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# CLICKS AND CONSEQUENCES: THE IMPLICATIONS OF EXPLOITING CHILDREN IN SOCIAL MEDIA

*Isabella Hopkins\**

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## I. INTRODUCTION

When one thinks of child labor, one often envisions children working in crowded factories, dark mines, or hot fields, laboring under harsh conditions. Yet, in 2024, a new form of exploitation unfolds in the digital landscape where children are compelled to capture their lives on camera, documenting their most embarrassing moments and mundane activities for an audience of millions of social media users.<sup>1</sup> Children, now burdened with the weight of creating videos and content for pay, feel the pressure to perform as the likes and views are what put food on their families' tables and keep their parents at home.<sup>2</sup> Yet, despite their role as entertainers, 'kidfluencers' are not afforded the same legal protections as traditional child performers, leaving them vulnerable to exploitation and abuse.<sup>3</sup>

This note will begin by outlining the background and history of child labor laws alongside the rise of social media influencing. It will then examine how social media platforms have become a modern form of child commodification. Next, it will assess the psychological harm and long-term consequences of social media exposure and exploitation. Finally, it will explore the legislative responses—or lack thereof—to the emerging issue of monetizing child imagery.

## II. BACKGROUND

### A. *Understanding the History of Child Labor Regulation*

The Industrial Revolution of the eighteenth and nineteenth centuries led to power-driven machines replacing the manual labor production of most manufactured goods.<sup>4</sup> Child labor emerged in the late 1700s and early 1800s when factory owners across England and the United States discovered a new, less expensive, and less likely to strike labor force to run their new machines: children.<sup>5</sup> Starting as young as seven, children worked long hours, earning little, if any, pay for their

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1. See generally Rachel Caitlin Abrams, *Family Influencing in the Best Interests of the Child*, 2 CHI. J. INT'L L. 97 (2023); see also Jason Coffee (@jasoncoffee), TIKTOK, <https://www.tiktok.com/@jasoncoffee> (last visited Jan. 17, 2025); Savannah LaBrant (@savv.labrant), TIKTOK, <https://www.tiktok.com/@savv.labrant?lang=en> (last visited Jan. 17, 2025).

2. See Abrams, *supra* note 1, at 103.

3. See Munirat Suleiman, *Is Kidfluencing Child Labor?: How the Youngest Influencers Remain Legally Unprotected*, COLUM. UNDERGRADUATE L. REV. (June 16, 2022), <https://www.culawreview.org/journal/is-kidfluencing-child-labor-how-the-youngest-influencers-remain-legally-unprotected>.

4. Catherine A. Paul, *National Child Labor Committee*, VA. COMMONWEALTH U.: SOC. WELFARE HIST. PROJECT (2017), <https://socialwelfare.library.vcu.edu/programs/child-welfarechild-labor/national-child-labor-committee/>.

5. *Id.*

work.<sup>6</sup> The National Consumers League, created in 1899, and the National Child Labor Committee, created in 1904, were established with the goal of challenging child labor.<sup>7</sup> They ultimately pushed for the enactment of the Fair Labor Standards Act in 1938, which created a federal standard for child labor.<sup>8</sup>

In 1916, in response to growing concerns over the harsh conditions and exploitation of child labor in factories and mills, Congress passed the Keating-Owen Act, which prohibited goods made by children under a certain age.<sup>9</sup> In the case, *Hammer v. Dagenhart*, the father of two minor sons, Dagenhart, brought suit on behalf of himself and his sons, who were employed in a North Carolina cotton mill.<sup>10</sup> Dagenhart alleged that the Keating-Owen Act was unconstitutional, claiming that Congress did not have the power to regulate child labor through the commerce clause.<sup>11</sup> He also argued that the law violated his Fifth Amendment rights.<sup>12</sup> While Dagenhart's personal motivations may have been rooted in economic necessity, it is clear that such child labor practices were exploitative and harmful to the well-being of children.<sup>13</sup> However, at the time of the holding, the Supreme Court ruled in favor of Dagenhart, stating that to "regulate the hours of labor of children in factories and mines within the States, [is] a purely state authority."<sup>14</sup>

The Supreme Court's ruling in *Hammer v. Dagenhart* restricted Congress's ability to regulate child labor<sup>15</sup> until Congress passed the Fair Labor Standards Act (FLSA) in 1938.<sup>16</sup> This Act provided for the federal establishment of fair labor standards for jobs in commerce.<sup>17</sup> The Act provided for a minimum wage, a maximum hour allowable for the workweek, a minimum age, and other provisions to improve child labor in the United States.<sup>18</sup> The Supreme Court upheld the Act and

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6. *See id.*

7. *Id.*

8. *Id.*

9. Keating-Owen Child Labor Act of 1916, Pub. L. No. 64-249, 39 Stat. 675 (1916); *see generally* *Hammer v. Dagenhart*, 247 U.S. 251 (1918), *overruled by* *United States v. Darby*, 312 U.S. 100, 115-16 (1941); *see also* *Hammer v. Dagenhart (1918)*, BILL OF RIGHTS INST., <https://billofrightsinstitute.org/e-lessons/hammer-v-dagenhart-1918?utm> (last visited Feb. 20, 2025).

