

# “I DON’T WORK FOR FREE”: THE UNPAID LABOR OF CHILD SOCIAL MEDIA STARS

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## Abstract

Today, some of the biggest child stars are not getting their start on the silver screen. Instead, they are finding success through their (or their parent’s) smartphones. The explosion of social media over the past few years has created a new type of child star: the kid influencer or “the kidfluencer.” These children appear alone or alongside their families to discuss child’s clothing, toys, and other family-related topics. If they gain enough followers, they may be able to monetize their social media accounts and obtain sponsorships from big brands such as Walmart and Mattel. Even though the method of achieving celebrity status has changed, certain problems with child stardom remain the same. Some parents are willing to sacrifice their children’s privacy, freedom, and mental health in their quest for fame and fortune. To make matters worse, these children are not always entitled to the money they make. This Note explores the protections (or lack thereof) afforded to children in monetized social media content. It will review what measures are being taken to protect children online in the United States and overseas. The Note ends by offering potential solutions aimed at safeguarding kidfluencers and the money they make.

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## INTRODUCTION

On May 27, 2020, a popular family of YouTubers, Myka and James Stauffer, announced that they were placing their autistic son, Huxley,<sup>1</sup> whom they had adopted from China three years prior, with a new family.<sup>2</sup> Myka had started posting on her personal YouTube channel in 2012.<sup>3</sup> Her early videos centered around health (giving followers advice on how to improve their wellness) and lifestyle (sharing stories about her personal life, interests, and shopping habits) content.<sup>4</sup> After her health and lifestyle videos failed to take off, Myka started leaning more into family content, posting videos featuring James and their biological children from their home in Ohio.<sup>5</sup> Myka created a separate channel, *The Stauffer Life*, which focused on her relationship with James and their expanding family.<sup>6</sup> Myka continued posting on her personal channel, which no longer featured her family.<sup>7</sup> Both channels were monetized,<sup>8</sup> meaning that they received money from video viewership and advertisements generated by YouTube.<sup>9</sup>

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1. Even though Huxley is a minor who deserves privacy, his name is used in this Article because it has already been publicized by his former adoptive parents and multiple news organizations.

2. Stephanie McNeal, *A YouTuber Placed Her Adopted Autistic Son from China with a New Family — After Making Content with Him for Years*, BUZZFEED NEWS (May 28, 2020, 8:45 PM), <https://www.buzzfeednews.com/article/stephaniemcneal/myka-stauffer-huxley-announcement> [<https://perma.cc/7Z3B-84RZ>].

3. Caitlin Moscatello, *Un-Adopted: YouTubers Myka and James Stauffer Shared Every Step of Their Parenting Journey. Except the Last.*, THE CUT (Aug. 18, 2020), <https://www.thecut.com/2020/08/youtube-myka-james-stauffer-huxley-adoption.html> [<https://perma.cc/9BT8-7QWB>].

4. Moscatello, *supra* note 3. See generally David Woutersen, *20 Most Popular YouTube Channel Types to Start*, OUT OF THE 925 (Aug. 5, 2022), <https://outofthe925.com/most-popular-youtube-channel-types/> [<https://perma.cc/894R-UCTZ>] (listing the most successful types of YouTube channels, including health and lifestyle).

5. Moscatello, *supra* note 3.

6. *Id.* Content on *The Stauffer Life* channel was deleted. *Myka Stauffer: Backlash After YouTubers Give Up Adopted Son*, BBC NEWS (May 28, 2020), <https://www.bbc.com/news/world-us-canada-52839792#> [<https://perma.cc/W3HH-BLPY>].

7. Moscatello, *supra* note 3.

8. McNeal, *supra* note 2.

9. MINT, *How Much Do Youtubers Make & How to Become a Youtuber*, INTUIT: MINT LIFE (Aug. 24, 2022), <https://turbo.intuit.com/blog/relationships/how-much-do-youtubers-make-5035/> [<https://perma.cc/CK5J-W9TQ>]; John Lister, *What Does “Monetize” Mean on YouTube?*,

In 2016, the Stauffers announced that they planned to adopt an infant from China.<sup>10</sup> Typically, adoption experts and agencies advise prospective parents to avoid sharing information about a child's adoption before it is official in order to prevent putting the adoption in jeopardy.<sup>11</sup> Myka ignored this recommendation and uploaded twenty-seven (later deleted) videos about her family's "adoption journey."<sup>12</sup> She began asking her fans for donations to help with the adoption expenses and created a campaign in which "every person who donated \$5 would unlock a different piece of a 1,000-piece puzzle, which would . . . be a photo of Huxley that she would reveal to the world" once completed.<sup>13</sup>

The adoption agency and a physician revealed to the Stauffers that Huxley had "brain damage" and would require extensive care.<sup>14</sup> Even though the couple was initially opposed to adopting a child with a disability and the doctor cautioned them about doing so, they continued through with the process.<sup>15</sup> In October 2017, the Stauffers traveled to China to adopt their son and meet him for the first time.<sup>16</sup> They posted a video of the trip entitled "Huxley's EMOTIONAL Adoption VIDEO!! GOTCHA DAY China Adoption" that Myka dedicated to "all of the orphans around the world."<sup>17</sup> The video accumulated over 5.5 million views, and people from around the world watched as "Huxley, then only 2 and a half, crie[d] and flail[ed] in Myka's arms, the camera still fixed on him."<sup>18</sup>

Myka continued to post updates as Huxley adjusted to his new family and country.<sup>19</sup> She uploaded sweet videos of Huxley connecting with his new siblings, laughing, and playing.<sup>20</sup> She also, however, shared videos of some not-so-sweet moments:

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AZCENTRAL, <https://yourbusiness.azcentral.com/monetize-mean-youtube-22360.html> [https://perma.cc/6XAK-NCJ4] (last visited Sept. 5, 2022).

10. McNeal, *supra* note 2.

11. Moscatello, *supra* note 3.

12. McNeal, *supra* note 2.

13. *Id.*

14. *Id.*; Moscatello, *supra* note 3; Brittany Galla, *Myka Stauffer Opens Up About Adoption*, PARADE (May 29, 2020), [https://parade.com/918868/brittany\\_galla/international-adoption-special-needs-myka-stauffer/](https://parade.com/918868/brittany_galla/international-adoption-special-needs-myka-stauffer/) [https://perma.cc/S8QD-WNM5].

15. Moscatello, *supra* note 3.

16. *Id.*

17. McNeal, *supra* note 2. Despite its popularity on social media, "Gotcha Day" is a term that many members of the adoption community have criticized. *The Controversy of 'Gotcha Day'*, CONSIDERING ADOPTION, <https://consideringadoption.com/the-controversy-of-gotcha-day/> [https://perma.cc/U9CX-HFDS] (last visited Sept. 5, 2022).

18. Moscatello, *supra* note 3.

19. *Id.*

20. *Id.*

Myka and James continued to post videos about Huxley's medical prognosis as well as his struggles with the apparent aftereffects of food insecurity (a relatively common issue for adopted and foster children, who may hoard or fixate on food), communication challenges, and meltdowns. Myka spoke regularly about struggling with some of Huxley's behaviors. There were also on-camera moments that would later concern some viewers: In one video, Huxley appeared with his thumb duct-taped, seemingly to prevent him from sucking it (in [a] sheriff's-office report, one of the Stauffers told a deputy he would suck his thumb so raw "he would have blisters"). In another, Myka followed the child with a camera while he cried, asking him, "Are you done fitting?"<sup>21</sup>

The Stauffers' popularity and wealth continued to grow.<sup>22</sup> They collaborated with other popular family vloggers and started participating in brand deals.<sup>23</sup> Myka shared sponsored videos focusing on Huxley's adoption and Instagram advertisements featuring her son.<sup>24</sup> She also wrote pieces for online magazines where she talked about Huxley's medical history.<sup>25</sup>

By the time the Stauffers announced they had "rehomed," or placed Huxley with another family,<sup>26</sup> the couple had amassed over one million subscribers on their two family-centered accounts (James had created a third channel focused on car detailing).<sup>27</sup> The Stauffers are estimated to have earned between "\$4,100 to \$66,700 from their three channels in April and May 2020, . . . a number that does not include revenue from sponsorships."<sup>28</sup>

The Stauffers' announcement about giving away their son was met with intense backlash.<sup>29</sup> Many commentators felt the Stauffers had

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21. *Id.*

22. *Id.*

23. Moscatello, *supra* note 3.

24. *Id.*

25. Galla, *supra* note 14.

26. See Michele Jackson, *What is Adoption Rehoming, Disruption, Dissolution?*, MJL ADOPTIONS (May 20, 2014), <https://mljadoptions.com/blog/adoption-rehoming-disruption-dissolution-20140520#> [<https://perma.cc/E6EU-W8DF>] ("*Adoption Rehoming* is a non-legal term describing the practice of placing an adoptive child in another family's home."); see also Megan Testerman, *A World Wide Web of Unwanted Children: The Practice, the Problem, and the Solution to Private Re-Homing*, 67 FLA. L. REV. 2103, 2107 (Mar. 2016) ("Historically, people have used the term 'private re-homing' to discuss finding new placements for pets, but now it describes custody transfers of children handled in much the same way.").

