually being done.

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26. While there is no common definition of greenwashing per se, Terra Choice attempted to classify the "Seven Sins of Greenwashing." THE SINS OF GREENWASHING: HOME AND FAMILY EDITION, http://sinsofgreenwashing.com/findings/the-seven-sins/index.html [https://perma.cc/R2 LA-JUZL] (last visited Nov. 1, 2018). The more straightforward and obvious sins include: no proof; vagueness; fibbing; and worshipping false labels (fake endorsements). While these sins seem clear, the other forms of greenwashing are more complicated, yet just as potentially misleading. For example, in the sin of "hidden tradeoffs," a product is defined as green based on one attribute, but there may have been other environmental factors at play that make the product less than optimal for the environment. A packaging claim may also commit the "sin of irrelevance," touting a factor (such as no CFCs) when there is already a legal rule in place banning it. While not an outright lie, per se, such product marketing may be designed to over-state a product's green nature and may ultimately misled consumers. Finally, the sin of "lesser of two evils" tries to minimize the harm done by the category of goods overall. So, for example, a greenwashing company might tout the fuel-saving benefits of its hybrid SUVs even though hybrid SUVs overall consume more gas than smaller non-hybrid cars. The categorization of these sins is useful in trying to analyze an overall definition of greenwashing.

27. Lesley Wexler, *Extralegal Whitewashes*, 62 DEPAUL L. REV. 817, 818–820 (2013).

28. *Id.*

29. *Id.* at 825.

30. *Id*.

31. *Id.* at 825–26.

Although Wexler's article discusses elements, whitewashing, greenwashing, and pinkwashing[32] currently are not legally actionable as torts in and of themselves, per se. While these activities certainly seem dishonest, that alone would not give rise to a legal cause of action. It is true that some greenwashes have resulted in liability for false advertising.[33] For example, there have been successful cases for false advertising around product labeling where insecticide companies that labeled their products as "ozone friendly" or "environmentally safe," when that statement was untrue.[34] In addition, cases have also been brought based on the use of the words "recycled," "recyclable," or "biodegradable," all which now have solid legal definitions.[35] However, the rhetoric of being a responsible company or just a general description of good business practices could be too vague a statement to create a cause of action for false advertising.[36] Some commentators have floated the idea of securities regulation liability for fake promises of corporate social responsibility.[37]

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32. A "pink wash" refers to either a wash that extols fake friendliness to the LGBTIA community, or a use of the breast cancer ribbon to sell products that do not actually assist cancer research. *See generally About Us*, THINK BEFORE YOU PINK, http://thinkbeforeyoupink.org/about-us/ [https://perma.cc/5RXN-FSHF] (last visited Nov. 1, 2018); Stephan Dahl, *The Rise of Pride Marketing and the Curse of 'Pink Washing'*, THE CONVERSATION (Aug. 26, 2014, 10:34 AM), http://theconversation.com/the-rise-of-pride-marketing-and-the-curse-of-pink-washing-30925 [https://perma.cc/V7W7-SGYH].

33. *See* John M. Church, *A Market Solution to Green Marketing: Some Lessons from the Economics of Information*, 79 MINN. L. REV. 245, 301–304 (1994) (citing cases on false advertising).

34. Douglass M. Branson, *Corporate Governance "Reform" and the New Corporate Social Responsibility*, 62 U. PITT. L. REV. 605, 646 (2001). *See also* Su-Ping Lu, *Corporate Codes of Conduct and the FTC: Advancing Human Rights Through Deceptive Advertising Law*, 38 COLUM. J. TRANSNAT'L L. 603, 617–19 (2000).

35. *See* Church, *supra* note 33, at 301–07.

36. One of the leading cases on greenwashing is *Nike v. Kasky* which examines the issue in the context of free speech and the First Amendment. Scholars have published much commentary about the case and its impact. *See*, *e.g.*, David C. Vladeck, *Lessons from a Story Untold:* Nike v. Kasky *Reconsidered*, 54 CASE W. RES. L. REV. 1049, 1049–1051 (2004); Tamara R. Piety, *Grounding Nike: Exposing Nike's Quest for a Constitutional Right to Lie*, 78 TEMPLE L. REV. 151, 151–62 (2004); Samuel A. Terilli, Nike v. Kasky *and the Running-But-Going-Nowhere Commercial Speech Debate*, 10 COMM. L. & POL'Y, 383 (2005); Robert L. Kerr, *From* Sullivan *to* Nike: *Will the Noble Purpose of the Landmark Free Speech Case Be Subverted to Immunize False Advertising*, 9 COMM. L. & POL'Y 525 (2004); Michele Sutton, Note, *Between a Rock and a Judicial Hard Place: CSR Reporting and Potential Legal Liability Under* Kasky v. Nike, 72 UMKC L. REV. 1159, 1169–70 (2004).

