FROM PLAYTIME TO PAYCHECKS: HOW PARENTS OF CHILD INFLUENCERS CONTINUE TO EVADE CHILD LABOR LAWS

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I. Introduction

Although it seems unfathomable that a nine-year-old child could earn over twenty-nine million dollars within a single year, in 2020, this was a reality for Ryan Kaji ("Kaji"), who is better known by his YouTube channel username, Ryan’s ToysReview.¹ Kaji was only three and a half years old when he filmed his first YouTube video in 2015.² By 2016, Kaji’s parents began posting videos of Kaji playing

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1 See Madeline Berg, How Nine-Year-Old Ryan Kaji, YouTube’s $30 Million Man, Just Keeps Getting Richer, FORBES (Dec. 18, 2020), archived at https://perma.cc/4788-VABV (discussing how Kaji’s income “put him at the top of the 2020 Forbes list of the world’s Highest-Paid YouTube Stars.”). Cf. Matthew Townsend, Influencer Nation: 86% of Young Americans Want to Become One, BLOOMBERG (Nov. 5, 2019), archived at https://perma.cc/Y9EY-AT75 (finding that “86% of Americans want to become [an influencer].”); Hannah Murphy, Ever younger ‘kidfluencers’ face online dangers, FIN. TIMES (July 25, 2020), archived at https://perma.cc/8T53-A7UF (revealing that a 2019 survey found that “out of 3,000 eight to 12-year-olds in the US, UK and China, nearly 30 per cent said they aspired to be a YouTuber when they grew up.”). See also Madison Medeiros, The Biggest ‘Kidfluencers’ You Need to Know, SHEKNOWS (June 12, 2019), archived at https://perma.cc/ET92-L8C4 (announcing that “Forbes estimated that Ryan made about $22 million between June 2017 and June 2018, making him the year’s most profitable YouTube Star . . . .”); Belinda Luscombe, How Ryan Kaji Became the Most Popular 10-Year-Old in the World, TIME (Nov. 12, 2021), archived at https://perma.cc/48UA-VJAD (stating that part of the reason Kaji has been the highest paid YouTube star for three years straight is because he operates nine channels on YouTube).
2 See Luscombe, supra note 1 (declaring that Ryan was three and a half years old when he asked his parents if he could be on YouTube). “[T]he family changed its
with and reviewing toys on YouTube, and one year later, Ryan’s ToysReview quickly became one of the most sought-after channels on YouTube. YouTube first paid Kaji about one hundred and fifty dollars for Kaji’s viral video, now garnering over a billion views. After over a year of rapid growth and large paychecks from YouTube, Kaji’s parents eventually quit their jobs to better manage Kaji’s business full time. In 2017, Kaji caught the eye of the former Walt
Disney executive who aided him in securing deals with companies like Walmart, Amazon, and Sketchers. While Kaji’s rise to fame may sound like a lucky break, that is not the case.

As reported by Forbes, Kaji currently holds the title as the highest paid YouTuber, however, he is just one of many “Kidfluencers” making millions by posting videos online. Children of all ages, even those who are still in utero but have accounts set up by their parents, are making thousands of dollars through brand

https://perma.cc/9PBB-BUAR (detailing Kaji’s source of income). “Nearly all of Ryan’s money, or about $21 million, comes from pre-roll advertising on his two channels, according to Forbes, while the remaining $1 million comes from sponsored posts.” Id.

6 See Cait Minschy, How Do Brand Deals with Influencers Work?, CAIT MINSCHY (June 24, 2021), archived at https://perma.cc/DW2W-TBL7 (defining a brand deal as one where a brand and an influencer work together on promoting the brand’s product in exchange for compensation). See also Kang, supra note 3 (discussing how Kaji established a partnership Pocket.watch, run by the former executive of Walt Disney). “Pocket.watch handles the Ryan’s World franchise, including deals with Walmart, Amazon and Sketchers.” Id.

7 See Kang, supra note 3 (discussing how there is little that distinguishes Kaji’s videos from the millions of other videos posted on YouTube). A teenager will do a dance on TikTok, “and suddenly every middle- and high-school kid has seen it, and before you know it, the dancer has 100 million followers and 15 separate sponsorship deals.” Id. See also Nina Willment, ‘Influencer’ is now a popular career choice for young people and here’s what you should know about the creator economy’s dark side, THE CONVERSATION (June 28, 2022), archived at https://perma.cc/SJ9B-DCTN (exposing that “300,000 people aged 18-26 are already using content creation as their sole income source.”); Alexandra Sternlicht, Charli And Dixie D’Amelio Turned TikTok Fame Into A Billionaire-Backed Personal Brand That Hinges On Their Personal Lives, FORBES (Sept. 6, 2022), archived at https://perma.cc/5G8V-6SKZ (stating that “[i]n 2019, the D’Amelio sisters became overnight TikTok sensations by posting low-production, self-shot dance and lip sync videos from their messy bedrooms . . . .”). See also Luscombe, supra note 1 (stating the rise of “Kidfluencers” has caused concern for many adults, especially because “[f]our of the 10 U.S. YouTube channels with the most subscribers are geared toward young children.”).

8 See Zulie Rane, The Terrifying Rise of the Child Influencer and the Parents Who Profit, ONE ZERO (Oct. 25, 2021), archived at https://perma.cc/X4WX-HRAK (noting that “an ‘influencer’ like Maya Basol, with over 1.5 million followers at the tender age of five, each #spon post could earn her upwards of $15,000.”). See also Luscombe, supra note 1 (suggesting that Kidfluencers do not have to sell toys because they can just become them). “Russian-born brothers who live in Florida released their first toy figurines in June. Nastya, 7, also a Russian-born Floridian, launches her dolls Nov. 15.” Id. See also Julia Wong, ‘It’s not play if you’re making money’: how Instagram and YouTube disrupted child labor laws, THE GUARDIAN (Apr. 24, 2019), archived at https://perma.cc/3ECP-RLRV (recognizing that twins Ava and Alexis McClure, “were included in Forbes magazine’s list of top kid influencers in 2017.”).
sponsorships due to their massive followings on social media platforms. Although a child who gets paid to post videos of himself playing with toys might deviate from society’s conventional form of employment, social media influencing has evolved into a full-fledged profession and deserves to be treated as such.

The existing regulations surrounding child labor have not adequately adapted to the demands of this digital age, resulting in a lack of established guidelines and standards to safeguard young

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9 See Jack Morse, So it’s come to this: An unborn baby ‘kidfluencer’ has 112,000 Instagram followers, MASHABLE (Mar. 1, 2019), archived at https://perma.cc/58VW-B32Q (emphasizing that even unborn children are getting followers and cash brand deals); Wong, supra note 8 (indicating that at the age of six, Everleigh Rose had 2.2 million subscribers on her YouTube channel, an Instagram account with 4.3 million followers, and is frequently featured in her family’s YouTube channel, “The LaBrant Fam,” with 8.8 million followers). See also The LaBrant Family Net Worth & Biography, FAMOUS PEOPLE (Aug. 8, 2022), archived at https://perma.cc/34PW-B7A7 (outlining the LaBrant’s family revenue). “Through their shared YouTube channel alone, it is estimated that the LaBrant family earns roughly $5.5 million per year.” Id. See also Katharine Schwab, The 2-year-old Instagram influencers who make more than you, FAST CO. (Dec. 17, 2018), archived at https://perma.cc/9HTC-G5ZV (discussing the life of Tatum and Oakley Fisher). With over 2.2 million followers on Instagram and 2.7 million subscribers on YouTube, identical twins Tatum and Oakley Fisher, debuted their career as Kidfluencers at the young age of two, earning about fifteen thousand to fifty thousand dollars for a single sponsored post in 2018. Id. See also Rach & Tempesta, supra note 5 (declaring that influencing runs in Tatum and Oakley’s blood because “the girls are cousins with Everleigh Rose Soutas, the list’s third-highest earner.”). See also Kate Fowler, Baby Internet Star Finally Perfects Pouring Skills after Months of Videos, NEWSWEEK (June 16, 2021), archived at https://perma.cc/SQ82-EQM5 (explaining how Marleigh went viral on TikTok). Marleigh went viral on TikTok after her uncle instructed her to pour orange juice into a glass, but Marleigh “poured the whole bottle into the tiny cup, overflowing it all over the table, but happened to gain five million likes for it, too.” Id. See, e.g., Martha Cliff, WHOAH BABY Forget the Rich Kids, meet the Rich Babies of Instagram who are raking in £3.4k a post, U.S. SUN (Aug. 25, 2021), archived at https://perma.cc/7JTM-83TK (listing various children on Instagram making thousands by posting online); Yeet Baby’s Net Worth, Height, Age & Personal Info Wiki, N.Y. BANNER (Nov. 6, 2022), archived at https://perma.cc/6TPE-Z4FT (noting that with over 3.5 million followers on TikTok, Marleigh has the potential of making $4,655 per post).

10 See Wong, supra note 8 (stating how a former child actor spoke out about how child influencing is real work). “I don’t care if it’s simply unboxing . . . It is not play if you’re making money off of it.” Id. A law professor also stated that “[i]t’s more than innocent fun and games . . . They are performing work, and if that work is being monetized, then those children deserve wages for their future.” Id. See also Townsend, supra note 1 (declaring that “[n]o less than 86% of people ages 13 to 38 are willing to try out influencing . . . ”).
influencers. The Fair Labor Standards Act of 1938 ("FLSA") includes a provision that exempts children below the age of twelve who work within businesses owned or operated by their parents. In absence of any safeguarding laws, Kidfluencers remain vulnerable to abuse by their parents in regard to their income, privacy, and safety.

11 See Wong, supra note 8 (asserting that a California bill was introduced to amend the Coogan Act to include minors in social media advertising, but by the time the bill was passed, it "barely resembled the bill that was proposed."). “It definitely is time to take a look at the ways parents or other adults are making money off the performance or work of minors. . . . The law needs to be amended to catch up with the technology.” Id. See also Erin E. O’Neill, Essay, Influencing the Future: Compensating Children in the Age of Social Media Influencer Marketing, 72 STAN. L. REV. 42, 52 (2019) (demanding that states should ensure that their laws can compensate social media child performers for their loss of online privacy); Nila McGinnis, “They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save them from their Parents, 87 MO. L. REV. 247, 248 (2022) (asserting that “minors working as influencers in the United States have no legal right to the money they earn by appearing in content posted by themselves or their parents.”).

12 See 29 U.S.C.S. § 213(c)(1)(A) (stating that children who are under the age of twelve and employed by their parents or a person standing in place of their parents are exempted under the FLSA). See also O’Neill, supra note 11, at 46 (recognizing that the FLSA does not apply to children employed by a parent). “This exemption derives from the statutory definition of ‘oppressive child labor,’ implying that working for one’s parent is not oppressive.” Id. But see Prince v. Mass., 321 U.S. 158, 165 (1944) (holding that the Court will only step in to prohibit children from working for a parent or guardian when the potential for harm is significant). “The parent’s conflict with the state over control of the child and his training is serious enough when only secular matters are concerned . . . [T]hat children be both safeguarded from abuses . . . .” Id.

13 See Harper Lambert, Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents, HOLLYWOOD REP. (Aug. 20, 2019), archived at https://perma.cc/CF86-MFG2 (arguing that the law has not kept up with the digital age). “[N]o law outlines protections for minors earning income in social media. It’s a cause for concern since, without protections, they stand to lose millions to their own parents.” Id. See also O’Neill, supra note 11, at 44–45 (explaining that “[c]hildren old enough to understand the implications of a permanent Internet identity may be less than thrilled to learn that their online presences have been shaped for them.”); WVU researcher studies the effects of online ‘sharenting’ and the risks facing kids, WVUTODAY (Aug. 19, 2022), archived at https://perma.cc/A9XG-GEP3 [hereinafter WVU researcher] (proclaiming that the greatest risk to children is pedophilia and “[m]uch of the fodder for pedophiles is not manufactured . . . . It comes from parents, from these public posts.”); Fox News, ‘Wren Eleanor’ TikTok movement inspires moms on social media to remove photos of kids: ‘Sick people’, N.Y. POST (July 26, 2022), archived at https://perma.cc/EG5H-27RT (warning parents of the dangers associated with posting their children on these platforms because predators can “use a smartphone’s screen-recording feature to record or
As the world begins to recognize the consequences associated with Kidfluencers’ presence on social media platforms, it is imperative for the United States government to take action and follow the lead of other countries that have already implemented legislation designed to protect the rights of child influencers on social media.¹⁴

¹⁴ See France: Parliament Adopts Law to Protect Child “Influencers” on Social Media, LIBR. CONG. (Oct. 30, 2020), archived at https://perma.cc/YT3E-XVP9 [hereinafter France: Parliament Adopts Law] (introducing a new law in France designed to protect child influencers on social media). Parents are required to obtain approval from the government before their child can engage in activities online that amount to labor relations and only part of the child’s income will be paid to the parents. Id. “[P]arents will also receive information on the rights of their child and on the potential consequences of the release of images of their child on the internet.” Id. Additionally, platforms will be required to remove a video of a child who asserts their right to be forgotten. Id. See also Priya Kumar, Child Influencing Is Work, but It’s Not Automatically Dangerous, SLATE (Oct. 28, 2020), archived at https://perma.cc/578J-8GG5 (indicating that while Europe’s General Data Privacy Regulation (GDPR) includes the right to remove information obtained about an individual online, this law expands the right to erasure because the GDPR doesn’t “apply to data processed for ‘a purely personal or household activity,’ which encompasses most family social media use.”). But see Press Releases, U.S. CONGRESSMAN CHRIS STEWART (Feb. 2, 2023), archived at https://perma.cc/3V7J-E35Y (highlighting a new law introduced by representative Chris Stewart, that would make it unlawful for children under the age of 16 to access social media platforms); Erin M. Henkel, Illinois considers legislation to protect ‘kidfluencers’, DISPATCH AND THE ROCK ISLAND ARGUS (Mar. 9, 2023), archived at https://perma.cc/K4LR-7MLG (contending that Senate Bill 1782, if passed, would modify child labor laws in Illinois to include families who monetize content that features minors and require parents implement a trust account for the child).
II. History

A. History of Child Labor in the United States

1. The Industrial Revolution

Although the Industrial Revolution played a significant role in American history as the first era of major scientific and technological innovation, it also marked the first recognized surge in severe forms of child labor practices.\(^\text{15}\) During the mid-1800’s, numerous families migrated to urban industrial cities to secure employment within newly established factories and mines.\(^\text{16}\) These occupations paid workers low wages, leading to situations where families had no choice but to have their children work in order to ensure their own survival.\(^\text{17}\)


In 1870, the first U.S. census to report child labor numbers counted 750,000 workers under the age of 15, not including children who worked for their families in businesses or on farms. By 1911, more than two million American children under the age of 16 were working – many of them 12 hours or more, six days a week. Often they toiled in unhealthful and hazardous conditions; always for minuscule wages.

