
QUIS CUSTODIET IPSOS CUSTODES: LABOR & PRIVACY IN THE AGE OF KIDFLUENCERS AND THE INTERNET'S STAGE MOTHERS

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ABSTRACT

Over the last fifteen years, child influencers or “kidfluencers”—children with monetized social-media accounts managed by parents or other adults—have been on the rise, with accounts capable of earning millions of dollars for both hosting platforms and content creators annually. Yet content creation for these accounts is largely unregulated, thus leaving, by default, the welfare of kidfluencers to their parents. Against this backdrop, in 2022, a group of minors sued Tiffany Smith, mother and producer of kidfluencer Piper Rockelle. The minors had appeared in monetized content on Rockelle’s YouTube channel. They described devoting oppressively long hours to producing hundreds of videos without compensation and detailed being pushed to film sexualized, invasive content that is still online today. This case was simply the tip of the iceberg, illustrating how leaving kidfluencers unregulated is a serious oversight because their profitability creates enormous financial incentives for parents to exploit children. Using the Rockelle lawsuit as a case study, this Note shows both how child labor laws are only beginning to provide safeguards against the financial exploitation of kidfluencers and leaving untouched their working conditions, and how

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privacy laws for child social-media users have yet to grapple with the grave potential for invasion of kidfluencers' rights to privacy and publicity. This Note further explains how existing child labor and privacy laws can be adapted to protect kidfluencers; how these new regulations must be enacted at the federal level in order to be truly effective; and how social-media platforms are the best-suited entity to enforce those protections. Ultimately, this Note proposes a set of common-sense regulations, grounded in analogous, existing law, that are designed to close the gaps in kidfluencer protections as quickly and effectively as possible.

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What price is worth giving up your childhood?

—Shari Franke¹

INTRODUCTION

In 2022, a group of minors sued Tiffany Smith, mother and producer of prolific child influencer Piper Rockelle, and her corporation Piper Rockelle Inc. (“PRI”), alleging nineteen claims in total, nearly all for violations of either state tort law or the California Labor Code.² The minors had previously appeared in monetized content on Rockelle’s YouTube channel, which then boasted over 8.5 million followers,³ as part of a group of children self-nicknamed “the Squad.”⁴ According to their complaint, they devoted long hours—in some cases more than twelve hours a day for seven days a

1. KUTV 2 NEWS SALT LAKE CITY, *Ruby Franke’s Oldest Daughter, Shari, Speaks to Utah Legislative Committee About Child Influencers* (YouTube, Oct. 16, 2024), <https://www.youtube.com/watch?v=yDtYITYeLSk> [<https://perma.cc/3VEJ-CL2D>].

2. Complaint for Damages for: 1. Violation of California Civil Code § 3344, 2. Violation of Common Law Right of Publicity, 3. Unjust Enrichment, 4. Intentional Interference with Contractual Relations, 5. Intentional Interference with Prospective Economic Advantage, 6. Civil Conspiracy, 7. Sexual Battery, 8. Battery, 9. Intentional Infliction of Emotional Distress, 10. Violation of Cal. Bus. & Prof. Code §§ 17200, *Et Seq.* at 1–2, Sawyer S. v. Smith, No. 22STCV01351 (Cal. Super. Ct. 2022) [hereinafter Complaint for Damages]; Second Amended Complaint for Damages for: 1. Violation of California Civil Code § 3344, 2. Violation of Common Law Right of Publicity, 3. Unjust Enrichment, 4. Intentional Interference with Contractual Relations, 5. Intentional Interference with Prospective Economic Advantage, 6. Civil Conspiracy 7. Sexual Battery, 8. Battery, 9. Intentional Infliction of Emotional Distress, 10. Violation of Cal. Bus. & Prof. Code §§ 17200, *Et Seq.*, 11. Negligence, 12. Negligent Interference with Prospective Economic Advantage, 13. Failure to Pay Minimum Wage (Labor Code §§ 216 and 1194 *Et Seq.*), 14. Failure to Pay Overtime Compensation (Labor Code § 510), 15. Failure to Furnish Wage and Hour Statements (Labor Code § 226), 16. Waiting Time Penalties (Labor Code §§ 201–2013), 17. Failure to Provide Meal and Rest Periods (Labor Code §§ 226.7 and 512), 18. Violation of Child Labor Laws, 19. Civil Penalties Under the Private Attorneys General Act of 2004 (Labor Code §§ 2698 *Et Seq.*) at 1–2, Sawyer S. v. Smith, No. 22STCV01351 (Cal. Super. Ct. 2024) [hereinafter Second Amended Complaint for Damages].

3. Complaint for Damages, *supra* note 2, at 5.

4. *Id.* at 2–3.

week⁵—over three years to producing “hundreds” of “highly lucrative” videos but were never compensated, were denied meal and rest breaks while filming, and did not receive regular on-set education.⁶ Following the suit’s initial filing, YouTube demonetized Rockelle’s channel, and venues where Rockelle had upcoming tour dates canceled her appearances.⁷ In 2023, Smith countersued for \$30 million, accusing plaintiffs and their parents of defamation, fraud, and extortion; before plaintiffs responded, Smith dropped her lawsuit.⁸ In March 2024, a Los Angeles Superior Court judge denied Smith’s motion for summary judgment, thus scheduling the case for trial.⁹ By October 2024, the parties had settled for \$1.85 million.¹⁰

The suit illustrates the potential for severe damage inherent in the world of child influencers—a world that is, as of now, largely unregulated. The plaintiffs in the suit, and Rockelle herself, represent a common demographic among child influencers (“kidfluencers”): children between ten and sixteen years of age with public, monetized accounts on large social-media platforms like YouTube, Instagram, and TikTok, and talent and training in skills like dancing and singing as well as video editing and other skills required for content creation. Between 2017 and 2020, the plaintiffs appeared in content on Rockelle’s YouTube channel and on her accounts on other platforms; while Rockelle’s early postings were relatively innocuous (videos with titles like “My trip to the Los Angeles Zoo”¹¹ and “Getting a pet turtle!!!”¹²), the channel’s tone quickly took a questionable turn, with videos featuring children performing skits, challenges, and pranks in various stages of undress and in suggestive situations accompanied by clickbait thumbnails and titles¹³ such as “24 HOURS HANDCUFFED to my ‘BOYFRIEND’ ”

5. Second Amended Complaint for Damages, *supra* note 2, at 43–44.

6. Amy Kaufman & Jessica Gelt, *Inside the Blockbuster Lawsuit Threatening One Teen YouTube Star’s Multimillion-Dollar Empire*, L.A. TIMES (Dec. 18, 2022, at 22:24 PT) [hereinafter Kaufman & Gelt, *Blockbuster Lawsuit*], <https://www.latimes.com/entertainment-arts/story/2022-12-18/piper-rockelle-youtube-child-labor-lawsuit> [https://web.archive.org/web/20241009204928/https://www.latimes.com/entertainment-arts/story/2022-12-18/piper-rockelle-youtube-child-labor-lawsuit].

7. *Id.*

8. *Id.*; Angela Yang, *YouTube Mom’s Child Abuse Scandal Ends in \$1.85 Million Settlement*, NBC NEWS (Oct. 9, 2024, at 13:22 PT), <https://www.nbcnews.com/tech/piper-rockelle-mom-youtube-settlement-deal-rcna174615> [https://perma.cc/VL7B-2X74].

9. *Sawyer S. v. Smith*, No. 22STCV01351, 2024 Cal. Super. LEXIS 51728, at *2, *19 (Dec. 18, 2024).

10. Yang, *supra* note 8.

11. PIPER ROCKELLE, *My Trip to the Los Angeles Zoo* || Piper Rockelle (YouTube, Oct. 28, 2017), <https://www.youtube.com/watch?v=ndZwmfmOcow> [https://perma.cc/Z8KJ-3B4V].

12. PIPER ROCKELLE, *Getting a Pet Turtle!!!* (YouTube, June 11, 2017), <https://www.youtube.com/watch?v=7OPQGKBJZTE> [https://perma.cc/W6NH-DJZ8].

13. *Clickbait*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/clickbait> [https://perma.cc/CXA3-W9XE] (last visited Dec. 17, 2024, at 12:14 PT).

(featuring a then-ten-year-old Rockelle),¹⁴ “11 YEAR OLD BELLY PIERCED **PRANK** (Can’t Say No 24 Hour Challenge) 🚫👉,”¹⁵ and “Asking STRANGERS To Be My BOYFRIEND Challenge **1 DATE = \$100** ❤️💰” (featuring a then-twelve-year-old Rockelle).¹⁶

Using the Piper Rockelle lawsuit (“the *PRI* lawsuit”) as a case study,¹⁷ this Note will focus on the growing number of kidfluencers and the need for standardized, federal laws ensuring their fair labor conditions and preservation of personal privacy. In particular, this Note will discuss the inadequacy of federal and state regulation of two forms of exploitation that present concerns in the kidfluencer context: (1) labor (exploiting a child’s work without compensation, meaningful consent, or regulation) and (2) privacy (exploiting a child’s image or likeness without compensation and meaningful consent).¹⁸ Part I of this Note presents an overview of the kidfluencer phenomenon and the evolution of stage parents from vaudeville and the early motion picture industry to the Internet and social media. Part II describes kidfluencers’ vulnerability to labor exploitation, discussing how measures protecting child performers remain largely unavailable to kidfluencers and require expansion to cover this new demographic of child workers. Part III details the rampant exploitation of kidfluencers’ privacy and analyzes how the increasing legal spotlight on protecting children as social-media users has yet to acknowledge kidfluencers’ privacy and publicity interests and must do so to adequately protect them. Part IV proposes that, in addition to enacting laws to protect the labor and privacy rights of kidfluencers, Congress should empower social-media platforms as enforcers of kidfluencer laws and impose liability on platforms that host content produced in violation of these recognized kidfluencer rights. Ultimately, this Note presents a holistic set of common-sense regulations, grounded in analogous, existing law, that are designed to close the critical gaps in kidfluencer protections as quickly and effectively as possible. This all-encompassing approach—covering both privacy and labor—to

14. PIPER ROCKELLE, *24 Hours Handcuffed to My “Boyfriend”* | Piper Rockelle (YouTube, June 23, 2018), <https://www.youtube.com/watch?v=Jua-A0z6BL0> [<https://perma.cc/CW3N-2XTE>].

15. PIPER ROCKELLE, *11 Year Old Belly Pierced **Prank** (Can’t Say No 24 Hour Challenge)* 🚫👉 | Piper Rockelle (YouTube, Jan. 16, 2019) [hereinafter ROCKELLE, *Belly Pierced*], https://www.youtube.com/watch?v=SkF8_jxE16M [<https://perma.cc/TP7S-FHWX>].

16. PIPER ROCKELLE, *Asking Strangers to Be My Boyfriend Challenge **1 Date = \$100*** ❤️💰 | Piper Rockelle (YouTube, June 23, 2019) [hereinafter ROCKELLE, *Asking Strangers to Be My Boyfriend*], <https://www.youtube.com/watch?v=YPymnxtTG-0> [<https://perma.cc/ZTM5-FQA4>].

17. I acknowledge that use of the *PRI* lawsuit as a case study may have inherent limitations in supporting more general propositions about the kidfluencer phenomenon and related legal and policy concerns.

18. In addition to both forms of exploitation, the *PRI* case also involved significant physical abuse; such abuse raises issues and laws that are not unique to kidfluencing and are not the focus of this Note.

regulating children in monetized content is essential given the pervasiveness of their online presence and the reality of ever-advancing online technology that is here to stay.

I. THE ARRIVAL OF KIDFLUENCERS

The influencer economy is worth over \$250 billion worldwide¹⁹ and is expected to swell to \$480 billion before the year 2030.²⁰ U.S. brands spend more than \$5 billion on influencers each year.²¹ Massive content-sharing platforms like YouTube, Instagram, and TikTok host millions of influencers who then share content to millions more subscribers.²² On YouTube, influencers creating and sharing videos on their “channels” earn revenue based on the number of views their videos generate. When a YouTube channel is monetized, YouTube collects forty-five percent of advertising revenue from the creator’s videos, and the creator receives the remainder.²³ With this formula, top creators earn tens of millions of dollars each year—and kidfluencers with at least one million followers can earn \$10,000 or more for each sponsored post they share.²⁴ Before the onset of the *PRI* lawsuit, *PRI* made between \$4.2 million and \$7.5 million annually from social-media advertising alone, and the *PRI* plaintiffs averaged up to \$28,000 per month in YouTube revenue.²⁵

And kidfluencers are a fast-growing demographic in monetized social-media content.²⁶ Social-media accounts listed in children’s names but managed by parents (typically with a moniker like “Managed by Mom” in

19. Jennifer Valentino-DeVries & Michael H. Keller, *A Marketplace of Girl Influencers Managed by Moms and Stalked by Men*, N.Y. TIMES (Feb. 25, 2024), <https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html> [<https://web.archive.org/web/20241116174149/https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html>].

20. Press Release, Steve Padilla, Sen., California Legislature Approves Senator Padilla Bill Updating Financial Protections for Youth Content Creators (Aug. 29, 2024), <https://sd18.senate.ca.gov/news/california-legislature-approves-senator-padilla-bill-updating-financial-protections-youth> [<https://perma.cc/8MCP-PWAU>].

21. Valentino-DeVries & Keller, *supra* note 19.

22. Joe Gagliese, *The Rise of the Influencer: Predictions for Ways They’ll Change the World*, FORBES (July 8, 2022, at 7:30 ET), <https://www.forbes.com/councils/theyec/2022/07/08/the-rise-of-the-influencer-predictions-for-ways-theyll-change-the-world> [<https://perma.cc/9SFW-UZJN>].

23. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

24. Press Release, Dave Koehler, Sen., Ill. Gen. Assemb., Koehler Law Ensures Child Vloggers Are Accurately Compensated (Aug. 11, 2023, at 16:22 PT), <https://www.senatordavekoehler.com/news/28-press-releases/462-koehler-law-ensures-child-vloggers-are-accurately-compensated> [<https://perma.cc/PJ5K-JSBW>].

25. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6; Complaint for Damages, *supra* note 2, at 21–23.

26. Sapna Maheshwari, *Online and Earnings Thousands, at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [<https://web.archive.org/web/20250207002557/https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html>].

the account biography) feature young children almost exclusively, with little to no regulations governing the children's compensation, working conditions, or content output. Thus, children can work extensive hours, receive little to no formal schooling, and have their intimate details shared on the Internet at-large with essentially no recourse and no safeguarding of their earnings from parents or other adults controlling their accounts. Many kidfluencer accounts boast massive followings, with subscribers in the hundreds of thousands or even millions, and the financial payout is huge. Roughly a century ago, states began regulating labor conditions for child performers, many of whom were pushed into the entertainment industry by their parents and subsequently experienced extensive exploitation.²⁷ Now, social media has given stage parents a new arena—one with novel and potentially catastrophic dangers if left unchecked.