37. Cynthia A. Williams, *The Securities and Exchange Commission and Corporate Social Transparency*, 112 HARV. L. REV. 1197, 1293-306 (1999) (proposing that SEC mandate disclosure of environmental information, thus providing a check against inflated advertising claims); David Monsma & John Buckley, *Non-Financial Corporate Performance: The Material Edges of Social and Environmental Disclosure*, 11 U. BALT. J. ENVTL. L. 151, 151–58 (2004); Janet E. Kerr, *The Creative Capitalism Spectrum: Evaluating Corporate Social Responsibility Through a Legal Lens*,

Based on these precursors, we can work toward defining the elements of a crowdwash. The first step element is to find an underlying flaw, claim, or grievance that is being covered up. In crowdwashing, this underlying flaw is the failure of some platforms to comply with minimum labor standards. This lack of compliance has been documented and elaborated upon by other commentators.[38] Journalists and labor activists have either worked online[39] or interviewed those working online in computer crowdwork, and determined that workers were unable to earn minimum wage.[40] The gigs were precarious; the time spent looking for work is not counted, even though it is certainly work itself, and there are no benefits.[41] To use the terms employed by sociologists, these are "bad jobs," with no opportunity for benefits, training, or career advancement.[42]

Having aggrieved claimants, however, is only the first part of the "wash." The second part involves covering up the problem and instead, telling a story that in fact burnishes or improves the reputation of the company. Here, we can look to the language of "sharing" as the rhetorical device that covers up many of these problems and simultaneously tells a story of altruism. Platform companies also have used framing devices to cover up their responsibility to workers. In part, platforms argue that because they are technology companies, message boards, market makers, or something else other than employers, they should not have to comply with labor and employment laws.[43] To understand crowdwashing more fully, it is necessary to look at some of these language and rhetorical strategies.

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81 TEMP. L. REV. 831, 831–34 (2008); Janet E. Kerr, A *New Era of Responsibility: A Modern American Mandate for CSR*, 78 UMKC L. REV. 327, 358–61 (2009).

38. *See*, *e.g.*, Prassl, *supra* note 12, at 68–70; Aloisi, *supra* note 12, at 675–78; De Stefano, *supra* note 11, at 489–94.

39. *See* Miranda Katz, *Amazon's Turker Crowd Has Had Enough,* WIRED (Aug. 23, 2017, 6:55 AM), https://www.wired.com/story/amazons-turker-crowd-has-had-enough/ [https://perma. cc/JGG6-99CT].

40. Moshe Z. Marvit, *How Crowdworkers Became the Ghosts in the Digital Machine*, THE NATION (Feb. 5, 2014), https://www.thenation.com/article/how-crowdworkers-became-ghosts-digital-machine/ [https://perma.cc/2KAH-LR95]; Robert Booth, *700,000 Gig Workers Paid Below National Minimum Wage,* THE GUARDIAN (Feb. 7, 2018, 9:19 AM), https://www.theguardian. com/business/2018/feb/07/death-dpd-courier-don-lane-tragedy-business-secretary [https://perma. cc/37E7-2VZU]; Alana Semuels, *The Internet Is Enabling a New Kind of Poorly Paid Hell,* THE ATLANTIC (Jan. 23, 2018), https://www.theatlantic.com/business/archive/2018/01/amazon-me chanical-turk/551192/ [https://perma.cc/P46P-CNL8].

41. Marvit, *supra* note 40; Booth, *supra* note 40; Semuels, *supra* note 40.

42. *See generally* Arne L. Kalleberg, Barbara F. Reskin & Ken Hudson, *Bad Jobs in America: Standard and Nonstandard Employment Relations and Job Quality in United States,* 65 AM. SOC. REV. 256 (2000).

43. Stemler, *supra* note 6, at 199.

II. THE LANGUAGE OF "SHARING"

Having discussed some preliminary and definitional issues around crowdwashing, we can now attempt a fuller look at how the language of "sharing" is being deployed within the gig economy. The first part of this section looks to the roots of online collaboration, and how commercialized on-demand platforms came to be wrapped in the cloak of "sharing." The second part examines some of the problematic terminology in more depth. Specifically, the second part examines the euphemistic names that platforms give to workers, the hiring process, and many other components of the relationship between worker and platform.

A. *The Watchamacallit Economy*[44]

The origins of term "sharing economy" to describe online or application-based platform businesses are imprecise, and likely apocryphal. However, with some assurance, we know that that the true pooling of resources and using community assets to help out the common good has a long history around the world.[45] Communities set up exchanges in different communities based on "barter" or timeshares, where individuals were able to bank and trade their time.[46] Others formed clubs to invest in and trade access to specialized machinery or tools.[47] We need look no further than the lending library to see a community resource dedicated to keeping communities well-informed and educated. On the frontier of the United States, communities would come together to volunteer with major construction tasks, such as raising a barn.[48] All of these efforts depended on volunteerism and community spirit. They certainly pre-dated the Internet and the current controversies over "sharing."

In his 2005 book *The Wealth of Networks*, Yochai Benkler described ways in which the Internet was beginning to facilitate the free exchange of information.[49] Citing operating systems like Linux and other examples of

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44. The name of this section comes from an article of the same name written by journalist Steven Greenhouse. *See* Steven Greenhouse, *The Whatchamacallit Economy*, N.Y. TIMES (Dec. 16, 2016), https://www.nytimes.com/2016/12/16/opinion/the-whatchamacallit-economy.html [https://perma.cc/94LW-WNR2?type=image].

45. *See generally* John F. Sherry Jr., *Gift Giving in Anthropological Perspective*, 10 J. CONSUMER RES. 157 (1983); Camille Robcis, *Lévi-Strauss's Structuralist Social Contract,* 123 YALE FRENCH STUD. 145 (2013).