\(^\text{16}\) See Elias Beck, *CHILD LABOR IN THE INDUSTRIAL REVOLUTION*, HIST. CRUNCH (Dec. 30, 2021), archived at https://perma.cc/J7MU-Y3AR (summarizing the need for working-class families to move into the city to obtain employment in factories and mines); *The Industrial Children*, MUSEUM OF CHILDHOOD (Oct. 15, 2022), archived at https://perma.cc/KNM8-3MYE (declaring that the Industrial Revolution created a high demand for labor, which resulted in many rural families relocating “to the cities to find work. Sadly, most were disappointed when they arrived. The jobs available required long hours and offered little pay.”).

\(^\text{17}\) See Madison Horne, *These Appalling Images Exposed Child Labor in America*, HIST. (Mar. 10, 2021), archived at https://perma.cc/62U4-8BEC (discussing how investigator and photographer Lewis Hine, quit his job to interview and photograph children working in various occupations). “The family informed [Hine] that with all the work they do together, they make $4 a week working until 9 p.m. each night.” Id. See also Beck, supra note 16 (highlighting that families needed their children to work to afford the cost of living); *The Industrial Children*, supra note 16 (stating that every able family member needed to work just to stay above the poverty level); Michael Schuman, *History of child labor in the United States—part 1: little children working*, U.S. BUREAU LAB. STAT. MONTHLY LAB. REV. (Jan. 2017), archived at
Within factories and mines, management quickly perceived children as the preferable employee due to various factors: they were cheaper to hire and more obedient than adults, and they could squeeze into smaller spaces. Children often started working at the age of six, and by the 1900’s, children under the age of sixteen accounted for eighteen percent of the working population, often working shifts exceeding twelve hours, at a rate less than one dollar per day. Although some children assisted in household chores, many worked in hazardous mines or factories where they were expected to operate dangerous machinery. Due to the extensive work hours, many children obtained physical injuries by the end of the day, which was often attributed to exhaustion. Other injuries, however, were

https://perma.cc/K3MK-38NZ [hereinafter Schuman, little children working] (explaining that when children obtained independent wages, “these wages generally became the property of the parents.”).

18 See Beck, supra note 16 (describing the reasons for hiring children over adults). “[C]hildren were paid between 10-20% that of an adult.” Id. When employees were late to work, they would be whipped by the managers of the factory. Id. Factory owners preferred to hire children over adults because the adult employees would resist or fight back if they were to be punished, whereas children were “easier to control and more likely to accept punishment.” Id. Finally, “[t]he small fingers and hands of the children were ideal for unclogging these machines . . . .” Id.

19 See The Industrial Children, supra note 16 (noting that children often began working at the age of six, but records from churches reveal that it was often at the ages of four and five); Schuman, little children working, supra note 17 (analyzing that “[t]he 1870 census found that 1 out of every 8 children was employed. This rate increased to more than 1 in 5 children by 1900.”). See also Horne, supra note 17 (quoting an eight-year-old girl who was working her shift from 3am to 5pm as an oyster shucker). “[S]he told [the investigator] that the baby of the family will start shucking as soon as she [can] hold the knife.” Id. Children under the age of sixteen accounted for 18% of all American workers. Id. But see Schuman, little children working, supra note 17 (noting that age was not the only factor used to consider if a child was ready to work).

Age was only one consideration in deciding whether a child was ready for work. Being “big enough to work” was usually not a metaphor about reaching a certain birthday; rather it was often about the physical size of the child as well as the acumen the child appeared to have in performing the labor required.

Id.

20 See Schuman, little children working, supra note 17 (noting that children have always been expected to help with farmwork or chores around the house). See also Beck, supra note 16 (stating that children who were too short to operate machines were required to stand on top of machines to operate it).

21 See Hannah Myers, LONG HOURS LASTING CONSEQUENCES: CHILDREN AS PASSIVE VICTIMS IN THE INDUSTRIAL REVOLUTION AND A
inflicted as forms of punishment by factory supervisors. Due to the recurring injuries these children experienced, the unhealthy working conditions they were subjected to, and the fatalities stemming from workplace injuries, reform advocates eventually achieved success in implementing regulations governing child labor.

2. The Fair Labor Standards Act of 1938

Despite several unsuccessful endeavors by reformers to enact laws that could better regulate or eradicate child labor practices, the Fair Labor Standards Act of 1938 (“FLSA”) marked the turning point that transformed the employment industry for the better. In attempts to improve regulations on child labor, the FLSA includes various
provisions that impose restrictions on the employment of children.\footnote{See McGinnis, supra note 11, at 251–52 (highlighting the FLSA’s impact on children). “[T]his set of federal child-labor regulations was passed to ‘ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities.’ These regulations were passed after the height of the Great Depression and only after decades of tireless advocacy.” Id. See also Schuman, the reform movement, supra note 24 (emphasizing that due to the many occupations exempted under the FLSA, “the law covered only around 6% of the 850,000 children working in 1938.”).} These provisions prevent children under the age of eighteen from working in occupations with hazardous conditions, and prohibit those under the age of fourteen from obtaining employment outside of their residence.\footnote{See McGinnis, supra note 11, at 253 (discussing the prohibitions on child labor under the FLSA). “[C]hildren under [the age of] fourteen were barred from obtaining any employment outside of the home, and children under eighteen were not permitted to work in ‘particularly hazardous conditions.’” Id. But see Marina A. Masterson, Comment, When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”, 169 U. PA. L. REV. 577, 587 (2020) (stating the child labor provisions under the FLSA are still being violated today).} Additionally, the FLSA safeguards workers’ rights by establishing the right to minimum wage, implementing standards for record-keeping, and mandating compensation for overtime hours worked in excess of forty hours a week.\footnote{See Ellen Terrell, Fair Labor Standards Act Signed, LIBR. CONG. (July 2021), archived at https://perma.cc/MG9G-4L3E (discussing the history behind the FLSA and the various rights it established). “[I]n January 1938 the bill that became the FLSA was sent to Congress. After the bill was debated and voted on, it was signed by President Roosevelt and became effective on October 24, 1938.” Id. Provisions under the FLSA include the right to minimum wage, overtime pay for anyone who works more than forty hours a week, and provisions relating to child labor. Id.}

Although the FLSA was instrumental in eliminating the presence of children in dangerous factories and mines, certain provisions within the FLSA still exhibit shortcomings in ensuring comprehensive protections against other forms of child labor.\footnote{See 29 U.S.C. § 213(c) (describing the various occupations involving child labor that are exempted under the FLSA).} For example, there are still a handful of occupations that ultimately fail to provide any labor protections for children because these specific...
careers qualify as an exemption under the FLSA. Among these exempted roles is one that authorizes minors under the age of sixteen to obtain employment as actors or performers in motion pictures or theatrical productions. This exemption, often referred to as the “Shirley Temple Act,” derives its name from the famous child actress who won America’s heart during the Great Depression. Due to the uplifting impact that Temple’s acting career had on the nation, Congress was persuaded to include child performers as an exempted occupation under the FLSA. By exempting child performers from the FLSA regulations, states were granted the authority to establish their own legislation governing the employment of child actors, which eventually resulted in varying degrees of protections for children.

29 See Shayne J. Heller, The Price of Celebrity: When a Child’s Star-Studded Career Amounts to Nothing, 10 DePaul J. Art, Tech. & Intell. Prop. L. 161, 168 (1999) (cautioning that if a child leaves a state with labor protections “to do work in another state without protection for professional children, one can only wonder about the environment in which he is working.”).

30 See 29 U.S.C. § 213(c)(3) (listing child actors as an exempted occupation under the child labor requirements). The FLSA “shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.” Id. See also Nathaniel Ang, Teenage Employment Emancipation and the Law, 9 U. Pa. J. Lab. & Emp. L. 389, 405 (2007) (stating that child acting was relatively harmless and was not considered “oppressive child labor”); Masterson, supra note 26, at 587 (declaring that child acting was exempted under the FLSA because it was not considered to be oppressive, but rather provided children with an opportunity to develop their talents).

31 See Ang, supra note 30, at 404–05 (noting that “Temple became popular when America was in the midst of the Great Depression, and the public desperately needed entertainment to distract them from the era’s harsh realities.”).

32 See Neyza L. Guzman, The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Laws, 8 Child & Fam. L. J., 85, 90 (2020) (highlighting Temple’s impact on society). President Roosevelt stated that Temple’s presence on screen was a necessity during this Great Depression because “[w]hen the spirit of the people is lower than at any time during the Depression, it is a splendid thing that for just fifteen cents an American can go to a movie and look at the smiling face of a baby and forget his troubles.” Id. See also Ang, supra note 30, at 405 (declaring that the Shirley Temple Act promoted the best interests of the child and society). “Child actors were able to develop their talent, and being under protection of state law, they had every opportunity to receive an adequate education. In return, society would be enriched by the ‘pleasant and wholesome entertainment’ provided by child actors.” Id. Workers who are exempted under the Shirley Temple Act “are still subject to minimum wage and maximum hour restrictions set by federal law.” Id. at 395.
depending on the specific state of employment. While most states provide no protective measures to child actors, certain states like California and New York have enacted comprehensive laws that ensure heightened safeguards for child performers.

3. Coogan’s Law

Despite the enactment of the FLSA, child performers still did not maintain ownership rights over a single penny of their income . . . it all belonged to their parents. However, in 1939, California passed a legislative measure known as “Coogan’s Law,” named after America’s first famous child actor, Jackie Coogan. After commencing his career at a mere sixteen months of age, Coogan would

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33 See Masterson, supra note 26, at 588 (stating that exempting child actors from the FLSA resulted in unequal protections in every state). “[S]eventeen states do not regulate child entertainment employment, and twenty-four states do not require children to have work permits for entertainment work.” Id.

34 See Child Entertainment Laws as of January 1, 2022, U.S. DEP’T LAB. (2020), archived at https://perma.cc/SEL7-GNSK (outlining the various child entertainment laws enacted in each state); Heller, supra note 29, at 164 (explaining that states “[w]ithout laws protecting child performers, children who worked as actors, models, athletes, or in any other type of performance driven industry wound up with nothing to show for their hard work and dedication.”).

35 See Phillips v. Bank of Am., 236 Cal. App. 4th 217, 225 (2015) (discussing the history of Coogan’s Law). “Even though he earned millions as a child, Coogan was surprised to find out when he reached adulthood that he was flat broke, because his mother and stepfather spent all of his money—legally.” Id. See also Heller, supra note 29, at 161 (asserting that a minor in the United States has no right to the money he earns, it belongs to his parents). “[W]hen a child reaches the age of majority he often finds nothing left of his money; an empty bank account is a common conclusion to a child’s star-studded career.” Id. See also Guzman, supra note 32, at 89 (recognizing that before the Coogan’s Law was passed, parents had sole ownership over their child’s earnings).

36 See James Barron, JACKIE COOGAN, CHILD STAR OF FILMS, DIES AT 69, N.Y. TIMES (Mar. 2, 1984), archived at https://perma.cc/6TY6-RNJU (recognizing that Coogan was the most famous boy in America during the 1920’s). Coogan stated his childhood experience was far from normal. Id. “When I was 7, we bought a big house… and put in one of the earliest swimming pools in Southern California.” Id. Coogan’s swim instructor had just won the Olympics one year prior, Coogan was one of nine people to surf the entire Pacific Coast, he drank milk from his own ranch, and while “[o]ther boys went to see Babe Ruth. Babe Ruth came to see me.” Id. See also Heller, supra note 29, at 166 (summarizing that Coogan’s Law was named after Jackie Coogan, whose parents had spent the majority of his earnings from his childhood career). See also Guzman, supra note 32, at 88 (stating that Coogan was America’s first child actor, and his success made him “the youngest person in history to earn a million dollars.”).
eventually go on to star in hundreds of films and television shows, earning an approximate fortune of $4 million. When Coogan turned twenty-one years old, he filed a lawsuit against his mother and stepfather after they refused to return his earnings. To his dismay, Coogan soon discovered that his parents had already spent the majority of his fortune, and unfortunately, the court was only able to restore Coogan with the remaining thirty-five thousand dollars. In response to this misfortune, a new law, drafted in Coogan’s name, was rushed through legislature with the goal of ensuring that his situation never happened again.

Currently in the United States, there are only four states that have enacted laws similar to California’s Coogan’s Law: New York, Illinois, Louisiana, and New Mexico. Of these, California’s

37 See Barron, supra note 36 (commenting that of the millions Coogan earned, “all he had ever received was a weekly allowance of $6.25.”). “After making his stage debut at the age of 16 months, [Coogan] earned between $2 million and $4 million before he was out of short pants.” Id. By the time Coogan was thirteen, he had traveled to New York by railroad eighteen times. Id. By 1966, Coogan had appeared in “35 silent films, 100 talkies and 850 television programs . . . .” Id.

38 See Destiny Lopez, 7 Celebs Whose Parents Decimated Their Fortunes, INSIDER (Apr. 2, 2014), archived at https://perma.cc/Q96H-9NA2 (explaining that Coogan’s mother felt entitled to spend his money because he earned his fortune as a child). “No promises were ever made to give Jackie anything. Every dollar a kid earns before he is 21 belongs to his parents.” Id.