10. *Dagenhart*, 247 U.S. at 268.

11. *Id.* at 269.

12. *See id.* at 268.

13. *See* Michael Schuman, *History of Child Labor in the United States—Part 2: The Reform Movement*, U.S. BUREAU LAB. STATS.: MONTHLY LAB. R. (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm>.

14. *Dagenhart*, 247 U.S. at 276.

15. *See id.* at 276-77.

16. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (1938) [hereinafter FLSA of 1938].

17. *See generally id.*

18. *Id.* §§ 212, 213(c).

overruled *Dagenhart* in the subsequent case *United States v. Darby*.<sup>19</sup> Post-*Darby*, the FLSA continues to protect workers in the United States, including children.<sup>20</sup> However, while the FLSA imposed restrictions on various types of child labor, it leaves significant gaps.<sup>21</sup> Notably, the FLSA does not extend all of its protections to children in agricultural work, offering exemptions for farm labor under Section 13(a)(6) and 13(b)(12) for minimum wage and overtime requirements.<sup>22</sup>

Similarly, the FLSA's standards do not apply to child actors and performers in the entertainment industry, leaving them vulnerable to exploitation.<sup>23</sup> For example, a child star might be required in some states to work long hours to accommodate shooting schedules, whereas federal law would prohibit children in other industries from working such extensive hours.<sup>24</sup> Additionally, many child actors work late into the night or early morning, depending on the set's demands.<sup>25</sup> As a result of the FLSA's gap, child labor laws for actors are determined at the state level rather than federally, leading to inconsistent protections.<sup>26</sup> Advocates contend that Congress should eliminate the double standards in child labor laws and apply restrictions to children working in agriculture and entertainment similar to those that already apply to other industries.<sup>27</sup>

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19. *United States v. Darby*, 312 U.S. 100, 115-16 (1941).

20. *United States v. Darby*, *Opinion of the Court, February 3, 1941*, U.S. CAP. VISITOR CTR.: ARTIFACT EXPLORER, <https://www.visitthecapitol.gov/artifact/united-states-v-darby-opinion-court-february-3-1941#:~:text=Darby%2C%20the%20Supreme%20Court%20reversed,%2C%20hours%2C%20and%20working%20conditions> (last visited Feb. 18, 2025).

21. See *Chapter 20: Agriculture: Related and Seasonal Exemptions*, in U.S. DEPARTMENT OF LABOR, FIELD OPERATIONS HANDBOOK 9 (2021) (proscribing various specific child labor standards in agriculture Congress did not address in the FLSA).

22. See *id.*

23. Joe Guerra, *Child Actor Labor Laws Explained*, BACKSTAGE (Nov. 25, 2024), <https://www.backstage.com/magazine/article/child-actor-laws-76778/?form=MG0AV3>.

24. See Shannon Kate McGrath, *Hollywood at Home: Applying Federal Child Labor Laws to Traditional and Modern Child Performers*, 29 WASH. & LEE J. C.R. & SOC. JUST. 291, 297-98 (2023).

25. See *id.* at 297-301.

26. Suleiman, *supra* note 3.

27. Neyza Guzman, *The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Laws*, 8 CHILD & FAM. L. J. 85, 111-15 (2020); Helene York, *Do Children Harvest Your Food?*, THE ATLANTIC (Mar. 26, 2012), <https://www.theatlantic.com/health/archive/2012/03/do-children-harvest-your-food/254853/>.

### B. *Protections for Child Influencers*

In 1939, California responded to the exploitation of child performers by passing the California Child Actor's Bill, also known as the Coogan Act.<sup>28</sup> This state-level law was designed to prevent the abuse and exploitation of minors working on film sets, addressing a gap left by the federal government in providing adequate protection for child workers in entertainment.<sup>29</sup>

The Act requires that parents set aside 15% of a child actor's gross earnings into an account that the child would gain access to at the age of majority.<sup>30</sup> The Act is named after Jackie Coogan, a childhood actor, whose mother and stepfather had spent an estimated \$3 to \$4 million of his earnings without his knowledge.<sup>31</sup> Coogan's legal battle with his parents brought to light how vulnerable child actors are.<sup>32</sup> These child influencers, similarly to child actors, are vital to the success of their parents' channels and are sacrificing their privacy and putting in hours of labor each week without any legal entitlement to their earnings.<sup>33</sup>