46. *See generally* JANELLE ORSI & EMILY DOSKOW, THE SHARING SOLUTION: HOW TO SAVE MONEY, SIMPLIFY YOUR LIFE, AND BUILD COMMUNITY (1st ed. 2009); Jenny Kassan & Janelle Orsi, *The LEGAL Landscape of the Sharing Economy*, 27 J. ENVTL. L. & LITIG. 1 (2012).

47. *See generally* John W. Bennett, *Reciprocal Economic Exchanges among North American Agricultural Operators*, 24 SW. J. ANTHROPOLOGY 276 (1968).

48. *See generally* "*Raising Bees" Served as Community Building Activity,* ORLEANS CTY. DEP'T. HIST. (Nov. 2, 2017), http://orleanscountyhistorian.org/raising-bees-served-as-community-building-activity/ [https://perma.cc/MZF6-C3DB].

49. YOCHAI BENKLER, THE WEALTH OF NETWORKS 1–6 (2005).

collaborative creation like Wikipedia, Benkler noticed that many of the technologies that were being created were open source and that this might have radical implications for the Internet's development.[50] It was within this environment that much of the discussion of the "sharing" economy grew. Collaborative technologies and new business models were being tested, some to take hold, and others to be disregarded as the laws changed[51] or they became outdated.

One of the author's earlier articles, *Cyber Commodification*, analyzed the way that new technology on the Internet was either developing as completely free and open access or, at the other extreme, completely commodified.[52] The article concluded that online commodification is more of a continuum, with many portions of the Internet existing in states of incomplete commodification.[53] It seems that many of the ideas that started out as non-monetized or collaborative have at this point turned into for-profit services. Businesspeople have now had the time to figure how to monetize some of these earlier systems. In fact, technology has enabled the monetization of some items that we would not normally think of as financial concepts, such as friendship, or two seconds of someone's time, or an individual's predictions about the future.[54]

The businesses that first sprung up around the rubric "sharing" in the first decade of the 2000s were also called "peer to peer" businesses or "collaborative" businesses. They depended on the power of the crowd, and so "collaborative" was an apt moniker. One such business, the T-shirt design website Threadless, served as the prototype for the "crowdwork" model described first by journalist

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50. *Id. See also* Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273, 332–35 (2004); Yochai Benkler, *Coase's Penguin, or, Linux and* The Nature of the Firm, 112 YALE L.J. 369, 386–87 (2002).

51. Prediction markets using real money were largely outlawed in the United States as an unfortunate by-product of legislative action designed to stamp out Internet gambling. Miriam A. Cherry & Robert L. Rogers, *Prediction Markets and the First Amendment*, 2008 U. ILL. L. REV. 833, 834–36 (2008).

52. Miriam A. Cherry, *Cyber Commodification*, 72 MD. L. REV. 381, 381–86 (2013).

53. *Id. See also* Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1857 (1987); Margaret Jane Radin & Madhavi Sunder, *Introduction: The Subject and Object of Commodification*, in RETHINKING COMMODIFICATION 8, 25 (Martha Ertman & Joan C. Williams eds., 2005) (Radin is "convinced that [her] most useful scholarly contribution is likely to be having made the word 'commodification' speakable in legal academic discourse."). Indeed, as early as 2002, Professor Margaret Jane Radin, a pioneer of commodification theory in legal literature, noted that the Internet and other computer technology was helping to accelerate various types of commodification by lowering transaction costs and bringing buyers and sellers together in a truly global marketplace. Margaret Jane Radin, *Incomplete Commodification in the Computerized World, in* THE COMMODIFICATION OF INFORMATION 3, 4 (Niva Elkin-Koren & Neil Weinstock Netanel eds., 2002).

54. Miriam A. Cherry & Rogers L. Rogers, *Tiresias and the Justices: Using Information Markets to Predict Supreme Court Decisions,* 100 NW. U. L. REV. 1141, 1145 (2006).

Jeff Howe.[55] In that business model, the platform allowed the members to participate in T-shirt design, ran contests to figure out what the best and most desired designs were, and then sold the winning designs to the membership.[56] Such situations were deemed "prosumer," a portmanteau of the words "producer" and "consumer."[57] They were participatory and, indeed, relied on the collective decision-making process of users.[58] It is not that there were no platform models that were monetized or even that paid workers poorly. In fact, Amazon Mechanical Turk and similar services like Crowdflower did pay poorly.[59] At the time, however, this seemed like an experiment or game, rather than a recognized category of workers.[60]

Other on-demand platforms in this nascent space asked people to essentially make an inventory of their assets and make better use of them. Just like the tool library of old, the idea was that most people did not want ownership of a particular item, what they wanted was access to it.[61] Journalist Matthew Yglesias wrote a short piece in 2013 that seemed to trace use of the "sharing" terminology to an advertising campaign by Zipcar, which promised access to a car for small periods of time in urban areas.[62] As he noted in his piece, while access to a car

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55. *See*, *e.g.*, Jeff Howe, *The Rise of Crowdsourcing*, WIRED (June 1, 2006), https://www.wired.com/2006/06/crowds/ [https://perma.cc/R4Z5-V9BH] (using term "crowdsourcing" to describe work performed with the aid of contributions from diverse groups of users on the internet); Deborah Halbert, *Mass Culture and the Culture of the Masses: A Manifesto for User-Generated Rights*, 11 VAND. J. ENT. & TECH. L. 921, 929 (2009) ("Computer technology in the hands of the masses has made available software programs that can create music, documents, and art just as well as expensive studios did in the past. This democratization of technology disrupts the monopoly on the creative means of production. The world of amateur production also demonstrates that many are motivated by noncommercial reasons.").