39 See Aljean Harmetz, Jaekie Coogan – Remember?; PALM SPRINGS, Calif., N.Y. TIMES (Apr. 2, 1972), archived at https://perma.cc/VFL5-FHBC (commenting on how much money Coogan received after his lawsuit against his parents). “When – after 18 months of depositions – the suit to recover his earnings from his mother and stepfather was settled out of court, Coogan was left ‘with $35,000 which included cashing in [his] life insurance policy.’” Id.

40 See Barron, supra note 36 (announcing that after Coogan filed a lawsuit against his parents, “[f]orty-eight hours after . . . they rushed a new law through the Legislature.”); Masterson, supra note 26, at 589 (discussing that after additional amendments to Coogan’s Law, to employ a minor, employers now need written consent from the Labor Commissioner and must deposit 15% of the child’s income into a blocked trust). See also Loring Weisenberger, A Producer’s Guide to Coogan Law, WRAPBOOK (July 28, 2022), archived at https://perma.cc/6BMN-KTFY (describing the history of Coogan’s Law). “The focus that Jackie’s legal battle brought to the vulnerability of child actors ultimately resulted in the 1939 enactment of the Jackie Coogan Law.” Id.

41 See Coogan Law, SCREEN ACTORS GUILD – AM. FED’N OF TELEVISION AND RADIO ARTISTS (Nov. 6, 2022), archived at https://perma.cc/9KJL-ELST (comparing the various Coogan Laws enacted in California, New York, Illinois, Louisiana, and New Mexico). Each state has enacted laws that requires any child performer to have a trust account that allocates 15% of their earnings. Id. The equivalent of a Coogan
Coogan’s Law remains the most restrictive law governing child actors in the nation.⁴² Some requirements under California’s Coogan’s Law mandate that parents establish a blocked trust account in their child’s name within the first week of employment, and within the first ten days of employment, parents must obtain a minor entertainment work permit for their child.⁴³ Furthermore, within fifteen days after receiving a copy of the child’s Coogan trust account, employers must promptly deposit payments into the child’s Coogan account that allocates for fifteen percent of the child’s gross earnings.⁴⁴ Additionally, the law requires that children have an educational teacher working weekdays, weekends, and holidays.⁴⁵ By way of comparison, Illinois does not mandate the presence of a teacher while the child actor is working; Louisiana does not require traditional work permits for minors working in the entertainment industry, rather

account in New York is known as a Uniform Transfer to Minors Act (UTMA) or a Uniform Gift to Minors Act (UGMA) trust account. Id. See also Eric Reed, UGMA vs. UTMA Custodial Accounts, SMARTASET (Mar. 14, 2022), archived at https://perma.cc/ZF5S-EM9Q (noting the differences between an UTMA and UGMA account). “A UGMA account is limited to purely financial products such as cash, stocks, mutual funds, bonds, other securitized instruments and insurance policies. A UTMA account, on the other hand, can hold any form of property, including real property and real estate.” Id.

⁴² See Child Entertainment Laws As of January 1, 2022, supra note 34 (indicating that in California, work permits prohibit child performers from working more than 5 days in a row and they cannot have more than 5 absences from school).


We hold that a bank may not for account service fees debit a so-called “Coogan Trust Account” – a statutorily required account to preserve 15 percent of a minor’s gross earnings for artistic or creative services for the benefit of the minor until the minor turns 18 or is emancipated because of the statutory ban on withdrawals from a Coogan Trust Account without court approval. Id.

⁴⁴ See Weisenberger, supra note 40 (mandating that employers must “set aside 15% of the child actor’s gross earnings in a Coogan Trust Account, where it can be monitored – but not withdrawn – by a legal guardian until the child reaches legal maturity.”).

⁴⁵ See Labor & Work Permits For California, CHILD. IN FILM (Nov. 6, 2022), archived at https://perma.cc/FM76-Q2BA (listing protections offered to child performers under California’s Coogan’s Laws). In addition to obtaining a work permit, the Coogan’s law in California requires minors to provide proof of satisfactory grades and attendance before a permit is issued. Id. To obtain an entertainment work permit, minors between the ages of 14 and 17 are required to include a department of fair employment and housing certificate and complete a sexual harassment prevention training. Id.
written consent from a parent or guardian suffices; and New Mexico only requires a Coogan account if the child earns over one thousand dollars per contract.\footnote{See Phillips, 236 Cal. App. 4th at 225 (commenting that inadequacies in Coogan’s Law “resulted in additional abuses of the finances of such child actors as Shirley Temple, Macaulay Culkin, Lee Aaker, and Gary Coleman—all of whose parents left the minors with at best only a small percentage of what they earned during their careers.”). See also Weisenberger, supra note 40 (demonstrating that although various states have enacted laws similar to Coogan’s law, “there are significant idiosyncrasies in the specific rules by which a Coogan Account operates even among [these states].”). Trust accounts in New York differ from California’s Coogan accounts “in their regulations around withdrawal and can be opened at any bank in any state, provided they meet the UTMA or UGMA requirements.” Id. See also Labor & Work Permits For Illinois, CHILD. IN FILM (Nov. 6, 2022), archived at https://perma.cc/R8XE-BE2M (stating that “[t]he state of Illinois does not require the presence of a teacher on set during the employment of a minor.”); Labor & Work Permits For Louisiana, CHILD. IN FILM (Nov. 6, 2022), archived at https://perma.cc/LFL3-US8N (asserting that “[t]ypical work permits are not required for minors working in entertainment in the State of Louisiana, however written consent of the parent or legal guardian must be provided . . . .”); Labor & Work Permits For New Mexico, CHILD. IN FILM (Nov. 6, 2022), archived at https://perma.cc/G72B-VKQB (indicating that “[c]hildren employed in New Mexico on contracts equal to or greater than $1,000 are required to hold a child performer trust account.”).} Although each state has enacted similar versions of Coogan’s Law to ensure that child performers receive a minimum of fifteen percent of their earnings, Coogan’s Law still allocates the remaining eighty-five percent of the child’s earnings to their parents, affording them the liberty to spend the money however they please.\footnote{See Lopez, supra note 38 (listing the various child performers who had 85% of their fortunes squandered by their parents). Shirley Temple was an adult when she discovered that of the $3.2 million, she earned, only $44,000 remained. Id. Mimi Gibson’s earnings were substantially drained by her mother that “she did not have enough saved for college tuition.” Id. LeAnn Rimes sued her father and former manager for spending “$7 million of her earnings on personal expenses.” See also Lisa Capretto, Aaron Carter Opens Up About The Multi-Million Dollar Mistakes That Led To His Bankruptcy, HUFFPOST (Feb. 11, 2016), archived at https://perma.cc/XHA2-5GEA (discussing how Aaron Carter’s parents negligently handled his money, which resulted in him filing for bankruptcy when he turned 18 years old). Carter started working at age 10 and made over $100 million before he turned 18 years old. Id. However, due to Carter’s parents’ negligence in maintaining his Coogan account and their failure to pay tax liens, Carter owed $4 million in tax once he turned 18 years old, and only received $2 million of the $20 million that should have been in his Coogan account. Id. But see Interview with Mila Kunis, The Howard Stern Show, in N.Y., N.Y. (July 19, 2016) (discussing how admirable it is that Kunis’ parents never spent any of her money, given how frequently parents of famous children to abuse their child’s money). “To this day, I have never been}
B. History of Social Media

The invention of the internet has brought about a profound transformation in societal functioning.\footnote{See A Brief History of the Internet, BD. OF REGENTS OF THE UNIV. SYS. OF GA. (Jan. 27, 2023), archived at https://perma.cc/SHM8-ZPCG (stating that even though the internet was used in the 1960’s for government researchers to share information, January 1, 1983, is considered the official birthday of the internet because prior to this, computers did not have a standard way to communicate with one another); World Wide Web (WWW) launches public domain, HIST. (Mar. 30, 2020), archived at https://perma.cc/U4LR-S826 (highlighting that the internet has been the “greatest expansion in information access in human history, has led to exponential growth in the total amount of data in the world, and has facilitated a spread of knowledge, ideas and social movements that was unthinkable as recently as the 1990s.”). But see The Good, Bad, and Ugly of the Internet, EXCALTECH (Jan. 2, 2019), archived at https://perma.cc/4KYB-XJGK (recognizing that while the Internet has provided society with “access to better opportunities, more knowledge, and interactions with people who matter to them[,]” it can actually be a dangerous place). The Internet also hosts troublesome content, like the dark web. \textit{Id}. “[M]ost of the dark web is filled with a black market that makes available goods and services that the average person has no use for. Murder for hire? Check. Drug catalogues? Check.” \textit{Id}.} After the inception of the first web browser, the medium by which individuals communicated and shared information was revolutionized.\footnote{See Children’s Online Privacy Protection Act (COPPA), INC. (Feb. 6, 2020), archived at https://perma.cc/ZZN9-X4BB (outlining that in 1998, the FTC’s survey of 212 websites found that “89 percent of them collected personal information from children . . . 46 percent did not disclose this fact or explain how the information was used.”); Caitlin McLean, \textit{When was the internet invented? What to know about the creators of it and more.}, USA TODAY (Aug. 28, 2022), archived at https://perma.cc/EPX6-KQF8 (announcing that the World Wide Web (WWW), or what many people today refer to as the internet, was invented by Tim Berners-Lee in 1990).} By 1997, the first recognizable social media website was introduced, which would later carve a path for the social media giants known today.\footnote{See Esteban Ortiz-Ospina, \textit{The rise of social media}, O\textit{UR WORL\textsc{d} IN D\textsc{ata} (Sept. 18, 2019), archived at https://perma.cc/5LSW-A34P (stating that in 1997, “Six-Degrees” was the first notable social media website and while sites like Facebook and YouTube have been around for over 10 years, “other large sites are much newer.”).} In 1998, the Federal Trade Commission (“FTC”) surveyed 212 websites directed at children, finding that 89% of those websites collected personal information from children, all the while failing to disclose how such
information was utilized.\footnote{See FTC Releases Report on Consumers' Online Privacy, \textit{FED. TRADE COMM’N} (June 4, 1998), archived at https://perma.cc/FJT8-VBBE (highlighting that the results from the Commission staff’s survey of 1,400 websites, 212 of which were directed at children, showed that 89% of websites collected personal information from children, 54% provided some disclosure form of their practices, 23% informed children to seek parental consent before providing any information); Melanie L. Hersh, \textit{Is COPPA a Cop Out? The Children Online Privacy Protection Act As Proof That Parents, Not Government, Should Be Protecting Children's Interest on the Internet}, 28 \textit{FORDHAM URB. L. J.} 1831, 1854 (2001) (declaring that “COPPA was designed to tackle two problems: ‘(i) overmarketing to children and collection of personally identifiable information from children that is shared with advertisers and marketers, and (ii) children sharing information with online predators who could use it to find them offline.’")}{51} This discovery eventually led to the passage of the Children’s Online Privacy Protection Act (“COPPA”) later that year.\footnote{See 15 U.S.C. § 6502 (2022) (listing the regulations and prohibited acts under COPPA).}

COPPA imposes various restrictions upon website operators and online services that target children under the age of thirteen.\footnote{See Osano Staff, \textit{What’s Going on with the Children’s Online Privacy Protection Act (COPPA)?}, \textit{OSANO} (Nov. 7, 2022), archived at https://perma.cc/V4J2-EQFU (asserting that COPPA “requires website operators and online services directed at children under the age of 13 to get parental consent from users before they can collect, use or disclose information.”).}{53} One key provision includes obtaining parental consent prior to collecting, using, or disclosing information about a child.\footnote{See Children’s Online Privacy Protection Act (COPPA) of 1998, \textit{IAPP} (Jan. 27, 2023), archived at https://perma.cc/7XDB-ZTKE (listing additional requirements under COPPA).}{54} Despite the enactment of the FLSA, Coogan’s Law, and COPPA, which represent initial attempts by the United States government in safeguarding children’s rights, these regulations ultimately still fall short in offering adequate protection to Kidfluencers.\footnote{See Burke, \textit{supra} note 3 (stressing that current child labor laws in the United States do not extend to cover Kidfluencers).}{55}
III. Facts

A. The Pandemic’s Impact on Social Media Usage

In March of 2020, society was forced to adapt to new lifestyles as the COVID-19 pandemic spread across the globe, causing a severe public health emergency resulting in nationwide lockdowns, mandated stay-at-home orders, and social distancing. In the wake of this turmoil, individuals turned to social media and other various technological avenues as means to stay entertained and connected with loved ones, attempting to compensate for the loss of face-to-face interactions. This shift contributed to an 11% upsurge in social media usage, elevating numbers from “3.4 billion in 2019, to 3.78 billion in 2021.” As many people continued to use well-established social media platforms like Facebook, Instagram, and YouTube, the pandemic’s initial quarter witnessed over 315 million downloads of TikTok, rendering it the most downloaded application during this period of the pandemic.

Though social media platforms frequently glamorize an embellished and often unrealistic portrayal of user’s lives, the COVID-19 pandemic highlighted the need for alternative means of communication and entertainment. The adoption of social media during the pandemic not only reflected a shift in consumer behavior but also underscored the importance of technology in facilitating social connections during times of isolation and uncertainty.