Furthermore, as the influence industry has grown, the amount of children involved in content creation on platforms like YouTube, Instagram, and TikTok has also increased, highlighting the need for updated regulations protecting young people online.<sup>34</sup> While the Children's Online Privacy Protection Act (COPPA) was passed in 1998 to safeguard children under thirteen, it primarily addresses privacy concerns related to the collection of personal information rather than the more complex issue of child labor and commercial exploitation in online spaces.<sup>35</sup> COPPA mandates that websites and online services collect verifiable parental consent before gathering or disclosing children's data, and it requires clear privacy policies and options for parents to review or delete their children's personal information.<sup>36</sup>

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28. *Coogan Law: How It Works & What Is a Coogan Account*, WRAPBOOK (Aug. 2, 2024), <https://www.wrapbook.com/blog/producers-guide-coogan-law> [hereinafter *Coogan Law*].

29. *See id.*

30. *Id.*

31. *See id.*

32. *See id.*

33. *See Taylor Mooney, Companies Make Millions off Kid Influencers, and the Law Hasn't Kept Up*, CBS NEWS (Aug. 26, 2019, 6:19 AM), <https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals/>.

34. Darice Warren, *Social Media and Its Impact on Children's Mental Health: Here's What You Need to Know*, OFF. PRACTICUM: PEDIATRIC SUCCESS SERIES (2024), <https://www.officepracticum.com/blog/social-media-and-its-impact-on-childrens-mental-health-heres-what-you-need-to-know/#:~:text=As%20of%202020%2C%20children%2C%20teens,an%20astounding%2075%25%20sin ce%20201.>

35. *See Children's Online Privacy Protection Act*, 15 U.S.C. §§ 6501-6506 (1998).

36. *Id.*

However, it does not specifically regulate the use of children for content creation or address how child labor in online media can be exploited for profit.<sup>37</sup>

Although the Coogan Act and COPPA offer some protections for child actors and their personal data, they fail to address the exploitation of children in the influencer economy, and the FLSA's limited scope leaves additional gaps in regulation.<sup>38</sup> As this form of family-driven content creation expands, it becomes increasingly clear that a comprehensive federal legal framework is needed to ensure that children's well-being is prioritized both in terms of their privacy and their role as contributors to digital labor.<sup>39</sup>

### C. *The Rise of Influencer Culture*

In the past decade, a new industry has emerged in the workforce: social media influencing.<sup>40</sup> Creators on platforms like Instagram, Facebook, YouTube, and TikTok “have transformed from mere internet personalities to influential figures[,] shaping trends and consumer behavior.”<sup>41</sup> Celebrities have long influenced lifestyle choices from specific clothing items, certain beverages, and expensive endorsements to even political opinions, making their impact felt across a wide range of consumer behaviors and societal norms.<sup>42</sup> The early 2000s led to the emergence of bloggers and, consequentially, YouTube.<sup>43</sup> In 2010, YouTube reportedly served more than two billion viewers daily, which was “nearly double the prime-time audience of all three major US television networks combined.”<sup>44</sup> The rise and widespread use of social media gave birth to the concept of “influencers.”<sup>45</sup> Celebrities and popular social media accounts realized their power to influence consumer behavior and encourage purchases of various products and services.<sup>46</sup> At the same time, these platforms provide celebrities an opportunity to enhance their own brands while promoting others, effectively reaching their followers.<sup>47</sup> Influencers have

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37. *See id.*

38. *See id.*; *see also Chapter 20: Agriculture: Related and Seasonal Exemptions, supra* note 21.

39. *See id.*; *Coogan Law, supra* note 28.

40. *See The History of Influencers: Impact on Society and Businesses*, HAVAS EDGE, <https://www.havasedge.com/the-history-of-influencers-impact-on-society-and-business/> (last visited Oct. 30, 2024).

41. *Id.*

42. *See id.*

43. *See id.*

44. Glenn Chapman, *YouTube Serving up Two Billion Videos Daily*, SYDNEY MORNING HERALD, (May 18, 2010, 10:07 AM), <https://www.smh.com.au/technology/youtube-serving-up-two-billion-videos-daily-20100517-v8sf.html> (quoting a YouTube employee's blog post).

45. *The History of Influencers: Impact on Society and Businesses, supra* note 40.