56. DAREN C. BRABHAM, CROWDSOURCING xix–xx (2013).

57. *See generally* DIGITAL LABOR AND PROSUMER CAPITALISM: THE US MATRIX (Mathieu O'Niel & Olivier Fraysse eds.) (2015). Note that the idea of "prosumers" is a new name but that the idea that customers would also be working is an older one. *See*, *e.g.*, MICHAEL PALM, TECHNOLOGIES OF CONSUMER LABOR: A HISTORY OF SELF-SERVICE 26 (2017) (detailing history of consumer work in the grocery store and on the telephone).

58. Stemler, *supra* note 6 at 201 (noting that going into the 2010s, "the Sharing Economy was considered a social, political, and economic transformation that was democratizing how we produce, consume, govern, and solve social problems.") (internal quotation marks omitted).

59. Otey v. Crowdflower, No. 12–CV–05524–JST, 2015 WL 4076620, at *2 (N.D. Cal. Jul. 2, 2015).

60. Miriam A. Cherry, *Working for (Virtually) Minimum Wage: Applying the Fair Labor Standards Act in Cyberspace*, 60 ALA. L. REV. 1077, 1096 (2009) (couching problem as one of work versus leisure because of newness of the platforms at that time).

61. J.J. Colao, *Welcome to The New Sharing Economy: Goodbye Ownership, Hello Access*, FORBES (Oct. 11, 2012), https://www.forbes.com/sites/jjcolao/2012/10/11/welcome-to-the-new-millennial-economy-goodbye-ownership-hello-access/#13ca952b74ab [https://perma.cc/Y5WS-Z5XS].

62. *See* Yglesias, *supra* note 2.

for a small period of time may be an interesting business model, it does not seem to have much to do with sharing.[63] As he noted there,

> My neighbor and I share a snow shovel because we share some stairs that need to be shoveled when it snows and we share responsibility for doing the work. If I owned the stairs and charged him a small fee every time he walked in or out of the house, that would be the opposite of sharing.[64]

This was the business environment at the time that Lyft began operating in the Bay Area in the first decade of the 2000s. Originally the service did not ask riders to pay, except for what they thought was fair for gas and the driver's time.[65] The idea was not to replicate a taxi service, but instead for neighbors to assist one another. In fact, early Lyft ads talk about both the passengers and the drivers being "friends."[66] One of the hallmarks of the company early on was the "fist bump" that Lyft drivers and customers would give to each other to show camaraderie.[67] Other early advertisement surrounding the company stressed that the service would be beneficial for the environment.[68] Cars could be taken off the road, and numerous people could carpool together. The person going in one direction to work could now, with the aid of the Lyft platform, pick up other riders, start a carpool, and collect money to offset the gas and garaging expenses of owning a car.

These various early models of "sharing" were still developing into the early 2010s, when Uber captured the attention of the public and people suddenly became familiar with the idea of crowdwork. Rather than buy into any pretense of neighbors helping each other, this new set of companies openly sought market share and profits.[69] Yet these platforms profited from the efforts of other, earlier

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63. *Id.*

64. *Id.*

65. Sam Gustin, *Lyft: Ride Sharing Startup Zimride Hits the Gas Pedal in San Francisco*, TIME (Sept. 4, 2012), http://business.time.com/2012/09/04/need-a-lyft-ride-sharing-startup-zimride-hits-the-gas-pedal/ [https://perma.cc/9GPQ-92XT].

66. Ryan Lawler, *Lyft Sheds Some of Its Quirks as It Seeks New Users*, TECHCRUNCH (Nov. 30, 2014), https://techcrunch.com/2014/11/30/lyft-quirks/ [https://perma.cc/X9QG-T7YM].

67. *Id.*

68. Maureen Morrison, *Lyft's First Big Ad Campaign: We're Not Just a Transportation Service, We Create Community*, ADVERT. AGE (Jan. 27, 2015), http://adage.com/article/digital/lyft-launches-national-campaign/296819 [https://perma.cc/L4VK-4QK3] (describing Lyft's attempt to "differentiate itself by offering a combination of 'humanity and technology,'" and providing a video showing a Lyft commercial set in the San Francisco Bay Area); Lyft, *What Is Lyft?*, YOUTUBE (Mar. 26, 2014), https://www.youtube.com/watch?v=X2bQdf408T8 [https://perma.cc/977Y-DEQM] (explaining how Lyft works and noting that you meet new friends and community members in using it); Lyft, *Lyft Community Solutions: The Price We Pay*, YOUTUBE (Oct. 16, 2014), https://www.youtube.com/watch?v=OhOrD-Kkt5E [https://perma.cc/QQD4-Q8W2] (noting that the company has increased opportunities for the disabled and those residents who live without a car).