57 See Talita Greyling et al., A tale of three countries: How did Covid-19 lockdown impact happiness? 2 (Glob. Lab. Org., Working Paper No. 584, 2020) (asserting that lockdown regulations “meant that for a significant period of time between March and June 2020, approximately one third of the world's population was living in some form of mandatory government-imposed lockdown.”).
58 See Caroline Forsey, How the Pandemic Changed Social Media: 6 Quarantine Trends Here to Stay [Data + Experts Insights], HUBSPOT (Jan. 24, 2022), archived at https://perma.cc/G7SK-ELGP (detailing that during the pandemic, the average amount of time people in the United States spent on social medial was 56 minutes a day and 145 minutes a day globally). The author states that during the pandemic, she “spent roughly 4 hours each day on Instagram.” Id.
59 See FlexTal, How Covid-19 Caused Social Media Apps to Pivot with New Features, ENTREPRENEUR (Oct. 13, 2020), archived at https://perma.cc/MY2Y-EBUQ (declaring that during the COVID-19 pandemic, TikTok brought in 22.2 million downloads in January of 2020, which doubled by April). “Globally, TikTok brought in 315 million unique visitors, making it the most-downloaded quarter for any app.” Id. See also Kim Lyons, TikTok says it has passed 1 billion users, THE VERGE (Sept. 27, 2021), archived at https://perma.cc/8Y5R-FSTE (finding that in 2020, “TikTok users spend more time watching its content than YouTube users.”).
19 pandemic leveled the playing field for all.60 This effect spanned across all individuals, including celebrities, who found themselves confined to their homes with little to share except genuine depictions of everyday life, with many participating in social media trends such as vlogging, unboxings, and bread making.61 Irrespective of the trend, thousands of ordinary people obtained massive followings on social media platforms during the pandemic, most notably on TikTok.62 TikTok’s unique algorithm is distinct from other social media platforms because it disregards a user’s follower count or history of high-performing videos when determining whose content will appear on other users’ feeds.63 The success of thousands of young, ordinary

60 See Rani Molla, Posting less, posting more, and tired of it all: How the pandemic has changed social media, VOX (Mar. 1, 2021), archived at https://perma.cc/2T3Y-3ZU3 (indicating that the pandemic encouraged openness and authenticity on social media).

61 See Potential Staff, What is Vlogging: All You Need to Know About Vlog Making, POTENTIAL (Sept. 22, 2021), archived at https://perma.cc/L3SF-JGSG (describing a vlog as a “blog delivered in video format, where a vlogger can take the camera along with them as they go about their day or talk in front of a static camera.”); Anugraha Sundaravelu, ‘Kidfluencers’ are being exploited and more needs to be done to protect them, METRO (May 9, 2022), archived at https://perma.cc/55KN-2D53 (declaring that “[i]nfluencer content on social media is becoming an increasingly popular media genre for children, particularly on YouTube.”); Forsey, supra note 58 (indicating that the pandemic forced many people to flock to social media as a source of entertainment and participate in trends like bread baking).

62 See Forsey, supra note 58 (stating that many users shifted to TikTok during the pandemic because anyone could be found and many “small creators blew up because they were able to create content that spoke poignantly to people's lived experiences and feelings.”); Darya Jandossova Troncoso, TikTok vs. Instagram: An In-Depth Comparison, SOTRENDR (July 26, 2022), archived at https://perma.cc/RN3C-2AKW (explaining that TikTok’s algorithm differs from Instagram’s because it “relies less on user input and networking to show users relevant content” whereas Instagram’s algorithm favors paid ads).

63 See Christina Newberry et al., Social Media Algorithms: A 2023 Guide for Every Network, HOOTSUITE (Nov. 7, 2022), archived at https://perma.cc/3SCD-VK49 (describing a social media algorithm as “a set of rules and signals that automatically ranks content on a social platform based on how likely each individual social media user is to like it and interact with it.”); Jacqueline Zote, The TikTok algorithm, SPROUT SOC. (May 2, 2022), archived at https://perma.cc/JA8D-ZGXM (declaring
children who rose to fame can be accredited to TikTok’s algorithm, often because their own content went “viral,” they were featured in content posted by their parents, or because their already-famous parents created an account on the child’s behalf. These children have coined the name, “Kidfluencers,” and they are dominating the influencer market.

B. The Rise of the “Fun-Sized” Influencers

The proliferation of social media has become so widespread that many people, including children, have managed to pursue full-time careers as “influencers” by deriving an income through brand sponsorships, with compensation typically dependent on the

that TikTok’s algorithm makes it easier for users to gain popularity because it “doesn’t consider follower count or a history of high-performing videos as direct ranking factors.”).

64 See Hill, supra note 4 (defining “going viral” when a user’s content quickly reaches a large audience by receiving an unusual amount of shares and exposure). See also Danielle Mund, The moral question of “kidfluencers”, MEDIUM (Mar. 12, 2019), archived at https://perma.cc/87P2-VJRE (demonstrating how Kidfluencers can have over 100,000 followers before they are even born). “Halston Blake, was born just a few days ago, and now has 227,000 fans and only 2 baby pics posted so far.” Id. See also O’Neill, supra note 11, at 43 (discussing how social media influencer, Katie Stauffer, became famous after posting content of her twin daughters). “Stauffer has been posting about the girls, now five years old, since before their birth; her ultrasound photos appear on her page, which at the time of this Essay has almost four million followers.” Id. See also Taylor Goodman, What are ‘kidfluencers’ and why are they so popular?, MEDIA UPDATE (Feb. 19, 2021), archived at https://perma.cc/PC8J-NWYA (declaring that parents have replaced television with YouTube as a way to keep their children entertained).

65 See Trending Now: Emergence Of Mom Bloggers and Kidfluencers, UNBOX SOC. (Nov. 13, 2022), archived at https://perma.cc/5YKD-MVYY (stating that kidfluencers, influencers under the age of 16, “on YouTube and Instagram dominate a lot of influencer market.”); Ai Permanasari, The Urgency of Child Labor Rights Protection as an Influencer, MARANATHA CHRISTIAN UNIV. (2021), archived at https://perma.cc/5RBJ-HRY7 (discussing how “videos featuring children are more popular than other videos.”); Cordeiro, Kidfluencers and Social Media, Kidfluencers and Social Media, supra note 4 (indicating that “[i]n the past few years, ‘Kidfluencers’ – children with large social media followings – have catalysed [sic] an $8 billion social media advertising industry, with highly ‘successful’ children generating up to $26 million a year through advertising and the sharing of sponsored content . . . .”); Medeiros, supra note 1 (stating that big brands are “learning that kids are great for pushing the hottest kids’ toys, clothing, and experiences.”).
individual’s follower count. For many adult influencers, the role constitutes a full-time career because it requires creativity, business skills, planning, content creation, and editing. However, recent discussions have arisen about whether Kidfluencers are actually working or if the content they create is just an extension of their normal routine. The line between work and play easily blurs as parents exert

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66 See Zoha Qamar, Why ‘Kidfluencers’ Have So Few Protections – Even As Americans Support Regulating The Industry, FIVETHIRTEYEIGHT (Jan. 3, 2023), archived at https://perma.cc/DQF7-A3KD (finding that “54% of 13-to-38-year-olds would, if given the opportunity, become an influencer.”); Werner Geyser, What is Influencer Marketing? – The Ultimate Guide for 2023, INFLUENCER MARKETINGHUB (Jan. 20, 2023), archived at https://perma.cc/PA8D-DPBS (stating that a brand sponsorship is when influencers are paid to promote a brand’s products or services on the influencer’s social media platform). See also Blaire McClure, How much do influencers charge per post?, IMPACT.COM (Nov. 14, 2022), archived at https://perma.cc/RK7E-WMQL (listing the average cost of a sponsor by an influencer is based on the number of followers they have on social media). The highest paid influencer is classified in the celebrity tier, where someone has over 1 million followers and is “[f]amous beyond social media, i.e., movie, TV, music, or sports stars.” Id. The lowest paid influencer is defined as a nano-influencer, someone with under 10 thousand followers and is considered “everyday folks with smaller followings but not necessarily less influential.” Id.

67 See Sam Hostetter, BEING A SOCIAL MEDIA INFLUENCER IS ‘A FULL TIME JOB’, THE ECHO (Dec. 4, 2020), archived at https://perma.cc/FT4A-PGZL (explaining that “[b]eing a micro-influencer or a larger-scale influencer requires creativity, business skills, planning time, attention to detail and an understanding of marketing in the digital world.”). See also Asra Mavad, When social media is a full-time job, DECCAN HERALD (Jan. 25, 2022), archived at https://perma.cc/4S5E-UAN6 (quoting Diksha Sharma, an influencer who also manages a job in marketing). “Technically I am doing two full-time jobs. As an influencer, my day involves a lot of research to keep up with everything happening online. I’m constantly responding to emails, working on concepts and shooting. On top of everything, editing takes up a lot of time . . . .” Id.

68 See Cordeiro, Kidfluencers and Social Media, supra note 4 (emphasizing that kidfluencers’ social media platforms can have thousands of followers and can then earn large incomes through sponsored content, but profiles are typically monitored by their parents because most platforms require users to be 13 years old); Sapna Maheshwari, Online and Making Thousands, at Age 4: Meet the Kidfluencers, N.Y. TIMES (Mar. 1, 2019), archived at https://perma.cc/D65A-GE36 (quoting Sravanthi Dev, a spokesperson for Instagram, who indicated that although the platform prohibits users under the age of 13, parents can create profiles for their child so long as the account indicates that it is run by the parent); Permanasari, supra note 65 (stating that Kidfluencers are targeted by companies to promote their products because “[c]hildren who have a lot of followers have a big influence in influencing their followers in terms of inspiring or leading to use or not use a certain product.”); Munirat Suleiman, Is Kidfluencing Child Labor?: How the Youngest Influencers Remain Legally Unprotected, COLUM. UNDERGRADUATE L. REV. (2022) (finding
pressure on their children to continue producing content due to the substantial amount of income it generates.69 There is a high risk that these children will be subjected to exploitation by their parents as there is no legislation in the United States that can provide protection to Kidfluencers.70 Consequently, parents are able to attain full possession over their child’s income, privacy, and safety.71

C. Skepticism Surrounding Kidfluencing

Ever since the development of the internet in the early 1980’s, people around the world have gained access to greater knowledge, that the parents of Kidfluencers claim that “they [capture] the child’s normal activities, rather than a rehearsed performance . . .”).

69 See Rachel Dunphy, The Dark Side of YouTube Family Vlogging, N.Y. MAG.: INTELLIGENCE (Apr. 17, 2017), archived at https://perma.cc/8ECU-9WP5 (quoting the pressures a thirteen-year-old YouTuber named Allie faced after her channel went viral and her mother wanted her to work long hours). “She wanted me to be famous enough and make enough money where I could provide for the entire family . . . she would be able to quit her jobs; my dad would be able to quit his job.” Id. Allie’s mother said she would never take her money, but began making statements like “I want 30 percent; I want 50 percent; I’m owed this.” Id. See also Kang, supra note 3 (describing a conversation when a crew member told Kaji, after hours of filming in the sun, “[i]f you finish this scene, you can play Minecraft.”). See also Danya Hajjaji, YouTube Lets Parents Exploit Their Kids For Clicks, NEWSWEEK MAG. (Oct. 4, 2021), archived at https://perma.cc/4JCV-EXN8 (discussing how an influencer instructed her eight-year-old son to look more upset in a vlog where their dog was suffering from a fatal disease). “‘Act like you’re crying . . . The boy replies: ‘But Mom, I’m actually crying.’” Id.

70 See Qamar, supra note 66 (highlighting that a poll from December 2022 found that two-thirds of Americans believe “underage influencers are exploited by a parent . . . .”); Nathalie Atkinson, Beware the ‘momager’: Why parents shouldn’t cash in on cuteness, GLOBE & MAIL (Apr. 12, 2019), archived at https://perma.cc/9FV2-HYGZ (highlighting that since “there are no laws that require parents to hold Kidfluencer earnings in trust – parents can pocket all of it . . . .”); Kathleen Singleton, THIS BILL COULD PROTECT YOUNG CHILDREN IN FAMILY VLOGS, HER CAMPUS (May 7, 2022), archived at https://perma.cc/N79V-PUUZ (demonstrating that while child actors have determined rights, “[c]hildren featured on vlogs are not playing a part when they are in vlogs, nor do they currently have legal protection.”).

71 See Murphy, supra note 1 (declaring that “[s]ome parents rely on their child’s influencer accounts or their family pages as their primary income.”); Faith Dolan, Social media influencers can violate child labor laws, DAILY TOREADOR (Apr. 29, 2022), archived at https://perma.cc/4KJ6-3HYF (stating that although Kidfluencers may appear happy in pictures or videos, that does not necessarily mean that they voluntarily decided to participate).
better opportunities, and enhanced connectivity with others.\textsuperscript{72} The advent of the COVID-19 pandemic notably amplified the amount of time children spent in front of screens, given the shift to virtual learning in schools and iPad games and television shows used as substitutes to traditional playdates.\textsuperscript{73} As it becomes the norm for young children to have social media accounts and for parents to create accounts dedicated to their newborn babies, an increasing number of individuals are now raising awareness about the alarming risks associated with Kidfluencing.\textsuperscript{74}

\textsuperscript{72} See Kurt Wagner, \textit{Is the internet good or bad for society? Americans are having a tough time deciding.}, VOX (May 6, 2018), archived at https://perma.cc/6AKP-TLLL (opining that even though the “internet is great for many things, like helping people stay in touch, spreading vital information and easing the burden of everyday tasks,” it can also be very harmful).

\textsuperscript{73} See \textit{Effects of Technology on Children During a Pandemic}, REGIS COLL. (June 16, 2021), archived at https://perma.cc/MN4D-9QCH [hereinafter, \textit{Effects of Technology}] (demonstrating that due to COVID-19, children spent excessive time in front of screens because by April 2020, 1.5 billion children were physically at home rather than school). “American children ages 8 to 12 spend an average of almost five hours a day looking at screens; children under 8 spend about half that time, and teenagers spend more than seven hours a day. That doesn’t count the time they spend using screens for schoolwork.” Id. See also BRIAN NEIL LEVINE, INCREASING THE EFFICACY OF INVESTIGATIONS OF ONLINE CHILD SEXUAL EXPLOITATION: REPORT TO CONGRESS 1, 22 (National Institute of Justice, National Criminal Justice No. 301590, 2020) (explaining that the switch to online learning during the COVID-19 pandemic resulted in many children using technology as a way “to replace the in-person socialization they received in school.”); More than 29 million reports of suspected child sexual exploitation in 2021, nonprofit center says, CBS NEWS (Mar. 15, 2022), archived at https://perma.cc/RJ9L-8EWC [hereinafter, \textit{Child Sexual Exploitations}] (noting that during the pandemic, predators realized that more “children were going to be unsupervised, and they were encouraging each other to seize upon that opportunity . . . .”).

