
BEYOND SHARENTING

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ABSTRACT

Sharenting—the practice of parents sharing information about their children online—has become mainstream in American society. While most forms of sharenting may be considered benign or even beneficial, some parents harm or exploit their children when sharing online. For example, “mom-influencers” often violate their children’s privacy in their attempts to attract followers to their social media accounts. While traditional forms of parental sharing raise privacy concerns, we are only beginning to understand the dangers and impacts of widespread exposure of children on social media.

*This Article is the first to propose a welfare model of child protection to address exploitative and harmful parental online conduct. The state, through its *parens patriae* power, already regulates parents who harm children in the brick-and-mortar world. The state must exercise that same power to protect children in the virtual world. This Article offers comprehensive solutions grounded in constitutional law principles that balance the parental right to control the upbringing of their children and to free expression with the state’s interest in protecting vulnerable children from harmful and exploitative online conduct. When parents go “beyond sharenting,” the state must be prepared to step in and protect vulnerable children.*

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INTRODUCTION

Mia is a seven-year-old girl growing up in Orlando, Florida.¹ Her mother, Savannah, is a stay-at-home mother, and her father, John, is a successful businessman.² Savannah is very active on social media. She has a public Instagram account and considers herself an influencer. Many lingerie brands pay her to model their clothing, and she often poses in pajamas alongside her daughter.³ Recently, a lingerie company from overseas offered

1. Hypothetical child. The following fact pattern is a hypothetical based on a composite of real-life events.

2. Hypothetical parents.

3. This is a common practice. *See, e.g.,* Danya Hajjaji, *Mom Selling Modeling Photos of Young Daughter Sparks Outrage*, NEWSWEEK (Apr. 5, 2022, 6:48 AM), <https://www.newsweek.com/mom-selling-modeling-photos-young-daughter-sparks-outrage-tiktok-1694668> [<https://perma.cc/VMZ3-GF2C>] (“The website in question promotes an aspiring child actress, and is run by a woman named Hannah Naeli on behalf of her young daughter.”).

Savannah money to have Mia also pose in their clothing. Savannah said yes. Over the next few weeks, she begins receiving the nighties—matching lingerie Savannah regularly models but in less revealing cuts. Savannah has Mia try some on, and while it covers her private areas, it highly sexualizes the little girl, with the matching prints suggesting her eventual graduation to those more mature silhouettes. Savannah tells Mia that she will get extra dessert for each outfit she agrees to model. The pair often model the outfits in pictures and videos together, sometimes wearing the outfits while reading together in bed, having pillow fights, or being playful around the house—always in clearly intimate but arguably appropriate settings.

Savannah's social media page explodes with new followers. Based on their profiles, many of these followers appear to be grown men.⁴ Images of Mia receive hundreds of likes and multiple comments, some of which seem inappropriate.⁵ Savannah deletes the most inappropriate comments, but she leaves others, hoping to increase the engagement on her page.⁶ As Savannah's social media following grows, so too does the amount of money the lingerie company pays her per outfit modeled.

Mia tells her teacher, Ms. Drake, about the social media page. Ms. Drake speaks with the school administrators and shows them the mother's Instagram page. The school reaches out to Mia's mother, Savannah, and to Mia's father, John, to implore them to reconsider sharing the photos, to no avail. Savannah keeps sharing.

4. Hypothetical audience, but this is commonplace on real social media accounts. *See, e.g.,* Catherine Ferris, *Woman Exposes 'Creeps' That Follow Children on Social Media in Viral Video*, NEWSWEEK (Mar. 7, 2022, 5:49 PM), <https://www.newsweek.com/woman-exposes-creeps-that-follow-children-social-media-viral-video-1685701> [<https://web.archive.org/web/20250904015419/https://www.newsweek.com/woman-exposes-creeps-that-follow-children-social-media-viral-video-1685701>] (“One account that she visited did not have any photos and was following 11 other accounts, all of which were young girls. ‘I’ve also noticed that a lot of these creeps are using the number 69 in their handle. . . .’”) (quoting TikTok user Sarah Adams).