A. A BRIEF HISTORY OF STAGE MOTHERS

The concept of “stage parents” and “stage mothers” enjoys a long and controversial history in American culture.²⁸ Early discussion of overbearing and even abusive parents pushing their children into careers on stage and in film arose from personal anecdotes of early film stars. Legendary movie star Judy Garland often recounted growing up on a vaudeville stage in the 1920s and 1930s, and the intensity with which her mother, Ethel Gumm, pushed her to perform; in a 1967 interview, Garland, recalling her early days of performing onstage, stated, “[My mother] would sort of stand in the wings . . . and if I didn't feel good, if I was sick to my tummy, she'd say, 'You get out and sing, or I'll wrap you around the bedpost and break you off short!' So, I'd go out and sing.”²⁹ Garland, cemented in American culture by her performance as Dorothy in 1939's *The Wizard of Oz*, later characterized her mother as “the real Wicked Witch of the West” and described how Ethel began giving her pills to increase energy or to promote sleep before Garland's tenth birthday.³⁰

Nearly a century and the passage of much legislation for child performers later, stage parents like Ethel Gumm remain, motivated by many of the same interests—money, fame, power, attention—as their twentieth-

27. See *infra* Section I.A.

28. See generally Teresa Simone, *Performing Performance Moms*, in AOISE STRATFORD & LYNN DEBOECK, (M)OTHER PERSPECTIVES: STAGING MOTHERHOOD IN 21ST CENTURY NORTH AMERICAN THEATRE & PERFORMANCE 220 (2023) (discussing depictions of stage mothers in reality television and various social debate thereof).

29. JAYCUB HOWARD, *Judy Garland Complete 1967 Interview*, at 13:25–13:39 (YouTube, Apr. 6, 2014), <https://www.youtube.com/watch?v=NHJujYMvY30> [https://perma.cc/8DJV-FLV2].

30. Sara Kettler, *Inside Judy Garland's Troubled Youth*, BIOGRAPHY (Oct. 1, 2020, at 14:12 ET), <https://www.biography.com/actors/judy-garland-facts-bio> [https://perma.cc/AK45-5UC9].

century counterparts. These interests can easily collide with children's needs, and the development of laws protecting child actors demonstrates a commitment by the traditional entertainment industry to limiting the effects of such conflict. Today, child actors in multiple states, including California and New York, and members of entertainer unions like SAG-AFTRA have protections that Judy Garland's generation did not, such as guaranteed access to wages, adequate education, and limitations over working hours.³¹ These regulations acknowledge both the potential conflict of interest between stage parents and child performers as well as the reality of children as a key and enduring presence within the entertainment industry. But while child actors today are more protected from parents who squander their earnings or force them to work oppressively long hours, children are still at the mercy of their parents as to whether they ultimately pursue an entertainment career in the first place and, if they do, the relentlessness of that pursuit.

In 2022, former child star Jennette McCurdy released her memoir *I'm Glad My Mom Died*. Chronicling her ascent from poverty to fame on the highly successful Nickelodeon show *iCarly*, McCurdy detailed her late mother's longstanding obsession with McCurdy's success as a child actor, regardless of McCurdy's own disinterest in such a career. Recalling the initial signing meeting with her first agent, McCurdy wrote,

"It's important that Jennette *wants* to act, in order for her to do well," [the agent] says.

"Oh, she wants this more than anything," Mom says as she signs on the next page's dotted line.

Mom wants this more than anything, not me. [Auditioning] was stressful and not fun, and if given the choice, I would choose to never do anything like it again. On the other hand, I *do* want what Mom wants, so she's kind of right.³²

McCurdy emphasized her lack of agency and meaningful choice in embarking on her career as an actor, framing her mother's eventual death from cancer as the catalyst that allowed McCurdy to leave behind the career

31. SAG-AFTRA, the primary labor union for American media professionals, provides extensive protections to child actors. See SAG-AFTRA, YOUNG PERFORMERS HANDBOOK 7 (2020), https://issuu.com/sag-aftra/docs/2020_youngperformers [<https://perma.cc/5YUZ-F8F4>]. Entertainers are eligible for membership upon being hired for a position covered by a SAG-AFTRA collective bargaining agreement, while minors under age four can work under SAG-AFTRA contracts without union membership. *Id.* at 5. SAG-AFTRA's collective bargaining agreements mandate protected trust accounts for the compensation of minor actors working in California and New York, in addition to restricting work hours for minor actors anywhere in the United States and imposing requirements for on-set education and supervision. *Id.* at 9, 13, 17. Production companies employing minors must adhere to the responsibilities required by both SAG-AFTRA contracts and applicable state law. *Id.* at 17.

32. JENNETTE MCCURDY, *I'M GLAD MY MOM DIED* 14 (2022).

she never wanted—though she could not as easily escape her fame.³³

When I was six years old, she pushed me into a career I didn't want. I'm grateful for the financial stability that career has provided me, but not much else. I was not equipped to handle the entertainment industry and all of its competitiveness, rejection, stakes, harsh realities, fame. I needed that time, those years, to develop as a child. To form my identity. To grow. I can never get those years back.³⁴

B. REALITY TELEVISION BRIDGES THE GAP FROM FILM AND TELEVISION TO THE INTERNET

In 2011, the Lifetime reality series *Dance Moms* premiered, unwittingly marking the beginning of a new era and a new medium for twenty-first-century stage parents. Following a group of young competitive dancers and their intense and argumentative mothers, *Dance Moms* became an overnight sensation and launched the show's young dancers into stardom. In the show's early seasons, the dancers' mothers spoke of their hopes for their children to achieve careers on a Broadway stage and in film.³⁵ In 2011, Instagram was in its infancy and the advent of TikTok was years away; a handful of hit reality shows featuring children, like *Jon and Kate Plus 8* and the ill-fated *19 Kids and Counting*,³⁶ existed but the children on those shows were not positioned adjacent to entertainment careers and also had not built independent followings or fanbases—the concept of kidfluencers was entirely new. *Dance Moms* changed the game.³⁷

33. See *id.* at 303.

34. *Id.*

35. See, e.g., DANCE MOMS: *The Competition Begins* (Lifetime television broadcast, aired July 13, 2011).

36. *19 Kids and Counting* was a reality series on The Learning Channel ("TLC") that ran from 2008 to 2015 and followed the lives of the Duggar family, a conservative Christian family with nineteen children. See Abby Ohlheiser, Sarah Pulliam Bailey & Elahe Izadi, *Josh Duggar Apologizes Amid Molestation Allegations, Quits Family Research Council*, WASH. POST (May 22, 2015), <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/21/josh-duggar-apologizes-resigns-from-family-research-council-amid-molestation-allegations> [https://web.archive.org/web/20150531005339/https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/21/josh-duggar-apologizes-resigns-from-family-research-council-amid-molestation-allegations]. The show was canceled in 2015 after allegations surfaced that the family's oldest son, Joshua Duggar, had sexually abused four of his younger sisters before the show's run. Abby Ohlheiser & Elahe Izadi, *TLC Pulls '19 Kids and Counting' Citing 'Heartbreaking Situation'*, WASH. POST (May 22, 2015), <https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/22/what-happens-to-tlcs-19-kids-and-counting-after-the-josh-duggar-allegations> [https://web.archive.org/web/20150531162500/https://www.washingtonpost.com/news/acts-of-faith/wp/2015/05/22/what-happens-to-tlcs-19-kids-and-counting-after-the-josh-duggar-allegations].

37. See generally BACK TO THE BARRE (Apple Podcasts) (discussing how the *Dance Moms* child cast evolved from popular reality-television personalities to some of the first kidfluencers on content-sharing platforms).

Today, the original *Dance Moms* dancers are in their early to mid-twenties and their primary careers are as social-media influencers.³⁸ Instead of becoming “stars” in a traditional sense on stage and in film, the *Dance Moms* girls achieved stardom as themselves, beloved by young fans of their show who flocked to follow them on social media as Instagram and other platforms simultaneously took off.³⁹ While the first *Dance Moms* dancers did not begin their time on the show imagining kidfluencer fame, cast members during the show’s later seasons arguably did. In 2016, a group of younger dancers joined the now-wildly successful *Dance Moms* cast; entering the show in the post-Instagram and Musical.ly (TikTok’s forerunner application) world, these new dancers had social-media pages ready when the show’s global audience began following them in droves. Now teenagers, many members of *Dance Moms*’ second generation work as kidfluencers today⁴⁰—and the world of kidfluencers and reality child stars is a small one. *Dance Moms*’ second generation includes seventeen-year-old Lilliana Ketchman and eighteen-year-old Elliana Walmsley. Ketchman was named by the *PRI* plaintiffs as a perceived competitor to Rockelle, “anger[ing]” Smith; the plaintiffs believed Smith subsequently used “dirty tactics” to cause a significant decline in Ketchman’s followers, viewership, and revenue in January 2021.⁴¹ Meanwhile, Walmsley is a former member of Rockelle’s Squad, though she was not a party to the *PRI* lawsuit.⁴²

38. See *infra* notes 43–45 and accompanying text.

39. Rebecka Schumann, ‘Dance Moms’ Online: 8 Former Cast Members to Follow on Instagram, Twitter and More, INT’L BUS. TIMES (July 2, 2015, at 14:15 ET), <https://www.ibtimes.com/dance-moms-online-8-former-cast-members-follow-instagram-twitter-more-1994430> [<https://perma.cc/V8SF-BW-MX>].

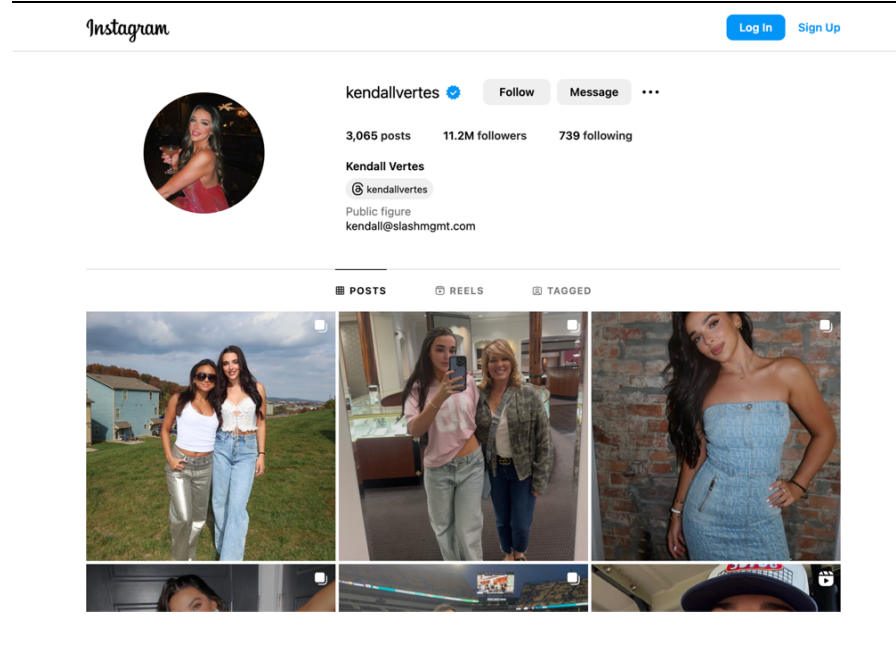
40. See *id.*

41. Complaint for Damages, *supra* note 2, at 15–16. Plaintiffs believed that Smith used the same tactics against Ketchman that they alleged that she did against the plaintiffs themselves after they stopped collaborating with Smith to develop content for Rockelle’s platforms. Such tactics included using “bots,” paying to quickly add and then remove “subscribers” from a YouTube channel (which affects YouTube’s algorithm for recommended content), falsely flagging content as “inappropriate” on YouTube (which leads to the content being deemed “restricted,” thereby hurting viewership of the content), embedding [p]laintiffs’ videos into porn[ography] sites and working with an inside individual . . . at YouTube to help “restrict” [p]laintiffs’ videos.

Id. at 15.

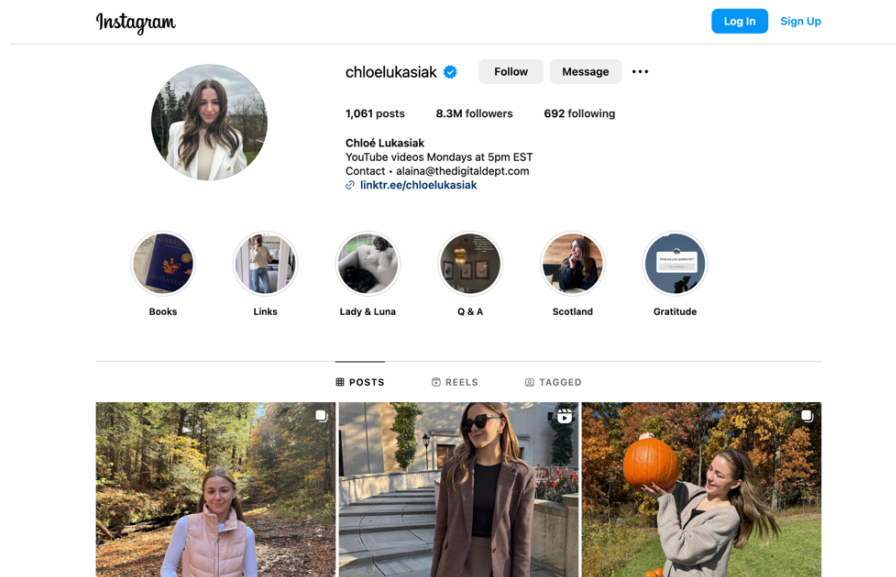
42. See, e.g., PIPER ROCKELLE, *Last to Stop Massaging Their Boyfriend Wins **Couples Challenge*** 🍷💕 | Piper Rockelle (YouTube, Feb. 13, 2021) [hereinafter ROCKELLE, *Last to Stop*], <https://www.youtube.com/watch?v=xSRoRwuVxX4> [<https://perma.cc/EYF9-9PDA>]; PIPER ROCKELLE, *Last to Leave the Bubble Bath!!* (YouTube, Feb. 5, 2022) [hereinafter ROCKELLE, *Last to Leave*], <https://www.youtube.com/watch?v=6KHITcf0e4s> [<https://perma.cc/5MHN-JCQ2>].