27. Moscatello, *supra* note 3.

28. *Id.*

29. Alexander Kacala, *YouTube 'Influencers' Face Backlash After Giving Up Custody of Adopted Son*, TODAY (May 28, 2020, 3:32 PM), <https://www.today.com/parents/youtuber-criticized-giving-custody-adopted-son-t182639> [<https://perma.cc/V4WY-FUKS>].

exploited Huxley for financial gain and called for the removal of any monetized content featuring Huxley.<sup>30</sup> While any discussion about the Stauffers' decisions to pursue a YouTube career and adopt Huxley would be mainly speculation, the controversial rehoming of Huxley serves as a backdrop for an issue that is sure to receive increased attention as user-created shared content becomes more popular in society: what is being done to make sure that children in monetized social media content like Huxley are not being taken advantage of?

The answer is: currently, not much.<sup>31</sup> Even though Huxley was shuffled between multiple homes and had his medical history and temper tantrums publicized all over the Internet, Huxley and other children across the United States receive very little protection from regulations aimed at protecting privacy or financial earnings.<sup>32</sup> There are no federal or state laws which indicate that the Stauffers should have paid Huxley for his appearances on their YouTube channels or sponsored Instagram posts.<sup>33</sup> There is also very little Huxley could have done to protect his privacy or control his image.<sup>34</sup> In fact, had Myka not taken it upon herself to take down the videos featuring Huxley, Myka most likely could have continued to profit from Huxley's story with little government interference.<sup>35</sup>

This Note will attempt to shine a light on the lack of protections afforded to children in monetized social media content. Part I will explain the concept of "sharenting" and the rise of monetized social media content featuring children. Part II will discuss the potential social media has for exploiting children financially, physically, and emotionally and will introduce measures states have taken to protect children in traditional entertainment roles as well. Part III will highlight some existing laws that protect children online, while Part IV will address the issues the government has with trying to regulate social media content featuring

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30. See Cynthia Martin, *I'm an Autism Expert Who Adopted 2 Children with Special Needs. Myka Stauffer Shouldn't Have Apologized for 'Rehoming' Her Adopted Son*, INSIDER (July 6, 2020, 1:29 PM), <https://www.insider.com/myka-stauffer-shouldnt-have-apologized-for-rehoming-her-son-2020-7> [<https://perma.cc/4A5W-QSLJ>] ("Myka should've should've [sic] apologized for using her son as a prop for her picture perfect family — and for monetizing him on social media along the way.").

31. Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents*, THE HOLLYWOOD REPORTER (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/news/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968> [<https://perma.cc/XF7Y-4C7P>].

32. Stephanie McNeal, *Will Huxley Stauffer's Story Be the Wake-Up Call That Leads to Protections for Children of Influencers?*, BUZZFEED NEWS (May 29, 2020, 8:00 AM), <https://www.buzzfeednews.com/article/tanyachen/will-huxley-stauffers-story-be-the-wake-up-call-that-leads> [<https://perma.cc/42T4-FQZF>].

33. Lambert, *supra* note 31.

34. McNeal, *supra* note 32.

35. *Id.*

children and what is currently being done to address the problem in other countries. Finally, Part V will consider ways to address the issue of sharenting for financial gain. In general, this Note will focus primarily on YouTube and Instagram, as they are two of the most popular social media platforms for influencers and user-created monetized content.<sup>36</sup> More recent applications, such as TikTok, are developing a new crop of child stars that will also need protection.<sup>37</sup>

The purpose of this Note is not to villainize social media or suggest that parents should never be allowed to share information about their children or receive financial compensation for their posts. Social media has proven to be an excellent tool for connecting people and giving individuals from marginalized communities a platform to share their stories.<sup>38</sup> There are also parents who are very conscious of their children's online presence and how it can impact their future both financially and emotionally.<sup>39</sup> However, social media is still a relatively new forum, so there is room for improvement, and issues arising from sharenting are often overlooked in discussions centered around children online.<sup>40</sup>

## I. THE RISE OF SHARENTING AND THE NEW AGE OF CHILD STARS

As the Internet began to take off and more people began to share information about their lives online, the term “sharenting” was coined to describe the practice of parents using social media to disclose information

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36. *Most Used Social Media Networks for Influencer Marketing*, SOCIALPUBLI.COM (Apr. 9, 2019), <https://socialpubli.com/blog/most-used-social-media-sites-for-influencer-marketing/> [<https://perma.cc/DZN3-EGM8>].

37. See Rachel E. Greenspan, *TikTok Is Breeding a New Batch of Child Stars. Psychologists Say What Comes Next Won't Be Pretty*, INSIDER (July 9, 2020, 1:42 PM), <https://www.insider.com/psychologists-say-social-media-fame-may-harm-child-star-influencers-2020-5> [<https://perma.cc/8SGH-RSS6>] (“Experts warn that these young [TikTok] influencers will face the typical hurdles of child fame, but with the additional complication of real-time social media surveillance by millions and an algorithmically programmed addiction to the instant gratification of a never-ending barrage of notifications.”); see also Deanna Ting, *‘Every Kid Wants to Be an Influencer’: Why TikTok Is Taking Off with Gen Z*, DIGIDAY (Feb. 7, 2020), <https://digiday.com/marketing/every-kid-wants-influencer-tiktok-taking-off-gen-z/> [<https://perma.cc/8SGH-RSS6>] (“TikTok appeals to Gen Z . . . because of the way it’s been designed from the very beginning; it emphasizes short-form video content, it’s easy to use and it’s even easier to go viral on the app than other more established social media platforms. It also feeds in perfectly to Gen Z’s desire for entrepreneurship and being a creator.”).

38. Naomi Day, *Everyone Can Learn from How Marginalized Communities Use Social Media*, ONEZERO (Jan. 15, 2020), <https://onezero.medium.com/marginalized-communities-know-the-upside-of-oversharing-on-social-media-8bee5f908197> [<https://perma.cc/9MRA-VC5B>]; *Marginalized Groups Use the Internet to Broaden Their Networks, Rather Than Reinforce Ties*, SCIENCE DAILY (Nov. 16, 2015), <https://www.sciencedaily.com/releases/2015/11/151116152215.htm> [<https://perma.cc/697T-MMEW>].

39. Some parents of child YouTubers have pledged to save their children’s earnings for when they become an adult. See Lambert, *supra* note 31.

40. McNeal, *supra* note 32.

about their children.<sup>41</sup> According to the Pew Research Center, around eight in ten parents share information about their children on social media.<sup>42</sup> Parents usually share information about their kids to keep their friends and family updated on their lives, to connect with them, and learn from other parents going through similar situations.<sup>43</sup> For example, many parents of children who have medical conditions have found support through Facebook groups.<sup>44</sup>

Although sharenting can positively impact parents who feel isolated while raising their kids, there is a growing concern among critics about parents who tend to overshare and the potential long-term effects information disclosure may have on their children.<sup>45</sup> USA Today reported that “[s]eventy-four percent of parents say they know a parent who has shared too much information about a child on social media, including, fifty-six percent who said they knew someone who shared embarrassing information about a child.”<sup>46</sup> While this trend may not be an issue if the information is shared between a small group of close friends and family, nothing on the Internet is truly private.<sup>47</sup> Any post has the potential to

41. *Sharenting*, COLLINS DICTIONARY, <https://www.collinsdictionary.com/submission/11762/Sharenting> [<https://perma.cc/JRR7-RR9U>] (last visited Sept. 6, 2022); *Sharent*, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/us/buzzword/entries/sharent.html> [<https://perma.cc/GW6V-EPLH>] (last visited Sept. 6, 2022).

42. See Brooke Auxier et al., *Parents’ Attitudes – and Experiences – Related to Digital Technology*, PEW RSCH. CTR. (July 28, 2020), <https://www.pewresearch.org/internet/2020/07/28/parents-attitudes-and-experiences-related-to-digital-technology/> [<https://perma.cc/DA4S-VF9N>] (“82% of parents who use social media say they have posted photos, videos or other information about their children on these sites.”).

43. Nione Meakin, *The Pros and Cons of ‘Sharenting’*, THE GUARDIAN (May 18, 2013, 2:00 PM), <https://www.theguardian.com/lifeandstyle/2013/may/18/pros-cons-of-sharenting> [<https://perma.cc/F8L4-TUC5>]; see Maeve Duggan et al., *Parents and Social Media*, PEW RSCH. CTR. (July 16, 2015), <https://www.pewresearch.org/internet/2015/07/16/parents-and-social-media/> [<https://perma.cc/26BX-6Q8X>] (“59% of social-media-using parents indicate that they have come across useful information *specifically about parenting* in the last 30 days while looking at other social media content . . . 42% of these parents have received social or emotional support from their online networks about a parenting issue in the last 30 days.”).