5. Fictional audience. Some pictures of children have garnered comments like “Perfect bikini body,” “Mmmmmmm take that bikini off,” and “You’re sooooo hot.” Jennifer Valentino-DeVries & Michael H. Keller, *A Marketplace of Girl Influencers Managed by Moms and Stalked by Men*, N.Y. TIMES (Feb. 22, 2024), <https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html> [<https://perma.cc/GJ34-6N5F>] (“‘I think they’re all pedophiles,’ she said of the many online followers obsessed with her daughter and other young girls.”).

6. “The large audiences boosted by men can benefit the families The bigger followings look impressive to brands and bolster chances of getting discounts, products and other financial incentives, and the accounts themselves are rewarded by Instagram’s algorithm with greater visibility on the platform, which in turn attracts more followers.” *Id.*

Ms. Drake sees this as a potential form of abuse and neglect⁷ and, according to her obligation as a mandatory reporter, she wants to call in an abuse report on the mother as she worries for Mia's safety and privacy.⁸ She makes the hotline call to the state's central abuse registry.⁹ She provides information and even emails the registry pictures, but the intake counselor declines to accept the hotline call.¹⁰ The counselor explains that posting the pictures is not grounds for an abuse, abandonment, or neglect investigation.¹¹ The parent is simply sharenting, the counselor explains, and that is within a parent's right to do so as they see fit.¹² There is nothing the intake counselor believes she can do.¹³

Parents in the United States do, in fact, have almost unfettered discretion when it comes to sharing about their children.¹⁴ And our legal system is ill-equipped to protect children like Mia.¹⁵ Unless Savannah agrees on her own to stop sharing these inappropriate pictures of her daughter, they will continue to be shared. Images already online can be saved and reshared by strangers, and Mia's digital footprint may always be marred with traces of her mother's online conduct.¹⁶ And, while parents have been sharing images of their children with the public long before the creation of the Internet, the life of online images is likely to long outlast Mia's childhood.¹⁷

7. FLA. DEP'T OF CHILD. & FAMS., REPORTING ABUSE OF CHILDREN AND VULNERABLE ADULTS 6 (2013), <https://www.myflfamilies.com/sites/default/files/2022-10/mandatedreporters.pdf> [<https://perma.cc/4AN6-A3J2>].

"Abuse" means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. . . . "Neglect" occurs when . . . a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

Id.

8. In most states, school administrators are required to report all suspected abuse and neglect. *See id.* at 4; CHILD WELFARE INFO. GATEWAY, MANDATORY REPORTING OF CHILD ABUSE AND NEGLECT 2 (2023) (noting that teachers, principals, and other school personnel are mandated reporters in forty-four states).

9. FLA. DEP'T OF CHILD. & FAMS., *supra* note 7, at 9.

10. *Id.*

11. *Id.*

12. *Id.* at 6.

13. *Id.*; *Safety & Protection*, FLA. DEP'T OF CHILD. & FAMS., <https://www.myflfamilies.com/services/abuse> [<https://perma.cc/7RGK-W4T7>] ("The Florida Abuse Hotline Counselor will determine if the information provided meets legal requirements to accept a report for investigation.").

14. Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 882 (2017).

15. *Id.* at 867–77.

16. Morgan Sung, *Their Children Went Viral. Now They Wish They Could Wipe Them from the Internet.*, NBC NEWS (Nov. 3, 2022, 5:30 AM), <https://www.nbcnews.com/pop-culture/influencers-parents-posting-kids-online-privacy-security-concerns-rcna55318> [<https://perma.cc/5T45-987H>].