IMAGE 1. Former *Dance Moms* Cast Member and Current Influencer Kendall Vertes's Instagram⁴³



43. Kendall Vertes (@kendallvertes), INSTAGRAM, <https://www.instagram.com/kendallvertes> [https://web.archive.org/web/20240110032236/https://www.instagram.com/accounts/login/?next=https%3A%2F%2Fwww.instagram.com%2Fkendallvertes%2F].

IMAGE 2. Former *Dance Moms* Cast Member and Current Influencer Chloé Lukasiak's Instagram⁴⁴



Barely a decade after *Dance Moms*' premiere and Instagram's launch, kidfluencing is now eclipsing the once-well-trodden paths to child stardom found on television and in film. Piper Rockelle exemplifies this phenomenon:

Paparazzi don't wait outside Piper's fuchsia-painted mansion in the San Fernando Valley, but among a young, YouTube-fixated demographic, the ebullient brunette is idolized. As a rising star on the most-watched video-content platform of her generation, Piper bypassed the traditional paths of Nickelodeon and Disney to become a millionaire through the monetization of her social media content.

Propelled by the force of millions of likes and heart emojis, Piper was making between \$4.2 million and \$7.5 million a year before the Squad's lawsuit. Her YouTube videos had amassed over 1.87 billion views, and companies such as NBCUniversal, Disney and Amazon were paying her to promote their products on Instagram and TikTok. Super-VIP tickets on her tour—a live variety show that trades on the Squad's online personas—went for \$599.99. She was also selling merchandise on her website,

44. Chloé Lukasiak (@chloelukasiak), INSTAGRAM, <https://www.instagram.com/chloelukasiak> [<https://perma.cc/PFP7-FQ6K>].

offering personalized greetings via Cameo and making music. She has released seven singles.⁴⁵

The PRI “empire[],” much like many YouTube money machines, “was built at home.”⁴⁶ Smith’s live-in boyfriend, Hunter Hill, also a defendant in the *PRI* lawsuit, filmed and edited the Squad’s videos in the Smith home, and Smith planned video content and coordinated filming schedules for Squad members.⁴⁷ Initially, Rockelle and other members of the Squad sought success as actors on stage and in film; after her social-media channels took off, however, Rockelle narrowed her focus solely to kidfluencing, while Smith “strongly discouraged” other Squad members from continuing to pursue work beyond their growing YouTube empire.⁴⁸

And though stage parents like Smith are pursuing fame for their children in a new medium, the same conflicts of interest between parents and children that persist in film and television recur in the Internet-child-stardom era. In the early 2000s, the challenges of living in poverty colored Jennette McCurdy’s high-stress journey into the television industry; just a few years later, PRI would allegedly take advantage of children also coming from limited means in order to profit from their involvement in the Squad. Said one *PRI* plaintiff, “[s]ingle mothers using YouTube to support the family—there’s a lot of those in the [Squad’s families].”⁴⁹

While the *PRI* lawsuit is seemingly unique (as of now) in terms of its size and the breadth of the allegations at-issue, Rockelle and the Squad are in good company as part of a vast, bankable movement of kidfluencer content creators. Kidfluencer accounts are undeniably popular: a 2019 study revealed that videos featuring a child younger than thirteen-years-old receive three times the views garnered by videos without children.⁵⁰ And critics of the kidfluencer phenomenon say that platforms like YouTube, as well as brands that partner with kidfluencers for paid product placements, are deliberately skirting child labor laws because of kidfluencer accounts’ popularity and payoff; in their view, the legal gray area surrounding kidfluencers enables platforms and brands to make “billions” from kidfluencer content while avoiding the costs and coordination that film and television productions are legally required to undertake to work with child

45. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Patrick Van Kessel, Skye Toor & Aaron Smith, *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> [<https://perma.cc/59KQ-22TN>].

performers.⁵¹ YouTube currently makes it fairly easy, with strategic use of algorithmic tools like hash-tagging, to achieve monetized status, requiring that channels reach just 1,000 subscribers and 4,000 viewing hours within twelve months to become monetized; as of last year, YouTube hosted roughly two million monetized accounts.⁵²

Between YouTube, Instagram, and TikTok, opportunities for children to build a massive online presence—and for adults to make serious money off their backs—are exploding. As the last century of developing adequate legal protections for child actors demonstrates, this level of financial promise coupled with children as the key moneymakers is a recipe for exploitative disaster. Now that the recipe has found a new home on the Internet, the potential for lifelong damage to the children behind the money machines has reached devastating levels. The baby steps that some lawmakers are beginning to take toward protecting, primarily, kidfluencers' compensation are, to be sure, essential regulatory efforts. But the reality of the kidfluencer world demands a much more all-encompassing approach—one that treats kidfluencers as the professionals they are and treats the Internet as the uniquely permanent and wide-ranging medium it is. Making parents the unchecked shot-callers over their children's labor conditions and privacy is an untenable arrangement because of the potential conflict of interest inherent in parents choosing between substantial monetary gain and their children's best interests. Kidfluencers and the Internet (much like child film stars and the motion picture industry as seen a century ago) are not going anywhere. So, lawmakers must get serious about how to regulate them.

II. REGULATING THE LABOR OF KIDFLUENCERS

While federal law does provide some protections for child labor, it expressly exempts child performers from those protections. Thus, to the extent that child entertainers receive protection from labor exploitation, those protections come either from state law or from unions for media professionals such as SAG-AFTRA. However, summarizing what relevant federal law is present in this area helps contextualize the gaps in child entertainer regulations that state laws and unions have had to attempt to fill. And while neither state laws (for the most part) nor unions protect *kidfluencers'* labor rights, they do protect child entertainers and thus provide helpful and relevant models for what effective legal protections for kidfluencers' labor should entail.

51. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

52. *Id.*

Only a handful of states have laws governing child entertainers, and the most stringent laws exist in California and New York; both states limit child entertainers' working hours, regulate their education, mandate their on-set supervision and advocacy, and protect their wages. All of these regulations should be expanded to cover kidfluencers; further, because kidfluencers primarily work at home and thus are not restricted by a need to live within range of entertainment hubs like Los Angeles and New York City, these regulations should apply to kidfluencers in every state through federal legislation. Recent legislation in California, Illinois, Utah, and Minnesota protecting primarily kidfluencers' wages, while helpful, is but one small piece of the comprehensive regulatory scheme needed to adequately protect kidfluencers' labor.

A. EXISTING LABOR REGULATIONS FOR CHILD ENTERTAINERS

1. Federal Measures for Child Workers: The Fair Labor Standards Act

In 1938, the Fair Labor Standards Act ("FLSA") marked a new era for regulation of child workers. Setting the minimum age of employment for most non-agricultural work at sixteen,⁵³ the act came on the heels of the United States Supreme Court striking down laws aimed at regulating commercial goods produced by child workers in *Hammer v. Dagenhart*⁵⁴ and the *Child Labor Tax Case*.⁵⁵ These decisions were but one component of a long struggle by labor reformers to protect child workers—by the twentieth century, reformers heavily emphasized how child labor led to extensive health problems and the deprivation of adequate education.⁵⁶ In developing their platform regarding child labor, advocates also had to reckon with the difficult but inescapable reality that many child workers came from immense poverty. Some reformers lobbed heavy criticism at parents who they claimed were "too lazy to work" and had "become accustomed to subsist[ing] by their children's labor."⁵⁷

The FLSA still has multiple exemptions, some critical to child entertainers and kidfluencers alike: the FLSA exempts from regulation "a parent employing his own child"⁵⁸ and does not apply to "any child

53. Fair Labor Standards Act of 1938, 29 U.S.C. § 203(l).

54. *Hammer v. Dagenhart*, 247 U.S. 251, 276–77 (1918).

55. *Child Labor Tax Case*, 259 U.S. 20, 39 (1922).

56. Michael Schuman, *History of Child Labor in the United States—Part 2: The Reform Movement*, U.S. BUREAU OF LAB. STATS.: MONTHLY LAB. REV. (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm> [<https://perma.cc/UWU8-NM2Y>].

57. *Id.* (alteration in original) (quoting HUGH D. HINDMAN, *CHILD LABOR: AN AMERICAN HISTORY* 174 (2002)).

58. 29 U.S.C. § 203(l).

employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions.”⁵⁹ The latter exemption is known as the “Shirley Temple Act” because without it, the then-wildly popular child star would have disappeared from movie screens.⁶⁰ Further, the lawmakers behind the FLSA did not consider entertainment work especially hazardous or oppressive, unlike the dangerous factory and agricultural labor the FLSA was intended to address, and thus excluded minors in entertainment from coverage.⁶¹ Due to this exclusion of child performers from federal regulation, labor rights for child performers fall under state law, and states have adopted a variety of protections (including, in seventeen states, no protections at all) for this demographic.⁶²

2. SAG-AFTRA, States’ Approaches & the Coogan Law

Some of the most comprehensive protections for child entertainers come from SAG-AFTRA, the primary union for media professionals in the United States. SAG-AFTRA’s collective bargaining agreements with production companies require that companies adhere to the standards delineated in SAG-AFTRA’s contracts as well as applicable state law regarding employment of minors.⁶³ Thus, SAG-AFTRA functions as the enforcer of its own standards for employing child performers; its collective bargaining agreements act as a bottleneck against potentially negligent or exploitative employment practices because production companies that are SAG-AFTRA signatories must comply with these standards in order to employ children with SAG-AFTRA membership.⁶⁴ SAG-AFTRA restricts the working hours of child entertainers working anywhere in the United States, stipulating that minors may not work before 5:00 a.m. or after 10:00 p.m. on days preceding a school day (and may not work after 12:30 a.m. on mornings of non-school days); SAG-AFTRA further limits total working hours per school day to four hours for children ages six to eight, five hours for children ages nine to fifteen, and six hours for children ages sixteen and

59. *Id.* § 213(c)(3).

60. Kimberlianne Podlas, *Does Exploiting a Child Amount to Employing a Child? The FLSA’s Child Labor Provisions and Children on Reality Television*, 17 UCLA ENT. L. REV. 39, 57–58 (2010).

61. Katherine Wirvin, Note, *A Star Is Born: Lack of Income Rights for Entertainment’s Newest Stars, “Kidtubers,”* 76 FED. COMM’NS L.J. 61, 63 (2023).

62. Nila McGinnis, Note, *“They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents*, 87 MO. L. REV. 247, 254 (2022).

63. SAG-AFTRA, *supra* note 31, at 17.

64. SAG-AFTRA represents hundreds of thousands of media professionals. *See About, SAG-AFTRA*, <https://www.sagaftra.org/about> [<https://web.archive.org/web/20241212142216/https://www.sagaftra.org/about>]. Countless production companies, including particularly prominent companies like The Walt Disney Company, are SAG-AFTRA signatories. *See Signatory Search, SAG-AFTRA*, <https://www.sagaftra.org/contracts-industry-resources/signatory-search> [<https://web.archive.org/web/20241213162220/https://www.sagaftra.org/contracts-industry-resources/signatory-search>].

seventeen.⁶⁵ School days for SAG-AFTRA contract purposes conform to the public school calendar for the district where the minor resides, and SAG-AFTRA requires that school-age minors receive an average of at least three hours of educational instruction on school days.⁶⁶ Minors between six months and two years old may work up to two hours while minors between two and five years old may work up to three hours; only preschool-age minors do not attend on-set school.⁶⁷

SAG-AFTRA's protections for child actors' compensation also conform to applicable state law, where present.⁶⁸ Originally passed in California in 1939, the Coogan Law now requires that fifteen percent of all minors' earnings for entertainment work be placed in a blocked trust account (known as a "Coogan Account") accessible only by the minor once they reach adulthood.⁶⁹ The law's namesake, child actor Jackie Coogan, enjoyed a tremendously successful career in the 1920s after being discovered by Charlie Chaplin.⁷⁰ But despite Coogan's millions of dollars in earnings as a child star, he only ever received a weekly allowance of \$6.25 from his mother until, when Coogan turned twenty-one, she ultimately refused to ever turn over more of his earnings to him.⁷¹ Though intended to prevent exploitation like that Coogan suffered from befalling future young actors, the first iteration of the Coogan Law had critical gaps, including merely permitting, rather than mandating, trust accounts for child performers.⁷² It was precisely these gaps that enabled the parents of Shirley Temple herself to devote her earnings entirely to supporting their family of twelve even after the initial passage of the Coogan Law; after her acting career slowed down in her teenage years, the generation-defining star's "only assets were a few thousand dollars and the deed to her dollhouse in the back yard [sic] of her parents' Beverly Hills home."⁷³ California closed the gaps in its Coogan Law

65. SAG-AFTRA, *supra* note 31, at 22. On non-school days, school-age minors may work up to two additional hours. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 9, 16–17, 32–33.

69. *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://web.archive.org/web/20241213153939/https://www.sagaftra.org/membership-benefits/young-performers/coogan-law>].

70. James Barron, *Jackie Coogan, Child Star of Films, Dies at 69*, N.Y. TIMES, Mar. 2, 1984 (§ B), at 5, <https://timesmachine.nytimes.com/timesmachine/1984/03/02/026082.html> [<https://nyti.ms/3MjtCP>]. Coogan grew up on vaudeville stages, making his stage debut at sixteen months old. After his mother's refusal to turn over more of his earnings, Coogan sued both her and his lawyer but eventually settled for only \$35,000. *Id.*

71. *Id.*

72. *Coogan Law*, *supra* note 69.

73. Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201, 205 (2000) (alteration in original) (internal quotation marks omitted).

in January 2000 following advocacy by SAG-AFTRA for unequivocal legal recognition that minors' earnings from entertainment work are their own.⁷⁴ Currently, New York, Illinois, Louisiana, and New Mexico all have trust-account mandates for child actors comparable to California's Coogan Law.⁷⁵

Meanwhile, some states also have laws concerning child performers' labor conditions in addition to compensation requirements and union protections. California mandates a maximum eight-hour workday for child entertainers in addition to three hours of on-set education for each weekday that children work; California also requires that a state-licensed teacher or welfare worker be present at all times on sets where child performers are working,⁷⁶ and that adults obtain permits before employing children and ensure that a minor's parent or guardian is within their sight and hearing range at all times that the minor is on set.⁷⁷ In New York, employers of child entertainers working three or more consecutive days must provide a credentialed on-set teacher to ensure that state educational requirements for child entertainers are met.⁷⁸

3. When Does the Home Become a Set?

State laws protecting child entertainers, however well-established, largely do not extend to kidfluencers—even in states like California, which has very strict regulations for child performers⁷⁹ (PRI is located in Los Angeles and the Squad's videos were filmed there⁸⁰). If we apply California and SAG-AFTRA's labor regulations for child actors to PRI and the Squad, PRI—sometimes allegedly, other times admittedly—fell far short.⁸¹ Smith did not obtain permits to work with the minors in the Squad.⁸² Some PRI plaintiffs claimed they worked up to twelve hours per day, seven days a week, without rest and meal breaks and without compensation.⁸³ The mother of two plaintiffs, sisters, worried that one of her daughters “was falling behind in school because she wasn't getting enough sleep” due to Smith's

74. *Coogan Law*, *supra* note 69.