44 See Sarah Catrin Titgemeyer & Christian Patrick Schaaf, *Facebook Support Groups for Rare Pediatric Diseases: Quantitative Analysis*, 3 JMIR PEDIATRICS & PARENTING 1, 8 (2020) (finding that the use of Facebook by parents as a tool for pediatric disease support groups is expected to increase).

45. Meakin, *supra* note 43.

46. Mary Bowerman, *Do You Overshare About Your Kids Online?*, USA TODAY (Mar. 16, 2015, 1:07 PM), <http://www.usatoday.com/story/tech/2015/03/16/parents-over-sharing-online/24825981/> [<https://perma.cc/7MYH-GLSB>].

47. See Joshua Hawkins, *Why Social Media Will Never Offer True User Privacy*, LIFEWIRE (July 12, 2021, 2:00 PM), <https://www.lifewire.com/why-social-media-will-never-offer-true-user-privacy-5192229> [<https://perma.cc/RU2Z-8VWP>] (“Even with the release of more consumer-focused privacy features, experts say privacy always will be an issue on social media because there are too many variables involved with keeping your information and content from being shared.”).

become a news story overnight.<sup>48</sup> Photos and other information about a child can also easily find their way into the hands of pedophiles<sup>49</sup> and can cause a child to be subjected to bullying from both peers and strangers online.<sup>50</sup>

Experts warn that even when a child is young or unaware of their presence online, parental overshare may still have a negative impact on a child's digital footprint.<sup>51</sup> Once information is put online, it is hard to control since "[i]nformation shared on the Internet has the potential to exist long after the value of the disclosure remains, and therefore disclosures made during childhood have the potential to last a lifetime."<sup>52</sup> A child (or their future employer) may stumble upon embarrassing photos, stories about them getting in trouble, or information regarding their physical and mental health later in life.<sup>53</sup>

Despite these drawbacks, parents continue to share online, and many have found ways to profit off disclosures of their children's lives.<sup>54</sup> A sizeable number of parents have begun monetizing their children's lives

48. *These Kids Went Viral on the Internet. Here's How Their Families Dealt with the Aftermath*, THE LILY (Mar. 15, 2018), <https://www.thelily.com/these-kids-went-viral-on-the-internet-heres-how-their-families-dealt-with-the-aftermath/> [<https://perma.cc/GEL4-VDEF>]; Aya Tsintziras, *20 Kids Who Went Viral for the Best Reasons*, MOMS (Aug. 12, 2018), <https://www.moms.com/20-kids-who-went-viral-for-the-best-reasons/> [<https://perma.cc/8QDK-84Q9>].

49. See Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 847 (2017) ("[A] mother posted pictures online of her young twins during toilet training. She later learned that strangers accessed the photos, downloaded them, altered them, and shared them on a website commonly used by pedophiles."); see also Lucy Battersby, *Millions of Social Media Photos Found on Child Exploitation Sharing Sites*, SYDNEY MORNING HERALD (Sept. 30, 2015, 12:23 PM), <https://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html> [<https://perma.cc/6U4Q-68MM>] ("Innocent photos of children originally posted on social media and family blogs account for up to half the material found on some paedophile [sic] image-sharing sites.").

50. Steinberg, *supra* note 49, at 854–55.

51. *Id.*

52. *Id.* at 846.

53. Meakin, *supra* note 43; Phoebe Maltz Bovy, *The Ethical Implications of Parents Writing About Their Kids*, THE ATLANTIC (Jan. 15, 2013), <https://www.theatlantic.com/sexes/archive/2013/01/the-ethical-implications-of-parents-writing-about-their-kids/267170/> [<https://perma.cc/H3Q4-R5VE>].

54. Allie Volpe, *How Parents of Child Influencers Package Their Kid's Lives for Instagram*, THE ATLANTIC (Feb. 28, 2018), <https://www.theatlantic.com/family/archive/2019/02/inside-lives-child-instagram-influencers/583675/> [<https://perma.cc/8YXQ-DH49>]; Ines Novacic, *"It's Kinda Crazy": Kid Influencers Make Big Money on Social Media, and Few Rules Apply*, CBS NEWS (Aug. 23, 2019, 8:08 AM), <https://www.cbsnews.com/news/kid-influencers-instagram-youtube-few-rules-big-money-cbsn-originals/> [<https://perma.cc/KUC8-AUQ8>]; Taylor Mooney, *Companies Make Millions Off Kid Influencers, and the Law Hasn't Kept Up*, CBS NEWS (Aug. 26, 2019, 6:19 AM), <https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals/> [<https://perma.cc/2N53-UKXL>].

through sponsored YouTube videos and Instagram pictures.<sup>55</sup> The trend has created a new type of child star: the “kidfluencer.”<sup>56</sup> Brands like Walmart pay families to have their children use brand products or clothes and share the experience online with the families’ thousands—sometimes millions—of followers in order to expand the brand’s customer base.<sup>57</sup>

It’s no secret why parents and children would want to get into the influencing business. Social media is a multi-billion-dollar industry that anyone with a computer or smartphone can access.<sup>58</sup> The influencer industry is projected to bring in fifteen billion dollars by 2022.<sup>59</sup> There are influencers that cover almost every interest and niche community on the Internet.<sup>60</sup> Seeing as 40% of the United States is made up of families with children under the age of eighteen, there is a large market for family- and children-oriented products and social media content.<sup>61</sup> In fact, in 2019, the highest-earning YouTuber in the world was an eight-year-old boy who made an estimated twenty-two million dollars reviewing toys on the channel *Ryan ToysReview*.<sup>62</sup> Many other families have found success online as well, with some making upwards of \$5,000 for a single Instagram post.<sup>63</sup>

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55. Volpe, *supra* note 54; Rachel Dunphy, *The Dark Side of YouTube Family Vlogging*, N.Y. MAG. (Apr. 17, 2017), <https://nymag.com/intelligencer/2017/04/youtube-family-vloggings-dark-side.html> [https://perma.cc/4BE2-DP3Y].

56. Keepface, *The Rise of the “Kid Influencers”: Meet the New Generation of Influencers*, MEDIUM (Oct. 30, 2019), <https://keepface-com.medium.com/the-rise-of-the-kid-influencers-meet-the-new-generation-of-influencers-752f223b9cfb> [https://perma.cc/2DKB-2ZJW] (last visited Sept. 6, 2022).

57. Sapna Maheshwari, *Online and Making Thousands, at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [https://perma.cc/U8B2-BNH3].

58. Audrey Schomer, *Influencer Marketing: State of the Social Media Influencer Market in 2020*, PULSE NIGERIA (Dec. 17, 2019, 8:14 PM), <https://www.pulse.ng/bi/tech/influencer-marketing-state-of-the-social-media-influencer-market-in-2020/neenqtm> [https://perma.cc/HZ35-SXP6].

59. *Id.*

60. *Id.*

61. *Share of Family Households with Own Children Under 18 Years in the United States from 1970 to 2020, by Type of Family*, STATISTA (June 2, 2022), <https://www.statista.com/statistics/242074/percentages-of-us-family-households-with-children-by-type/> [https://perma.cc/Z2D5-LZAV].

62. Amanda Perelli, *The World’s Top-Earning YouTube Star is an 8-Year-Old Boy Who Made \$22 Million in a Single Year Reviewing Toys*, BUS. INSIDER (Oct. 20, 2019, 9:45 AM), <https://www.businessinsider.com/8-year-old-youtube-star-ryan-toysreview-made-22-million-2019-10> [https://perma.cc/5U3F-CRE7].

63. Volpe, *supra* note 54.

## II. SOCIAL MEDIA'S POTENTIAL TO EXPLOIT CHILDREN AND HOW STATES HAVE PROTECTED TRADITIONAL CHILD STARS

Children have been a staple in the entertainment industry for more than a century. One of the first known child performers, Lotta Crabtree, began her career at six years old.<sup>64</sup> Lotta was a singer and dancer during and after the California Gold Rush in the 1850s.<sup>65</sup> As the popularity of motion pictures rose in the early 1900s, so did the popularity of traditional child performers.<sup>66</sup> Many child actors, singers, models, and dancers found success on screen and on stage.<sup>67</sup> Stars such as Jackie Coogan, Shirley Temple, Judy Garland, and Elizabeth Taylor established themselves as household names in the entertainment world before their eighteenth birthdays.<sup>68</sup> A number of child actors, dancers, models, and singers continue to dominate the entertainment world today.<sup>69</sup>

With fame, money typically follows. This can lead to legal issues, especially when minors are involved. Many child stars are left defenseless against the biggest threat to their fortunes: their parents.<sup>70</sup> In almost every state, there is a common law rule that parents are entitled to their children's earnings.<sup>71</sup> The United States adopted this common law rule from traditional English law, under which the rule dictated that "the services and earnings of a minor child belong[] absolutely to the child's father while the child live[s] with and [i]s supported by him."<sup>72</sup> The rationale behind the rule is that giving parents their children's earnings compensates the parent for supporting their child:

The right to a child's services and earnings is reciprocal to the duty to support. In discussing the father's right to the child's earnings, it is said: It is certainly perfect while the period of the child's nurture continues. But if this is all, it can be of little consequence, because the child's labor and

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64. *Lotta Crabtree*, WOMEN HISTORY BLOG, <https://www.womenhistoryblog.com/2013/12/lotta-crabtree.html> [<https://perma.cc/582Z-NN29>] (last visited Sept. 9, 2022).