17. *Id.* ("Now 23, Cam, who didn't want to be referred to by their full name out of concern for their privacy, said their needs were often sidelined by their mother's constantly posting about them on

As I have described previously, sharenting, or the practice of parents sharing information about their children online, has become mainstream in American society.¹⁸ Parents post information about their children on various platforms, often with the goal of connecting and sharing about their lives with family and friends.¹⁹ While most parents share with the intention that their pictures and stories reach a limited audience,²⁰ others share publicly.²¹ Furthermore, some parents gain financial or social capital through sharing, and children may lose their current and future sense of privacy and autonomy as a result. The children may be pressured into allowing themselves to be recorded in uncomfortable ways or photographed in embarrassing situations. This sharing is at times exploitative, and it is likely more harmful than more personal forms of sharing—that of noninvasive photos and memories among family and friends.²²

The public, as well as many academics working in this space, refer to parents who share detailed information about their family in public ways as “mom-influencers,”²³ and the children are referred to as “kid-influencers.”²⁴ These parents may be well-meaning, but their actions can present significant

MySpace and Facebook in the late 2000s to the early 2010s. It has taken a toll on their mental health and shaped how they navigate their own social media presence.”)

18. Steinberg, *supra* note 14, at 842.

19. *Id.*; see also Tara Haelle, *Do Parents Invade Children’s Privacy When They Post Photos Online?*, NPR (Oct. 28, 2016, 5:00 AM), <https://www.npr.org/sections/health-shots/2016/10/28/499595298/do-parents-invade-childrens-privacy-when-they-post-photos-online> [https://perma.cc/E5NX-BJHF].

20. Steinberg, *supra* note 14, at 850.

21. *Id.* at 880 (“Despite the risks, many parents will choose to blog about their children publicly.”); see also Sung, *supra* note 16.

Cam said their mother began posting photos and videos of them on MySpace when they were in the second grade. They didn’t comprehend how many people were watching them grow up, Cam said, until their mother joined Facebook. Cam assumed that their mother knew her thousands of “friends” personally, so they often accepted requests from random adults because their mother was a mutual friend. As a result, they’d sometimes receive disturbing messages. “I remember I was 12 years old, and I was riding my bike with my friends around the town that we lived in at the time and getting a Facebook message the day after saying, ‘Hey, I saw you riding your bike,’” Cam said. “And it was from an older man, and it was just very uncomfortable.”

Sung, *supra* note 16.

22. Until recently, parents were unaware of the complexities and risks that social media fame could create for their children. While many influencer parents now intend for their child to go viral, for a time there was a grey area where children of non-influencer parents unexpectedly went viral due to the actions of their parents. See Sung, *supra* note 16.

23. “Mom-influencer” is not a word recognized by most dictionaries. “Mumfluencer” has been proposed as a new word and, according to Collinsdictionary.com, is being monitored for evidence of usage. *Mumfluencer*, COLLINS DICTIONARY (Dec. 27, 2019), <https://www.collinsdictionary.com/us/submission/21916/mumfluencer> [https://perma.cc/5ATL-SEAX].

24. “Kid-influencer” is not a word recognized by most dictionaries. “Kidfluencer” has been proposed as a new word and, according to Collinsdictionary.com, is being monitored for evidence of usage. *Kidfluencer*, COLLINS DICTIONARY (June 04, 2019), <https://www.collinsdictionary.com/us/submission/21204/kidfluencer> [https://perma.cc/4SVJ-K24F].

danger.²⁵ Legal remedies do not exist to protect children whose parents overshare online, and as such, these children are left at risk for abuse and exploitation.²⁶

In the United States, parents are primarily responsible for the well-being of their children, and the government will only intercede in the most necessary of circumstances.²⁷ For example, parents can generally discipline

25. See Sung, *supra* note 16; see also Amanda McMaster & Yi-Jin Yu, *Mom Influencer Opens Up About Why She Erased Her Kids' Faces from Social Media*, ABC NEWS (Feb. 17, 2022), <https://abcnews.go.com/GMA/Family/mom-influencer-opens-erased-kids-faces-social-media/story?id=82928115> [<https://perma.cc/MZP5-3SEK>].

Four years ago, Katy Rose Prichard decided to become a mom influencer. She'd seen other influencers on social media and just had her first child.