46. *See id.*

47. *See id.*

become modern celebrities, and much like traditional celebrities, they leverage their online presence to shape trends, endorse products, and maintain a powerful cultural influence, often blurring the lines between entertainment and marketing.<sup>48</sup>

Today, the content creator economy is worth an estimated \$104.2 billion – with over 200 million active creators—and is expected to double by 2027.<sup>49</sup> It is noted that “[t]he majority of influencers work as full-time creators,” with social media as their primary income source.<sup>50</sup> Almost eighty percent of social media influencers earn around \$23,500 annually, with the average hourly wage estimated at \$76.<sup>51</sup> In the U.S., 82% of the influencer marketing budget is spent on partnerships between brands and influencers, where influencers promote products or services to their audiences on social media platforms.<sup>52</sup>

Along with the rise of content creation, family influencers and parent-led child influencer content have become increasingly popular, with many parents earning substantial income by sharing content that showcases their children.<sup>53</sup> This trend, particularly prevalent on platforms like YouTube, TikTok, and Instagram, often blends family life and commercial enterprise.<sup>54</sup> According to the Pew Research Center, approximately twenty-one million youths between the ages of twelve and seventeen use the internet, with more than half of online teens creating content.<sup>55</sup> Among them, 32% of teenagers produce self-created content.<sup>56</sup> While YouTube restricts children under thirteen from creating their own channels, they can still use the platform with parental permission.<sup>57</sup> This loophole allows parents to post content involving their children without clear guidelines on what is appropriate or what constitutes exploitation.<sup>58</sup> The lack of regulation is concerning, especially considering that if content creators were held to the standards set by the FLSA, child creators would need to be at least fourteen years old to legally engage in such

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48. *See id.*

49. *2025’s Creator Economy Statistics That Will Blow You Away*, WPBEGINNER (Jan. 13, 2025), <https://www.wpbeginner.com/research/creator-economy-statistics-that-will-blow-you-away>.

50. *See id.*

51. *Id.*

52. *Id.*

53. Abrams, *supra* note 1 at 99-100.

54. *See id.* at 99-101.

55. *See Teen Content Creators and Consumers*, PEW RSCH. CTR. (Nov. 2, 2005), <https://www.pewresearch.org/internet/2005/11/02/teen-content-creators-and-consumers/> [hereinafter *Teen Content Creators*].

56. *Id.*

57. *Terms of Service*, YOUTUBE (Dec. 15, 2023), <https://www.youtube.com/static?template=terms>.

58. *See id.*; *see also Suleiman, supra* note 3.

activities.<sup>59</sup> Moreover, these children are not receiving the protections the Coogan Act provides either.<sup>60</sup> Thus, child influencers fall into a regulatory gap, caught between traditional child labor protections and contemporary media practices.

*D. Inadequate Safeguards for Children's Privacy, Safety, and Well-Being*

Despite the rapid growth of the social media industry, few effective protections exist for children's privacy and safety on platforms like YouTube or through existing legal frameworks.<sup>61</sup> The lack of safeguards has raised concerns among experts in children's rights and development.<sup>62</sup> Despite their status as entertainers, "kidfluencers" are not afforded the same legal protections as traditional child performers, leaving them vulnerable to exploitation and abuse.<sup>63</sup> When parents create content for advertisements, the platform is profiting directly off of a minor who likely is not old enough to use the site.<sup>64</sup> On YouTube, in particular, content creators can monetize their content by displaying advertisements in their videos.<sup>65</sup> Whereas one must be thirteen years old to create an account, there is no limitation on a parent's general ability to post their children.<sup>66</sup> Advertisers typically pay between ten to thirty cents for each view or "click," and YouTube typically collects 45% of that advertisement revenue.<sup>67</sup> For example, Ryan Kaji, a twelve-year-old YouTuber, is one of the top earners on YouTube.<sup>68</sup> As of 2018, Kaji had twenty-one million subscribers, and YouTube made \$10 to 15 million from his videos.<sup>69</sup> Today, Kaji is up to 37 million YouTube subscribers.<sup>70</sup> Unlike children working on TV or movie sets, where state regulations govern their hours and conditions, social media content creation lacks similar rules, raising concerns about child safety.<sup>71</sup> This lack of regulation for social

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59. See FLSA of 1938, *supra* note 16.

60. See *Coogan Law*, *supra* note 28.

61. See Erin Quinn-Kong, *Children of Influencers are Pushing Back . . . and Some Lawmakers are on Their Side*, TODAY (Oct. 17, 2024, 7:14 PM), <https://www.today.com/parents/family/influencer-children-rcna175057?form=MG0AV3>.

62. See *id.*

63. See Sulciman, *supra* note 3.

64. Mooney, *supra* note 33.

65. *Id.*

66. See *Terms of Service*, *supra* note 57.

67. See Mooney, *supra* note 33.

68. See EJ Dickson, *He Got Famous at 3. How Does a YouTube Superstar Grow Up?*, ROLLING STONE (Aug. 15, 2024), <https://www.rollingstone.com/culture/culture-features/ryans-world-ryan-kaji-youtube-1235078164/>.