75. *Id.*

76. Jessica Gelt & Amy Kaufman, *YouTube Star Piper Rockelle's Mom Reaches \$1.85-Million Settlement with Young Influencers*, L.A. TIMES (Oct. 10, 2024, at 09:10 PT) [hereinafter Gelt & Kaufman, *Settlement*], <https://www.latimes.com/entertainment-arts/story/2024-10-10/youtube-influencer-piper-rockelle-mother-lawsuit-settlement> [https://web.archive.org/web/20241124201801/https://www.latimes.com/entertainment-arts/story/2024-10-10/youtube-influencer-piper-rockelle-mother-lawsuit-settlement].

77. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

78. SAG-AFTRA, *supra* note 31, at 20, 22.

79. *Id.* at 22–23.

80. Complaint for Damages, *supra* note 2, at 5–6.

81. See SAG-AFTRA, *supra* note 31, at 20, 22–23.

82. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

83. Second Amended Complaint for Damages, *supra* note 2, at 43–44, 46.

demanding filming schedule.⁸⁴ Some of the plaintiffs' parents alleged that Smith "regularly forbade other adults from being on set";⁸⁵ Smith reportedly only ever "briefly" hired an on-set teacher for Squad members and "was uninterested in the children's education," even though none of the minors attended traditional in-person school during their years filming.⁸⁶ After some of the plaintiffs' parents hired a private tutor to work with the minors in Smith's guesthouse, Smith "barged" into the guesthouse mid-lesson, "screaming" that the child currently studying needed to "report to set immediately" and that "she didn't care whether the tutor's hour wasn't up."⁸⁷ The tutor left her position teaching the Squad after the incident.⁸⁸ Plaintiffs also reported that Rockelle herself had significant educational gaps, claiming Rockelle, who has only ever been homeschooled,⁸⁹ had trouble reading and "never" did schoolwork.⁹⁰

Commenting on the allegations in the *PRI* lawsuit regarding failure to provide compensation as well as the maintenance of an oppressive work environment, plaintiffs' attorney Matthew Sarelson remarked, "Imagine if these kids had been on a movie set for Lionsgate . . . People would go to jail if this had happened at a studio."⁹¹ But kidfluencers occupy a legal gray area existing somewhere between professional child performers and the kids-next-door getting together to make a funny video.⁹² And the *PRI* plaintiffs assert that that legal gray area has given rise to a "Wild West atmosphere of content creation" where adults can push children into extensive, high-profile content creation with little to no oversight.⁹³

Throughout the *PRI* lawsuit, Smith emphasized that she "did not view her home as a workplace" nor herself as the plaintiffs' employer; she described the Squad's activities as "'kids get[ting] together voluntarily to collaborate on making videos,'" a far cry, in her view, from a professional studio environment that would necessitate her compliance with state child

84. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. Homeschooling in the United States is a largely unregulated practice, and some critics argue that the lack of oversight for homeschooling families threatens both children's right to an effective education as well as their emotional and physical well-being. *See generally* Elizabeth Bartholet, *Homeschooling: Parent Rights Absolutism vs. Child Rights to Education & Protection*, 62 ARIZ. L. REV. 1 (2020) (pointing to correlations between homeschooling and instances of child abuse to illustrate the risks potentially inherent in a deregulated homeschooling regime).

90. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

91. *Id.*

92. *See Id.*

93. Gelt & Kaufman, *Settlement*, *supra* note 76.

labor laws.⁹⁴ Smith’s lawyer commented, “There is tremendous uncertainty about what labor laws apply in the context of filming a YouTube video at home, with an iPhone At what point is that a professional production?”⁹⁵ Meanwhile, Sarelson argued that “PRI should be treated no differently than a traditional production company” and expressed “hopes [that] the lawsuit sparks change in the social media space.”⁹⁶ Some of PRI’s activities—including using a professional camera to film content and posting audition notices for young actors to film with Rockelle—could indicate that the corporation was effectively operating as a professional production company.⁹⁷ But currently, no federal legislation exists delineating the line between making home videos and shooting professional social-media content.

B. NEW EFFORTS: EXPANDING CHILD LABOR REGULATIONS TO COVER KIDFLUENCERS

A handful of states are beginning to enact labor protections for kidfluencers, underscoring the desire and need for a comprehensive, federal approach to kidfluencer regulation.⁹⁸ In July 2025, Minnesota enacted some of the most significant kidfluencer regulations so far: not only does the state now mandate protected trust accounts to safeguard kidfluencers’ earnings, but it also prohibits children less than fourteen years old from appearing in monetized content at all.⁹⁹ Instead of designing its law solely as a means of “legitimizing” kidfluencers as akin to child entertainers, University of Minnesota Law School Dean William McGeeveran said Minnesota “ ‘set [its law] up as almost a child labor law. . . . It’s about kids needing to be able to be paid for work that they do And if they’re 13 and under, kids can’t work in the ice cream shop and they can’t work in their parents’ content creation either.’ ”¹⁰⁰ Minnesota’s statute does not enshrine any further labor regulations for kidfluencers over fourteen beyond protecting their earnings.

94. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

95. *Id.*

96. *Id.* The PRI lawsuit also raised questions as to whether the plaintiffs’ parents should have obtained permits covering their children’s individual filming of their own content. *Id.*

97. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

98. As of June 2025, sixteen states have introduced legislation to regulate kidfluencers in some form; this Note only addresses legislation already enacted at the time of writing. Kim Miller, *Protecting Young Influencers: New Laws Protect Content Creators that Are Minors*, MULTISTATE (June 25, 2025), <https://www.multistate.us/insider/2025/6/25/protecting-young-influencers-new-laws-protect-content-creators-that-are-minors> [https://perma.cc/TD94-8TAF].

99. H.F. 3488, 93rd Leg., 93rd Sess. (Minn. 2024).

100. Caroline Cummings, *New Minnesota Law Sets Guardrails for Children of Content Creators Featured in Monetized Videos*, CBS NEWS (July 2, 2025, at 21:27 CT), <https://www.cbsnews.com/minnesota/news/minnesota-law-children-content-creators-monetized-videos-guards> [https://perma.cc/R9BU-68ST].

For the other six states that now protect kidfluencers' labor, their measures are limited to regulating kidfluencers' compensation. In July 2024, Illinois became the first U.S. state to enact laws expressly protecting kidfluencers' earnings.¹⁰¹ Content creators in Illinois must now set aside a portion of earnings in a protected trust account for all minors age sixteen and under who appear in at least thirty percent of their monetized content.¹⁰² Illinois Senator Dave Koehler, who introduced the law, took action after Shreya Nallamothe, a fifteen-year-old high school student in his district, alerted him to the issue of young children being featured extensively online with no labor protections for them in place.¹⁰³ "This new digital age has given us tremendous opportunities to connect with one another, but it's also presented legal issues that have never existed before," said Koehler.¹⁰⁴ "We need to work with our children to see the problems they face and tackle them head-on before any further harm is done."¹⁰⁵

The Illinois law protects earnings for minors under the age of sixteen while stipulating that minors under sixteen who produce their own videos are not considered "vlogger[s]" subject to the compensation and record-keeping requirements established by the law.¹⁰⁶ The law explicitly includes "famil[ies]" in its definition of "vlogger[s]," thus requiring parents who produce content featuring their own children (as well as any other children) to set aside the minors' earnings if their inclusion reaches the specified threshold. The law also amends Illinois' Child Labor Law by allowing teenagers who are at least eighteen years old to take legal action against their parents for failing to compensate them in accordance with the new requirements.¹⁰⁷ In response to the law, University of Alabama professor of digital media Jessica Maddox called the legislation "long overdue" and pushed for other states to take similar steps as well as expand protections to allow eighteen-year-olds to petition for the removal of social-media content that features them.¹⁰⁸ Emphasizing the need for regulations that adequately measure up to the reality of the kidfluencer phenomenon, Maddox commented:

101. Katie Kindelan, *Illinois Becomes 1st State to Regulate Kid Influencers: What to Know About the Law*, ABC NEWS (Aug. 14, 2023, at 14:36 PT), <https://abcnews.go.com/GMA/Family/illinois-1st-state-regulate-kid-influencers-law/story?id=102259218> [<https://perma.cc/N9G8-U2UA>].

102. *Id.*

103. Press Release, Koehler, *supra* note 24.

104. Kindelan, *supra* note 101.

105. *Id.*

106. 820 ILL. COMP. STAT. ANN. 206/10 (West 2025).

107. Amanda Anderson, *Illinois Enacts Law Protecting "Child Influencers,"* 4A'S (Aug. 23, 2023, at 11:38 PT), <https://www.aaaa.org/illinois-enacts-law-protecting-child-influencers> [<https://web.archive.org/web/20240703060538/https://www.aaaa.org/illinois-enacts-law-protecting-child-influencers>].

108. Kindelan, *supra* note 101.

[Kidfluencing and vlogging] are actual jobs, possible ways of earning income, that need protection . . . Since there aren't unions, there isn't systemic protection in terms of laws, that is why Illinois law is super important for setting the precedent that this type of labor needs to be protected, especially for minors.¹⁰⁹

Meanwhile, on September 26, 2024, California Governor Gavin Newsom signed legislation expressly expanding the state's Coogan Law to cover kidfluencers sharing content on YouTube and similar platforms.¹¹⁰ The bill in question, AB 1880, defines "content creator" as "an individual who creates, posts, shares, or otherwise interacts with digital content on an online platform," including "vloggers, podcasters, social media influencers, and streamers"; "online platform" is defined as "any public-facing website, web application, or digital application."¹¹¹ Regarding Governor Newsom's support for the bill, bill author Assemblymember Juan Alanis remarked:

I thank Governor Newsom for signing AB 1880 and for his commitment to addressing the unique challenges minors face as online content creators in the rapidly growing digital entertainment industry. Child content creators deserve the same protections under the Coogan Law as their counterparts in traditional entertainment. With this bill, California takes a significant step in protecting the financial rights and well-being of child online influencers by extending critical protections against exploitation and ensuring they receive a fair share of earnings from their content.¹¹²

Former child actor and successful musician Demi Lovato championed the bill as a critical step toward "grant[ing] agency" toward kidfluencers upon reaching adulthood.¹¹³

Signed alongside AB 1880 was SB 764,¹¹⁴ the Child Content Creator Rights Act ("CCCRA"), authored by Senator Steve Padilla.¹¹⁵ The CCCRA stipulates that video bloggers ("vloggers") engage a minor "in the work of vlogging" when at least thirty percent of the vlogger's monetized visual content includes "the likeness, name, or photograph of the minor."¹¹⁶ Vloggers engaging minors in vlogging work under the definition of the CCCRA are required to keep detailed records of the minor's age during the

109. Kindelan, *supra* note 101 (errors in the original).

110. Press Release, Gavin Newsom, Governor, Governor Newsom Joins Demi Lovato to Sign Legislation to Protect the Financial Security of Child Influencers (Sept. 26, 2024), <https://www.gov.ca.gov/2024/09/26/governor-newsom-joins-demi-lovato-to-sign-legislation-to-protect-the-financial-security-of-child-influencers> [<https://perma.cc/WHW9-HU8A>].

111. Assemb. B. 1880, 2023–2024 Reg. Sess. (Cal. 2024).

112. Press Release, Newsom, *supra* note 110.

113. *Id.*

114. *Id.*

115. Press Release, Padilla, *supra* note 20.

116. S.B. 764, 2023–2024 Reg. Sess. (Cal. 2024).

vlogging period and the extent of their appearance in and compensation for monetized content.¹¹⁷ Contracts for vlogging work between a minor and their parent must be approved by a court to avoid application of the bill’s terms; “[i]n determining whether to approve such a contract, the court shall consider whether the terms of the contract are at least as beneficial to the minor as the compensation the minor would otherwise receive under [the CCCRA].”¹¹⁸

And as of May 2025, Utah now also mandates protected trust accounts for kidfluencers.¹¹⁹ With similar provisions to those in California and Illinois, Utah’s law also lays out procedures for managing kidfluencers trusts and also requires that content creators “inform a minor’s parents that the minor is featured” in their content if, as in the *PRI* lawsuit, the creator is not themselves the minor’s parent.¹²⁰ In the same vein, Virginia, Arkansas, and Montana all enacted kidfluencer laws in 2025, and each state focused its labor protections for kidfluencers on compensation safeguards, mandating Coogan Account-esque trusts for kidfluencers appearing in a certain percentage of creators’ content.¹²¹

As lawmakers in California, Minnesota, Illinois, Utah, Arkansas, Montana, and Virginia have recognized, kidfluencing is a job, plain and simple. It demands the same safeguards against labor exploitation that are accepted throughout the United States for children in traditional entertainment jobs, along with additional protections that are necessary to address issues unique to kidfluencing. Thus, while the recent legislation in these states represents important progress, much more robust protections for kidfluencers—regulations modeled after California’s existing laws for child actors—are needed. Because of the geographic flexibility inherent in kidfluencer work, such protection is needed at the federal level to be fully comprehensive; further, kidfluencer regulations must not only mandate safeguards to compensation, but also ensure limits on working hours, guaranteed access to education, on-set supervision and advocacy, and the obtainment of permits to employ minors. As it stands today, even for kidfluencers now protected from financial exploitation in a handful of states, the rest of their working conditions remain largely unregulated—as does their privacy.

117. *Id.*

118. *Id.*

119. H.B. 322, 66th Leg., 2025 Gen. Sess. (Utah 2025).

120. *Id.*

121. H.B. 2401, 2025 Gen. Assemb., Reg. Sess. (Va. 2025); H.B. 1975, 95th Gen. Assemb., Reg. Sess. (Ark. 2025); H.B. 392, 69th Leg., Reg. Sess. (Mont. 2025).