65. *Id.*

66. *ChildStars*, ENCYCLOPEDIA.COM (Nov. 31, 2020), <https://www.encyclopedia.com/children/encyclopedias-almanacs-transcripts-and-maps/child-stars> [<https://perma.cc/68V4-UCLQ>].

67. *Id.*

68. *Id.*

69. See Matt Berger, *15 Child Stars to Look Out for in the 2020s*, SCREEN RANT (Jan. 13, 2021), <https://screenrant.com/hollywood-child-stars-look-out-for-up-coming-2020s-elsie-fisher-noah-jupe/> [<https://perma.cc/2DYA-JZGC>] (discussing today's well-accomplished young actors).

70. See Destiny Lopez, *7 Celebs Whose Parents Decimated Their Fortunes*, BUS. INSIDER (Apr. 2, 2014, 5:47 PM), <https://www.businessinsider.com/7-celebs-whose-parents-decimated-their-fortunes-2014-4> [<https://perma.cc/Q4UD-6WJP>] (listing child actors whose parents squandered their fortunes).

71. See Jules D. Barnett & Daniel K. Spradlin, *Enslavement in the Twentieth Century: The Right of Parents to Retain Their Childrens' Earnings*, 5 PEPP. L. REV. 673, 675 (1978).

72. *Id.* at 677.

services are for that period of little value; nor could compensation be thus afforded for the many years when the child was entirely helpless. His right to their [his children's] services, like his right to their custody, rests upon the parental duty of maintenance, and it is said to furnish some compensation to him for his own services rendered to the child.<sup>73</sup>

In the 1930s, California was the first state to challenge this rule by creating a law aimed at protecting the wages of child entertainers.<sup>74</sup> The statute—which was revised in 2000 to offer even more safeguards<sup>75</sup>—was named the “Coogan Act” after famed child star Jackie Coogan.<sup>76</sup> In 1938, Coogan sued his mother for spending almost all of the four million dollars he had earned as a child star and for refusing to give him what was left.<sup>77</sup> He eventually recovered about \$125,000, a far cry from the fortune he had worked for years to amass.<sup>78</sup> The updated version of the Coogan Act states that money earned by minors in the entertainment industry is the property of the child and not their parents.<sup>79</sup> The Act “also requires that 15% of all minors’ earnings . . . be set aside in a blocked trust account commonly known as a Coogan Account.”<sup>80</sup> These accounts must be created at a California bank.<sup>81</sup>

A few other states have adopted their own version of the Coogan Act or created laws that have similar effects.<sup>82</sup> In New York, after obtaining a child performer permit, parents are required to open up either a Uniform

73. *Wardrobe v. Miller*, 200 P. 77, 79 (Cal. Ct. App. 1921) (internal quotations omitted) (brackets in original).

74. CAL. FAM. CODE §§ 6752–53 (2020).

75. Erica Siegel, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427, 434–35 (2000).

76. See Brad Smithfield, *Coogan Act: Stopped Parents of Famous Child Actors Seizing All the Childs Money*, THE VINTAGE NEWS (Oct. 29, 2016), <https://www.thevintagenews.com/2016/10/29/coogan-act-stopped-parents-of-famous-child-actors-seizing-all-the-childs-money/> [<https://perma.cc/79FW-DQ87>] (discussing the life and career of Jackie Coogan, who starred in Charlie Chaplin’s *The Kid* and played Uncle Fester in *The Adam’s Family*).

77. Jennifer Robin Terry, *The Wolf at the Door: Child Actors in Liminal Legal Spaces*, 11 J. HIST. CHILDHOOD & YOUTH 57–8 (2018); Deepa Pokharel, *The Story of Actor Jackie Coogan — A Millionaire Child, Who Was Beaten to the Ends by His Own Parents*, MEDIUM (Oct. 31, 2019), <https://medium.com/the-dustbin/the-story-of-actor-jackie-coogan-a-millionaire-child-who-was-beaten-to-the-ends-by-his-own-8d319ab9b02c> [<https://perma.cc/CK4H-3CE2>].

78. *Four States Protect Children’s Earnings with Coogan Accounts*, THINK GLAMOR (Dec. 8, 2018), <https://thinkglamor.com/lifestyle/young-actors-models/four-states-protect-childs-earnings-with-coogan-accounts/> [<https://perma.cc/FU2A-DGMB>].

79. *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/Y98B-PYH9>] (last visited Sept. 9, 2022).

80. *Id.*

81. *Id.*

82. Siegel, *supra* note 75, at 435–38; *Four States Protect Children’s Earnings*, *supra* note 78.

Transfers to Minors Act (UTMA) or a Uniform Gift to Minors Act (UGMA) compliant trust account.<sup>83</sup> These accounts have different rules regarding withdrawal than Coogan Accounts and can be opened in any bank in any state.<sup>84</sup> Like California, New York’s child entertainer statute requires a minimum of 15% of the child’s earnings to be deposited into the trust.<sup>85</sup> Failure to comply with the trust requirement will prevent the child from having their child performer permit renewed by the Department of Labor, which means the child will no longer be legally able to work as a child performer.<sup>86</sup> New Mexico, Louisiana, and Kansas also have laws similar to the Coogan Act but have different rules about when trust accounts are needed.<sup>87</sup>

Instead of following a traditional Coogan Act system, the Florida Labor Code states that “upon approval of a contract, ‘all earnings, royalties, or other compensation earned or received by the minor pursuant to said approved contract shall become the property of the minor,’”<sup>88</sup> and does not require that the money be put into a trust account.<sup>89</sup> However, the Florida law only applies “when a contract is subject to court approval. If the contract is never approved, then the earnings still belong to the parents.”<sup>90</sup> As a result, “The statute cannot be truly effective because . . . there is rarely a motive to have the contract approved in the entertainment industry today.”<sup>91</sup> In Massachusetts, earnings do not belong to the child outright.<sup>92</sup> Instead,

The employer is required to have the contract approved by the probate and family court in the county where the child resides in order for the child to be employed. Once the contract is approved, the court then uses the factors in section 85P(d)(2) to ensure that there is a protection plan for the child's earnings. By requiring contract approval, Massachusetts retains for the court the opportunity to intervene to protect a child’s earnings.<sup>93</sup>

This law gives children in Massachusetts slightly more court protection than those in Florida, but it also does not set specific guidelines

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83. N.Y. LAB. LAW § 151 (2022); *Coogan Law*, *supra* note 79.

84. *Four States Protect Children’s Earnings*, *supra* note 78.

85. N.Y. LAB. LAW § 151 (2022).

86. *Id.*

87. CAL. FAM. CODE §§ 6752–53 (2022); N.M. STAT. ANN. §§ 50-6-19(A), (I) (2022); LA. STAT. ANN. §§ 51:2132(A), :2133(A)(1) (2022); KAN. STAT. ANN. § 38-620(b)(1) (2022).

88. Siegel, *supra* note 75, at 437; FLA. STAT. ANN. § 743.08(3)(b) (2022).

89. Siegel, *supra* note 75, at 437; FLA. STAT. ANN. § 743.08(3)(b) (2022).

90. Siegel, *supra* note 75, at 437.

91. *Id.*

92. *Id.*; MASS. GEN. LAWS ANN. ch. 231, § 85P ½ (West 2022).

93. Siegel, *supra* note 75, at 437–38.

for setting aside and depositing the child's earnings like the laws in California and New York.<sup>94</sup>

While not perfect, the Coogan Act and similar statutes have given child stars such as Macaulay Culkin,<sup>95</sup> Gary Coleman,<sup>96</sup> and LeAnn Rimes<sup>97</sup> the ability to fight against parents stealing their paychecks.<sup>98</sup> These laws, however, do not apply to children on social media, which can be a major problem because children under the age of thirteen cannot own accounts on YouTube and Instagram.<sup>99</sup> Even California, which has the strictest regulations for child entertainers in the country,<sup>100</sup> offers very little protection for minors' Internet-based content and affords parents the right to their minor children's services and earnings by statute.<sup>101</sup> Child labor laws regarding work time limits and education requirements also do not apply to kidfluencers.<sup>102</sup>

While uploading a couple of photos and short videos online may not seem as demanding as spending three to six months filming a motion picture or touring in a stage production, there is a downside to trying to make it as an influencer. There are thousands, if not millions, of social media users trying to become influencers,<sup>103</sup> and companies only have so much money they can spend on influencer marketing. To get paid, social

94. *Id.* at 438; MASS. GEN. LAWS ANN. ch. 231, § 85P ½ (c)–(d) (2022).