69. Stemler, *supra* note 6, at 207.

platforms that had been more community-based.[70] Indeed, many of those websites promoting community benefits still exist. But when certain platforms treat workers poorly, engage in regulatory arbitrage, and fight legal battles or even exit markets rather than compromise with communities, it is easy to see that "sharing" has become a misnomer, or in some instances, a misrepresentation of the true nature of what is happening.

A.   Other DoubleSpeak in the Gig Economy

While so far the main focus has been on the use of "sharing" terminology, it is far from the only linguistic misrepresentation surrounding on-demand businesses. Additional doublespeak reveals itself in what we would normally think of as the creation of and the end of the work relationship in legal terms. Rather than being hired and going through an employee orientation, workers on these platforms go through a similar process, yet it is called "onboarding."[71] In the crowdwork context, onboarding presumably involves establishing an online account, some amount of learning about the company, having questions answered, and then being set up to work. The use of the term "onboarding," however, evades the word "hiring," which appears in many statutes in relation to labor rights, and it also avoids the traditional phrase "employee orientation," which would imply that an activity that is related to labor and employment laws was occurring. Thus "onboarding" is a euphemistic evasion to describe what is a fairly straightforward "hiring" process.

Similarly, an employee who was not performing well might be given feedback and progressive discipline, but ultimately be fired if not performing the quantity and quality of work expected. However, workers in the gig economy are not fired, rather, they are "deactivated." [72] This impersonal terminology conceals a destructive truth; deactivation can actually be worse than being fired. The worker only discovers deactivation when they go to log into the app, and find that their account is erased and they are effectively banned from returning to the platform. This may also include erasure of data or information built up around the worker's account.[73] In many instances the platform may not be

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70. *Id.* at 205–07.

71. *See Will You Pass the Uber Background Check?*, RIDESHARING DRIVER (Jan. 15, 2018), https://www.ridesharingdriver.com/will-you-pass-the-uber-background-check/ [https://perma.cc/PX25-DT87] (informing Uber drivers of details surrounding the background checks they must complete before "onboarding").

72. *See* Sydney Brownstone, *Seattle Lyft Driver Wants to Know Why She Was Deactivated after Attending a Teamsters Organizing Meeting,* THE STRANGER (Nov. 15, 2015, 11:47 AM), https://www.thestranger.com/blogs/slog/2015/11/19/23163805/seattle-lyft-driver-wants-to-know-why-she-was-deactivated-after-attending-a-teamsters-organizing-meeting [https://perma.cc/Q3R8-V6V3] (detailing "deactivation" of Lyft driver who organized meeting for drivers at union office).

73. *Fired from Uber: Why Drivers Get Deactivated, and How to Get Reactivated*, RIDESHARING DRIVER (Feb. 7, 2018), https://www.ridesharingdriver.com/fired-uber-drivers-get-

required to give a reason for deactivation, with no appeal or recourse on the part of the worker.[74] Deactivation can be an automatic response to user ratings falling below a number, as a result of algorithm management.[75]

As noted above, this use of language is far from accidental. In fact, a leaked document from European food delivery app Foodora exposes these linguistic manipulations for what they clearly are – attempts to cover up or disguise the existence of a labor relationship.[76] The leaked document provides synonyms for many of the terms that exist for employees and directs its managers to use those other terms.[77] For example:

> Instead of hiring riders at a recruitment centre, for example, senior staff undertake "onboarding" at a "supply centre." They must also talk about riders' "availability" rather than refer to shifts. As an example, it tells staff they should not tell riders, "You did not attend a shift" and should instead say, "You were unavailable to accept orders at a previously agreed time." Riders' branded outfits must not be described as uniform, but only as "kit" or "equipment." The document's list of dos and don'ts also says that riders do not clock on, but log in (to the rider app), and says that staff dealing with riders pay should always refer to invoices rather than payslips.[78]

And while all of this doublespeak about the hiring process seems extreme, the lengths that some platforms will go to in order not to call their workers "employees" involve even further legerdemain.

Platforms refer to "Providers," "Taskers," "Clickers," "Authors," "Hourlies," "Riders," "Partners," "Roos," and even "Ninjas" rather than use the

deactivated-and-reactivated/ [https://perma.cc/N6UX-67T8] (stating that Uber rarely actually states "you're fired," but rather says things like "Your account needs attention" or "Your account has been placed on hold"); Carolyn Said, *Uber, Lyft Drivers Fear Getting Booted from Work*, S.F. CHRON. (Oct. 14, 2018, 12:39 PM), https://www.sfchronicle.com/business/article/Uber-Lyft-drivers-fear-getting-booted-from-work-13304052.php [https://perma.cc/QV4V-9YTF] (describing instances of workers discovering that their accounts had been deactivated).

74. The practice of deactivation has encountered significant enough issues that it has become part of the settlement negotiations in the Uber and Lyft litigations. Cotter v. Lyft, Inc., 176 F. Supp. 3d 930, 934 (N.D. Cal. 2016); O'Connor v. Uber Techs., Inc., 201 F. Supp. 3d 1110, 1117–19 (N.D. Cal. 2016). Under the terms of these settlement agreements, drivers would have the ability to be heard by a labor arbitrator before being disconnected. *Cotter,* 176 F. Supp. 3d at 934; *O'Connor*, 201 F. Supp. 3d at 1117–19.