69. See Mooney, *supra* note 33.

70. See Dickson, *supra* note 68.

71. See Mooney, *supra* note 33.

media content raises important questions about the protections necessary for young creators, similar to the historical efforts aimed at safeguarding child actors.<sup>72</sup>

### III. FAMILY INFLUENCING: COMMODIFICATION FOR PROFIT

Over the last few years, especially since the COVID-19 pandemic, family influencing has become increasingly popular.<sup>73</sup> Since the pandemic, consumers have doubled the amount of content they consume on a daily basis.<sup>74</sup> Families share substantial amounts of their everyday lives through video blogs and posts on platforms like TikTok, YouTube, and Instagram.<sup>75</sup> Content ranges from marital advice, parenting tips, and family updates to product reviews and often includes sponsored posts that have the potential to earn them thousands of dollars each month.<sup>76</sup> Family influencing “is the ultimate family business: you literally get paid for raising your kids.”<sup>77</sup>

While the idea of creating content with your children may seem appealing, the influencer culture raises serious concerns that cannot be ignored. These parents are not just leveraging their children’s presence to build their brands: they are effectively using their children as active participants in the content creation process, turning them into workers who contribute to the family’s profits.<sup>78</sup> Much like child actors or performers, these children are involved in creating and producing content, often working long hours to benefit of their parents’ brand.<sup>79</sup> By showcasing their kids in their content, publicly sharing personal details about their children’s emotional and physical well-being, and involving the children in sponsored posts, parents are capitalizing on their children’s efforts while infringing on their privacy and autonomy.<sup>80</sup>

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72. *Id.*

73. See John Koetsier, *Global Online Content Consumption Doubled in 2020*, FORBES (June 30, 2021, 11:39 AM), <https://www.forbes.com/sites/johnkoetsier/2020/09/26/global-online-content-consumption-doubled-in-2020/?sh=6521ef322fde>; see also Abrams, *supra* note 1, at 99-100.

74. See Koetsier, *supra* note 73.

75. Abrams, *supra* note 1, at 100.

76. See Belinda Luscombe, *The YouTube Parents Who are Turning Family Moments into Big Bucks*, TIME (May 18, 2017, 6:00 AM), <https://time.com/4783215/growing-up-in-public/>.

77. *Id.*

78. See Danya Hajjaji, *YouTube Lets Parents Exploit Their Kids for Clicks*, NEWSWEEK (Oct. 4, 2021, 9:00 AM), <https://www.newsweek.com/youtube-lets-lawless-lucrative-sharenting-industry-put-kids-mercy-internet-1635112>.

79. See *id.*

80. See *id.*

*A. Monetizing Childhood: How Exploitation Occurs*

Children are among the biggest stars on Instagram and YouTube, earning significant amounts by appearing in their parent's partnerships and influencer deals.<sup>81</sup> Research studies have shown that videos featuring seemingly prepubescent children garner three times the views of other videos.<sup>82</sup> Although parents have always shared stories of their kids and their accomplishments, sharing these stories online for profit is not the same.<sup>83</sup> The work involved in this type of "child labor" may not include physical tasks like milking cows or laboring in factories, but it does involve children performing for public consumption to generate income.<sup>84</sup> For example, one study found that channels aimed at children, particularly those about toys or games, had an average of 2.1 million subscribers, almost double that of subscribers for channels that did not focus on children's content.<sup>85</sup> Children are often expected to "sing . . . dance . . . and . . . remember their lines" in videos, earning significant amounts by appearing in their parent's partnerships and influencer deals.<sup>86</sup>

This type of commercialized sharing of children's lives is not just about showcasing their personal experiences; it can cross the line into uncomfortable situations where boundaries are unclear.<sup>87</sup> In some cases, parents may fail to understand the emotional toll of such exposure.<sup>88</sup> By prioritizing profit over the child's well-being, parents may push children into situations where the child is coerced into participating in content or exposed to harmful public scrutiny, which can result in emotional distress or neglect.<sup>89</sup> A child's home should be a sanctuary, a safe place to express themselves freely without fear of judgment or intrusion. Yet, it's becoming increasingly common for parents to post intimate aspects of their children's lives on social media platforms for monetary gain.<sup>90</sup> More than 90% of children in the United States have an online presence before they turn two years old and "now come of

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

82. See Patrick Van Kessel et al., *A Week in the Life of Popular YouTube Channels*, PEW RSCH. CTR. (July 25, 2019), <https://www.pewresearch.org/internet/2019/07/25/a-week-in-the-life-of-popular-youtube-channels/>.

83. See Wong, *supra* note 81.

84. See *id.*

85. See Kessel et al., *supra* note 82.

86. Wong, *supra* note 81.

87. See generally Amanda Rose DeStefano, *The Hidden Truth Behind the Camera of Family Vlogs*, THE TRINITY VOICE (Nov. 29, 2023), <https://thetrinityvoice.com/opinions/2023/11/29/unsubscribe/>.