\textsuperscript{74} See Steinberg, \textit{Sharenting}, supra note 13, at 849 (reporting that in nearly one-fourth of pregnancies, babies already have an online presence because their parents share their sonogram pictures online). See also LEVINE, supra note 73, at 21 (reviewing a 2010 study). The study indicated that social media platforms were predominantly used by children under the age of 12, with 79% of children receiving a phone before the age of 15, 33% of parents allowing smartphone use before age 5, and 20% of parents providing smartphones to children aged 11 or younger. Id. Of the 49 million people in the United States who are users on TikTok, about one-third of them are aged 14 or younger, 5% of users on Instagram are 11 or younger, and 11% of users are between the ages 9 and 11. Id. See also \textit{What are ‘kidfluencers’?} INHOPE (June 9, 2022), archived at https://perma.cc/P8V8-ZAG9 (reasoning that after parents post their kids online, some parents have found images of their children “reproduced on Child Sexual Abuse Material (CSAM) platforms” resulting in the creation of “deepfake images that were then shared on the darknet.”). But see The
Due to the inherent flexibility embedded in influencers’ work schedules, Kidfluencers can essentially work anywhere and at any time, which has sparked concerns over the number of hours Kidfluencers might be compelled to spend creating content.\textsuperscript{75} Unlike child actors who adhere to stringent schedules, Kidfluencers are not bound to rigid itineraries, thus enabling them to create most of their content within the confines of their own home.\textsuperscript{76} Considering the substantial earnings a single post can generate, there is a tremendous incentive for parents to exert pressure on their children to produce as much content as possible.\textsuperscript{77} However, since the majority of social media platforms require users to be at least thirteen years old to create an account, parents often assume the responsibility of managing their

\textsuperscript{75} See Lambert, \textit{supra} note 13 (cautioning that if parents abuse the income their child generates, “that amplifies the risk of them planning 10-hour workdays, rather than structured, comfortable workdays.”); Dunphy, \textit{supra} note 69 (recognizing that as a Kidfluencer’s business begins to grow, it is tempting for parents “to start treating kids like employees, and these pockets of support help justify practices like scripting videos, filming emergency room and dental visits, and homeschooling kids to better accommodate a work schedule.”).

\textsuperscript{76} See Pierce \textit{v. Soc’y of Sisters}, 268 U.S. 510, 534–35 (1925) (holding that the government cannot interfere with parents’ right to “direct the upbringing and education of children under their control.”); Schwab, \textit{supra} note 9 (stating that Kidfluencers do not work on sets, rather “they’re probably at home, it might be after school, or on the weekends.”); Qamar, \textit{supra} note 66 (opining that family vlogs are now “a thriving economy of kid personalities.”).

\textsuperscript{77} See Keepface, \textit{The Rise of the “Kid Influencer”: Meet the new generation of Influencers}, MEDIUM (Oct. 30, 2019), archived at https://perma.cc/BBF3-VSWW (asserting that children can turn their YouTube or Instagram into a money-making platform if their “social media presence has garnered enough attention that they attract advertisers and sponsors…”). “[B]rands might pay $10,000 to $15,000 for an Instagram post while a sponsored YouTube video might cost $45,000.” \textit{Id.} If an influencer gives a 30 to 90 second shout in a video, this can cost advertisers between $15,000 to $25,000. \textit{Id.} See also Schwab, \textit{supra} note 9 (noting that a Kidfluencer can earn about $100 per 1,000 followers per post, therefore “[a] child with 500,000 followers would earn about $5,000 for a single image.”); Rane, \textit{supra} note 8 (indicating that “an ‘influencer’ like Maya Basol, with over 1.5 million followers at the tender age of five, each #spon post could earn her upwards of $15,000 (Maya Basol’s mom appears to post almost exclusively ads, about once per day.”); Gianna Melillo, \textit{Why ‘sharenting’ is sparking real fears about children’s privacy}, THE HILL (Sept. 16, 2022), archived at https://perma.cc/XSD8-TN9W (criticizing influencer Brittany Jade Szabo after she posted a video on TikTok and “told her twin sons to go along with a story claiming their third brother had died, in an effort for the family to win a cruise trip.”).
child’s accounts, often taking drastic steps to amplify content production.\textsuperscript{78}

Kidfluencers, being children, inherently present additional challenges for parents when it comes to content creation because their behavior is often uncontrollable, and the child is too young to understand that they are being paid to perform a job.\textsuperscript{79} In response, many parents tackle this issue by removing their child from traditional classroom settings and opt for homeschooling, thus ensuring the child’s constant availability at any moment throughout the day.\textsuperscript{80}

\textsuperscript{78} See Suleiman, \textit{supra} note 68 (arguing that parents are the “laborers behind Kidfluencing through content creation and contracts, since the children alone are often too young to have their own accounts on these platforms.”). See also Claire Haiek, \textit{YouTube couple cops backlash after ‘cruel’ April Fools’ prank on daughter, KIDSPOT} (Apr. 5, 2019), archived at https://perma.cc/HP57-8D5W (condemning the parents of 6-year-old Everleigh Rose for uploading a video to their family YouTube channel where they told Everleigh they were giving away her dog as an April Fool’s joke, for the purpose of creating content). “In the video, Everleigh appears to be visually distressed and even has a tear spill over before the couple reveals it’s in fact a prank.” \textit{Id.} After receiving significant backlash for playing such a prank on Everleigh, the couple made a subsequent video addressing their mistake. \textit{Id.} In the video, Cole stated, “We film our whole lives, it’s what we signed up for . . . We honestly thought it was really funny . . . it was just a bad judgment call in the moment.” \textit{Id.} See also Wong, \textit{supra} note 8 (demonstrating the extreme measures parents will take to have their children produce content after Machelle Hackney Hobson, mother of five, was arrested for abusing her children). The children were disciplined if they did not remember their lines or perform as they were instructed to. \textit{Id.} The children further stated that one reason they were taken out of school was “so they can keep filming their series and they mentioned they have not been in school for years.” \textit{Id.} See also Charlotte B. Winckler, \textit{KIDFLUENCERS: HOW THE LAW’S FAILURE TO KEEP UP LEAVES CHILDREN ACROSS THE COUNTRY AT RISK OF LABOR ABUSE AND FINANCIAL EXPLOITATION}, 16 CHARLESTON L. REV. 111, 126 (2022) (demonstrating that the mother of 6-year-old Summer Gittens, “considers her daughter’s social media fame a business and pays herself fifteen to twenty percent out of [Summer’s] earnings for her role as manager.”).

\textsuperscript{79} See Burke, \textit{supra} note 3 (explaining that Kidfluencers “are oftentimes placed into the social media spotlight before they have the ability to talk.”); Wong, \textit{supra} note 8 (discussing how the mother of 5-year-old Kidfluencer Zooey Miyoshi uses sunglasses to help take the perfect photo because “[m]ost of the time, she is not looking directly at me, which sunnies help hide.”). See also Rane, \textit{supra} note 8 (quoting a mother of three Instagram-famous boys). “If there’re days that 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.” \textit{Id.}

\textsuperscript{80} See Wisconsin v. Yoder, 406 U.S. 205, 244 (1972) (Douglas, J., dissenting) (reasoning that a child should be entitled to be heard in decisions regarding their education). Although parents normally make all the decisions for their family,
Accordingly, the conditions and the number of hours Kidfluencers’ spend producing content will remain devoid of regulation because the work transpires within the privacy of the family’s home.\textsuperscript{81} 

Another major area of concern pertains to whether the increase in children’s online presence will cultivate an environment conducive to online predators.\textsuperscript{82} The National Center for Missing & Exploited Children reported that there have been “29.3 million reports of child will often have an opinion about their education because “[h]e may want to be a pianist or an astronaut or an oceanographer.” \textit{Id.} A parent who removes their child from school bars the child “from entry into the new and amazing world of diversity that we have today.” \textit{Id.} at 245. \textit{See also} Gabbi Shaw, \textit{28 celebrities who dropped out of school and make it big anyway}, INSIDER (Aug. 14, 2021), archived at https://perma.cc/MY67-Y6MM (listing various celebrities who stated that they wish they had never dropped out of school). Singer Katy Perry stated that one of her biggest regrets was not having a better education. \textit{Id.} “I’m kind of bummed at this stage that I didn’t have a great education because I could really use that these days . . . I was being pulled out of school even in middle school and sometimes being home-schooled.” \textit{Id.} Oscar-winning actor, Quentin Tarantino, stated that he hated school when he was younger, however, if he had stayed in school, he would have really liked college. \textit{Id.} 

\textsuperscript{81} \textit{See} Jonathan F. Geider, \textit{How to (Not) Exploit Your Internet Child Star: Unregulated Child Labor On YouTube, Instagram and Social Media}, 1, 20–21 (2021) (Seton Hall University) (declaring that when content creation occurs in a family’s home, it provides additional obstructions when regulating Kidfluencers). “The abuse [Machelle Hackney Hobson’s] children endured reminds us that there is a risk that any parent who is managing their children in social media production has the ability to abuse their children in a production that would not be possible or tolerated in a traditional entertainment environment.” \textit{Id.} 

\textsuperscript{82} \textit{See} \textit{HOW PREDATORS HAVE INFILTRATED SOCIAL MEDIA, INNOCENT LIVES FOUND}, (Nov. 18, 2022), archived at https://perma.cc/Y6NN-DAAW (stressing that social media platforms like Instagram, YouTube, Snapchat, and WhatsApp have “predators [who] hide behind false identities to groom children.”). \textit{See also} Katie Collins, \textit{TikTok Parents Are Taking Advantage of Their Kids. It Needs to Stop}, CNET (Aug. 7, 2022), archived at https://perma.cc/G8W6-6FL5 (quoting the perspective of TikToker Sarah Adams, who discusses the concerns surrounding parents who set up amazon wish lists on their child’s platforms for strangers to buy them swimwear and underwear). Other 11-year-olds are not “sending their pocket money to these girls so they attend their next bikini modeling shoot. ‘Who the fuck do you think is tipping these kids?’ . . . ‘It’s predators who are liking the way you exploit your child and giving them all the content they need.’” \textit{Id.} \textit{See also} Kieran Press-Reynolds, \textit{A new wave of parent influencers and mom TikTokers are choosing not to spotlight their children on the internet anymore}, INSIDER (Jan. 10, 2023), archived at https://perma.cc/62TA-Z4WG (demonstrating that famous TikToker, Maia Knight, began covering her twins’ faces in videos to protect their privacy).
suspected child exploitation,” which is a 35% increase since 2020. The transition to online learning during the COVID-19 pandemic supplied predators with the perfect opportunity to target thousands of vulnerable children, who were often left unsupervised online while their parents worked.

Recent debates have also surfaced concerning the phenomenon known as “sharenting,” a term used to describe parents who overly publicize sensitive content about their children on social media platforms. While to most, pictures of children on social media may appear innocent and harmless, unfortunately these presumptions often contribute to the presence of children’s images on websites that cater to pedophiles and hebephiles. This issue was recently brought to

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83 See Child Sexual Exploitations, supra note 73 (emphasizing that the number of reports of suspected child sexual exploitation hit an all-time high in 2021). See also Fox News, supra note 13 (declaring that parents are supplying predators with pictures of their children that they would normally have to search for). Parents are the ones putting this content on social media, “it’s not like [predators] are the ones creating . . . that type of content. They’re just consuming it.” Id.

84 See Leena Nas, Kids Desperately Looking For Connections Are At A Major Risk Online, M O M S (Jan. 6, 2021), archived at https://perma.cc/S59U-WEHY (asserting that the pandemic caused a significant increase in online child exploitation because children were stripped of social interaction with their peers, which resulted in social media platforms transforming into “essential lifelines for children stuck at home and separated from their friends . . . .”). “Being forced to learn online means that the majority of children across the globe are relatively, if not entirely, unsupervised as they navigate the online world . . . .” Id.

85 See Abdul Rasool Syed, Sharenting! Your actions are getting your child subject to harassment, GLOB. V I L L. SPACE (Dec. 3, 2019), archived at https://perma.cc/B494-HH2L (defining sharenting as when parents overuse social media to share photos or information about their children). See also Steinberg, Sharenting, supra note 13, at 847 (indicating that while most parents have good intentions when they share information about their child online, they are often unaware of the potential consequences that may result). “Some parents are lulled into a false sense of security that the data they share about their children will not be seen beyond a select audience.” Id. at 850. “Many parents believe this provides them with a safety net, and they use little discretion sharing with their chosen audience. In reality, even these posts can reach a large audience, as the intended audience has the ability to save and repost the data in alternate forums.” Id. See also Morgan Sung, How one teen is urging legislature in Washington state to help protect kids from being exploited in vlogs, NBC NEWS (Feb. 14, 2023), archived at https://perma.cc/4HBC-8E6S (describing Cam’s experience growing up with a parent who engaged in sharenting). According to Cam, when you google their name, “[t]he first thing that pops up is photos of me as a child in bikinis . . . .” Id.

86 See Syed, supra note 85 (highlighting that parents are “sharing photos as well as personal data of their children on Facebook without making any effort to learn that
light in relation to a series of videos that famous TikToker, Jacqueline Paul, posted on her account of her three-year-old daughter, Wren Elenore.\textsuperscript{87} According to various accusations made by Paul’s followers, a handful of the videos that Paul posted of Elenore were being broadcasted to outside websites and made accessible to child predators.\textsuperscript{88} Many of Elenore’s 17 million followers on TikTok observed that some videos of Elenore, which appeared innocent to the average viewer, contained disturbing comments sexualizing the three-year-old, with certain videos being saved over 385,000 times.\textsuperscript{89} As a result, numerous mothers who had once engaged in sharenting, made the decision to stop broadcasting their children on social media and

\begin{itemize}
  \item What may be the consequences . . . \textquotedblright. As a result of sharenting, “[r]esearch has shown that millions of innocent photographs end up on pedophilic and hebephilic websites.” \textit{Id. See also} Melillo, \textit{supra} note 77 (urging parents not to constantly document their child’s lives because “children learn to expect that their experiences are always going to be posted online, which leads them to be self conscious and to moderate themselves in a way that maybe isn’t good for their growth and development.”). \textit{See also} Dave Moore, \textit{Once on the Internet, always on the Internet, Norman Transcript} (Mar. 18, 2021), \textit{archived at} https://perma.cc/XR5D-35YC (explaining that digital permeance means that once content is put on the internet, it will remain there forever).