Prichard started a blog and began posting photos of her growing family on her Instagram page. She soon started working with brands and other small businesses, growing her Instagram following to nearly 100,000 followers.

But two months ago, the mom of four from Oklahoma learned of a sinister social media trend that completely changed her perspective, driving her to take down past photos of her children and revamp her approach to her influencer business.

The trend is known as "role playing" and as Prichard explained, it's the practice of stealing photos of others on social media and creating new, fake accounts with made-up stories and identities.

When her daughter showed her another account that looked like hers and used her photos, Prichard said she was terrified.

McMaster & Yu, *supra* note 25.

26. This is one way that sharenting online is different and more dangerous than traditional forms of sharenting in publications—there is no path to accountability or form of legal recourse that could be used against a parent who publishes as there are against legacy media organizations or outside actors who take advantage of or otherwise harm their subjects. See Steinberg, *supra* note 14, at 867 ("While there are laws in place that protect an individual's privacy in some circumstances, laws do little to protect children from parental oversharing.").

27. Monrad G. Paulsen, *The Legal Framework for Child Protection*, 66 COLUM. L. REV. 679, 679 (1966).

In America, raising children is the business of parents, not of government. Hence, the law normally gives to parents the custody of children, and relies on parental love to call forth the care and protection a child requires. An act of child abuse, therefore, takes place in a setting which the legal system itself has arranged. In every state, however, the law has provided for intervention by society when parental care is dangerously faulty or insufficient.

Id. But the application of state power in the child welfare system is often uneven and weaponized especially against Black families and poor families. Critics like Dorothy Roberts importantly point out that, while the child welfare system

[P]urports to keep children safe [but] instead does the exact opposite, tearing [children] away from family and community and leading to their continued contact with the prison-industrial complex. Roberts analyzes this foster care-to-prison pipeline closely: "Just as the child welfare system entangles Black parents in a carceral web, so it throws many Black children into encounters with police officers and on a path to arrest, detention, and imprisonment." These carceral entanglements are only one part of a greater "foster-industrial complex," she explains, in which the child welfare system collaborates with other systems of regulation, sharing information, engaging in common training, and cooperating in investigations, creating what Roberts identifies as a frightening web of surveillance. According to Roberts, "Precisely because it seems to operate outside criminal law enforcement, the child welfare system has become an extremely useful arm of the carceral state. For it has the power to intensively monitor

their children as they see fit.²⁸ However, they may not physically abuse their children without facing legal consequences. But this was not always the case. In 1800, spanking a child lightly and beating a child both fell under the penumbra of parental rights.²⁹ But today, two penumbras exist.³⁰ Parents may use corporal punishment only to the extent permitted by law.³¹ Recognizing that parental rights must be balanced against the state's *parens patriae* powers, states have laws that allow parents to use reasonable corporal punishment on their children but prohibit child abuse, which is often understood as excessive (and unreasonable) corporal punishment.³² When parental conduct goes beyond mere corporal punishment, parents are under the second penumbra, child abuse, and may face criminal and civil prosecution.³³

entire communities, all the while escaping public scrutiny and bypassing legal protections by claiming to protect the children of those communities.”

Sophia Ramirez, *Benevolent Terror: Dorothy E. Roberts on Reimagining the Child Welfare System*, PEN AM. (June 15, 2022) (quoting PEN America, *Dorothy E. Roberts on Ending the Child Welfare System to Build Safer Futures*, WORKS OF JUSTICE (June 16, 2022)), <https://pen.org/benevolent-terror-dorothy-e-roberts-on-reimagining-the-child-welfare-system> [<https://perma.cc/953L-RYH2>].

28. Paulsen, *supra* note 27, at 686.

Parents may, without exposing themselves to criminal liability, heed the warning, “spare the rod and spoil the child,” because of the parental privilege to discipline one’s offspring. The privilege, codified in New York as a justification for the use of force or violence upon the person of a child provides: “force or violence . . . is not unlawful . . . when committed by a parent . . . to restrain or correct his child . . . and the force or violence used is reasonable in manner and moderate in degree.” A California provision extends even further, and excuses homicide when “committed by accident and misfortune, in lawfully correcting a child or servant.”