88. See *id.*

89. See *id.*

90. *Id.*

age with a digital footprint created by their parents before they've had any say in it."<sup>91</sup> Parents using their children as objects to share and continuously posting about their children has been coined "sharenting."<sup>92</sup> A study indicated that "42.8 percent of parents' posts include children."<sup>93</sup> In cases of sharenting, children can be vulnerable to neglect and abuse because "[w]hile sharenting syndrome may not always result in visible harm to the child involved, it can lead to problems in social, emotional, or mental development."<sup>94</sup> Thus, parents' dependency on social media and prioritization to create engaging content for their followers can effectively amount to neglecting or abusing their children.<sup>95</sup>

### B. *The Physical Labor of Child Influencers*

Furthermore, with the rise of influencing, it is becoming more apparent that there are issues surrounding the working conditions of children involved in content creating. Children of influencers often have to sit for numerous retakes of conversations, outbursts, and everyday moments for their parents' videos while their parents frequently encourage them to exaggerate their reactions.<sup>96</sup> Children have no concept of what it means to have millions of views on a video.<sup>97</sup> These influencer-children may appear in hundreds of posts each year, providing large profits for their parents without receiving any direct compensation.<sup>98</sup> Although the content may appear to show the child playing, producing that content still requires a specific product to promote, such as a toy or a piece of clothing, a target audience, and potentially even a deadline— all for monetary gain.<sup>99</sup> These children are effectively "working" and being directed on how to act, what to say, how to pose, etc., for their parent's financial gain.<sup>100</sup>

Further, this form of child labor can lead to actual child abuse.<sup>101</sup> A stark example is former influencer Ruby Franke, who was sentenced to four years in jail for

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91. Kate Land, *Sharenting: Do You Share Too Much About Your Children on Social Media?*, U.S. NEWS (Feb. 13, 2017), <https://health.usnews.com/wellness/for-parents/articles/2017-02-13/sharenting-do-you-share-too-much-about-your-children-on-social-media>.

92. Ayten Doğan Keskin et al., *Sharenting Syndrome: An Appropriate Use of Social Media?*, HEALTHCARE, May 9, 2023, at .

93. *Id.* at 2.

94. *Id.* at 3.

95. *Id.*

96. *See, e.g.*, Hajjaji, *supra* note 78.

97. *See* Quinn-Kong, *supra* note 61.

98. *See id.*

99. *See id.*

100. *See* Mooney, *supra* note 33.

101. *See* Mattea Bubalo, *Who is Ruby Franke, the Parenting Influencer Jailed for Child Abuse?*, BBC NEWS (Feb. 21, 2024), <https://www.bbc.com/news/world-us-canada-66719859>.

child abuse after her YouTube channel went viral for her parenting advice.<sup>102</sup> Franke had over two million YouTube subscribers, where she consistently posted videos depicting a typical Mormon suburban family life.<sup>103</sup> Franke's influence came to a stop when her 12-year-old son was found knocking on a neighbor's door with visible wounds asking for food and water.<sup>104</sup> Behind Franke's carefully curated content, which made money off millions of views, her children were being starved and physically abused in an attempt to create the perfect "family" image.<sup>105</sup> Franke would ensure her children participated in the content by depriving them of food, sleep, and other necessities.<sup>106</sup>

While this form of labor may look different from child labor in the 19th century, the underlying motive is the same: parents seeking to use their children's presence and performance to generate family income.<sup>107</sup> As such, this form of "child labor" raises similar concerns regarding the safety and well-being of children, particularly when it occurs for commercial purposes without proper protections and safety checks in place.<sup>108</sup>

*C. Psychological Risks and Long-Term Consequences of Child Involvement in Social Media*

Family vlogging is still a relatively recent development, and the long-term psychological impacts of this kind of internet exposure for children remain unclear.<sup>109</sup> Even if parents don't intend to put their children at risk through content creation, the lure of profit and fame associated with family influencers can still result in significant exploitation.<sup>110</sup>

The concerns surrounding the use of children online are not new.<sup>111</sup> Long before the rise of social media influencers, the federal government recognized the need to safeguard children's privacy, as demonstrated by the passing of COPPA in 1998.<sup>112</sup> However, while COPPA aimed to protect children's personal information, it did not account for the evolving nature of online content creation, where children are now

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102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *See id.*

107. *See* DeStefano, *supra* note 87.

108. *Id.*

109. *Id.*

110. *Id.*

111. *See generally* Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 (1998).