75. *Uber Community Guidelines,* UBER (Oct. 17, 2017), https://www.uber.com/legal/community-guidelines/us-en/ [https://perma.cc/6FR9-FRUB]. *See also* Alex Rosenblat & Luke Stark, *Algorithmic Labor and Information Asymmetries: A Case Study of Uber's Drivers*, 10 INT'L J. OF COMM. 3758, 3759 (2015).

76. Sarah Butler, *Deliveroo Accused of 'Creating Vocabulary' to Avoid Calling Couriers Employees*, THE GUARDIAN (Apr. 5, 2017), https://www.theguardian.com/business/2017/apr/05/deliveroo-couriers-employees-managers [https://perma.cc/95SB-U7G7].

77. *Id.*

78. *Id.*

term "worker" or "employee."[79] Some of these terms for workers are cute, such as "Roos," or even in the case of "Ninjas" deferential, while others of these terms could be seen as dehumanizing.[80] So instead of hiring a worker to put together IKEA furniture, platform users might turn to TaskRabbit to have a "Rabbit" to do the work for them.[81] In devising this parallel terminology, those who use a platform are discouraged from forming the "worker" identity, and instead called something else. The refusal to use the terminology that the legal system typically uses to discuss labor and employment law issues is troubling and may also signal evasion.

I. REIMAGINING THE ON-DEMAND ECONOMY

When Malaysian jetliner MH370 crashed in 2014, thousands of people around the world logged in to search the images of tiny patches of ocean to see if survivors or debris could be identified.[82] In the years since, similar types of search and rescue applications have allowed volunteers to donate their time in an effort to save lives.[83] More recently, a cellphone application called "Be My Eyes" connects sighted users with blind users. Blind users call when they need help with a task, like reading a pricetag or directions.[84] The app then connects them with sighted users who take a video call and provide assistance with reading the item, all for free.[85] These are two genuine examples of "sharing" one's labor on the Internet through an app or platform for a socially beneficial cause, helping others through altruism.

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79. *Id. See also*, *e.g.*, *Start Tasking. Earn Money Your Way,* TASKRABBIT, https://www.task rabbit.com/become-a-tasker [https://perma.cc/7XEA-HMZN] (last visited Sept. 9, 2018); *Become a Driver-Partner,* UBER, https://help.uber.com/h/3362f824-b3de-4cc3-979d-6bafcbc24290 [https://perma.cc/RR59-UMGC] (last visited Sept. 9, 2018).

80. De Stefano, *supra* note 11, at 477–78.

81. Megan Rose Dickey, *IKEA Has Bought TaskRabbit*, TECHCRUNCH (Sept. 28, 2017), https://techcrunch.com/2017/09/28/ikea-buys-taskrabbit/ [https://perma.cc/LB4P-5EJU]; Ingrid Angulo, *Ikea Rolls Out Nationwide Assembly Services with TaskRabbit,* CNBC (Mar. 13, 2018, 9:43 A.M.), https://www.cnbc.com/2018/03/13/ikea-rolls-out-nationwide-assembly-services-with-taskrabbit.html [https://perma.cc/24UA-H36X].

82. Carmen Fishwick, *Tomnod – The Online Search Party Looking for Malaysian Airlines Flight MH370*, THE GUARDIAN (Mar. 14, 2014), https://www.theguardian.com/world/2014/mar14/tomnod-online-search-malaysian-airlines-flight-mh370 [https://perma.cc/WAM8-LT4C]. Unfortunately, despite the best efforts of thousands of crowdwork volunteers and many search efforts, the wreckage was never found. *Id.*

83. Steve Friess, *50,000 Volunteers Join Distributed Search for Steve Fossett*, WIRED (Sept. 11, 2007, 2:00 P.M.), https://www.wired.com/2007/09/50000-volunteers-join-distributed-search-for-steve-fossett/ [https://perma.cc/6PEQ-6YC9].

84. BE MY EYES, https://www.bemyeyes.com/ [https://perma.cc/D7QR-7NL7] (last visited Aug. 31, 2018).

85. *Id. See generally* Steve O'Hear, *Be My Eyes Lets You Help a Visually-Impaired Person See via Their Phone's Video Camera,* TECHCRUNCH (Jan. 16, 2015), https://techcrunch.com/2015/01/16/be-my-eyes/ [https://perma.cc/M7N8-HW7A].

Crowdwashing puts collaborative efforts like these at risk, making participants cynical about being used or taken advantage of. As the journalist Anthony Kalamar writes, crowdwashing:

> [D]oes more than just misrepresent things like renting, working, and surveilling as "sharing." It does more than just stretch and contort the meaning of the word "sharing" until it practically loses all meaning. It also *disables the very promise of an economy based on sharing* by stealing the very language we use to talk about it, turning a crucial response to our impending ecological crisis into another label for the very same economic logic which got us into that crisis in the first place.[86]

Crowdwashing is thus a serious concern with implications for worker's rights, but it is also serious because it might undermine online collaborative volunteer efforts or the environmental concerns the "sharing" economy had touted itself as helping to fix.