III. REGULATING THE PRIVACY OF KIDFLUENCERS

Growing up in the pop culture spotlight compromises a child's privacy and reputation in ways that can be painful and enduring. As child actor Jettie McCurdy put it, "Growing is wobbly and full of mistakes, especially as a teenager—mistakes that you certainly don't want to make in the public eye, let alone be known for for the rest of your life. But that's what happens when you're a child star."¹²² And for kidfluencers, the extent to which their privacy and reputations are at stake is much greater. For Shirley Temple and Judy Garland, while the laws protecting them were still woefully inadequate, the personal information they shared with the public was limited to their performances as fictional characters, filmed on a soundstage by a camera that never followed them home. But for kidfluencers, the camera lives at home. Nothing is off-limits and every experience, every mistake, every embarrassment is potential content with dollar signs attached to it.

If labor regulations for kidfluencers are largely undeveloped, laws protecting kidfluencers' privacy seem like less than an afterthought—perhaps even conceptually oxymoronic given that the point of kidfluencer content, in general, is to share children's personal lives online. Even as lawmakers take steps to protect children as Internet *users*, kidfluencers are nowhere to be found in their policies. Though states have common law rights to privacy and publicity and a 1998 federal act regulates online platforms' collection of children's personal data, these rights can all generally be waived with consent—and for children, the consenting parties are their parents. Meanwhile, online platforms typically limit accounts to users aged thirteen and older, but given the numerous active kidfluencer accounts heavily featuring children under thirteen, platforms do not appear to restrict accounts that overwhelmingly feature children if the accounts are set up and managed by adults. These gaping loopholes in existing rights and policies allow kidfluencer accounts to thrive unchecked,¹²³ leading to severe, long-term harm to and exploitation of kidfluencers that society is likely only beginning to reckon with.¹²⁴

122. MCCURDY, *supra* note 32, at 121.

123. Notably, Piper Rockelle's YouTube channel was only demonetized by YouTube in 2022 after the *PRI* lawsuit's filing, despite the account being at least four years old by that point, having a significant viewership and presence on the platform, and having primarily featured children under the age of thirteen for an extended period. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

124. See generally KUTV 2 NEWS SALT LAKE CITY, *supra* note 1 (depicting a former kidfluencer sharing her personal experience with the Utah Legislative Committee).

A. PRIVACY REGULATIONS FOR CHILDREN AS USERS ONLINE

1. Existing and Proposed Federal Regulations for Children Online

i. The Children's Online Privacy Protection Act of 1998

The Children's Online Privacy Protection Act of 1998 ("COPPA") is the primary set of federal regulations concerning children's online privacy, covering consent and notice requirements for online platforms and entities that collect personal data from children.¹²⁵ COPPA's "primary goal . . . is to place parents in control over what information is collected from their young children online,"¹²⁶ and it focuses on protecting children as *users* of online platforms as opposed to children *appearing in* online content. COPPA requires the Federal Trade Commission ("FTC") to regulate online collection of children's data and was last amended in 2013 in an effort to keep up with advancing technology.¹²⁷ Kidfluencers are not explicitly covered by COPPA or any other federal law.

As a protective measure for children who are merely consumers of online content, COPPA is reasonably comprehensive (though it needs continuous updates to remain effective). Its critical failure as a protective measure for kidfluencers, however, lies in its parental-consent-based structure—and in the fact that it makes no actual mention of kidfluencers at all. COPPA only applies to children under thirteen and requires that online entities obtain parental consent before collecting children's personal data from children. COPPA prohibits "unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet."¹²⁸ The act applies to websites or online services "directed to children"; in determining whether a given platform qualifies under this standard, the FTC considers the platform's "subject matter," "use of . . . child-oriented activities and incentives," and "presence of child celebrities" as among relevant factors.¹²⁹ COPPA defines "collection" as "the gathering of any personal information from a child by any means, including . . . [r]equesting, prompting, or encouraging a child to submit personal information online," "[e]nabling a child to make personal information publicly available," and "[p]assive tracking of a child online."¹³⁰ "[P]ersonal information" under COPPA includes identifiers like first and last

125. Children's Online Privacy Protection Act of 1998, 15 U.S.C. § 6502.

126. *Complying with COPPA: Frequently Asked Questions*, FED. TRADE COMM'N (JAN. 2025), <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> [https://perma.cc/S7LY-253R].

127. *Id.*

128. 15 U.S.C. § 6502.

129. Children's Online Privacy Protection Rule, 16 C.F.R. § 312.2 (2025).

130. *Id.*

name, physical address, and a “photograph, video, or audio file where such file contains a child’s image or voice.”¹³¹ “Child” under COPPA includes only “individual[s] under the age of 13.”¹³²

Before online entities collect personal data from a child, COPPA requires that the child’s parent receive adequate notice about the information collected and its intended use and that the parent consent to such collection.¹³³ Online platforms also must provide parents with a “reasonable means . . . to review the personal information collected . . . and to refuse to permit its further use or maintenance.”¹³⁴ COPPA specifies that any means employed for parents to review collected information cannot be “unduly burdensome” to the parent and asserts that parents have the right to “at any time . . . refuse to permit . . . further use or future online collection of personal information . . . and to direct the [online platform] to delete the child’s personal information.”¹³⁵ Platforms have the right to terminate a child’s use of its services if the child’s parent revokes consent and requests deletion of collected information.¹³⁶ Platforms also must only retain children’s information for “as long as is reasonably necessary to fulfill the purpose for which the information was collected.”¹³⁷

Lastly, COPPA includes safe harbor provisions, allowing online entities that follow approved sets of self-regulatory guidelines to be deemed compliant with COPPA and eligible for safe harbor treatment shielding them from potential liability.¹³⁸

ii. COPPA 2.0

In May 2023, U.S. Senator Edward Markey, the author of COPPA, alongside Senator Bill Cassidy, introduced a new version of COPPA, “COPPA 2.0.”¹³⁹ After the Senate Commerce, Science, and Transportation Committee unanimously advanced COPPA 2.0 in July 2023, the Senate passed the bill in August 2024.¹⁴⁰ Senators Markey and Cassidy then

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.* § 312.3.

135. *Id.* § 312.6.

136. *Complying with COPPA: Frequently Asked Questions*, *supra* note 126.

137. *Id.*

138. 15 U.S.C. § 6503.

139. Press Release, Edward Markey, Sen., Senator Markey Celebrates COPPA 2.0’s Unopposed Advancement Through Commerce Committee, Leap Forward in Protecting Young Americans Online (July 27, 2023), <https://www.markey.senate.gov/news/press-releases/senator-markey-celebrates-coppa-20s-unopposed-advancement-through-commerce-committee-leap-forward-in-protecting-young-americans-online> [<https://perma.cc/VV9P-7WX7>].

140. Press Release, U.S. Senate Comm. on Com., Sci. & Transp., Senate Overwhelmingly Passes Children’s Online Privacy Legislation (July 30, 2024), <https://www.commerce.senate.gov/index.php>

reintroduced the bill in March 2025.¹⁴¹ In early 2024, COPPA 2.0 cosponsor Senator Ted Cruz described the bill's purpose as ensuring that no child leaves behind a digital footprint:

When Congress first passed the *Children's Online Privacy Protection Act*, Americans were using dial-up to search "Ask Jeeves" instead of Google. Now, kids can access the Internet in the palm of their hands, and tech companies routinely surveil and target America's youth. I'm proud to have worked with Sens. Markey, Cantwell, and Cassidy on bipartisan legislation to empower parents to safeguard their children's online privacy and hold tech companies responsible for keeping minors safe from data collection. *Every child deserves to grow up free of a digital footprint*, and this bipartisan legislation is one step closer to achieving that goal.¹⁴²

Championed as a means of bringing "children and teen's online privacy standards into the 21st century,"¹⁴³ COPPA 2.0 enumerates additional categories of online platforms, including mobile applications,¹⁴⁴ and forms of personal data, including biological and physiological information.¹⁴⁵ Most significantly, however, COPPA 2.0 creates an entirely new class of protected minors: teenagers between thirteen and sixteen years old.¹⁴⁶ Under COPPA 2.0, teenagers—not their parents—consent to collection of their own personal data and are empowered to request review of collected data as well as revoke consent for data collection.¹⁴⁷ However, COPPA 2.0 does not permit teenagers to withdraw consent for their own data that was collected with their *parents'* consent before they turned thirteen.¹⁴⁸ The omission of this right, under either iteration of COPPA, is particularly sobering in the kidfluencer context because it prevents kidfluencers from compelling platforms to remove their data, collected before age thirteen, in the event that their parents cannot or will not do so.

/2024/7/senate-overwhelmingly-passes-children-s-online-privacy-legislation [https://perma.cc/2L8P-JBEW].

141. Press Release, Edward Markey, Sen., Senators Markey and Cassidy Reintroduce Children and Teen's Online Privacy Protection Legislation (March 4, 2025), <https://www.markey.senate.gov/news/press-releases/senators-markey-and-cassidy-reintroduce-children-and-teens-online-privacy-protection-legislation> [https://perma.cc/EJH6-487W].

142. Press Release, Ed Markey, Sen., Senators Markey, Cassidy Announce Chair Cantwell and Ranking Member Cruz as Cosponsors of COPPA 2.0 Children's Privacy Legislation (Feb. 15, 2024) [hereinafter Markey, Announce Chair] (emphasis added), <https://www.markey.senate.gov/news/press-releases/senators-markey-cassidy-announce-chair-cantwell-and-ranking-member-cruz-as-cosponsors-of-coppa-20-childrens-privacy-legislation> [https://perma.cc/RQ9V-3867].

143. *Id.*

144. Children and Teens' Online Privacy Protection Act, S. 1418, 118th Cong. § 2(a)(1), (3) (2024).

145. *Id.* § 2(a)(3).

146. *Id.* § 2(a)(6).

147. *Id.* § 2(a)(4). COPPA 2.0 preserves the original COPPA's structure in giving parents the right to consent to collection of data from minors younger than thirteen. *See id.*

148. *See id.*

2. Online Platforms' User Age Restrictions

The largest social-media platforms typically require users to be at least thirteen years old,¹⁴⁹ though caveats to this rule exist. YouTube's terms of service specify that users "must be at least 13 years old to use [YouTube]; however children of all ages may use [YouTube and YouTube Kids] . . . if enabled by a parent or legal guardian."¹⁵⁰ TikTok requires users to be at least thirteen years old,¹⁵¹ and TikTok's settings default accounts associated with minor users to private mode; TikTok users ages sixteen and seventeen can choose to make their accounts public.¹⁵²

Instagram also requires that users be at least thirteen,¹⁵³ on September 17, 2024, Instagram began defaulting all accounts created by users who indicated they are under eighteen to private mode.¹⁵⁴ These changes, which Instagram says are being "rolled out on an individual basis,"¹⁵⁵ are part of Instagram's new "Teen Accounts" initiative promoted as a means of increasing safety for minors using the platform.¹⁵⁶ Under the "Teen Accounts" setup, users ages sixteen and seventeen can change the default privacy setting themselves to make their accounts public; minors under sixteen need their parents' permission to do so.¹⁵⁷

It is not clear whether Instagram's recent changes will affect accounts that feature minors but are at least ostensibly managed by an adult (as most kidfluencer accounts typically are); however, Instagram makes no mention of such accounts in its communications about this new measure, while stipulating that the "Teen Accounts" setup applies to "users." Thus, even as platforms begin rolling out age restrictions, kidfluencer accounts continue to

149. Catherine Page Jeffery, Opinion, *Is 13 Too Young to Have a TikTok or Instagram Account?*, U. SYD. (Feb. 10, 2023), <https://www.sydney.edu.au/news-opinion/news/2023/02/10/is-13-too-young-to-have-a-tiktok-or-instagram-account-.html> [<https://perma.cc/22EQ-UXZC>]. This age restriction requirement stems from COPPA itself.

150. *Terms of Service*, YOUTUBE, <https://kids.youtube.com/t/terms> [<https://perma.cc/M8UG-BPK9>].

151. *Teen Privacy and Safety Settings*, TIKTOK, <https://support.tiktok.com/en/account-and-privacy/account-privacy-settings/privacy-and-safety-settings-for-users-under-age-18> [<https://perma.cc/AX2B-WBGX>].

152. *Id.*

153. *About Instagram Teen Privacy and Safety Settings*, INSTAGRAM HELP CTR., <https://help.instagram.com/3237561506542117> [<https://web.archive.org/web/20240905015036/https://help.instagram.com/3237561506542117>].

154. Natasha Singer, *Instagram's New 'Teen Accounts': What Parents and Kids Need to Know*, N.Y. TIMES (Sept. 17, 2024), <https://www.nytimes.com/2024/09/17/technology/instagram-teen-account-settings-safety.html> [<https://web.archive.org/web/20241208195819/https://www.nytimes.com/2024/09/17/technology/instagram-teen-account-settings-safety.html>].

155. *About Instagram Teen Privacy and Safety Settings*, *supra* note 153.

156. Singer, *supra* note 154.

157. *Id.*

occupy a gray area outside of the growing spotlight on child social-media users.

B. RELEVANCE AND CURRENT LIMITATIONS OF THE COMMON LAW RIGHTS OF PRIVACY AND PUBLICITY

In the United States, the common law rights of privacy and publicity are “distinct” from one another and “intended to vindicate different interests,” though the latter initially evolved out of the former.¹⁵⁸ While the right of publicity enshrines the “right to control the commercial value of one’s identity,”¹⁵⁹ the right of privacy “protects one’s right ‘to be let alone.’”¹⁶⁰ The common law right of privacy comprises four tort causes of action: intrusion upon seclusion, public disclosure of private facts, false light, and appropriation.¹⁶¹

The common law right of publicity developed out of both the right of privacy and intellectual property law, and has existed formally in the United States since the 1970s.¹⁶² While the United States Supreme Court recognized the existence of the right of publicity in 1977 in *Zacchini v. Scripps-Howard Broadcasting Co.*,¹⁶³ there is no federal right of publicity; rather, the right of publicity exists at the state level and is currently recognized in thirty-five states, including California.¹⁶⁴ The right of publicity stipulates that individuals have a common law right against appropriation of “the commercial value of [their] identity . . . without consent”;¹⁶⁵ inherent in the right is the recognition that “an individual’s likeness” is that individual’s

158. *Montgomery v. Montgomery*, 60 S.W.3d 524, 528 (Ky. 2001) (quoting Steven M. Fleischer, *The Right of Publicity: Preventing an Identity Crisis*, 27 N. KY. L. REV. 985, 988 (2000)).

159. *Id.*

160. *Id.* (quoting Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890)); see also *Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc.*, 202 F.2d 866, 868 (2d Cir. 1953). *Haelan Laboratories* was the first U.S. case to explicitly distinguish the rights to privacy and publicity and emphasized the differences between economic and personal privacy interests as necessitating separate rights for each. See Sophie Polo, Note, *The Unregulated Digital Playground: Why Kids Need Right of Publicity Protections from Their Parents*, 31 J. INTELL. PROP. L. 138, 141–42 (2024).