Id. (footnotes omitted) (first quoting N.Y. PEN. LAW § 246; then quoting CAL. PENAL CODE § 195).

These laws are quoted in this footnote as they existed in 1966, at the time of publication of the article. *Id.* The laws have become less broad over time, allowing for the state to intervene more frequently when parents cross from discipline into abuse. *See e.g.*, FLA. DEP’T CHILD. & FAMILIES, *supra* note 7, at 6 (“Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.”).

29. Paulsen, *supra* note 27, at 699.

30. *Id.* at 687 (“The ‘modern’ or ‘objective’ rule holds the defendant to an ‘external standard of what is reasonable under the circumstances,’ and imposes liability for purposefully, knowingly, recklessly, or negligently using excessive force on a child. This rule, clearly the majority view, allows only for such punishment of a child as is reasonable under the facts and circumstances, and leaves it to the jury to determine the reasonableness of the discipline.”) (quoting WILLIAM L. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 140 (3d ed. 1964)) (footnotes omitted).

31. *See, e.g.*, FLA. STAT. § 827.03 (1975).

32. *See* *Raford v. State*, 828 So. 2d 1012, 1020–21 (Fla. 2002) (“Courts and legislative bodies have repeatedly recognized the difficulty in delineating a precise line between permissible corporal punishment and prohibited child abuse. *See, e.g., McDonald*, 785 So.2d at 647; *Corsen*, 784 So.2d at 536; *Moakley v. State*, 547 So.2d 1246, 1247 (Fla. 5th DCA 1989); cf. *S.L. v. Dep’t of Children & Families*, 787 So.2d 973, 974 (Fla. 5th DCA 2001) (recognizing in dependency case the ‘delicate balance between the fundamental rights of parents to raise and discipline their children and the need to protect children from abuse’). However, we conclude that this difficult task is principally a legislative function, better left to the Legislature.”) (first citing *State v. McDonald*, 785 So. 2d 640, 647 (Fla. 2001); then citing *Corsen v. State*, 784 So. 2d 535, 536 (Fla. 2001); then citing *Moakley v. State*, 547 So. 2d 1246, 1247 (Fla. 5th DCA 1989); and then citing *S.L. v. Dep’t of Child. & Families*, 787 So.2d 973, 974 (Fla. 5th DCA 2001).

33. *See, e.g.*, FLA. STAT § 827.03 (2018); *id.* § 39.01 (2022).

“While parents must bear the primary responsibility for meeting the needs of their children,” Monrad Paulsen posits in his 1966 article *The Legal Framework for Child Protection*, “society has an obligation to help parents who for one reason or another are unable or incapable of satisfactorily fulfilling their role.”³⁴ Paulsen’s framework was written with corporal punishment in mind, but the same core tenets can be applied in the context of sharenting. The general responsibility to control a child’s social media footprint must lie primarily with the parents.³⁵ But society must also bear an obligation to step in when parents are “unable or incapable of satisfactorily fulfilling their role.”³⁶ Companies have also been called upon to protect children by policing content posted on their platforms, whether it be self-imposed or by legislative mandate.³⁷

Much like how child abuse falls beyond the bounds of acceptable parental discipline, exploitative sharing about children publicly and for profit often falls beyond the bounds of acceptable sharenting, thus necessitating legal protections and remedies for children who are harmed or at risk of harm by their parents’ conduct. When parents go “beyond sharenting,” they have engaged in a course of conduct that calls for state action to minimize harm to their children.