This next section suggests three steps to reduce disingenuous crowdwashing. The first step is to fix the flawed "sharing" terminology. The second step involves making on-demand workers more visible. Here I am referencing existing efforts to find worker voice behind the technological platforms. Third, and finally, we can start to think about reimagining the type of platform work that we want to have for the future through various minimum standards. Corporate social responsibility, free of crowdwashing, can have a role to play in the structuring and implementation of such standards.[87]

A.   *Changing the Terminology*

One immediate suggestion is to stop using the language of "sharing" to refer to the on-demand economy unless it is genuinely capturing the idea of volunteer work for collaborative benefit. When referring to platforms that facilitate volunteer work, like the Malaysian jetliner or Be My Eyes, sharing is altogether appropriate. Likewise, there are smaller, community based instances that could genuinely use the "sharing" label.

However, given the variety of different platforms that exist, the terminology of "sharing" can be misleading. This is so especially when dealing with for-profit companies involved in cyber commodification. Language matters, and continuing to use the misleading term of "sharing" amplifies and reinforces an already misunderstood labor and employment law issue. Furthermore, we should consider dropping other meaningless business jargon, like "ninjas" or "onboarding," as these terms are being used either to disguise the workers, or the work in which they are engaged. The long list of substitute terminology used

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86. *See* Kalamar, *supra* note 16.

87. *See* Miriam A. Cherry & Winifred R. Poster, *Crowdwork, Corporate Social Responsibility, and Fair Labor Practices*, *in* RESEARCH HANDBOOK ON DIGITAL TRANSFORMATIONS 291, 299–310 (F. Xavier Olleros & Majlinda Zhegu eds., 2016).

by Deliveroo management in order to avoid liability for the employment relationship makes it clear that this is language that is being used to manipulate and deceive users of the site, the public, regulators, and possibly workers themselves.[88]

If the language of "sharing" is problematic and contributing to a crowdwashing, then what language should be used instead? Instead of "sharing economy," a better option would be to use the term "on-demand economy."[89] The term "on-demand economy" describes the business model based on user need, and is a generally a neutral term. Further, the phrase "on-demand" signifies that this is an economy of efficiency and convenience. As far as its descriptive power, "on-demand" accurately captures the fact that the app is "always on" and that workers may find themselves working at various times in order to meet that demand. As such, "on demand" is a significantly better choice for use in academic articles and the popular press, rather than "sharing."

Another alternative is to use the phrase "gig economy."[90] In some ways, this is an accurate term because it captures the fact that work, or a "gig" is taking place. The nature of "gigs" is that they are short term, discrete, and precarious, and thus the term also accurately captures the concept of microtasks or odd jobs that could be posted on an online platform. But "gigs" also refer to musicians, and the term pre-dated the Internet and apps; it may actually be a broader term than tasks that take place due to a platform intermediary.[91]

Whatever the pluses and minuses of the terms are, both "gig" and "on demand" more accurately describe the situation than the misleading language of sharing. Likewise, we should insist on using terms like "worker" and "employee," no matter how cutesy or fun it sounds to hire a "Roo" or "Ninja." And made-up words like "onboarding" are neither cute nor fun, and do no additional work than that already performed by the term "hiring," which has a specific legal meaning.

B.   Making Workers More Visible

Another strategy to counteract crowdwashing is to make the workers more visible. Currently, platforms hide workers from ultimate users, especially with crowdwork performed wholly on the computer. As noted in my chapter in *Invisible Labor Hidden Work in the Contemporary World*, technology "may hide workers from a Web site's ultimate users or consumers, who . . . may not even

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88.   *See* Fishwick, *supra* note 83.

89.   *See* Greenhouse, *supra* note 45.

90.   *See* Stemler, *supra* note 6, at 207 ("It is more appropriate to classify these [platform] companies as part of the "gig economy," "peer to peer economy," or "on-demand economy," but these terms do not spark the positive emotions associated with sharing. The term "Sharing Economy" muddles our ability to see it for what it is, and hinders a rational debate about policy and regulation.").

91.   *See* Greenhouse, *supra* note 45.

know that a human is working at all."[92] Various crowdworker and labor activists have attempted to change this dynamic over the years, through protests specifically designed to make workers more visible.

In 2015, Stanford researchers and crowdworkers organized the Dynamo campaign, which was described as "a community platform designed to gather ideas, energy, and support directed towards collective action."[93] A primary focus of Dynamo was overcoming the twin issues that seemed to be stopping collective action in the sector, which they described as "stalling" and "friction."[94] Two of Dynamo's initiatives secured significant media attention: the articulation of guidelines for academic researchers and a letter-writing campaign targeted at Amazon CEO Jeff Bezos.[95]

The guidelines were aimed at academic researchers, who commonly post surveys, psychological tests, and other similar tasks online. Many of the tasks came under fire because of the low rates of pay offered. Amazon now officially suggests that requesters use Dynamo's Guidelines for Academic Requesters as a basis "to help Requesters get started successfully with MTurk."[96] The guidelines include standards of identification, timeliness, and fair pay.[97] As such, this part of the Dynamo's effort seems to have had a lasting impact.

The second effort that received widespread media attention was the letter-writing campaign to Amazon CEO Jeff Bezos. Bezos was publicly known for his willingness to respond to Amazon customers' emails that were sent to him.[98] Knowing about this affinity, Dynamo began a campaign to have Turkers email Bezos directly.[99] The letter writing campaign by Turkers received extensive media coverage during the busy gift-giving Christmas season.[100] For example, Kristy Milland, the community manager of the online community, *Turkernation,* wrote in her own letter to Bezos, "[p]lease stop selling us as nothing more than an algorithm and instead introduce those who use your service to the fact we are

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92. Miriam A. Cherry, *Virtual Work and Invisible Labor*, *in* INVISIBLE LABOR HIDDEN WORK IN THE CONTEMPORARY WORLD 73 (Marion G. Crain, Winifred R. Poster & Miriam A. Cherry eds.) (2016).