161. Samuel Soopper, *The First Amendment Privilege and Public Disclosure of Private Facts*, 25 CATH. U.L. REV. 271, 271 n.5 (1976).

162. Mark Roesler & Garrett Hutchinson, *What’s in a Name, Likeness, and Image? The Case for a Federal Right of Publicity Law*, A.B.A. (Sept. 16, 2020), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2020-21/september-october/what-s-in-a-name-likeness-image-case-for-federal-right-of-publicity-law [https://web.archive.org/web/20241204093931/https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2020-21/september-october/what-s-in-a-name-likeness-image-case-for-federal-right-of-publicity-law].

163. *Zacchini v. Scripps-Howard Broad. Co.*, 433 U.S. 562, 564–65 (1977).

164. Roesler & Hutchinson, *supra* note 162.

165. Polo, *supra* note 160, at 141 (quoting RESTATEMENT (THIRD) OF UNFAIR COMPETITION § 64 (A.L.I. 1995)).

“own property.”¹⁶⁶ The right of publicity is based on three core justifications: (1) the right to “reap the fruit of [one’s] labors,” connected to concerns about unjust enrichment;¹⁶⁷ (2) the “copyright-incentive theory” that the law must protect the individual’s persona so as to promote creative artistry; and (3) the need to protect “consumer[s] from advertising deception.”¹⁶⁸ Section 3344 of the California Civil Code (“section 3344”) codifies California’s common law right of publicity and prohibits use of another’s image or “likeness” for profit without consent.¹⁶⁹ For minors, however, it is precisely the element of “consent” that is likely to prove most challenging if and when section 3344 is invoked to protect their rights, for the law expressly recognizes consent by a minor’s parent or guardian as equivalent to the minor’s own consent.¹⁷⁰

While the *PRI* lawsuit is currently unique, it illustrates how disputes over consent are likely to be central to any efforts to protect kidfluencers’ privacy and publicity rights under the common law and corresponding statutes. Three plaintiffs in the *PRI* lawsuit alleged violations of both section 3344 and California’s common law right of publicity;¹⁷¹ Smith argued that she could not be liable under section 3344 and the common law precisely because the parents of the three plaintiffs had consented to the use of their children’s likenesses for commercial purposes on Rockelle’s channel.¹⁷² The plaintiffs disputed the fact of such consent¹⁷³ and, in denying summary judgment in March 2024, the Superior Court of California ruled that these claims created issues of triable fact. Presumably, parents of the other eight plaintiffs *had* consented to use of their children’s likenesses for profit by Smith and *PRI*. And given that no plaintiff ever alleged that their parent had no knowledge whatsoever of their appearance in videos on Rockelle’s channel, it follows that the parents of the three children alleging publicity violations simply may not have given *meaningful* consent.

At least for situations like the ones in which these three *PRI* plaintiffs found themselves, requiring that online platforms verify meaningful consent

166. Roesler & Hutchinson, *supra* note 162.

167. Cristina Fernandez, *The Right of Publicity on the Internet*, 8 MARQ. SPORTS L.J. 289, 314 (1998) (quoting Michael Madow, *Private Ownership of Public Image: Popular Culture and Publicity Rights*, 81 CALIF. L. REV. 125, 178 (1993)).

168. *Id.*

169. CAL. CIV. CODE § 3344(a) (West 2023).

170. *Id.*

171. Second Amended Complaint for Damages, *supra* note 2, at 24–26.

172. Defendants’ Notice of Motion and Motion for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of Issues at 5–7, Sawyer S. v. Smith, No. 22STCV01351 (Cal. Super. Ct. 2024).

173. Plaintiffs’ Consolidated Memorandum of Points & Authorities in Opposition to Defendants’ Motions for Summary Judgment or, in the Alternative, Motion for Summary Adjudication of the Issues at 3–5, Sawyer S. v. Smith, No. 22STCV01351 (Cal. Super. Ct. 2024).

and notice by kidfluencers or their parents to use of the child's likeness in monetized content would counteract harm. But still further, the lack of application of recognized privacy and publicity rights to the kidfluencer context as well as the parental-consent waiver's potential for conflicts of interest in that context is representative of the current limitations of existing laws. Looking at the plain language and spirit of the recognized rights of privacy and publicity alongside the raw reality of the kidfluencer phenomenon, as typified by the *PRI* lawsuit, it follows not only that our society and legal system *should* care about protecting kidfluencers' privacy and publicity rights, but that we in fact *do* care about it. However, our society has not yet recognized how our concern for privacy and publicity rights implicates kidfluencers due to their novelty; and it would likely take years of litigation—and kidfluencer exploitation—before the common law could produce a legal framework appropriate for the competing claims of parents and kidfluencers to control over the child's rights to privacy and publicity.

C. FALLING THROUGH THE GAPS: PROTECTING KIDFLUENCERS' PRIVACY

1. Kidfluencing's Unique Threat to Privacy

The Senate's passage of COPPA 2.0 indicates a strong desire on the part of lawmakers to protect children online. But thus far, kidfluencers are missing entirely from that conversation—and to disastrous results. The types of information COPPA and COPPA 2.0 mention specifically as constituting "personal" data worth protecting—full names, online contact information, photographs, video and audio files containing a child's image or voice, geolocation information, and more—are available in droves on kidfluencer accounts. And even as social-media platforms place age restrictions on users, kidfluencer accounts need only include a few words claiming to be managed by a parent in their description to post massive amounts of kidfluencer content to vast online audiences without constraint.

And kidfluencers' audiences grow more dangerous as their accounts gain traction: in early 2024, the *New York Times* published an in-depth investigation into kidfluencers' follower demographics, and the results are sobering. The proportion of kidfluencer account followers who are adult males grows "dramatically" as accounts grow in popularity.¹⁷⁴ While men made up approximately 35 percent of kidfluencer audiences overall, "[m]any [accounts] with more than 100,000 followers had a male audience of over 75 percent," while some had over 90 percent.¹⁷⁵ The *Times* discovered men previously charged with or convicted of sex crimes among kidfluencer

174. Valentino-DeVries & Keller, *supra* note 19.

175. *Id.*

followers and found that some of these men participated in chat rooms with thousands of members, “treat[ing] children’s Instagram pages . . . as menus to satisfy their fantasies.”¹⁷⁶

While some parents are ignorant of the dangers posed by their children’s audiences,¹⁷⁷ others have grown “numb” trying to beat back the unending tide of suspicious followers.¹⁷⁸

“You are so sexy,” read one comment on an image of a 5-year-old girl in a ruffled bikini. “Those two little things look great thru ur top,” said another on a video of a girl dancing in a white cropped shirt, who months later posted pictures of her 11th birthday party.

For many mom-run accounts, comments from men—admiring, suggestive or explicit—are a recurring scourge to be eradicated, or an inescapable fact of life to be ignored. For others, they are a source to be tapped.

“The first thing I do when I wake up and the last thing I do when I go to bed is block accounts,” said Lynn, the mother of a 6-year-old girl in Florida who has about 3,000 followers from the dance world.

Another mother, Gail from Texas, described being desensitized to the men’s messages. “I don’t have as much of an emotional response anymore,” she said. “It’s weird to be so numb to that, but the quantity is just astounding.”¹⁷⁹

Still other parents are taking knowing advantage of this population: men in the chat rooms that the *Times* uncovered “frequently praise[d] the advent of Instagram as a golden age for child exploitation” and “trade[d] information about parents considered receptive to producing and selling ‘private sets’ of images.”¹⁸⁰ And among the allegations in the *PRI* lawsuit was a claim by one plaintiff that she accompanied Smith in mailing “several of Piper’s soiled training bras and panties to an unknown individual,” whereupon Smith told the plaintiff that “old men like to smell this stuff.”¹⁸¹ Plaintiffs also alleged that Smith often “boast[ed] . . . about being the ‘Madam of YouTube’ ” and a “Pimp of YouTube,” and about making “kiddie porn.”¹⁸²

Rockelle’s content and the *PRI* plaintiffs’ allegations paint a stark picture of the rampant sharing of invasive kidfluencer content carrying on

176. *Id.*

177. *See id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Complaint for Damages, *supra* note 2, at 14.

182. *Id.* at 13.

unchecked throughout social media. For the members of the Squad, their experience working with PRI shares themes with Jennette McCurdy's recollection of losing her childhood, autonomy, and privacy to child stardom. The Squad made countless videos centered around the group's internal "crushes" and these videos performed much more strongly than the more innocent videos from Rockelle's early days.¹⁸³ Smith and Hill documented Rockelle's first kiss on camera at age eleven¹⁸⁴ and filmed challenges among the Squad in which the minors competed to see who could kiss without stopping for the longest period of time.¹⁸⁵ The mother of two *PRI* plaintiffs, who is also Rockelle's aunt, claimed that Smith sent Rockelle "a daily iPhone checklist cataloging the attention she needed to pay to her boyfriend, including sending him heart emojis [and] giving regular kisses, hugs and loving touches."¹⁸⁶

In addition to the suggestive video content on Rockelle's channel, the thumbnail images for the videos themselves are clearly set up to provide shock value and drive an increase in viewership. The mother of one *PRI* plaintiff alleged that Smith "often urged [plaintiffs] to pose more provocatively for thumbnail photo shoots,"¹⁸⁷ and the lawsuit claimed that Smith, declaring that "sex sells," "would frequently tell [the Squad members] to make 'sexy kissing faces' for thumbnails, to 'push their butts out,' to 'suck their stomachs in,' 'wear something sluttier' and would otherwise position [the p]laintiffs' bodies in explicitly and sexually suggestive positions."¹⁸⁸ As a result, minors are frequently depicted in provocative, revealing, or otherwise exploitative positions and situations in Rockelle's thumbnails.

183. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

184. PIPER ROCKELLE, *Recreating Famous Instagram Couples Photos Challenge **First Kiss*** | Piper Rockelle (YouTube, May 18, 2019) [hereinafter ROCKELLE, *Recreating Famous Instagram Couples*], <https://www.youtube.com/watch?v=l7ocyA76zfw> [<https://perma.cc/4YPN-7G69>].

185. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

186. *Id.*

187. *Id.*

188. Second Amended Complaint for Damages, *supra* note 2, at 13–14.

IMAGE 3. Video on Piper Rockelle’s YouTube Channel, Featuring Eleven-Year-Olds¹⁸⁹



IMAGE 4. Video on Piper Rockelle’s YouTube Channel, Featuring Eleven-Year-Olds¹⁹⁰



189. PIPER ROCKELLE, *I Spent 24 Hours Overnight in My Boyfriends Bedroom **Caught*** | Piper Rockelle (YouTube, Mar. 23, 2019), <https://www.youtube.com/watch?v=EJxmFsmwMOQ> [<https://perma.cc/82HR-QG2F>]. As of November 2025, this video has 4.5 million views. *Id.*

190. ROCKELLE, *Asking Strangers to Be My Boyfriend*, *supra* note 16. As of this writing, this video has 9.9 million views. *Id.*

IMAGE 5. Video on Piper Rockelle's YouTube Channel, Featuring Eleven-Year-Olds¹⁹¹



IMAGE 6. Video on Piper Rockelle's YouTube Channel, Featuring Eleven-Year-Olds¹⁹²



191. ROCKELLE, *Recreating Famous Instagram Couples*, *supra* note 184. As of November 2025, this video has 10 million views. *Id.*

192. PIPER ROCKELLE, *Handcuffed to My Boyfriend for 24 Hours Challenge *Bad Idea** | Piper Rockelle (YouTube, Mar. 16, 2019), <https://www.youtube.com/watch?v=lcCHCOrngjU> [<https://perma.cc/NS8J-PJGE>]. As of November 2025, this video has 4.6 million views. *Id.*

The following YouTube video thumbnail images are merely described herein to protect the privacy of the minors featured in them:

Six teenagers (four female, two male), aged thirteen to seventeen, photoshopped to appear crowded together inside a bubble bath. The two male teenagers are shirtless, while the female teenagers appear to be wearing tank tops. The female teenager in the center has her hair arranged covering the straps of her tank top. The video is entitled “LAST TO LEAVE THE BUBBLE BATH!!” and has 2.3 million views.¹⁹³

Six teenagers (three female, three male), aged twelve to fifteen, arranged in co-educational pairs, each in one of three horizontal panels. Each female is touching her male counterpart. The male in the center panel is shirtless and his female counterpart is touching his bare torso. The video is entitled “LAST TO STOP MASSAGING THEIR BOYFRIEND WINS **Couples Challenge** 🤝💕” and has 1.9 million views.¹⁹⁴

One female aged eleven pictured in a cropped shirt pointing at her navel. A fake piercing is attached to her navel and a yellow circle is superimposed around her stomach while a zoomed-in image of her navel with the piercing appears in the right-hand side of the thumbnail. In the center of the thumbnail, the words “11 YEARS OLD!!” appear in large block lettering. The video is entitled “11 YEAR OLD BELLY PIERCED **PRANK** (Can’t Say No 24 Hour Challenge) 🚫👉” and has 4.6 million views.¹⁹⁵

Two females, aged eleven and twelve, wearing fake “baby bumps” designed to look like a pregnant woman’s belly with their shirts raised to expose the bumps. The video’s description includes the note, “We are only 11 and 12 so [this is] a pretty crazy challenge for us.” The video is entitled “24 Hours Being PREGNANT Challenge in PUBLIC with TWINS **FUNNY REACTIONS** 🍷🎀” and has 14 million views.¹⁹⁶

According to the *Los Angeles Times*’ investigation of the *PRI* lawsuit, *PRI*’s videos chronicling the Squad’s “crushes” performed the best with Rockelle’s online audience.¹⁹⁷ This data combined with the *New York Times*’ findings regarding dangerous followers of kidfluencers reflect the significant market that exists for kidfluencer content that is sensitive at best and criminal

193. ROCKELLE, *Last to Leave*, *supra* note 42.

194. ROCKELLE, *Last to Stop*, *supra* note 42.

195. ROCKELLE, *Belly Pierced*, *supra* note 15.

196. PIPER ROCKELLE, *24 Hours Being Pregnant Challenge in Public with Twins **Funny Reactions** 🍷🎀* | Piper Rockelle (YouTube, July 20, 2019), <https://www.youtube.com/watch?v=pwUvDI85-oQ> [<https://perma.cc/9XRV-K5X2>] (on file with the author).

197. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

at worst. If, in the words of COPPA 2.0 cosponsor Senator Ted Cruz, “[e]very child deserves to grow up free of a digital footprint,”¹⁹⁸ the law is currently failing kidfluencers to a staggering degree.