112. *Id.*

actively involved in producing videos that can have lasting psychological effects.<sup>113</sup> As social media platforms continue to grow, these concerns shift from privacy protection to the broader mental health impacts of online exposure, especially when children are used as props in their parents' online content.<sup>114</sup> One of the main psychological consequences of "sharenting" is that a child's self-representation has to compete with or conform to their parents' representation of them on social media platforms.<sup>115</sup> Parental pressure often refers to the emotional strain frequently put on the child concerning their performance.<sup>116</sup> A child's brain between the ages of ten and nineteen goes through a highly sensitive period where feelings and an identity of self-worth are forming.<sup>117</sup> Additionally, parents can unknowingly exacerbate the pressure by creating an "idealized image online" of their child, which can distort the child's sense of self-esteem and self-worth.<sup>118</sup> Frequent exposure to and success with social media can correlate with distinct changes in the development of the child's brain and affect necessary regulatory functions.<sup>119</sup> Additionally, excessive parental pressure can have profound effects on children and lead to a range of psychological and behavioral challenges.<sup>120</sup> Some of the potential consequences include depression and negative self-talk, body image issues, eating disorders, poor academic performance, anger management problems, aggression, social withdrawal, and difficulty maintaining relationships.<sup>121</sup>

Furthermore, parents' posting humiliating things about their child online may also impact the child's future education and professional prospects.<sup>122</sup> Imagine a child's mom, who is a content creator, posting a video of the child peeing in the bed as a toddler in 2024 and continuing to share embarrassing videos as the child grows up. A survey of 13 to 17-year-olds found that at least 35% of teens use at least one

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113. *Id.*

114. *Sharing Isn't Always Caring: The Risks and Dangers of 'Sharenting'*, CLEV. CLINIC (May 29, 2024), <https://health.clevelandclinic.org/sharenting> [hereinafter *Sharing Isn't Always Caring*].

115. *Id.*

116. See Carly Claney, *The Psychological Impact of Parental Pressure on Kids and Teens*, RELATIONAL PSYCH: CHILD THERAPY (Mar. 12, 2024), <https://www.relationalpsych.group/articles/the-psychological-impact-of-parental-pressure-on-kids-and-teens>.

117. Kathy Katella, *How Social Media Affects Your Teen's Mental Health: A Parent's Guide*, YALE MED. (June 17, 2024), <https://www.yalemedicine.org/news/social-media-teen-mental-health-a-parents-guide>.

118. *Sharing Isn't Always Caring*, *supra* note 114.

119. See Linda H. Hamilton, *The Emotional Costs of Performing: Interventions for the Young Artist*, 12 SCI. & MED. 67, 68 (1997); see also Katella, *supra* note 117.

120. Claney, *supra* note 116.

121. See *id.*

122. See *Sharing Isn't Always Caring*, *supra* note 114.

social media platform several times a day.<sup>123</sup> The likelihood that one's peers would find the mom's influencer account seems very high. In the case of Caymi Barrett, her mother posted numerous times online about her skin condition.<sup>124</sup> When Caymi "returned to school, her [peers] refused to sit near her, and [her] teacher . . . made her sit [in] an isolated" area.<sup>125</sup> Caymi is now a 24-year-old advocate for protecting children on social media platforms: "likes and engagement can motivate [individuals] to post certain things or behave in certain ways. When you bring a child into that, a child can very easily become a prop . . . and that creates a troubling dynamic."<sup>126</sup> Moreover, these social platforms expose teens to biased and incorrect information. They can be a means to spread rumors and personal information, giving teens unrealistic body expectations and exposing them to cyberbullying—all of which can give rise to mental health conditions such as depression and anxiety.<sup>127</sup>

#### IV. RECENT STATE LEGISLATION IN RESPONSE TO THE RISE OF CHILD EXPLOITATION ON SOCIAL MEDIA

Since the Coogan Law was passed in 1939, and the Children's Online Privacy Protection Act passed in 1998, advocates have continued to push hard for greater privacy protections for children in media.<sup>128</sup> In 2023, Illinois became the first state to enact a law, Illinois Senate Bill 1782, that ensures children shown on social media are compensated for their work.<sup>129</sup> "[A]dults who use 'the likeness, name or photograph' of a minor in paid online content [must] set aside a portion" of that revenue in a trust account that the minor can access at the age of 18.<sup>130</sup> Parents are also responsible for maintaining records of their child star's appearances.<sup>131</sup> If the parent

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123. *Tween and Teen Health*, MAYO CLINIC (Jan. 18, 2024), <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437>.

124. RNZ, *The First Social Media Babies Have Grown Up – and They're Angry*, N.Z. HERALD (Sept. 9, 2023, 5:56 PM), <https://www.nzherald.co.nz/lifestyle/the-first-social-media-babies-have-grown-up-and-theyre-angry/FDJMRWX2HVFBJRMMSDSYG4/>.

125. *Id.*

126. *Id.*

127. *See* Katella, *supra* note 117.

128. *See* Julia Walker, *What to Know About California's New 'Kidinfluencer' Law*, MED. MKTG. & MEDIA (Sept. 30, 2024, 2:05 PM),

<https://www.mmm-online.com/home/channel/what-to-know-about-californias-new-kidfluencer-law>; Chris Morris, *A New Illinois Law Will Force Influencer Parents to Compensate Their Children for Appearing in Social Media Content*, FORTUNE (July 9, 2024, 10:26 AM), <https://fortune.com/2024/07/09/illinois-child-influencer-law-social-media/>.