Scholars, parents, and politicians are grappling with this new reality, but scholarly literature has yet to propose comprehensive frameworks or realistic solutions. In 2017, I published the first scholarly article on sharenting, drawing from my professional and practical experience as a law professor and clinician.³⁸ This Article builds on that work, further

34. Paulsen, *supra* note 27, at 704.

35. Steinberg, *supra* note 14, at 861–62 (“[C]ases suggest that courts are sympathetic to a child’s interest in privacy but nonetheless give substantial deference to parents’ rights to control their child’s upbringing and the limitations of the right to privacy. These cases offer limited guidance with respect to how children’s privacy interests might intersect with parents’ rights to share their child’s personal information online, as today’s parental online sharing practices are novel in the legal sphere.”) (footnote omitted).

36. Paulsen, *supra* note 27, at 704.

37. See Danielle Keats Citron, *How to Fix Section 230*, 103 B.U. L. REV. 713, 713–14 (2023) (“Content platforms lack sufficient incentive to combat online abuse because they generate significant profits from our likes, clicks, and shares. Victims can’t sue sites that earn advertising fees from their suffering. The status quo is particularly costly for women, children, and minorities who lose their ability to speak, work, and love. Inaction signals our society’s indifference to vulnerable people enduring online abuse that robs them of their civil rights and civil liberties. We need to fix § 230. Reform must be approached with humility and care, lest it spur platforms to over—or under—moderate in ways that do more harm than good. . . . While the over-filtering provision, § 230(c)(2), should be preserved, the under-filtering provision, § 230(c)(1), should be revised. Sites that deliberately encourage, solicit, or maintain intimate privacy violations, cyber stalking, or cyber harassment should not enjoy immunity from liability.”). See generally Ari Ezra Waldman, *Privacy as Trust: Sharing Personal Information in a Networked World*, 69 U. MIA. L. REV. 559 (2015); Ari Ezra Waldman, *Designing Without Privacy*, 55 HOUS. L. REV. 659 (2018).

38. See Steinberg, *supra* note 14.

developing a scholarly account for when sharenting crosses the line into problematic harm or exploitation and advancing several solutions.

This Article will proceed in three parts. Part I of this Article provides an overview of child abuse law. It considers the rights parents have under the substantive due process clause of the Fourteenth Amendment.³⁹ As later Sections of the Article explain, the law must evolve to recognize the legal boundaries of sharenting, utilizing the state's *parens patriae* powers to protect children when their parents fail to do so.⁴⁰

Part II of this Article discusses how our legal system fails to protect children's privacy online. Furthermore, this Part offers readers an overview of sharenting. This parental practice of sharing about children online also receives protection under both the substantive due process clause of the Fourteenth Amendment and the free speech protections outlined in the First Amendment.⁴¹ In most circumstances, parents are best suited to control the upbringing of their children both on- and offline.⁴² To that end, Section II.B explores federal laws that aim to keep young people safe online,⁴³ both from harm caused by the child's own conduct online and harm to children by others collecting, storing, selling, or otherwise disseminating a child's information or imagery in a way that poses a risk of harm to children, specifically focused on the practice of sharenting.⁴⁴ This Section will explore laws spanning from the 1998 Children's Online Privacy Protection Act,⁴⁵ which places parents in control over the information third parties collect about children online, to today's attempts to regulate children's own conduct when they use social media themselves.⁴⁶ Next, this Section will explore how states have attempted to fill the gaps left open by the lack of comprehensive federal legislation that protects children online.⁴⁷ It will outline how states have managed to empower parents to take control of their

39. U.S. CONST. amend. XIV.

40. See *infra* Sections III.A–B.

41. U.S. CONST. amends. I, XIV.

42. Steinberg, *supra* note 14, at 862.

43. Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–06 (1998).

44. Stacey Steinberg, *The Myth of Children's Online Privacy Protection*, 77 SMU L. REV. 441, 452 (2024).

45. 15 U.S.C. §§ 6501–06.