Further, even content that perhaps falls short of the hallmark suggestiveness of Rockelle’s brand victimizes kidfluencers—according to some kidfluencers themselves. In July 2023, Ruby Franke, former figurehead of the now-defunct YouTube channel “8 Passengers,” made headlines when her two youngest children, then ages nine and twelve, were found emaciated and wounded.¹⁹⁹ The children had been imprisoned and suffered months of abuse by both Franke and her business partner Jodi Hildebrandt.²⁰⁰ Franke had stopped posting videos of her children over a year before, changing the name of her channel to “Moms of Truth” and posting solemn videos alongside Hildebrandt discussing parenting strategies and religion. But in the 8 Passengers heyday, Franke posted videos of her family of eight almost daily, chronicling her six children’s lives as they grew up in front of an audience of up to two million subscribers.²⁰¹

By 2022, 8 Passengers viewers had started to grow concerned about Franke’s behavior—while the harrowing nature of Franke’s eventual abuse would have been impossible for viewers to predict, many subscribers began to notice that Franke showed an indifference, at best, to her children’s privacy.²⁰² Franke spoke at length in her YouTube videos about sensitive matters in her children’s lives; over the course of several videos, she described in-depth her and her husband Kevin’s decision to send their oldest son, then fourteen, to a behavioral modification camp in the Arizona wilderness. At one point, Franke played a voicemail for viewers that her son had left her while at the camp; her son cried throughout the voicemail as he described his experience.²⁰³ Another video featured the parents taking their preteen daughter to buy her first bra. After Kevin asked his preteen, “How come you’re all embarrassed?” his oldest daughter Shari spoke up off camera: “Because you’re filming her and you’re her dad?”²⁰⁴

198. Markey, Announce Chair, *supra* note 142.

199. Caitlin Moscatello, *The Truths and Distortions of Ruby Franke: She Broadcast Her Family’s Wholesome Life on YouTube. How Did She End Up Abusing Her Children?*, THE CUT (Sept. 24, 2024), <https://www.thecut.com/article/ruby-franke-8-passengers-jodi-hildebrandt-connexions-children-jail-update.html> [<https://web.archive.org/web/20240925042742/https://www.thecut.com/article/ruby-franke-8-passengers-jodi-hildebrandt-connexions-children-jail-update.html>].

200. *Id.*

201. *Id.*

202. *Id.*

203. 8 PASSENGERS, *Answering Questions About Chad* (YouTube), <https://ia801604.us.archive.org/32/items/8-passengers/20190911%20Answering%20Questions%20About%20Chad.mp4> [<https://perma.cc/37FG-F258>] (video is no longer available on YouTube).

204. Moscatello, *supra* note 199.

2. Adapting COPPA 2.0 and the Necessity of a Right to Removal

In October 2024, Shari, now twenty-one, addressed Utah’s Business and Labor Interim Committee; Utah Representative Doug Owens, who sponsored Utah’s subsequent bill regulating kidfluencers, introduced her testimony.²⁰⁵ Shari told lawmakers that she appeared before them “as a victim of family vlogging” in hopes of “shed[ding] light on the ethical and monetary issues that come from being a child influencer.”²⁰⁶ Her words highlighted how adequate compensation is but one small component of a comprehensive regulatory scheme to protect kidfluencers; her experiences as a kidfluencer also evoke many of the same themes as Jennette McCurdy’s retelling of her time as a child actor—in particular, the sense that the compensation she received, while helpful, was simply not worth the loss of her childhood.

[Being a kidfluencer] is more than just filming your family life and putting it online. It is a full-time job with employees, business credit cards, managers, and marketing strategies. The difference between family vlogging and a normal business, however, is that the employees are all children. Children, from before they are born to the day they turn eighteen, have become the stars of family businesses on YouTube, Instagram, and most other social media platforms.

....

At first, family vlogging is an alluring business that can bring high revenue. For my family, it became the primary source of income Many child influencers are paid for their work as I was, and this money has helped me in my adult life. However, this payment was usually a bribe. For example, we’d be rewarded \$100 or a shopping trip if we filmed a particularly embarrassing moment or an exciting event in our lives. . . . Any payment that happens is under the table, with no paper trail. And how do we determine how much a child should make from appearing in family content? What price is worth giving up your childhood?

. . . Some of our most popular videos were when my eyebrow was accidentally waxed off, and the whole world saw a crying teenager when I just wanted to mourn in private. Or the time I was violently ill and got the leading role in the video for that day. My friends became scarce because dates were filmed and none of my friends wanted to be on camera. The camera never stops and there is no such thing as a [vacation] from filming.

....

205. See H.B. 322, 66th Leg., 2025 Gen. Sess. (Utah 2025); *Child Influencer Protections: Hearing Before the Interim Comm on Bus. & Lab.*, 2024 Leg., 65th Sess. (Utah 2024) (statement of Sheri Franke, Presenter), <https://le.utah.gov/av/committeeArchive.jsp?mtgID=19498> [<https://perma.cc/ADD4-UR3V>].

206. KUTV 2 NEWS SALT LAKE CITY, *supra* note 1, at 00:56–01:05.

[A]s children, we do not understand the consequences of filming our lives and [having it] post[ed] for the world to see. We cannot give consent to our parents to post our lives. . . . I did not realize the impact that filming as a child would have on me now. . . .

. . . .

If I could go back and do it all again, I'd rather have an empty bank account now and not have my childhood plastered all over the Internet. No amount of money I received has made what I've experienced worth it. . . . I promise you that my experiences are not unique and are happening to child influencers all over Utah and the country. Let's tackle this issue before it becomes a bigger crisis than it already is.²⁰⁷

As Shari's words illustrate, kidfluencing is currently too unchecked and too profitable—for parents—to be safe; thus, common-sense regulations aimed at deterring parents from overworking and oversharing their children for a financial payout are critically necessary. Just as labor protections for kidfluencers would be most effective if enacted at the federal level, protective measures for kidfluencers' privacy need federal support. COPPA presents a key opportunity to begin developing that support by empowering kidfluencers to wield greater control over their digital footprints long term. While COPPA 2.0 takes an important step forward by expanding online privacy protections for teenagers, a truly comprehensive and effective COPPA amendment would also cover kidfluencers.

Protections for kidfluencers under a new version of COPPA would make explicit the right of teenaged kidfluencers to consent (or not) to sharing their personal information in monetized content and their right to revoke that consent at any time; this system would empower teenaged kidfluencers by allying them with the social-media platforms hosting their content—regardless of a parent's role in producing kidfluencer content, platforms would require the *kidfluencer's* consent before new content could be shared. For kidfluencers under thirteen, the consent that their parents give to sharing their children's information and to commercial use of their likeness would become provisional only and revocable by the child upon reaching age thirteen. This change would allow kidfluencers to retroactively revoke consent to personal data their parents had agreed to share and compel platforms to remove it.²⁰⁸ And in situations where groups of kidfluencers

207. *Id.* at 01:11–06:54. Shari's full statement is included in the Appendix.

208. Thus far, the United States has not legally recognized the European Union's "right to erasure" or "right to be forgotten," which enshrines the right of individuals to the erasure of their personal data. Individuals protected under the right to be forgotten can demand erasure of their data under a variety of circumstances, including when they simply withdraw consent to their data's collection and processing by another entity. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free

create content together, as in the case of Piper Rockelle’s Squad, a kidfluencer-focused COPPA section would provide legal scaffolding to discourage casual content-sharing to large online audiences without informed consent by every parent or teenager involved. These amendments would be a first step in giving kidfluencers the privacy protections that they currently lack.

Four of the states that now regulate kidfluencers’ compensation have also taken steps in this direction: recent laws in Montana, Arkansas, Utah, and Minnesota include provisions aimed at empowering kidfluencers to request removal of content featuring them. In particular, Minnesota’s flat ban on children thirteen and under working as kidfluencers is well worth lawmakers’ consideration both in other states and at the federal level; such a ban would have automatically made much of the Squad’s early content unlawful due to the children’s ages, while also avoiding the challenges of enforcing more nuanced regulations. Yet gaps persist—Minnesota’s law provides that “[c]ontent containing the likeness of a child must be deleted and removed from any online platform by the individual who posted the content, the account owner, or another person who has control over the account when the request is made,” either by a kidfluencer at least thirteen years old or by a former kidfluencer who is now an adult.²⁰⁹ However, the law does not provide an explicit enforcement mechanism or a means for relief for kidfluencers whose requests for removal go unheeded; it also seemingly exempts social-media platforms from responsibility entirely as it has no “effect on a party that is neither the content creator nor the minor who engaged in . . . content creation.”²¹⁰

Meanwhile, Utah’s law does involve social-media platforms that host kidfluencer content explicitly in its removal provisions, requiring that platforms “provide a readily apparent process” for former kidfluencers who are now at least eighteen to request removal of content featuring themselves as minors.²¹¹ But under Utah’s system, creators can still refuse to comply with removal requests. The law provides only an *ex post*, litigation-dependent right of action for former kidfluencers to challenge a creator’s

Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), art. 17, 2016 O.J. (L 119) 1. Some U.S. lawmakers have contemplated but ultimately abandoned, at least as of now, legislation providing a similar right; in the drafting and ultimate passage of Illinois kidfluencer compensation law, that bill’s sponsor said such a provision was ultimately removed from the law because “there was really no way of enforcing it.” Anderson, *supra* note 107. Notably, however, those concerns did not stop lawmakers in one state: Montana’s 2025 kidfluencer law explicitly titles its section detailing takedown requirements for platforms, “Right to be forgotten.” H.B. 392, 69th Leg., Reg. Sess. § 5 (Mont. 2025).

209. H.F. 3488, 93rd Leg., 93rd Sess. § (4) (Minn. 2024).

210. *Id.*

211. H.B. 322, 66th Leg., 2025 Gen. Sess. § (4) (Utah 2025).

refusal; at that point, a court would then consider the “emotional harm or substantial embarrassment” the challenged content poses to the former kidfluencer and both “the interests of the content creator” as well as “the public interest served by” that content.²¹² Thus, while Utah and Minnesota’s protections are certainly better than nothing, they are also critically limited; because kidfluencer exploitation is so rampant and systemic, an expensive, slow, after-the-fact system of relief available only on a state-by-state basis is simply not enough to protect them.

From that perspective, Arkansas and Montana have gone the furthest toward effecting an adequate legal solution: both states’ kidfluencer laws put responsibility on platforms, though with some caveats, to enforce kidfluencer protections, including removing kidfluencer content upon request. In Montana, creators are removed from the takedown process entirely; instead, Montana’s law triggers platforms’ responsibility to “take all reasonable steps to permanently delete” kidfluencer content as soon as former kidfluencers (who are at least eighteen) request removal.²¹³

Arkansas’ kidfluencer law is arguably even more sweeping; under that law, platforms must allow for removal requests by kidfluencers and then notify content creators of their obligation to remove the applicable content within thirty days; if creators do not do so, platforms “shall review and take all reasonable steps to remove the content.”²¹⁴ Unlike Montana, Arkansas does include caveats to platforms’ mandated removal, including for content that the platform finds “sufficiently newsworthy or of other public interest to outweigh the privacy interests” of the kidfluencer in question.²¹⁵ However, Arkansas also elevates platforms’ responsibilities in an additional, consequential area: its law makes it “unlawful to financially benefit from knowingly producing or distributing publicly . . . any visual depiction of a minor with the intent to sexually gratify or elicit a sexual response in the viewer or any other person.”²¹⁶ This section mandates platforms to “develop and implement a risk-based strategy to help mitigate risks related to monetization of the intentional sexualization of known minors” in a content-creation context; the structure of such strategies is at platforms’ discretion and can include monetization policies, “automated system[s] to identify and enforce against potentially problematic content and accounts,” and “[q]uality assurance processes” to monitor the effectiveness of platform’s policies in

212. *Id.*

213. H.B. 392, 69th Leg., Reg. Sess. § 5(1)–(2) (Mont. 2025).

214. H.B. 1975, 95th Gen. Assemb., Reg. Sess. § 1(4-88-1503)(c)(3)(B) (Ark. 2025).

215. *Id.* § 1(4-88-1503)(c)(3)(B)(ii).

216. *Id.* § 1(4-88-1504)(a)(1).

this area.²¹⁷ While the precise standard for determining whether content has “the intent to sexually gratify or elicit a sexual response” under Arkansas’ law are unspecified, much of the PRI Squad’s content could likely qualify. Thus, in addition to placing responsibility on social-media platforms to effectuate kidfluencer content removal, Arkansas also made the critical first step, at the state level, toward mandating that platforms develop ongoing procedures to monitor for at least some kinds of problematic kidfluencer content, and, ideally, prevent exploitation before it occurs.

Overall, both Arkansas and Montana’s regulatory approaches—situating platforms as the enforcers of newly-recognized kidfluencer privacy and publicity rights—represent the most effective way forward for a comprehensive *federal* scheme to protect kidfluencers.

IV. THE SOLUTION—FEDERAL LABOR AND PRIVACY PROTECTIONS AND REQUIRING SOCIAL-MEDIA PLATFORMS TO ENFORCE KIDFLUENCER RIGHTS

Kidfluencers need comprehensive labor and privacy protections, and because the Internet transcends the geographical limits that made state-specific labor regulations for child actors practical, adequate kidfluencer labor and privacy regulations must be set at the federal level. But once enacted, these comprehensive federal protections will require an effective enforcement mechanism—and the social-media platforms that host kidfluencer content are likely the entities best situated to moderate and enforce kidfluencer regulations. Thus, a robust set of federal kidfluencer labor and privacy protections would include an imposition of liability on platforms that feature kidfluencer content on monetized accounts (thereby creating revenue for the platform itself as well as for those managing the kidfluencer accounts) when that content is produced under conditions that violate kidfluencer laws. So far, only two states, Montana and Arkansas, have placed legal responsibility squarely on platforms to remove kidfluencer content upon request; lawmakers seeking to adequately protect kidfluencers must follow these states’ lead by pushing for federal measures that regulate kidfluencers’ labor and privacy and enable platforms to enforce those laws.