\textsuperscript{87} \textit{See} Alison Cutler, \textit{Toddler goes viral in ‘Wren Elenor’ TikTok videos. Moms are scared of who’s watching, MIA. HERALD} (July 28, 2022), \textit{archived at} https://perma.cc/95BW-BMDP (discussing how moms on TikTok raised concerns about who is watching three-year-old Wren Elenor’s TikTok videos). TikTok users noticed that certain videos of Wren eating a hot dog, pretending to shave, playing with tampons, or playing in a bikini have received millions of views and have been saved by thousands. \textit{Id.}

\textsuperscript{88} \textit{See} Lindsay Dodgson, \textit{A controversy over major momfluencer & Wren Jacquelyn sparks a campaign over predators on TikTok, INSIDER} (July 25, 2022), \textit{archived at} https://perma.cc/AE3T-NQFU (asserting there were various comments on Wren’s account where she was sexualized, or her pictures were sometimes edited and posted on outside websites). While some images of Wren were reposted on Pinterest calling the child “cute,” others were titled, “‘Girls I like,’ while another had several images of children tied up and gagged.” \textit{Id.}

\textsuperscript{89} \textit{See} Dodgson, \textit{supra} note 88 (analyzing the types of videos saved from Wren’s TikTok account). One video “shows Wren in the bath, which was liked 880,000 times and saved 22,000 times. Another, which has over 10 million views, shows Wren using perfume, pretending to shave with a razor, and mimicking inserting a tampon, has been saved 385,000 times.” \textit{Id. See also} \textit{Child Sexual Exploitations, supra} note 73 (declaring that this past year, the National Center for Missing & Exploited Children “received more tips about unlawful videos than still images.”).
instead posted videos raising awareness about the dangers that can result from sharenting.  

**D. Emergence of Foreign Laws Aimed to Protect Kidfluencers**

As the age of Kidfluencers gets younger, the public has raised many concerns as to whether Kidfluencers are old enough to provide informed consent for their online exposure. As many parents continue to partake in the sharenting trend, they begin to establish a digital footprint of their child, oftentimes before the child even knows how to speak or can manifest consent. Over the past few years, various countries have taken steps to better protect children’s online privacy after recognizing the undesirable consequences that may result when young children are featured on social media platforms.

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90 See Cutler, supra note 87 (quoting a TikTok mom who stated she does not post pictures of her children anymore because even though “98% of viewers are innocent and think it’s cute . . . that 2% isn’t worth it.”). See also Collins, supra note 82 (stating that an influencer with almost 92,000 followers, stopped posting her children online when she discovered people had “taken photos of her children that she’d posted and used them to create fictional profiles . . . ”).

91 See Margaret Arabpour, Lights, Camera, (Legal) Action: Expanding Child Entertainment Laws to Protect Children on Social Media, AM. U. J. GENDER, SOC. POL’Y & L., (2022) (discussing how children are unable to “fully rationalize and understand the long-term consequences of having their toddler tantrums or invasive breakdowns about their bodies and medical histories available on the internet for free commentary, viewing, and distribution.”). See also Myriam Whaibe, Digital Child Labour – The Phenomenon of “Kidfluencers”, PHX. DAILY (Nov. 15, 2021), archived at https://perma.cc/F4AD-FRVD (emphasizing that regardless of age, consent is crucial “especially when someone is affecting another person’s image and is exposing them to such a big audience.”).

92 See Steinberg, Sharenting, supra note 13, at 842 (cautioning parents who post information about their children on social media without their child’s permission “may foreclose their children from the opportunity to create their own digital footprints.”). See also Dolan, supra note 71 (asserting that young children who are prevalent on social media will live their lives under the microscope of millions of strangers). See also Collins, supra note 82 (highlighting that “[a]s kids get older, they naturally want to define themselves on their own terms, and if parents have overshared about them in public spaces, that can be difficult, as many will already have notions about who that child is or what that child may like . . . ”). See also Marisa Dellato, Warning: Your kid’s digital footprint starts before birth, N.Y. POST (Nov. 8, 2018), archived at https://perma.cc/Y4CV-9MWT (emphasizing that “[k]ids will have an average of 1,300 pictures and videos of themselves posted online by their parents by the time they’re 13.”).

93 See Vanessa Cezarita Cordeiro, Understanding the Ramifications of ‘Sharenting’: Children’s “Right to be forgotten”, HUMANIUM (Mar. 9, 2021), archived at
In 2016, the European Union established the General Data Protection Regulation ("GDPR"), a legislative framework designed to provide citizens in the European Union greater control over their personal data online. Specific provisions within the GDPR incorporate protections for children’s privacy, such as a child’s right to erase any data collected about them. In 2020, France transcended the provisions of the GDPR’s scope by instituting additional regulations concerning children’s privacy on the internet. These regulations under the GDPR are some of the strictest in the world and many countries model their laws around the GDPR to ensure that nothing slips through the cracks. In addition to requiring advanced consent measures, the GDPR says you can’t subject [a child under the age of 15] data to automated processing or profiling. 

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94 See Danny Palmer, What is GDPR? Everything you need to know about the new general data protection regulations, ZDNET (May 17, 2019), archived at https://perma.cc/BF5V-FMSZ (stating that the GDPR, which was enacted in 2018, is a set of regulations designed to give EU citizens more protection over their personal data).

95 See Nicole Olsen, Minors and Your Privacy Policy, PRIVACY POLICIES (July 1, 2022), archived at https://perma.cc/JQ5Q-79GJ (declaring that the regulations under the GDPR are some of the strictest in the world and many countries model their laws around the GDPR to ensure that nothing slips through the cracks). “In addition to requiring advanced consent measures, the GDPR says you can’t subject [a child under the age of 15] data to automated processing or profiling.” Id. See also Right to erasure (‘right to be forgotten’), INTERSOFT CONSULTING (Feb. 22, 2023), archived at https://perma.cc/ZQ22-Q9L2 (indicating that children have the right to erase any data collected about themselves if it falls under the restrictions discussed in Article 8 (1)). See also General Data Protection Regulation (EU) No. 2016/679 of 27 April 2016, art. 17, 2016 O.J. (L 119/1) 1 (explaining that under the GDPR, personal data of children aged 15 and younger can only be processed if parental consent is obtained).

96 See Jennifer Venis, Social media: Rise of ‘kidfluencers’ pushes legislators to engage with children’s rights online, INT’L BAR ASS’N (Sept. 6, 2022), archived at https://perma.cc/AU5C-2NZS (declaring that French law enshrines the GDPR because it “allows for children to demand that platforms remove videos of them without requiring the approval of their parents.”); Ebrar Ermaner, French Law to Protect “Child Influencers”, INFLOW NETWORK (Jan. 13, 2021), archived at https://perma.cc/K8CL-HXBN (highlighting France’s law that protects children who spend a considerable amount of time working online and derive an income from such work); Brittany Wong, In The Future, Will Your Kids Be Able To Sue You For
stringent privacy laws were designed to protect the income, privacy, and safety of Kidfluencers on social media. 97 In that same year, France also passed a law specifying that any individual who publishes unauthorized images of another, for the purpose of monetization, could be sentenced to five years in prison and receive a fine of nearly €75,000. 98 Furthermore, as of March 2023, French lawmakers have

Oversharing Online?, HUFFPOST (Apr. 23, 2019), archived at https://perma.cc/RNS8-7J5C (asserting that in 2016, French parents were urged to reduce the amount of content they post about their child); ‘Kid influencers’ regulated under new French law, FRANCE 24 (June 10, 2020), archived at https://perma.cc/8V99-LAJB (declaring that “[s]ince 2017 the government has committed itself on several occasions to better regulating the digital world so that everyone is better protected there.

97 See Jessica Maddox, Why aren’t there any legal protections for the children of influencers, RICH TIMES-DISPATCH (Jan. 21, 2023), archived at https://perma.cc/M3ZB-VTAW (stating that France has already implemented laws “protecting the commercial use of children under 16 on social media.”); Amar Toor, French police tell parents to stop posting Facebook photos of their kids, THE VERGE (Mar. 2, 2016), archived at https://perma.cc/ZWT7-8EXY (quoting French internet law expert Éric Delcroix, “it’s likely that baby photos published today could lead to lawsuits years from now.”); France: Parliament Adopts Law, supra note 14 (declaring that “[b]eyond certain thresholds regarding the number of videos produced, the cumulative length of these videos, or the level of income generated by those videos, the child’s parents will need to submit a declaration to the government authorities.”).

98 See Laura Kayali, France to introduce legal protection for YouTube child stars, POLITICO (Oct. 6, 2020), archived at https://perma.cc/R634-YMQ (indicating that “[u]nder the new rules, anyone — including parents — who records videos that feature minors under 16 years old for the purpose of monetization on video-sharing platforms will need authorization from an administrative authority, or face fines of up to €75,000 and five years in prison.”). See also Glyn Moody, French Parents Face Fines, Lawsuits And Prison For Posting Pictures Of Their Own Children Online, TECHDIRT (Mar. 7, 2016), archived at https://perma.cc/WKQ7-YUCC (stating that “[u]nder France’s stringent privacy laws, parents could face penalties as severe as a year in prison and a fine of €45,000 [about $49,000] if convicted of publicising [sic] intimate details of the private lives of others — including their children — without their consent.”); Kumar, supra note 14 (announcing that “[v]ideo producers [including parents] who do not get proper work authorization for children face a fine of 75,000 euros (about $88,700) and up to five years in prison … [a]dvertisers who do not
successfully enacted the world’s inaugural law that can prohibit parents from posting pictures of their children online, regardless of whether it involves monetization, and holds parents responsible for their child’s image rights.99

IV. Analysis

The FLSA and COPPA demonstrate the various attempts made by the United States government to protect children, but unfortunately, these laws have not kept pace with the technological advancements that have given rise to Kidfluencers.100 Similarly, even within the

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99 See Amey Patil, Sharenting: France Passes World’s First Law that Bans Parents from Sharing Children’s Photos, MEBOUND TIMES (Mar. 24, 2023), archived at https://perma.cc/338R-K3ZQ (indicating that “[t]he legislation can prohibit parents from posting pictures of their children on various social media platforms. It can also hold both parents responsible for their children’s image rights.”). See also Sophia Khatsenkova, ‘Sharenting’: Why is France trying to stop parents from oversharing their children’s images online?, EURONEWSNEXT (Mar. 10, 2023), archived at https://perma.cc/KUB4-RXXU (discussing France’s new “anti sharenting” bill). “One of the clauses being put forward aims to make parents responsible for the privacy rights of their children who cannot consent to their images being uploaded online.” Id. “In the most extreme cases, a family judge could even take away one parents’ rights to share images of their child, if deemed excessive or harmful.” Id. See also Pranav Dixit, Parents can be jailed for sharing their child’s photos on social media in this country, BUS. TODAY (Mar. 22, 2023), archived at https://perma.cc/7SR3-KD4B (announcing that the new law has been praised by many child activists and experts, but some say the law only scratches the surface and does not go far enough).

100 See Masterson, supra note 26, at 585 (explaining that the FLSA protected children from “the most hazardous and exploitative occupations . . . ”). “Because [children] were often given the least desirable jobs in these workplaces, one book estimated that boys under sixteen-years-old had twice as many workplace accidents as adult men and girls under sixteen had three times as many accidents as adult women.” Id. at 585–86. See also Schuman, the reform movement, supra note 24 (describing that one of the various provisions under the FLSA “restrict[s] legal child labor to those ages 16 and over except for hazardous occupations.”). Child labor began to decline by the time the FLSA passed because parents could now afford to send their child to school rather than utilizing them as a source of income and workplaces sought out immigrants because technological advances made workplace machinery too complex for children. Id. See also Cordeiro, Kidfluencers and Social Media, supra note 4 (listing the various harms Kidfluencers are exposed to). “Loss of privacy, child labour [sic], child exploitation and deprivation of other opportunities (such as missing school) are all common risks – as well as the additional physical and psychological harms such as exploitative practices due to the unregulated nature of
states that have enacted laws comparable to California’s Coogan’s Law, such laws only protect traditional child actors and performers, thus still lacking protections for Kidfluencers, who may be prone to even more abuse.101 Devoid of safeguards under the FLSA, COPPA, and Coogan’s Law, Kidfluencers in the United States remain increasingly vulnerable to abuse of their finances, privacy, and safety.102

A. Ramifications Associated with Kidfluencing

1. Overworked and Underpaid

As the number of Kidfluencers continues to rise and technological advancements forge ahead, these children remain vulnerable to financial abuse and grueling working hours orchestrated by the hands of their own parents.103 Given the absurd amount of money that

the social media space.” Id. See also Masterson, supra note 26, at 585 (stating that the underlying purposes of the FLSA “do not encompass social media work. Accordingly, like for child actors, protections for child social media stars are likely to be addressed on a state-by-state basis.”); O’Neill, supra note 11, at 46 (declaring that actors and performers are exempted under the FLSA because they “earn high salaries and do not need the same minimum-wage and overtime protections as other workers, and because they qualify for the ‘creative professional’ exemption.”).

101 See e.g., Child Entertainment Laws as of January 1, 2022, supra note 34 (listing the various protections granted to child performers in each state); O’Neill, supra note 11, at 46 (discussing the level of protection granted to child performers significantly varies in different states); Burke, supra note 3 (indicating that Coogan’s Law “is limited to the traditional entertainment industry, and does not extend to children that are earning money via social media.”); Murphy, supra note 1 (noting that “[s]ome parents rely on their child’s influencer accounts or their family pages as their primary income.”).