93. Niloufar Salehi et al., *We Are Dynamo: Overcoming Stalling and Friction in Collective Action for Crowd Workers*, Proceedings of the 33rd Annual ACM Conference on Human Factors in Computing Systems 1621, 1621 (2015).

94. *Id.*

95. *Id.* at 1626.

96. *How to Be a Great MTurk Requester*, AMAZON MECHANICAL TURK (Sept. 10, 2017), https://blog.mturk.com/how-to-be-a-great-mturk-requester-3a714d7d7436 [https://perma.cc/5ZEJ -RS54].

97. Salehi, *supra* note 94, at 1626.

98. *Id.*

99. *Id.*

100. *Id.*

living, breathing beings . . . ."[101] To Milland, Turkers should be seen as highly-skilled laborers and marketed as such, rather than Amazon presenting them as unskilled and thus enabling poor payment and attitudes by requesters.[102] Thus, Dynamo activists sought to raise the awareness of Turkers as workers, not as invisible and disembodied "artificial artificial intelligence."

C.   *Toward Better Platform Work*

Crowdwashing would not be necessary if the standards and types of work offered, met or exceeded current labor standards. Which brings us to the question: what would a "good" or "socially responsible" or "sustainable" platform look like for workers? Regardless of the intervention of a platform, we know that sub-minimum wage pay, a lack of benefits, wage theft, no opportunity for advancement or training, and a lack of transparency are "bad jobs," both offline and online.[103] But rather than continuing to catalog the problems with the current system, how would we envision platforms that were socially responsible and created decent work?[104]

To begin, some of the platforms might actually be run and owned by the workers themselves. Professors Trebor Scholz and Nathan Schneider at the New School have written extensively about platform cooperatives.[105] The business model of such platform cooperatives "flip the script" on most traditional working relationship. Rather than work for a wage, workers, who are also cooperative owners, are able to keep most of the money earned from their platform. Only a percentage of their earnings go back to the platform, with the goal not that of enriching platform investors, but rather to invest in upkeep and functionality of the platform.[106]

Even in businesses not owned by workers, we could imagine improvement in current employment practices. First, we should assume that such a business wanting to establish such norms would likely adhere to a corporate code of

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101. James Vincent, *Amazon's Mechanical Turkers Want to Be Recognized as 'Actual Human Beings'*, THE VERGE (Dec. 4, 2014), https://www.theverge.com/2014/12/4/7331777/amazon-mechanical-turk-workforce-digital-labor [https://perma.cc/N2TX-ZWVE].

102. *Id.*

103. Kalleberg, *supra* note 43, at 260.

104. De Stefano, *supra* note 11, at 480–85; Aloisi, *supra* note 12, at 686–87.

105. Trebor Scholz, *How Platform Cooperativism Can Unleash the Network*, *in* OURS TO HACK AND OWN: THE RISE OF PLATFORM COOPERATIVISM, A NEW VISION FOR THE FUTURE OF WORK AND A FAIRER INTERNET 24–25 (Trebor Scholz & Nathan Schneider, eds. 2017). *See also* Eillie Anzilotti, *Worker-Owned Co-ops are Coming for the Digital Gig Economy*, FAST COMPANY (May 31, 2018), https://www.fastcompany.com/40575728/worker-owned-co-ops-are-coming-for-the-digital-gig-economy [https://perma.cc/KU7B-95QE]; Trebor Scholz, *Platform Cooperativism vs. The Sharing Economy*, MEDIUM (Dec. 5, 2014), https://medium.com/@trebors/platform-cooperativism-vs-the-sharing-economy-2ea737f1b5ad [https://perma.cc/VU2N-67KG].

106. Scholz, *supra* note 105, at 24–25.

conduct and corporate social responsibility norms.[107] These would encompass the idea of fair remuneration, which at the very least, would reflect the minimum wage, but would perhaps in fact be more akin to a living wage. Disclosure and transparency are also important, so that workers understand the big picture of what they are working for and can make informed choices.[108] Finally, there need to be procedural safeguards for workers on platforms. If there are rating systems that are being built up over time, then workers should be able to have access to that data, and also to be able to contest the data if it is wrongfully withheld.[109] It is also important to ensure for procedural protections so that wage theft does not occur.

V. CONCLUSION

Ultimately, this Article has attempted to give voice to the growing sense of unease the author feels when hearing the term "sharing economy" used by the media, academics, or within the zeitgeist. While there certainly are some online business models that involve collaboration and sharing, others have no such motivation. Rather, these platforms look, if anything, even more commodified than their equivalents in the offline world. If that is accurate, then it seems disingenuous to keep using the erroneous terminology of "sharing." Worse yet, that terminology may be disguising labor trends that are of significant concern, keeping those issues from receiving due attention. To have a full and fair conversation about these issues and the future world of work that we want, we should leave the misleading rhetoric behind.

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107. For more on this point, see Cherry & Poster, *supra* note 87, at 299–310.
108. *Id.*
109. *Id*.