129. *See* Morris, *supra* note 128.

130. *Coogan Law*, *supra* note 28.

131. *See id.*

fails to follow the requirements of this law, the child may pursue legal action against them.<sup>132</sup>

However, the Illinois bill does not aim to protect the privacy concerns that people like Caymi Barrett advocate for. The amended bill included a section allowing for individuals to request deletion of content that was posted of them when they were a minor, yet the section was taken out “because ‘there was really no way of enforcing it.’”<sup>133</sup> Additionally, the Illinois bill still fails to impose any liability on marketers who work with parents to produce content and promotions.<sup>134</sup>

In addition to Illinois, Minnesota recently took steps to protect kid influencers.<sup>135</sup> In May 2024, the Minnesota House voted to approve legal protections for minors in social media posts.<sup>136</sup> According to the proposal, children under 14 would be prohibited from creating paid social media content.<sup>137</sup> For accounts where children under 14 appear in at least 30% of the content, all earnings would go directly to the child.<sup>138</sup> The Minnesota bill also requires influencers to maintain records of when a child appears in their content and how much the influencer earns on that content.<sup>139</sup> Additionally, influencers aged 14 to 18 who earn money from social media would have their profits placed in a trust fund that is accessible once they reach adulthood.<sup>140</sup> The Minnesota bill also aims to address what the Illinois bill could not: minors featured in paid influencer accounts would also have the right to request the removal of content they appeared in at a later date.<sup>141</sup>

California has been the latest state to try and follow suit in protecting the rights of minor children on social media. California Senate Bill 764 requires content creators to compensate children who appear in their social media posts.<sup>142</sup> The California bill requires influencers to set aside at least 15% of the content earnings into

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132. *See id.*

133. Amanda Anderson, *Illinois Enacts Law Protecting “Child Influencers”*, AM. ASS’N ADVERT. AGENCIES (Aug. 23, 2023), <https://www.aaaa.org/illinois-enacts-law-protecting-child-influencers/?cn-reloaded=1>.

134. *See id.*

135. Dana Ferguson, *Proposal Requiring Compensation, Extra Legal Protection for ‘Kidfluencers’ Passes Minnesota House*, MPRNEWS (May 1, 2024, 4:35 PM), <https://www.mprnews.org/story/2024/05/01/kidinfluencer-proposal-passes-minnesota-house>.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. Walker, *supra* note 128.

a trust.<sup>143</sup> The percentages will depend on the amount of content the child is in.<sup>144</sup> The bill will require creators to document and keep records of the child's involvement in the content.<sup>145</sup> The governor's officer shared a statement from Demi Levato stating, "[i]n order to build a better future for the next generation of child stars, we need to put protections in place for minors working in the digital space."<sup>146</sup>

## V. CONCLUSION

In conclusion, the evolution of child labor and privacy regulations highlights a critical need for updated protections in the age of social media, where influencer culture has fundamentally transformed the landscape of childhood. As families increasingly monetize their children's lives online, the commodification of childhood raises significant ethical concerns and the potential for exploitation. The psychological risks associated with this phenomenon, coupled with the inadequate safeguards for children's privacy, safety, and well-being, necessitate urgent attention from lawmakers.

While states have begun to respond to these challenges, with Illinois, Minnesota, and California leading the way, their legislative efforts fall short of providing comprehensive protection. Current state-level policies fail to address the fundamental labor conditions these children face: there are no regulations governing filming hours, required takes, or content creation frequency. This regulatory gap mirrors the concerns that prompted the original child labor laws, yet now it appears in the digital space.

Nearly a century after *Dagenhart* challenged Congress's power to regulate child labor through the Commerce Clause, society finds itself in a post-*Darby* era where federal authority to protect working children is well-established. Just as the nation transitioned from leaving child labor regulations up to individual states to implementing comprehensive federal protections like the FLSA, the current situation demands similar federal action. The interstate and international nature of social media platforms makes this an inherently federal issue that cannot be adequately addressed through patchwork state legislation alone.

Today's 'kidfluencers,' despite their role as digital entertainers, are not afforded the same legal protections as traditional child performers, leaving them vulnerable

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143. *Id.*

144. *Id.*

145. *Id.*

146. Katie Kindelan, *California Becomes Latest State to Require Parents to Save Earnings for Child Influencers*, ABC NEWS (Sept. 27, 2024, 1:45 PM), <https://abcnews.go.com/GMA/Family/parenting-influencers-speak-new-law-designed-protect-kids/story?id=111580202>.

to exploitation and abuse. It is essential to create comprehensive policies that not only safeguard children's rights but also promote their well-being, allowing them to thrive in an increasingly complex digital world.