95. Macaulay Culkin starred in the holiday classic *Home Alone* at the age of ten years old. *Macaulay Culkin*, IMDB, [https://www.imdb.com/name/nm0000346/bio?ref\\_=nm\\_ov\\_bio\\_sm](https://www.imdb.com/name/nm0000346/bio?ref_=nm_ov_bio_sm) [<https://perma.cc/KD4A-B6KX>] (last visited Sept. 4, 2022).

96. Gary Coleman, "THE child TV star of the late 1970s and early 1980s," was best known for his role in *Diff'rent Strokes*. *Gary Coleman*, IMDB, <https://www.imdb.com/name/nm0171041/> [<https://perma.cc/2NPE-ELGR>] (last visited Sept. 9, 2022).

97. LeAnn Rimes is a singer and actress who recorded her first album at eleven-years-old. *LeAnn Rhimes*, IMDB, [https://www.imdb.com/name/nm0005361/bio?ref\\_=nm\\_ov\\_bio\\_sm](https://www.imdb.com/name/nm0005361/bio?ref_=nm_ov_bio_sm) [<https://perma.cc/8ZET-RBZN>] (last visited Sept. 9, 2022).

98. Culkin, Coleman, and Rhimes have all filed related financial claims against their parents. See Jessica Fecteau, *Family Feuds: When Child Stars and Their Parents Collide in Court*, PEOPLE (Apr. 9, 2015, 8:15 AM), <https://people.com/crime/child-stars-who-have-sued-their-parents/> [<https://perma.cc/S57B-YR XR>].

99. Julia Carrie Wong, *'It's Not Play If You're Making Money': How Instagram and YouTube Disrupted Child Labor Laws*, THE GUARDIAN (Apr. 24, 2019, 1:00 PM), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> [<https://perma.cc/F87W-8DLE>].

100. Lambert, *supra* note 31.

101. CAL. FAM. CODE § 7500(a) (2022).

102. E.W. Park, *Child Influencers Have No Child Labor Regulations. They Should.*, LAVOZ NEWS (May 16, 2022), <https://lavozdeanza.com/opinions/2022/05/16/child-influencers-have-no-child-labor-regulations-they-should/> [<https://perma.cc/H98Y-MHG2>].

103. See Sarah Min, *86% of Young Americans Want to Become a Social Media Influencer*, CBS NEWS (Nov. 8, 2019, 4:49 PM), <https://www.cbsnews.com/news/social-media-influencers-86-of-young-americans-want-to-become-one/> [<https://perma.cc/9J6S-R986>] ("About 86% of young Americans surveyed said they're willing to try out influencing on their social media platforms . . . 'Social media star' has become the fourth-most popular career aspiration for kids.")

media stars have to show they have, and can keep, a large number of followers.<sup>104</sup> This creates pressure for creators to maintain their online presence by continuously posting content and experimenting with new (and sometimes extreme) ideas to gain views.<sup>105</sup> When children are involved, such pressure can cause them to feel overworked and put them in traumatizing situations.

For example, an eleven-year-old girl who started a YouTube channel about her doll collection for fun quickly found herself being pressured by her mother to create more videos after the channel became popular enough to earn advertisement revenue.<sup>106</sup> The girl spent all night editing videos, trying to fulfill her mother's request that she become famous and generate an income sufficient to provide for the entire family.<sup>107</sup> The child knew that her online career would allow her parents to quit their jobs and remembers her mother "always told [her] that she would never touch a cent, and then it became, 'I want 30%; I want 50%; I'm owed this.'"<sup>108</sup> The girl eventually developed an anxiety disorder, moved out of her mother's house to live with her father, and gave up her doll collection.<sup>109</sup>

Protecting child social media stars has often required police and court intervention. The creators of the YouTube channel *DaddyOFive*, Michael and Heather Martin, were each sentenced to five years' probation and lost custody of two of their five children for sharing videos of their children that many characterized as abusive.<sup>110</sup> The videos often featured the two parents "swearing and screaming at [their children] until they cr[ie]d."<sup>111</sup> For example, "In one video, Michael smashed his son's Xbox with a hammer in front of him. (It wasn't his real Xbox, but the child did not

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104. Viral Access, *Is It Hard to Be an Influencer?*, MEDIUM (Oct. 8, 2019), <https://medium.com/@viralaccess/is-it-hard-to-be-an-influencer-3c222f997a39> [<https://perma.cc/8MHD-UHCF>]; Leanna Garfield, *What It Takes to Achieve Fame and Fortune on YouTube*, BUS. INSIDER (Sept. 10, 2016, 10:00 AM), <https://www.businessinsider.com/how-to-be-a-youtuber-2016-9> [<https://perma.cc/CT2J-86EK>].

105. Viral Access, *supra* note 104; Garfield, *supra* note 104.

106. Dunphy, *supra* note 55.

107. *Id.*

108. *Id.*

109. *Id.*

110. *DaddyOFive Parents Lose Custody 'Over YouTube Pranks'*, BBC NEWS (May 2, 2017), <https://www.bbc.com/news/technology-39783670> [<https://perma.cc/C9SN-8URD>]; Neal Augenstein, *'DaddyOFive' Parents Found Guilty of Neglect, Avoid Jail*, WTOP NEWS (Sept. 11, 2017, 1:05 PM), <https://wtop.com/frederick-county/2017/09/parents-behind-daddyofive-prank-videos-plead-guilty-neglect/> [<https://perma.cc/T429-N4SY>].

111. KC Baker, *Controversial 'DaddyOFive' YouTube Parents Lose Custody of 2 Children Featured in Prank Videos*, PEOPLE (May 3, 2017, 5:28 PM), <https://people.com/crime/controversial-daddyofive-youtube-parents-lose-custody-of-2-children-featured-in-prank-videos/> [<https://perma.cc/QH7F-X92B>].

know this.)”<sup>112</sup> In another video, the family tried to convince their youngest son that another family was adopting him.<sup>113</sup> The court forbade the Martins from making and posting videos featuring their other children.<sup>114</sup> Still, they continued to do so from a second YouTube account (this time *FamilyOFive*) until the website banned them.<sup>115</sup>

As a second example, Michelle Hobson, a mother who ran the popular channel *Fantastic Adventures*, was arrested for allegedly molesting and abusing her seven adopted children.<sup>116</sup> Police claimed that she would punish her children for forgetting their lines or for not participating in her videos.<sup>117</sup> She would allegedly “withhold food and water for days at a time, pepper-spray them, force them to take ice baths and lock them in a barren closet.”<sup>118</sup> Her children also claimed she took them out of school so that they would have more time for filming and touched at least one of them inappropriately.<sup>119</sup> Hobson died before standing trial, and her assets were distributed to the children who appeared in her videos.<sup>120</sup>

Had Hobson lived, there is no guarantee that her children would have been compensated for the work Hobson forced them to do, even though *Fantastic Adventures* is estimated to have generated a maximum of 1.7 million dollars per year.<sup>121</sup> While money could never rectify the trauma that Hobson’s children and other exploited kidfluencers have faced, it would at least allow children to regain some control, as they would no longer be financially dependent on their parents.

112. Madison Malone Kircher, *Sentence Reduced for Parents in Abusive YouTube ‘Prank’ Videos*, N.Y. MAG. (Jan. 10, 2019), <https://nymag.com/intelligencer/2019/01/daddyofive-abusive-youtube-parents-get-reduced-sentence.html> [<https://perma.cc/5NYJ-V7Z2>].

113. *Id.*

114. *Id.*

115. Natalie Wolfe, ‘FamilyOFive’ YouTube Channel Deleted After Months of Backlash, NEWS.COM.AU (July 21, 2018, 3:55 PM), <https://www.news.com.au/lifestyle/parenting/kids/familyofive-youtube-channel-deleted-after-months-of-backlash/news-story/faf103b8e20d309c2757244d8dd4f07f> [<https://perma.cc/GD33-7T5J>].

116. Eric Levenson & Mel Alonso, *A Mom on a Popular YouTube Show Is Accused of Pepper-Spraying Her Kids When They Flubbed Their Lines*, CNN (Mar. 27, 2019, 7:43 PM), <https://www.cnn.com/2019/03/20/us/youtube-fantastic-adventures-mom-arrest-trnd/index.html> [<https://perma.cc/CZL2-V9GX>].