A. SECTION 230 AND TECHLASH

Any conversation surrounding potential liability for online platforms based on a platform’s third-party content implicates section 230 of the Communications Decency Act of 1996 (“section 230”). Recognizing how “[t]he rapidly developing array of Internet . . . services available to

217. *Id.* § 1(4-88-1504)(d)(1)–(2)(iii), (v).

individual Americans represent[s] an extraordinary advance in the availability of educational and informational resources,”²¹⁸ and how the Internet “ha[s] flourished, to the benefit of all Americans, with a minimum of government regulation,”²¹⁹ section 230 provides limited immunity to any online platform for content posted by third-party users.²²⁰ In the nearly thirty years since section 230’s passage, its supporters have credited it with enabling some major online platforms to grow from start-ups into global giants,²²¹ particularly with regard to the largest companies commonly referred to as a whole as “Big Tech.”²²² And many of those supporters have defended section 230 in the last ten years as an increasing number of detractors began voicing concerns over Big Tech’s ever-growing and seemingly unchecked power, a phenomenon dubbed “techlash.”²²³

Kidfluencers are glaringly missing from this increasingly heightened debate over the virtues and dangers of section 230 and, more broadly, about the responsibilities or lack thereof that Big Tech owes to users. Any federal proposal to impose liability upon platforms who violate laws designed to prevent kidfluencer exploitation will prompt questions about whether imposing such liability would infringe platforms’ rights under section 230 and their constitutional rights to freedom of expression. Crucially, however, section 230 itself already includes limiting language: in addition to protecting the right of platforms to “voluntarily” and “in good faith” “restrict access to or availability of material that [the platform] considers to be obscene, lewd, . . . or otherwise objectionable, whether or not such material is constitutionally protected,”²²⁴ section 230 dictates explicitly that it has “[n]o effect on intellectual property law.”²²⁵ Thus, new kidfluencer regulations, if modeled after this exception for intellectual property law, could be fully consistent with section 230.

218. Communications Decency Act of 1996, 47 U.S.C. § 230(a)(1).

219. *Id.* § 230(a)(4).

220. *See id.* § 230.

221. *Diverging Paths for Platform Liability: The Impact of Section 230 and the Choice for America’s Digital Future*, INTERNET GOVERNANCE F. USA, <https://www.igfusa.us/diverging-paths-for-platform-liability> [<https://web.archive.org/web/20240520193755/https://www.igfusa.us/diverging-paths-for-platform-liability>].

222. Kean Birch & Kelly Bronson, *Big Tech*, 31 *SCI. AS CULTURE* 1, 1 (2022).

223. ROBERT D. ATKINSON, DOUG BRAKE, DANIEL CASTRO, COLIN CUNLIFF, JOE KENNEDY, MICHAEL MCLAUGHLIN, ALAN MCQUINN & JOSHUA NEW, *A POLICYMAKER’S GUIDE TO THE “TECHLASH”—WHAT IT IS AND WHY IT’S A THREAT TO GROWTH AND PROGRESS 1* (2019), <https://www2.itif.org/2019-policy-makers-guide-techlash.pdf> [<https://perma.cc/SYL3-U5T3>]; Elizabeth Nolan Brown, *Section 230 Is the Internet’s First Amendment. Now Both Republicans and Democrats Want to Take It Away*, REASON (July 29, 2019), <https://reason.com/2019/07/29/section-230-is-the-internets-first-amendment-now-both-republicans-and-democrats-want-to-take-it-away> [<https://perma.cc/E2FZ-3HEW>].

224. 47 U.S.C. § 230(c)(2)(A).

225. *Id.* § 230(d)(2).

B. CONTRIBUTORY LIABILITY AS A BASIS FOR PLATFORM ENFORCEMENT

In keeping with section 230's unrestricted exception for intellectual property concerns, the Digital Millennium Copyright Act ("DMCA"), passed two years later, empowers copyright owners to compel online entities to remove infringing material hosted on their platforms or otherwise face liability.²²⁶ Under the DMCA's "notice-and-takedown system," online platforms can qualify for limitations on liability, known as safe harbor provisions, provided that they comply with an owner's takedown request.²²⁷ Thus, the system enables copyright owners to safeguard their work from infringement while avoiding litigation and also ensures, via its safe harbor provisions, that online platforms are not impeded in their industrial development by these intellectual property protections. The DMCA has roots in common law contributory liability doctrine in recognizing partial responsibility on the part of online entities for infringement happening on their platform.²²⁸ In this way, the DMCA serves as an analog for a potential liability model for platforms hosting kidfluencer content produced in violation of expanded regulations.

In the kidfluencer context, online platforms also go a step further than inadvertent sharing of objectionable material—they profit directly from kidfluencer content by collecting a percentage of advertising revenue from the accounts they monetize.²²⁹ Thus, under expanded labor and privacy protections for kidfluencers, adapted from existing laws for child actors and child social-media users, platforms hosting monetized kidfluencer accounts would more than meet the criteria for contributory liability for profiting off of content produced in violation of these new regulations. Yet at the same time, platforms are also likely the most well-situated party to enact protocols that can effectively monitor and enforce updated kidfluencer laws.

Platforms can develop a more robust application process for kidfluencer account monetization requiring that adults running kidfluencer accounts to comply with the same laws regulating studios employing traditional child entertainers: obtaining permits to employ minors, tracking and reporting kidfluencers' working hours and staying within working hour limits, providing proof of regular education and on-set supervision, and setting up protected trust accounts to safeguard kidfluencers' compensation. Under this regulatory system, would-be kidfluencer accounts would have to meet these

226. *The Digital Millennium Copyright Act*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/dmca> [<https://web.archive.org/web/20241214044325/https://www.copyright.gov/dmca>].

227. *Id.*

228. *See generally* 5 DONALD S. CHISUM, CHISUM ON PATENTS § 17 (2024) (discussing the common law origins and development of contributory infringement doctrine).

229. Kaufman & Gelt, *Blockbuster Lawsuit*, *supra* note 6.

requirements as part of applying for account monetization, and existing kidfluencer accounts would have to provide documentation showing that they are maintaining these mandates to retain their monetized status on a continuing basis. Further, if federal protections for kidfluencers' privacy were enshrined in an expansion of COPPA, online platforms could also be required to actively monitor kidfluencer accounts' adherence to COPPA's expanded mandates; specifically, platforms must obtain consent by teenagers and provisional consent by parents of children under thirteen to appear in monetized content and provide a means to revoke consent and compel removal upon request. Just as proof of continuing adherence to expanded kidfluencer labor regulations should be required for kidfluencer accounts to achieve monetization, so too should kidfluencer accounts be required to demonstrate compliance with privacy protections in order to keep gaining revenue. Online platforms already have established procedures to conform with COPPA's existing mandates for children's data collection that are similar to DMCA's safe harbor criteria—in particular, COPPA includes its own self-regulatory guidelines for platforms to keep themselves eligible for COPPA's longstanding safe harbor provisions. Thus, platforms are poised with a foundation to further develop protocols that monitor compliance with kidfluencer regulations. And despite the ongoing debate over the fate of section 230, imposing liability for online platforms in the kidfluencer context arguably need not threaten section 230, or platforms' free expression more broadly, at all; such liability would not be without precedent given section 230's blanket exception for intellectual property infringement, the DMCA's subsequent imposition of the notice-and-takedown system, and COPPA's longstanding restrictions on how online platforms interact with child users.

CONCLUSION

While some former kidfluencers like Shari Franke have explicitly called for a ban on kidfluencing entirely, such a drastic measure would be remarkably difficult, if not impossible, to achieve. At the same time, though the *PRI* lawsuit is unique, as of this writing, in its involvement of kidfluencers personally suing adult content producers, the *PRI* plaintiffs are part of an ever-growing cohort, the oldest of whom are only beginning to reach adulthood. As the first generation of kidfluencers comes of age while regulations to protect kidfluencers remain, at best, in their infancy, courts could see a rise in litigation by former kidfluencers only now independent enough to seek legal recourse. Rather than Shari's proposed all-out ban on kidfluencing or a slew of merely reactive, post-exploitation lawsuits in the spirit of the *PRI* lawsuit, the more promising approach to addressing kidfluencer exploitation lies in enacting strict labor and privacy regulations at the federal level; once these regulations are created or expanded,

lawmakers can then explore mechanisms for imposing liability on social-media platforms that host kidfluencer content produced in violation of these expanded regulations. If kidfluencers are to remain a fixture of the content-creator world (and they likely will, given the pervasiveness of their online presence as well as their financial value to the platforms that feature them), their career field needs to be regulated like the bona fide occupation that it is. Thus, federal law must ensure the right of kidfluencers in every state to limits on their working hours, guaranteed access to education, on-set supervision and advocacy, and compensation safeguards—the same protections that the most stringent states afford to professional child actors.

But merely applying labor regulations for child actors to kidfluencers as an overall protective measure still falls short because the nature of kidfluencing itself presents an unprecedented privacy intrusion. Child actors have built-in privacy protections by virtue of conducting their work on a set, away from home, playing characters. Their work, by and large, is only seen by people who pay to see it and is only broadcast subject to intellectual property and other licensing agreements between production companies and distributors. In contrast, when kidfluencers' parents say, "Action!" the entire world immediately has an unrestricted window directly into their personal, private life. Thus, just as federal law must be expanded to regulate kidfluencers' labor, COPPA should be amended to explicitly cover kidfluencers and also to make parental consent to collection of kidfluencers' personal data provisional only—once children turn thirteen, they must be able to retroactively withdraw consent for data their parents turned over on their behalf. Under this new regulatory system, social-media platforms would be charged with monitoring kidfluencer accounts' adherence to these requirements and suspending accounts in violation, drawing upon their existing safe harbor guidelines that currently ensure their compliance with COPPA and the DMCA as a model. This all-encompassing approach will serve to close the gaps in kidfluencer protections as quickly and effectively as possible, preventing future generations of kidfluencers from needing to wait to reach adulthood before they can pursue legal recourse after years of exploitation. It defies common sense that, as far as kidfluencers' labor and privacy are concerned, the younger—and more vulnerable—they are, the fewer rights they have.

APPENDIX

My name is Shari Franke. My mother, Ruby Franke, is the prominent family vlogger arrested last year for child abuse. I don't come today as the daughter of a felon, nor a victim of an abnormally abusive mother. I come today as a victim of family vlogging. My goal today is not to present any idea of a solution to this problem, but to shed light on the ethical and monetary issues that come from being a child influencer.

When children become stars in their family's online content, they become child influencers. It is more than just filming your family life and putting it online. It is a full-time job with employees, business credit cards, managers, and marketing strategies. The difference between family vlogging and a normal business, however, is that the employees are all children. Children, from before they are born to the day they turn eighteen, have become the stars of family businesses on YouTube, Instagram, and most other social media platforms.

Utah is specifically a hotspot for family content due to the LDS culture around family and the goal to share the church with the world. We also have large families which makes family content more lucrative. Specifically, many parents film their regular family life as an online video blog, called a vlog. But I want to be clear that there is never, ever a good reason for posting your children online for money or fame. There is no such thing as a moral or ethical family vlogger.

At first, family vlogging is an alluring business that can bring high revenue. For my family, it became the primary source of income as is often the case for full time family vloggers. Many child influencers are paid for their work as I was, and this money has helped me in my adult life. However, this payment was usually a bribe. For example, we'd be rewarded \$100 or a shopping trip if we filmed a particularly embarrassing moment or an exciting event in our lives. Or other times, simply going on vacation was expected to be payment enough—because most kids don't get to go on regular and expensive trips. Never mind the fact that the child's labor is actually what paid for the vacation or trip. There is no law in place to guarantee that child influencers get any money from their work. If a family account does not become an LLC, parents are taxed heavily for paying their children. But parents receive tax write offs for the regular clothes they wear, the gas money used to drive places, and even the houses they live in—anything that is filmed can be written off. And even after registering their business as an LLC, there is no guarantee that children will get paid. Any payment that happens is under the table, with no paper trail. And how do we determine how much a child should make from appearing in family content? What price

is worth giving up your childhood?

But despite any monetary payment children may receive, don't let this excuse the 24/7 labor that these children are subjected to. As a child, I was fully aware that I was an employee. The business was successful when I was happy or when I shared my hardships with the world. Some of our most popular videos were when my eyebrow was accidentally waxed off, and the whole world saw a crying teenager when I just wanted to mourn in private. Or the time I was violently ill and got the leading role in the video [for] that day. My friends became scarce because dates were filmed and none of my friends wanted to be on camera. The camera never stops and there is no such thing as a [vacation] from filming.

At the time, I'd tell you that I had a choice in what was filmed. But I've come to learn that every child influencer, in a way, suffers from Stockholm syndrome. Most child influencers would probably tell you they have full control over what is posted; but the reality is that their parents bribe and shame them into posting their most vulnerable moments. In fact, many child influencers may tell you they enjoy their work because of the monetary perks they receive, or the fun experiences that they can have. After all, what child would say no to a fun vacation or shopping spree if all they needed to do was film [a mental breakdown or] an embarrassing moment?

But as children, we do not understand the consequences of filming our lives and [having it] post[ed] for the world to see. We cannot give consent to our parents to post our lives. In any other context, it is understood that children cannot give consent—but for some reason, people think family vlogging is different. I did not realize the impact that filming as a child would have on me now. My social media became flooded with rumors of having sexual relations with my own brother, to being called a baby birthing machine at the age of thirteen. All these things have stuck with me, and I will forever live between the ages of thirteen to seventeen in many of my viewer's minds. In addition, pedophiles stalk the internet, specifically seeking out child influencers. I promise you that the parents are aware of these predators and choose to post their children anyway.

I understand that this a big issue to tackle. I am not asking you to ban family vlogging, though that is my end goal. I also understand that as Utahns, we don't appreciate big government overreach. But when it comes to protecting children, it should be a bipartisan issue. The only people harmed by child influencer laws are the parents exploiting their children. While this may not seem like an issue now, as child influencers in Utah continue to grow up, I foresee there will be legal crises with these children realizing that vlogging has brought severe emotional distress. Or these kids may realize

they don't have an appropriate amount of money to show for their [forced] labor. After all, how does that child know how much they should have made versus what their parents may or may not have paid them? Let's deal with this now, before we reach that point. But even despite a good paycheck, I want to be absolutely clear that there is no amount of money can justify selling your soul, as a child, to the world. In no other industry would we justify unregulated child labor with a huge paycheck, and we should not do that here.

If I could go back and do it all again, I'd rather have an empty bank account now and not have my childhood plastered all over the Internet. No amount of money I received has made what I've experienced worth it. While I don't have all the answers, nor many feasible solutions for this problem, I am proud to be one of the first child influencers in the state of Utah to speak against this issue. I don't want people to look at me and blame my unique circumstances, with a mother in prison, to the Franke criminal case. Family vlogging ruined my innocence long before Ruby committed a crime. I promise you that my experiences are not unique and are happening to child influencers all over Utah and the country. Let's tackle this issue before it becomes a bigger crisis than it already is. Thank you.²³⁰

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