102 See Lambert, supra note 13 (stating that Kidfluencers are at risk of losing millions to their parents because there are no laws protecting Kidfluencers income). With no laws protecting Kidfluencers’ income, advocates for child workers’ rights argue that “the law hasn’t kept pace with the digital age, and as a result, kidfluencers are falling through the cracks.” Id. See also Terrell, supra note 27 (highlighting that the FLSA has been amended many times since its enactment in 1938); O’Neill, supra note 11, at 48 (urging states to adopt legislation to protect Kidfluencers because severe consequences can result when a child’s privacy is compromised in front of a large audience); Masterson, supra note 26, at 594 (demonstrating that when social media work “prevents the child from excelling in school or developing other skills, or even causes widely known reputational harm, their parents’ decision to make them a kidfluencer can have serious long-term financial effects.”).

103 See Cordeiro, Kidfluencers and Social Media, supra note 4 (indicating that parents often underestimate the potential risks associated with exposing their child
companies are willing to pay for sponsored posts, which often take a matter of minutes to produce, the risk of financial abuse that Kidfluencers face make the circumstances surrounding Coogan’s misfortune look commonplace. Without laws governing the management of Kidfluencers’ income, these parents have the legal right to use their child’s earnings for their own personal benefit, rather than investing in their child’s future. When a Kidfluencer begins earning a substantial income through social media, their parents often remove them from traditional classroom settings and transition into homeschooling, making it easier to accommodate the child’s unpredictable work schedule. In such scenarios, the parental right to control the child’s upbringing and education becomes an avenue to

to large audiences). Many parents of Kidfluencers typically state that it was their child’s choice to post on social media, and they “object to the idea that they have ‘pushed’ their children into social media ....” Id. See also Steinberg, Sharenting, supra note 13, at 848 (finding that 51% of parents shared information online that “could lead to an identification of their child’s location at a given time, and 27% of participants shared (potentially) inappropriate photos”). One mother posted pictures of her children toilet training and later discovered that strangers accessed, downloaded, and altered the pictures, then shared them on a website commonly used by pedophiles. Id.

104 See Cordeiro, Kidfluencers and Social Media, supra note 4 (indicating that parents have a strong incentive to pressure their child into producing more content since a Kidfluencer with over a million followers can earn over $10,000 per post); Sternlicht, supra note 7 (noting that the D’Amelio sisters can earn over $250,000 per sponsored post); Maheshwari, supra note 68 (asserting that “YouTube accounts can also bring in serious ad dollars without brand deals….”). See also Guzman, supra note 32, at 104 (describing the horrific conditions that Mike and Heather Marin, who run their YouTube channel “DaddyO’Five,” put their children through to film content). The channel contains content of the children being “pranked to the point of tears, peeing on themselves, and jumping whenever their father entered the room.” Id.

105 See Kid influencers’ regulated under new French law, supra note 96 (stating that “[t]he money available for so-called ‘kid influencers’ -- some are known to earn millions of dollars a year -- has raised fears of pushy parents encouraging their offspring to spend more time posting online than pursuing their education.”). See also Kang, supra note 3 (discussing how Kaji’s quick rise to fame and massive income allowed his parents to pursue their dream of living in Hawaii). After Kaji became famous, his family moved from Houston to Hawaii and Kaji’s mother stated that she had “always wanted to live in Hawaii, and now that we can afford it, we thought, Why [sic] don’t we just do it?” Id.

106 See Dunphy, supra note 69 (indicating that parents are often inclined to utilize homeschooling as a way to better support their child’s demanding work schedule). See also Dolan, supra note 71 (discussing how the LaBrant family removed Everleigh from school so she could help take care of their newborn child). “For a family who generates a significant amount of wealth and most likely could afford to hire a nanny, this is quite concerning.” Id.
shield the outside world from the excessive hours and conditions that Kidfluencers may be forced to work in.\(^{107}\)

2. The Aftershock of Digital Permanence

The privacy rights of Kidfluencers are also jeopardized due to their limited capacity to provide informed consent or comprehend the ramifications of exposing their personal information online for millions to view.\(^{108}\) Although COPPA was designed to protect

\(^{107}\) See Pierce v. Soc’y of Sisters, 268 U.S. 510, 534–35 (1925) (holding that the government cannot interfere with parents’ right to control the upbringing and education of their children); Geider, supra note 81, at 27 (asserting that because social media productions can be filmed at any time throughout the day, there is no reason to interfere with a child’s normal school hours). See also Lambert, supra note 13 (highlighting that the difference between traditional media, which is subject to strict schedules and studio oversight, and digital content, which can be filmed whenever and wherever a creator wants). “If [parents] are using [the child’s earnings] for personal reasons, that amplifies the risk of them planning 10-hour workdays, rather than structured, comfortable workdays.” Id. See also O’Neill, supra note 11, at 49 (suggesting that states could “look for a correlation between the amount a child performer earned and the amount of school she missed—a significant number of absences could be a warning sign of a child working too many hours.”); Kang, supra note 3 (pointing out that due to Kaji’s tight schedule and his family’s desire to spend as much time as possible in Hawaii, Kaji “flies to Los Angeles, films a season’s worth of shows, then heads right back home.”); McGinnis, supra note 11, at 259 (indicating that “[e]ven if states wanted to protect child social media influencers, it could be difficult because most of the work takes place in the home, on a child’s hours outside of school, and under the direct supervision of a parent or guardian.”).

\(^{108}\) See Burke, supra note 3 (recognizing that Kidfluencers are often involved in the creation of social media content before they can even speak); Maheshwari, supra note 68 (quoting Everleigh’s grandmother, who stated that after making an Instagram account for Everleigh and her best friend, she wanted to make a YouTube account as well, but the girls were only ten months old and could not speak, so she “waited for them to start talking.”). See also Masterson, supra note 26, at 592 (demonstrating that some children are too young to understand the consequences associated with influencing). [a] CBS Originals documentary shows parents feeding lines to their children who cannot even pronounce the word ‘influencer,’ let alone know that they are influencers.” Id. See also Press-Reynolds, supra note 82 (indicating that the public’s general response to Knight’s decision to hide her children’s faces on social media has been overly supportive). Although Knight originally gained popularity on TikTok by sharing videos of her twins, one user responded to some of the criticisms Knight received after deciding to keep her children’s faces out of her videos. Id. “Some people are like, ‘it’s too late.’ It’s never too late to make a better decision . . . ” Id. See also Steinberg, Sharenting, supra note 13, at 854–55 (demonstrating that parental disclosures on social media have caused some children to be bullied by other children and even other adults).
children’s personal information from being collected by websites, one thing the drafters did not foresee was that children’s parents would be the ones sharing their child’s personal information online.\(^{109}\) As parents divulge personal and intimate details about their children for financial gain, Kidfluencers may inevitably face the subsequent consequences such as embarrassment or harm to their reputation.\(^{110}\)

\(^{109}\) See Levine, supra note 73, at 35 (evaluating the purposes of COPPA). COPPA is focused on protecting children from marketing. COPPA requires commercial websites and online services to notify parents and obtain their consent regarding the collection of their child’s personal information by the online app or platform if the child is age 12 or younger. COPPA does not require software makers and social networking sites to provide protection to children from other users.

\(^{110}\) See O’Neill, supra note 11, at 48 (stating that child labors laws should be extended to cover Kidfluencers). “Although child-labor laws generally do not apply to children employed by their parents, states should extend child-labor laws to cover child performers working for mom influencers on social media because of the privacy risks of exposing children’s personal information online.” Id. See also Arabpour, supra note 91 (describing the consequences associated with posting content of children on social media).

These young children are not able to fully rationalize and understand the long-term consequences of having their toddler tantrums or invasive breakdowns about their bodies and medical histories available on the internet for free commentary, viewing, and distribution. They are also unable to give consent for it to be posted.

\(^{110}\) See O’Neill, supra note 11, at 42 (noting that “[c]hildren in today’s technocentric world may find themselves with an Internet identity before they can speak.”); Masterson, supra note 26, at 582 (“[a]ccording to a 2010 study, more than 90% of two-year-olds in the United States have an online presence.”); Hajjaji, supra note 69 (recognizing that “[w]hen parents are the ones disclosing personal information about children, they are both the gatekeepers (tasked with protecting the information) and also the gate openers (the ones who potentially benefit from the disclosure of the child’s information) . . .”).
States like California, Washington, Illinois, and New York have exhibited efforts to enact laws protecting Kidfluencers’ rights, but unfortunately, they have yet to be successful. The difficulty in enacting these laws may stem from the potential clash with a parent’s fundamental right to raise their children, coupled with the absence of evidence showcasing the detrimental effects associated with Kidfluencing.

When [parents] “are able to earn significantly large amounts of revenue from recording and posting their children’s lives online, the relationship between the parent and the child might shift towards an employment relationship; they will do what is necessary to earn money first, and the child’s well-being will come second.”

Id. See Masterson, supra note 26, at 590–91 (demonstrating that in 2018, California lawmakers attempted to expand the law to include social media advertising, but ultimately failed). By the time the bill was passed into law, the provision mentioning social media influencers was removed. Id. See also Singleton, supra note 70 (acknowledging that in 2022, the state of Washington proposed a bill that, if enacted into law, would set aside money for children featured in videos before they are of age and give minors the right to request deletion of content that they are featured in). See also Hajaji, supra note 69 (stating that in June of 2020, a bill in New York was introduced that would expand the state’s labor law to include children who appear in monetized social media videos and if signed into law, Kidfluencers would be considered “child performers”). “They would need to obtain a permit, meet schooling requirements, and have their work hours and conditions regulated. Parents and guardians would be required to establish a trust account for the minors, with a required minimum deposit of 15 percent of the child’s gross earnings.” Id.

111 See Pierce v. Soc’y of Sisters, 268 U.S. 510, 534–35 (1925) (holding that the government cannot interfere with parents’ right to “direct the upbringing and education of children under their control.”). See also Qamar, supra note 66 (exposing that occupational exemptions and carve outs to child labor laws are a result of power and money). “Closing those loopholes [with Kidfluencing] is touchy because it would involve the government monitoring and regulating what can be perceived as family work under parental supervision.” Id. Many politicians are not concerned about Kidfluencers because there is no science demonstrating the harm, “there is little that can be done on the policy side.” Id. See also Burke, supra note 3 (outlining the difficulties in passing a law to protect Kidfluencers). One such challenge making it difficult to protect Kidfluencers is due to “the role parents play in content creation and management, and the fact that much of the content production occurs in the family home.” Id.

Kidfluencing transforms into a dangerous occupation once their content falls into the hands of sexual predators. In this digital age, child predators no longer have to hunt for images of children because Kidfluencers’ parents inadvertently supply the content for them by posting seemingly innocuous pictures of their child on their public social media platforms. Social media platforms also provide gateway access for predators to anonymously converse with children, often by pretending to be a child of similar age, thus enabling the predator to begin grooming tactics. Additionally, current technological advancements empower predators to save and download videos for future use by leveraging the smartphone’s screenshot or

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113 See Dodgson, supra note 88 (cautioning parents about sharing images of their child online). While it may seem harmless for parents to post innocent pictures of their children online, “it often ‘turns into a dark fetish involving babies and children.’” Id. “Innocent pictures could be saved, they could be morphed into deep-fake images for child pornography, or just used in inappropriate ways . . . .” Id. See also WVU researcher, supra note 13 (indicating that many parents are not aware of the risks associated with social media, especially the greatest risk of predatory behavior, because they did not grow up with social media).

114 See Fox News, supra note 13 (warning parents that when you put information on a public account, anyone in the world has access to that content, including child predators). See also Steinberg, Sharenting, supra note 13, at 881 (cautioning parents to consider limiting the audience when posting pictures of their child naked or in swimsuits because although these images appear cute and innocent, they are easy targets for pedophiles). A commissioner reported that “almost half of all images found on the pedophile image sharing site . . . were originally posted with a parent’s innocent intent on social media and family blogs.” Id. See also Cutler, supra note 87 (highlighting that “[c]ertain videos, such as Wren eating hot dogs and pickles, pretending to shave pubic areas or playing with tampons, have gotten millions of views and been saved by watchers.”); Dolan, supra note 71 (maintaining that pictures or videos posted by parents that are accompanied by hashtags like #pottytraining, #bathtime, and #nakedkids make these children “vulnerable to pedophiles and sex offenders who actively target photos of kids in states of undress.”).

115 See Fox News, supra note 13 (cautioning that once predators discover an account belongs to a minor, they often pose as other minors and coerce the child into sending pictures and videos of themselves and eventually groom the child into sending more provocative content). See also LEVINE, supra note 73, at 3 (demonstrating the various tactics predators use to groom children). “Individuals involved in CSAM production and distribution are forming online communities to train each other in how to evade detection, destroy evidence, and groom victims into accepting sexual abuse as normal behavior.” Id.
screen recording feature to remain completely untraceable. Many parents of Kidfluencers, like the mother of six-year-old Kidfluencer Zooey, have openly acknowledged that sexual predators are probably looking through their child’s social media account, but claim that “anti-pedophile tactics,” such as putting sunglasses on their child, prevents pedophiles from forming a connection with their child. The safety of Kidfluencers is imperative as these parents continue to post content of their children and completely disregard the potential safety hazards that may ensue.

B. Creating a Safer World for Kidfluencers

1. France’s Revolutionary Law

As of 2020, France remains the only country in the world that has enacted laws aimed at protecting the rights of Kidfluencers.

116 See Fox News, supra note 13 (discussing how platforms and smartphones have assisted pedophiles in obtaining content of children while remaining untraceable). TikTok’s save feature allows users to tag videos, ultimately making them easier to find and refer back to. Id. “And not only can videos and photos be saved on TikTok and other social media accounts, but predators can also use a smartphone’s screen-recording feature to record or screenshot content directly to their phones without being traced.” Id. See also Cutler, supra note 87 (warning that “TikTok’s save function lets users come back to videos they like to watch later.”). Many TikTok moms note that red flags should be raised when “a video of a child sleeping, sucking on lollipops or playing in a bikini have hundreds of thousands of saves . . .” Id.