117. *Id.*

118. *Id.*

119. *Id.*

120. *Official: ‘YouTube Mom’ Accused of Abuse Dies in Scottsdale*, ABC15 ARIZ. (Nov. 13, 2019, 8:12 PM), <https://www.abc15.com/news/region-northeast-valley/scottsdale/official-youtube-mom-machelle-hobson-dies-at-hospital-in-scottsdale> [<https://perma.cc/RN3M-7QW>].

121. Lily Altavena, *How YouTubers Like Mom Accused of Child Abuse Make Money Off Popular Videos*, AZCENTRAL (Mar. 21, 2019, 4:19 PM), <https://www.azcentral.com/story/news/local/pinal/2019/03/20/how-fantastic-adventures-youtube-mom-machelle-hobson-made-money-off-videos/3224280002/> [<https://perma.cc/5JJS-8BS9>].

### III. EXISTING RULES TO PROTECT CHILDREN ONLINE

Some steps have been taken to protect kidfluencers from online exploitation. In 1998, Congress enacted the Children's Online Privacy Protection Act (COPPA).<sup>122</sup> The Act, amended in 2013, is designed to help parents protect their children's privacy online.<sup>123</sup> As a part of the Act, the Federal Trade Commission (FTC) is required to regulate "commercial websites and online services directed to children under 13 or knowingly collecting personal information from children under 13."<sup>124</sup> The FTC requires websites and online services to:

- (a) notify parents of their information practices; (b) obtain verifiable parental consent for the collection, use, or disclosure of children's personal information; (c) let parents prevent further maintenance or use or future collection of their child's personal information; (d) provide parents access to their child's personal information; (e) not require a child to provide more personal information than is reasonably necessary to participate in an activity; and (f) maintain reasonable procedures to protect the confidentiality, security, and integrity of the personal information.<sup>125</sup>

To avoid being subject to COPPA and FTC's guidelines, almost all social media websites and applications require users to be at least thirteen years old to make an account.<sup>126</sup> There is nothing, however, to prevent children from lying about their age or making accounts using their parent's information.<sup>127</sup> Originally, social media companies were able to get away with having relaxed guidelines for protecting children on their platforms because they claimed they were not directly targeting

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122. 15 U.S.C. §§ 6501–06 (2022).

123. *Children's Online Privacy Protection Act*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/statutes/childrens-online-privacy-protection-act> [<https://perma.cc/F627-BQJD>] (last visited Sept. 11, 2022).

124. *Id.*

125. *Id.*

126. *Age Restrictions on Social Media Services*, CHILDNET (Apr. 25, 2018), <https://www.childnet.com/blog/age-restrictions-on-social-media-services> [<https://perma.cc/4PYF-2M52>].

127. Paul Harper & Catherine Micallef, *CHILD'S PLAY How Old Do You Have to Be to Have Facebook and Instagram Account? Social Media Age Restrictions Explained*, THE SUN (June 8, 2022), <https://www.the-sun.com/lifestyle/tech/289567/how-old-do-you-have-to-be-for-snapchat-facebook-instagram-accounts-social-media-age-restrictions-explained/> [<https://perma.cc/K7LH-LD7K>].

children.<sup>128</sup> However, in recent years, the FTC has been more strict about holding social media platforms accountable for violating COPPA.<sup>129</sup>

In 2019, YouTube and its parent company, Google, paid the FTC and the State of New York 170 million dollars in a settlement for violating child privacy laws.<sup>130</sup> The settlement arose out of allegations that “while YouTube claimed to be a general audience site, some of YouTube’s individual channels—such as those operated by toy companies—[were] child-directed and therefore [had to] comply with COPPA.”<sup>131</sup> The FTC and New York Attorney General further alleged that YouTube knew that there were multiple child-oriented channels on the website, but continued to collect personal information from viewers of such channels without parental consent.<sup>132</sup>

As a part of the settlement, YouTube was required to take a more active role to protect children using its platform.<sup>133</sup> In general, YouTube does not require users to have an account to watch most of the videos on its platform.<sup>134</sup> This meant that, prior to YouTube’s changes, children were able to watch videos at any time without YouTube’s knowledge, which was an issue when trying to avoid collecting children’s data. In order to prevent further COPPA violations, YouTube started requiring all content creators to notify the company if their content was geared toward children and began limiting data collection and personalized advertisements on child-oriented videos.<sup>135</sup> YouTube also disabled the comment section on videos featuring children to prevent pedophiles from

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128. See *Social Media: Defending Children’s Legal Rights to Privacy*, IDX (Feb. 19, 2020), <https://www.idx.us/knowledge-center/social-media-defending-childrens-legal-rights-to-privacy> [<https://perma.cc/EV75-6M2A>] (“So, many businesses . . . ignored COPPA altogether, claiming that their content is not directed solely to young children.”).

129. *Id.*

130. *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law*, FED. TRADE COMM’N (Sept. 4, 2019), <https://www.ftc.gov/news-events/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations> [<https://perma.cc/AK2Z-AK3N>].

131. *Id.*

132. *Id.*

133. See *Better Protecting Kids’ Privacy on YouTube*, YOUTUBE OFFICIAL BLOG (Jan. 6, 2020), <https://blog.youtube/news-and-events/better-protecting-kids-privacy-on-youtube/> [<https://perma.cc/9BB4-RBRG>] (“All creators will be required to designate their content as made for kids or not made for kids in YouTube Studio, and data from anyone watching a video designated as made for kids will be treated as coming from a child, regardless of the age of the user.”).

134. See Gretchen Siegchrist, *What to Watch on YouTube*, LIFEWIRE (Feb. 12, 2020), <https://www.lifewire.com/youtube-what-to-watch-1082424> [<https://perma.cc/A35C-6HRC>] (“You don’t need an account to watch YouTube videos, but it helps.”).

135. Susan Wojcicki, *An Update on Kids and Data Protection on YouTube*, YOUTUBE OFFICIAL BLOG (Sept. 4, 2019), <https://blog.youtube/news-and-events/an-update-on-kids> [<https://perma.cc/ZLS7-MYU5>]; *Better Protecting Kids’ Privacy*, *supra* note 133.

interacting with children and each other.<sup>136</sup> While YouTube has made great strides in protecting children's privacy, YouTube and other companies have largely failed to address the issue of children *appearing* in social media content. This leaves parents and others free to violate children's privacy online by sharing pictures and information that children might not want the world to see.

#### IV. ISSUES WITH REGULATING SHARENTING FOR FINANCIAL GAIN AND ATTEMPTS TO COMBAT THEM

States' few attempts to regulate children in monetized social media content and sharenting in general have mostly failed. In 2018, California lawmakers put together "a bill that attempted to add 'social media advertising' to the definition of employment in child labor law."<sup>137</sup> As a part of this bill, kidfluencers and other children working in the digital space "would have to obtain a work permit and follow measures similar to those required by the Coogan Law."<sup>138</sup> In 2019, the bill was signed into law, but it was water-downed from the original proposal:

[The law] exempts young digital creators from obtaining work permits if their performance is unpaid and shorter than an hour . . . [S]crapping the work permit provision effectively prevented the bill from enforcing Coogan Law protections, because in Hollywood they're a package deal: If a parent doesn't provide the studio with a Coogan account number, his or her child's work permit is voided. And if work permits aren't mandatory for kidfluencers, their parents have no legal obligation to open a Coogan account.<sup>139</sup>

Critics argued that enforcing permits would be nearly impossible because "[u]nlike traditional media, which is subject to strict schedules and studio oversight, digital content can be filmed whenever and wherever a creator wants."<sup>140</sup> This can also make adhering to scheduling and education requirements extremely difficult.<sup>141</sup>

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136. Julia Alexander, *YouTube Is Disabling Comments on Almost All Videos Featuring Children*, THE VERGE (Feb. 28, 2019, 1:53 PM), <https://www.theverge.com/2019/2/28/18244954/youtube-comments-minor-children-exploitation-monetization-creators> [https://perma.cc/DFF3-WV8P]; see Ron Lyons, *YouTube Keeps Having to Make Changes to Make Itself Safe for Kids*, SLATE (June 5, 2019, 4:30 PM), <https://slate.com/technology/2019/06/youtube-children-streaming-exploitation-history.html> [https://perma.cc/PPQ5-ZJGL] ("March 2019: YouTube disabled comments on many videos featuring children.").

137. Lambert, *supra* note 31.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

Even if the California law more rigorously safeguarded kidfluencers' financial futures, the law still only applies to minors in California.<sup>142</sup> Traditional child stars would be better protected if just a few more states implemented laws like the Coogan Act and stricter child labor regulations since such children primarily work with film studios and production companies based inside state lines. Kidfluencers, however, create social media content from across the United States. So even though YouTube and Instagram are California-based companies, there are no laws ensuring that Huxley from Ohio and the Hobson children in Arizona get a fair share for their work.<sup>143</sup>

One roadblock for regulating sharenting for financial gain on a national level is federal child labor laws. The Fair Labor Standards Act (FLSA), which sets the federal guidelines for child employment, including both work hour limits and wage requirements, does not apply to minors who work for their parents.<sup>144</sup> FLSA also exempts child entertainers employed in "motion pictures, theatrical productions, radio or television productions," but does not specify how the exemption applies to children on social media.<sup>145</sup> Regardless, the first exemption regarding minors employed by their parents means that federal law does not require the children of family bloggers to be paid a minimum wage or have set work hours.<sup>146</sup> Even if parents were required to pay their children under federal law, the common law presumption that parents are entitled to their children's earnings would essentially render the federal rule meaningless.<sup>147</sup>

Another issue with regulating sharenting is the reluctance of courts to tell parents how to raise their children, even if such reluctance results in compromising the minor's privacy.<sup>148</sup> A parent's right to control their children's upbringing was established in cases such as *Meyer v. Nebraska*<sup>149</sup> and *Pierce v. Society of Sisters*.<sup>150</sup> In *Meyer*, the U.S. Supreme Court determined that parents have the right to control their children's education.<sup>151</sup> The right is protected by the Fourteenth Amendment's provision against the deprivation of liberty without due

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142. Wong, *supra* note 99.

143. *Id.*

144. U.S. DEPT. OF LAB., CHILD LABOR PROVISIONS FOR NONAGRICULTURAL OCCUPATIONS UNDER THE FAIR LABOR STANDARDS ACT 3 (2016), <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/childlabor101.pdf> [<https://perma.cc/C5VT-T5UA>].

145. *Id.*

146. *Id.*

147. *See infra* Part II.

148. Steinberg, *supra* note 49, at 856.

149. 262 U.S. 390, 400 (1923).

150. 268 U.S. 510, 534–35 (1925).

151. *Meyer*, 262 U.S. at 399–401.

process.<sup>152</sup> The Court revisited this right in *Pierce*, where it concluded that a law requiring children eight through sixteen years old to go to public school was unconstitutional because it “interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control.”<sup>153</sup> While *Meyer* and *Pierce* involved the education sector, both cases generally stand for the rule that parents have a right to raise their children as they deem proper.<sup>154</sup>

Because parents have a right to control their children’s upbringing, the U.S. Supreme Court will only intervene in cases about children working for their parents when a child’s well-being is at issue. For example, in *Prince v. Massachusetts*, the Court held that the State of Massachusetts could prohibit children from selling publications on the street without infringing on parental rights because of the potential harm that could come to children from street preaching on the highway.<sup>155</sup>

In regard to a minor’s privacy interests, courts have also found that the interests of the state and the parents can take precedence over those of the child. In *Nguon v. Wolf*, a federal California court ruled that a school was entitled to inform a young girl’s mother that she had violated the school’s policy regarding inappropriate displays of public affection even though it meant revealing that the girl was in a same-sex relationship, which the girl did not want her parents to know.<sup>156</sup> The court agreed with the school that the student’s mother needed to be informed to ensure that the student’s due process rights were protected.<sup>157</sup>

This long line of cases, along with the constitutionally protected right to free speech and press,<sup>158</sup> makes putting a blanket ban on sharenting nearly impossible in the United States. Other countries have had more success with regulating sharenting and children in monetized social media content. On October 9, 2020, France passed a law focused on protecting child social media stars.<sup>159</sup> The law gives kidfluencers the

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152. *Id.* at 391.

153. *Pierce*, 268 U.S. at 534–35.

154. *Parental Rights Cases to Know*, ABA (Feb. 1, 2016), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-35/february-2016/parental-rights-cases-to-know/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-35/february-2016/parental-rights-cases-to-know/) [<https://perma.cc/L3RZ-JB3E>].

155. *Prince v. Massachusetts*, 321 U.S. 158, 165–69 (1944).

156. *Nguon v. Wolf*, 517 F. Supp. 2d 1177, 1195–96 (C.D. Cal. 2007).

157. *Id.*

158. *See* U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech, or of the press.”).

159. Kerry Breen, *New Law Aims to Protect Finances, Privacy of Child Social Media Stars*, TODAY (Oct. 9, 2020, 6:43 PM), <https://www.today.com/parents/law-protects-finances-privacy-child-social-media-stars-t193881> [<https://perma.cc/AH63-7VBL>]; *Enfants influenceurs: adoption de la proposition de loi* [Child Influencers: Adoption of the Bill], ASSEMBLÉE NATIONALE [National Assembly] (Feb. 12, 2020) (Fr.), <http://www.assemblee-nationale.fr/dyn/actualites-accueil-hub/enfants-influenceurs-adoption-de-la-proposition-de-loi> [<https://perma.cc/5928-MXQJ>].

same protections afforded to French child models and actors.<sup>160</sup> Specifically,

The multi-part legislation guarantees that the conditions of employment for social media influencers under the age of 16 are 'compatible with his schooling and the safeguard of his health. The majority of a child's income garnered from social media influencing must be paid to a specific French public sector financial institution, which will hold and manage that money until the child comes of age. The law also places limits on how many hours a child can work as an influencer.<sup>161</sup>

Additionally, the law requires social media platforms to actively monitor and remove any "problematic audiovisual content."<sup>162</sup>

The French law also gives children a "right of erasure," which enables children to demand that websites take down any images of them that they no longer want to appear online.<sup>163</sup> The right of erasure is not a new idea in Europe. Also known as the "right to be forgotten," the "doctrine effectively allows individuals to change their digital footprint."<sup>164</sup> The doctrine gained traction in 2014 after a Spanish man successfully sued to have some of his personal information removed from Google search results because it was damaging his reputation and did not reflect who he currently was as a person.<sup>165</sup> The court decided that "the locating and dissemination of the data are liable to compromise the fundamental right to data protection and the dignity of persons in the broad sense and this would also encompass the mere wish of the person concerned that such data not be known to third parties."<sup>166</sup>

By adding a "right of erasure" to its child social media law, the French Legislature ensured not only that children in monetized social media content would be paid for their work but also that they would not be haunted later in life by any potentially embarrassing videos or parental overshares from their youth. If the United States passed a similar law, children like Huxley, whose adoption story and medical history were shared all over the Internet without his consent, would have the opportunity to gain back some control over their online image. A right of erasure, however, would be challenging to implement in the United States. Digital information in the United States is classified as speech,

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160. Breen, *supra* note 159.

161. *Id.*

162. *Id.*; *Enfants influenceurs*, *supra* note 159.

163. Breen, *supra* note 159; *Enfants influenceurs*, *supra* note 159.

164. Steinberg, *supra* note 49, at 864.

165. Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos*, 2014 E.C.R. 616.

166. *Id.*

which is protected by the First Amendment,<sup>167</sup> but in European countries, digital information is viewed as data that can be removed if it is no longer necessary.<sup>168</sup>

## V. PREVENTING THE NEXT JACKIE COOGAN SCANDAL

Because influencer marketing has just started to reach its peak, there are still many unknowns about its effect on children. Most research has focused on children who are being targeted by social media advertisements and the dangers of influencers on child development.<sup>169</sup> While these subjects are important, it is critical to remember that children may also be pressured by both companies and parents to appear in social media content. If the history of child performers in Hollywood is any indication, the United States may start seeing more social media families in court once child stars turn eighteen and ask what happened to their money. To prevent this, the government should take proactive steps to protect child social media stars. Additionally, society should change the way it thinks about social media influencing and sharenting.

First, federal and state governments should follow France's lead and enact legislation geared toward protecting kidfluencers. The federal government should implement a national Coogan Act that requires at least 15% of all earnings by child entertainers and models, including those featured in monetized social media content, to be set aside in a trust that cannot be accessed until the child reaches eighteen. In *United States v. Darby*, the Supreme held that Congress has the right to enact the Fair Labor Standards Act (FLSA) as a part of its power to regulate interstate commerce.<sup>170</sup> Since digital entertainment content is spread all over the country, Congress should have the power to set standards for child entertainers.

By modifying the FLSA to include Coogan Account protection, Congress could not only protect social media influencers but also standardize financial protections for all child performers no matter which state they live in. In order to do this, Congress will most likely need to modify the FLSA's exemption for children who work for their parents<sup>171</sup> to exclude those working in social media. Even without an exclusion from the exemption, one could argue that kidfluencers are working for the

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167. U.S. CONST. amend. I.

168. Allyson Haynes Stuart, *Google Search Results: Buried If Not Forgotten*, 15 N.C. J.L. & TECH. 463, 466 (2014).

169. See, e.g., Marijke D. Veirman et al., *What Is Influencer Marketing and How Does it Target Children? A Review and Direction for Future Research*, 10 FRONT. PSYCHOL. 1, 1 (2019) ("This paper therefore aims to shed light on why and how social media influencers have persuasive power over their young followers.").