117 See Schwab, supra note 9 (quoting Nguyen-Miyoshi, mother of six-year-old Kidfluencer Zooey, acknowledging that pedophiles are online, but she does her best to remove suspicious accounts). Nguyen-Miyoshi stated that she does not post any photos of her daughter that could be read as “sexual,” and reviews all of Zooey’s new followers for any accounts that look suspicious, such as having no profile picture or accounts of men who only post selfies. Id. Additionally, Nguyen-Miyoshi claims that putting sunglasses on her daughter is an “anti-pedophile tactic” because “pedophiles mostly connect with children through their eyes, so she dresses Zooey with sunglasses as a means of circumventing it.” Id. See also Maheshwari, supra note 68 (announcing that “YouTube came under fire last month after lewd comments by pedophiles were discovered on innocent videos of children.”).

118 See also Dodgson, supra note 88 (indicating that multiple users attempted to shut down 3-year-old Kidfluencer Wren Eleanor’s TikTok account after a “save Wren” hashtag began circulating after some users accused Wren’s mother, Jacquelyn Paul, of posting videos sexualizing her 3-year-old daughter). One commenter claimed that she saw photos of Wren being posted on outside websites and potentially being shared with child predators. Id.

119 See Qamar, supra note 66 (stating that France is one of the only countries in the world that has implemented laws protecting Kidfluencers); Whaib, supra note 91
France’s stringent privacy law enacted in 2020 is groundbreaking because for the first time in history, Kidfluencers under the age of 16, who spend a significant amount of time creating content, are equipped with the same protections afforded to child performers and models.\(^{120}\) By limiting the number of hours Kidfluencers can work, parents of Kidfluencers no longer have the privilege of shielding the outside world from the unreasonable hours their child devotes to content production, and they must ensure that the workload aligns with the child’s schooling and health.\(^{121}\) Similar to Coogan’s Law, France’s privacy law provides Kidfluencers with protection over their income because only a percentage of the child’s earnings is allocated to their parents, with the remainder to be placed in a savings account for the child, which can be accessed once they become of age.\(^{122}\)

Additionally, France’s privacy law also diminishes the risk of Kidfluencers’ content falling into the hands of child predators by ensuring that Kidfluencers and their parents are informed of the potential consequences that may result from posting content online, (declaring that the legal framework of the new French Law “fills an important void, as the work of child influencers was largely unregulated and their work could easily be exploited by their parents.”). See also Toor, supra note 97 (discussing the consequences that may result from violating the new French Law).

[It’s likely that baby photos published today could lead to lawsuits years from now. Under French privacy law, anyone convicted of publishing and distributing pictures of another person without their consent can face up to one year in prison and a fine of €45,000. That would apply to parents publishing images of their kids, as well.

Id. See ‘Kid influencers’ regulated under new French law, supra note 96 (detailing how the framework of the new French Law provides child influencers the same protections awarded to child performers and fashion models and requires their income to be held in an account for them until they reach the age of 16); Permanasari, supra note 65 (asserting that Kidfluencers need to be protected because in many cases, these children become the primary source of income for the family, and as a result, posting content on social media is no longer optional because that will stop the family income).

\(^{121}\) See Venis, supra note 96 (outlining that under the new French Law, the number of hours a child under the age of 16 can work is limited); Breen, supra note 97 (noting that the conditions of the child’s employment for social media influencing must be compatible with the child’s schooling and safeguard the child’s health).

\(^{122}\) See Permanasari, supra note 65 (stating that parents do not get all of the child’s income, they only get part, and the remainder goes into an account for the child when they are of age); Rane, supra note 8 (reasoning that due to the unpredictable nature of brand deals, which are often under the table, “children may not even know they’re happening, let alone know how much money they’re entitled to.”).
given that parents are often oblivious to the internet’s perilous nature for children. By advising Kidfluencers of their right to erase all information about themselves online, this privacy law is monumental for empowering Kidfluencers with a remedy to regain control over content that has been posted about them on the internet without their permission. In cases where parents deliberately choose to post content of their children on social media, fully aware of the potential consequences, France’s recently enacted law in 2023 ensures that these individuals will face disciplinary actions.

2. The United States’ Long Road Ahead

As these issues only continue to progress, lawmakers in the United States are finally beginning to recognize the magnitude of the dangers associated with Kidfluencing, with various states attempting to pass

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123 See Cutler, supra note 87 (revealing that a TikToker no longer posts pictures of her children online because even though “98% of viewers are innocent and think it’s cute . . . that 2% isn’t worth it.”); Collins, supra note 82 (revealing that an influencer stopped posting her children online when she discovered people had taken the photos of her children that she posted online and used them to create fictional profile). But see Schwab, supra note 9 (quoting Nguyen-Miyoshi, mother of six-year-old Kidfluencer Zooey, stating that she puts sunglasses on her daughter as an “anti-pedophile tactic” because “pedophiles mostly connect with children through their eyes, so she dresses Zooey with sunglasses as a means of circumventing it.”).

124 See Cordeiro, Ramifications of Sharenting, supra note 93 (discussing how the landmark ruling in Google Spain v. Costeja, established the “right to erasure,” granting children with the ability to request that data controllers remove specific information about themselves). “Whilst the right to be forgotten does not eliminate the original harm that a child might suffer due to ‘sharenting’, it enhances the possibility of restricting the level of harm in the long-term.” Id. See also Steinberg, Sharenting, supra note 13, at 876 (stating that the European Union’s ‘right to be forgotten’ law is the most promising legal solution to remedy the harm caused by parents who post personal information about their child on social media platforms).

125 See Patil, supra note 99 (discussing the consequences that may result until the new French law passed in March of 2023). If a parent and child disagree on whether a certain picture of the child should be posted online and the parent posts the picture anyway, “[t]he parent could be banned from posting and lose authority over the child's image rights.” Id. See also Khatsenkova, supra note 99 (noting that the “law also looks to punish influencer parents looking to gain followers and earn money by posting images of their children.”). With more than 91% of parents posting content of their child online before even reaching the age of five, Bruno Studer, the French politician behind the bill, notes that 50% of “photos innocently shared on social media end up on child sex abuse forums.” Id.
new laws governing children and social media. Unfortunately, the realm of politics exerts considerable influence in contentious matters like parental control, and consequently, many legislatures face challenges in gaining support for proposals and drafts of laws that effectively address the concerns associated with Kidfluencing. States like Washington and Illinois have prepared comprehensive bills for legislative review, which if passed, would extend crucial safeguards to Kidfluencers. While this appears promising, a similar bill aimed at protecting Kidfluencers was proposed by California lawmakers in 2018, however, after legislative review, the bill that eventually passed bore little resemblance to the original proposal, with the provision pertaining to Kidfluencers being entirely removed.

As the influencer market continues to rapidly expand, Kidfluencers living in the United States will continue to remain vulnerable to abuse unless the government decides to take initiative and follow France’s

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126 See Henkel, supra note 14 (describing how 15-year-old Shreya Nallamothu spoke at the Illinois statehouse about the lack of laws protecting Kidfluencers and the affiliated dangers); Sung, supra note 85 (recognizing that Washington’s bill is “one of the first pieces of legislation specifically for children who are posted online without their consent.”).  
127 See The Associated Press, supra note 74 (recognizing that once the law takes effect in March 2024, Governor Spencer Cox “anticipates social media companies will challenge it in court.”). See also Press Releases, supra note 14 (introducing the Social Media Protection Act, which was proposed by Congressman Chris Stewart). The Act is notable for making it unlawful for social media platforms to have users under the age of 16 and requires platforms to be responsible for verifying user’s age. Id. While the Act is important because it addresses social media’s influence on children’s mental health, none of the provisions relate to Kidfluencers. Id.  
128 See Henkel, supra note 14 (listing the various protections Kidfluencers would obtain if the bill were to become law). The bill would alter existing child labor laws to include families who have profited on content featuring minors. Id. Additionally, the bill would require parents to create a trust account in the minor’s name that would be funded with a percentage of their earnings. Id. The bill also would allow children to request to remove content they were featured in on online platforms. Id. See also Sung, supra note 85 (announcing that Washington’s bill would require parents to set aside revenue in a trust account for the minor and allow Kidfluencers to delete any information about themselves from “any internet platform or network that provided compensation to the individual’s parent . . . in exchange for that content.”).  
129 See Wong, supra note 8 (recognizing that the bill originally proposed by California assembly member Kansen Chu was significantly altered by the time the bill was passed); Masterson, supra note 26, at 580 (declaring that although the California bill attempted to provide protections to Kidfluencers, the provision of the bill governing Kidfluencers was “entirely removed before the bill’s amendments passed.”).
lead in enacting laws that protect Kidfluencers’ rights. Although some hold the belief that these children are just “playing,” Kidfluencing is work and deserves to be treated as such. There are several avenues through which the United States could enhance the protection of Kidfluencers’ rights, such as enacting laws similar to those implemented in France, amending the FLSA, instituting new child labor regulations that encompass social media production, or mandating parental disclosures detailing their child’s employment. Although social media platforms are flooded with content of children, every child does not acquire a massive following or earn substantial income through brand sponsorships. The widespread fame achieved

130 See Steinberg, Sharenting, supra note 13, at 861–62 (commenting that current laws in the United States reflect the tradition that parents have the exclusive right to control the disclosure of their child’s personal information, ultimately providing children with no privacy protection from their parents). See also Schwab, supra note 9 (discussing how payments are made to Kidfluencers). When Kidfluencers work with agents, the checks come in the child’s name, however, some companies will issue checks in the name of one of the parents. Id.

131 See Masterson, supra note 26, at 592 (stressing that Kidfluencing is work and cannot be classified as “playing”).

These children are appearing in hundreds of posts per year, and the child provides the value to company sponsors. The content may be designed to appear like the child is playing, but the production still requires the child to use a specific product, perhaps even by a specific deadline, and be filmed doing it for monetary gain. Id. See also Cordeiro, Kidfluencers and Social Media, supra note 4 (stating that Kidfluencing fails to be classified as “work” because no employee-employer relationship exists and it is presumed that they are participating in normal activities on camera, rather than performing). See also Wong, supra note 8 (quoting former child star, Sheila James Kuehl). “I don’t care if it’s simply unboxing presents . . . It is not play if you’re making money off it.” Id.

132 See Burke, supra note 3 (declaring that the new French law is a promising development, and the United States should consider using the French amendments as a guide). See also Geider, supra note 81, at 24, 26 (discussing various ways the United States can protect Kidfluencers). Congress could amend the FLSA or implement new federal child labor laws to cover children in social media production and regulate their involvement, with the intent to “eliminate the risk of parents abusing their children or enriching themselves from their child’s work.” Id. at 23. Requiring parents to disclose the details of their child’s work would supply the Department of Labor with “a sufficient amount of data to check that the work is legal and safe.” Id. at 25.

133 See Kang, supra note 3 (acknowledging that there are thousands of children doing the exact same thing Kaji is doing on different channels, but his audience was growing at an explosive rate); Masterson, supra note 26, at 594 (highlighting that “[t]hese children, who are essential to their channels’ successes, are sacrificing privacy and exerting hours of labor each week while maintaining no legal right to
by certain children makes it abundantly clear that Kidfluencers are doing something extraordinary, which is deserving of legal protections.\textsuperscript{134} The world is changing, and this change includes the current definition of employment, which has expanded rapidly since the utilization of social media.\textsuperscript{135} Thus, the time has come for the United States’ legislation to evolve as well and adapt to protect the rights of Kidfluencers.\textsuperscript{136}

V. Conclusion

At this very moment, thousands of Kidfluencers in the United States are being subjected to abuse by their parents regarding their finances, privacy, and safety. In the past, when the labor industry underwent a change, the government was forced to enact laws protecting children’s innocence, safety, and financial integrity. As

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  \item \textsuperscript{134} See Permanasari, supra note 65 (describing how Kidfluencers are good for marketing purposes because “everything about children is very interesting and grabs the attention of social media users.”). Some of the most popular videos on the internet feature children, and as a result, many children become famous on social media, often obtaining “tens of thousands and even millions” of followers. \textit{Id.} “Many Kidfluencers are contracted by business people to promote their products, in the form of paid promotions and endorsements.” \textit{Id.}
  \item \textsuperscript{135} See McGinnis, supra note 11, at 249 (indicating that in the United States there are no federal laws that provide protections to Kidfluencers); Heller, supra note 29, at 161 (highlighting that Coogan’s Law “did not conform to the changing entertainment industry, nor the additions to the definition of ‘child celebrity . . .’”); Guzman, supra note 32, at 88 (emphasizing that the law has not caught up with modern technology, ultimately failing to protect “children who broadcast videos on YouTube in exchange for compensation, both monetarily and non-monetarily.”).
  \item \textsuperscript{136} See Atkinson, supra note 70 (declaring that it is time for labor laws to extend to social media production). “Social media isn’t new any more [sic]. Facebook is 15 years old; Instagram is nearly 10.” \textit{Id.} See also Wong, supra note 8 (indicating that in today’s world, child stars can reach “incredible fame and fortune without ever stepping into a Hollywood studio . . .”); McGinnis, supra note 11, at 249 (declaring that at least 10% of digital marketing budgets “go toward influencer marketing, and the trend continues to grow as digital media usage flourishes.”). See also Goodman, supra note 64 (revealing why many brands sponsor Kidfluencers). When children watch Kidfluencers promote a product on their platform, “pester power” is likely triggered. \textit{Id.} “Pester power” is a child’s ability to “nag their parents into purchasing items they may not otherwise buy. Here advertisers rely on the child to nag their parent to buy the product instead of marketing to the mother directly.” \textit{Id.} See also Rane, supra note 8 (stressing that “[w]hen your parents are the ones posing you for money, who can you count on to look after your safety online?”).
\end{itemize}
technology advances and businesses increasingly turn to influencers for product marketing, the Kidfluencing profession faces unique challenges requiring government involvement and protection. So long as lawmakers continue to turn a blind eye to the risks associated with parents monetizing their children on social media, Kidfluencers in the United States will continue to remain vulnerable to abuse. It is imperative that the United States government takes the initiative and follows France’s lead in enacting laws that protect Kidfluencers’ rights.