170. *United States v. Darby*, 312 U.S. 100, 121–26 (1941).

171. U.S. DEPT. OF LAB., *supra* note 144.

social media companies and brands that pay them, not for their parents.<sup>172</sup> States should also modify their regulations about work hours and schooling requirements for child performers to include children in monetized social media content.

To prevent a situation like California's, where the implementation of child work permits that are impossible to enforce renders the child social media protections moot,<sup>173</sup> the burden of adhering to regulations should be placed on the companies wishing to advertise. In Florida, the Division of Jobs and Benefits already requires companies to apply for a permit before employing minors.<sup>174</sup> New York also requires anyone who employs a child performer to have a "certificate of eligibility to employ a child performer."<sup>175</sup> Production companies must renew this certificate every three years to avoid being accused of illegally employing a child.<sup>176</sup> States legislatures or the U.S. Congress could enact laws requiring companies wishing to advertise on social media to work only with kidfluencers covered by Coogan protections in order to receive a permit to employ minors. This way, the government would avoid the issue of regulating parenting, which is unconstitutional,<sup>177</sup> and instead shift its focus to child exploitation and labor, which can be regulated "to guard the general interest in youth's well-being."<sup>178</sup>

For these changes to be effective, Americans should change the way they perceive kidfluencers and sharenting. Many people use social media daily for casual use,<sup>179</sup> so they might undervalue the amount of work and energy that influencers and digital creators put into making new content every week. The average time it takes to make a YouTube video is about seven hours for every one to five minutes of edited footage.<sup>180</sup> Even creating a single Instagram post can take weeks of planning.<sup>181</sup> In

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172. See Wong, *supra* note 99 ("You could argue that YouTube is the joint employer of the child . . . YouTube controls what the child can and cannot do. They control the dissemination of the money. They would very likely be considered joint employers under California wage laws and child labor laws.")

173. See *infra* Part IV.

174. FLA. STAT. § 450.132(2) (2022).

175. N.Y. LAB. LAW § 151 (McKinney 2022).

176. *Id.*

177. Meyer v. Nebraska, 262 U.S. 390, 400 (1923); Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534–35 (1925).

178. Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

179. Brooke Auxier, *8 Facts About Americans and Instagram*, PEW RSCH. CTR. (Oct. 21, 2020), <https://www.pewresearch.org/fact-tank/2020/10/21/8-facts-about-americans-and-instagram/> [<https://perma.cc/Z5P5-85KD>].

180. Vidya Narayanan, *How Long Does It Take to Create a YouTube Video?*, MEDIUM (Sept. 25, 2019), <https://medium.com/rizzle/how-long-does-it-take-to-create-a-youtube-video-266ae3496bf3> [<https://perma.cc/7UER-ZH5X>].

181. Natalie Zfat, *Here's How Long It Takes Your Favorite Influencer to Create an Instagram Post*, FORBES (Aug. 22, 2019), <https://www.forbes.com/sites/nataliezfat/2019/08/>

addition, most influencers spend time interacting with followers, traveling and doing promotional events, planning content and merchandise, and fulfilling any other contractual obligations they have with brands.<sup>182</sup> This can be strenuous work for a child even if adults are helping them.

Still, many parents of social media stars do not see the need for regulations. Parents argue that creating social media content with their children is “a family endeavor, their kids are having fun, and it should not necessarily be considered ‘labor.’”<sup>183</sup> For example, when asked about the need for regulations, Tyler Oakley, whose three-year-old twins have over 3.6 million followers on Instagram, said, “Who gets to decide who does the work? You know, my girls are in a picture—they’re in a picture and that qualifies as work?”<sup>184</sup>

Child advocates disagree. Sheila James Kuehl, a former child star and co-author of a law that overhauled California’s labor protections for child performers, contends, “I don’t care if it’s simply unboxing presents, that’s work . . . It is not play if you’re making money off it.”<sup>185</sup> The co-founder of BizParentz, a nonprofit focused on protecting children in the entertainment industry, agrees with Kuehl’s stance: “If you’re lending your image and you’re doing something to sell a product, it’s work. If it’s work, then your money should be protected.”<sup>186</sup>

Another point should also be considered: while being an influencer might be fun for children when they are young, what happens when they want out later? As shown in Part II, some parents are willing to go to extremes to obtain the views they need to make money. Even parents who try not to be overbearing still admit to bribing their children to ensure they fulfill their brand deal obligations: “If there’re days they’re totally not into it, they don’t have to be . . . Unless it’s paid work. Then they have to be there. We always have lollipops on those days.”<sup>187</sup> Considerations regarding work hours and consent should be made for children who may

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22/heres-how-long-it-takes-your-favorite-influencer-to-create-an-instagram-post/?sh=798cde183f46 [https://perma.cc/TT88-YG97].

182. Viral Access, *supra* note 104; Jessica Booth, *What It’s Really Like To Be an Instagram Influencer*, THE LIST (Feb. 7, 2019 12:40 PM), <https://www.thelist.com/144932/what-its-really-like-to-be-an-instagram-influencer/> [https://perma.cc/3K58-L48B]; Clare Brown, *5 Things People Don’t Tell You About Being an Influencer (So We Will)*, OCTOLY MAG. (June 13, 2018), <https://mag.octoly.com/5-things-people-dont-tell-you-about-being-an-influencer-so-we-will-6c5dea6401c1> [https://perma.cc/6Z7Q-W33E].

183. Mooney, *supra* note 54.

184. Novacic, *supra* note 54.

185. Wong, *supra* note 99 (internal quotations omitted).

186. Lambert, *supra* note 31.

187. Emma Grey Ellis, *Child Stars Don’t Need Hollywood. They Have YouTube*, WIRED (Feb. 6, 2019, 12:51 PM), <https://www.wired.com/story/age-of-kidfluencers/> [https://perma.cc/R3XK-E5D6].

not want to be involved with social media long term, especially as more parents are quitting their jobs to pursue social media full time with their family.<sup>188</sup>

While the American public waits for child labor regulations to catch up with technology, it must remain cognizant of social media's potential to exploit children. By redefining influencing as an occupation instead of a hobby, both social media consumers and parents of kidfluencers can ensure that children's interests are protected. In fact, some talent managers already require that any kidfluencers they sign have a Coogan Account set up.<sup>189</sup> Additionally, some parents of child social media stars, including Ryan from *Ryan ToysReview*, have pledged to set money aside for their children and try to make sure they have a healthy work-life balance.<sup>190</sup> While these parents have made a good start, greater effort is needed to make the public aware of the lack of protections afforded to children in monetized social content. Such effort could go a long way in creating accountability both for parents and the government as they work to create legislation.

Conversations also need to be had about issues of privacy and children being unable to consent to their image being online. Increasingly, "more and more . . . children and young people . . . do not want to have an online presence or . . . are faced with an online identity created by their parents."<sup>191</sup> While it is unlikely that anything can be done from a legal standpoint to stop parents from posting about their children online, fostering discussions about sharenting and how it can negatively impact children can encourage parents to make sure they act responsibly when it comes to influencing. Professor Stacy Steinberg encourages the use of a public health model approach to sharenting and details several considerations parents should think about before posting on social media.<sup>192</sup> Two of these suggestions, allowing children to exercise "veto" power over content they are featured in and refraining from sharing "photos of [children] in any state of undress,"<sup>193</sup> could allow child social media stars to exert some control over their digital image.

## CONCLUSION

While social media has proven to be an excellent innovation for creating online communities and giving creators a platform to share their work and stories, it has also opened a new door for child exploitation,

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188. *Id.*

189. Lambert, *supra* note 31.

190. Ellis, *supra* note 187; Lambert, *supra* note 31.

191. Suzanne Bearne, *Would You Let Your Child Become a 'Kid Influencer'?*, BBC NEWS (Aug. 22, 2019), <https://www.bbc.com/news/business-49333712> [<https://perma.cc/CV79-EXSY>].

192. Steinberg, *supra* note 49, at 877–84.

193. *Id.* at 881.

especially from a privacy and financial standpoint. Unlike child performers who work in traditional outlets such as television, theater, and print modeling, very few regulations protect child social media stars or the money they make online. This means that minors like Huxley and the Martin and Hobson children can have their entire childhoods displayed on the Internet, be put into potentially abusive situations, and still end up with nothing.

While most parents are conscious of social media's impact on their children and work to protect their privacy and financial interests, even one child being exploited is one too many. To prevent exploitation, federal and state governments should work on implementing laws that provide some of the same protections that apply to traditional child entertainers to children in the digital space, particularly the Coogan Account system, which would require a percentage (at least 15%) of the child's earnings to be set aside until they reach adulthood. In the meantime, Americans should rethink the way they perceive influencers and sharenting. While parents most likely will never be, and should never be, banned from posting about their children online, we can work to ensure that children do not regret their social media fame once they reach adulthood.