46. *Id.*

47. See, e.g., H.B. 3, 2024 Leg. Reg. Sess. (Fla. 2024) (codified at FLA. STAT. §§ 501.1736–38 (2024)), <https://www.flsenate.gov/Session/Bill/2024/3> [<https://perma.cc/Q4HF-6JXK>]; Press Release, Ron DeSantis, Gov., State of Fla., Governor DeSantis Signs Legislation to Protect Children and Uphold Parental Rights (Mar. 25, 2024), <https://www.flgov.com/eog/news/press/2024/governor-desantis-signs-legislation-protect-children-and-uphold-parental-rights> [<https://perma.cc/B324-B5WZ>] (“Specifically, this bill: Prevents a minor who is younger than 14 years of age from becoming a social media account holder. Empowers parents to decide whether 14- and 15-year-olds can have a social media account. Protects the ability of Floridians to remain anonymous online.”).

children's online experiences and information to better protect their families and also how some states have begun to limit how parents share online.⁴⁸ Lastly, Section II.C will discuss how other countries have attempted to protect children online, highlighting how foreign governments appear far more willing to exercise *parens patriae* powers to protect children than the U.S. government or the states.⁴⁹ This Section will discuss the role of the United Nations Convention on the Rights of the Child ("UNCRC") in protecting children, and perhaps more importantly, the role of the UNCRC in recognizing children's rights to privacy and protection in digital environments.⁵⁰ This children's rights-based framework is recognized by over 192 nations and is quite different from our parents' rights-based framework in the United States.⁵¹

Part III of the Article will propose a new model for children's online privacy protection. Just as child welfare laws have evolved to separate legal corporal punishment from child abuse, Section III.A will argue that the United States must separate legal parental sharenting from online abuse and exploitation perpetrated by parents. Utilizing the doctrine of *parens patriae*,⁵² this model recognizes that there are limits to parental autonomy.⁵³ While determining those limits is challenging, systems exist that allow for child welfare professionals to use evidence-based research to inform new policy in this arena.⁵⁴ This policy can include comprehensive measures that allow for a public health campaign educating parents on the difference between acceptable sharenting and online child abuse or exploitation.⁵⁵ The public health campaign would be accompanied by new methods of reporting instances of exploitative or abusive sharenting and provide funding for such reports to be investigated by well-trained professionals who, like traditional child welfare professionals, proceed first by working to educate and

48. Press Release, Ron DeSantis, *supra* note 47.

49. U.N. Comm. on the Rts. of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment*, ¶¶ 23–25, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

50. *Id.* ¶¶ 7, 67.

51. Sonia Livingstone, Eva Lievens, Richard Graham, Kruakae Pothong, Stacey Steinberg & Mariya Stoilova, *Children's Privacy in the Digital Age: US and UK Experiences and Policy Responses* in HANDBOOK OF CHILDREN AND SCREENS: DIGITAL MEDIA, DEVELOPMENT, AND WELL-BEING FROM BIRTH THROUGH ADOLESCENCE 491 (Dimitri A. Christakis & Lauren Hale eds., 2025).

52. *Parens Patriae*, THE LAW DICTIONARY, <https://thelawdictionary.org/parens-patriae> [https://perma.cc/DJG8-247E].

53. See *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 402 (1923); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

54. See Tonia C. Stott, Ann MacEachron & Nora Gustavsson, *Social Media and Child Welfare: Policy, Training, and the Risks and Benefits from the Administrator's Perspective*, 17 ADVANCES SOC. WORK 221, 224 (2016); Melanie Sage & Todd Edward Sage, *Social Media Use in Child Welfare Practice*, 17 ADVANCES SOC. WORK 93, 107–08 (2016).

55. See Stacey Steinberg, Meredith Burgess & Karla Herrera, *Adopting Social Media in Family and Adoption Law*, 2023 UTAH L. REV. 447 (2023).

strengthen families so that parents can be supported to make better online sharing decisions for their families.⁵⁶ However, these professionals must also be empowered with legal methods to protect children if parents fail to do so. Through a judicial process, the state should be permitted to take action to protect children in the virtual world much as it does in our brick-and-mortar one.

Parents rarely neglect or abuse their children because they are intentionally malicious.⁵⁷ Most do so because they either do not have the resources they need to make better parenting decisions, or they are unaware of how they can better meet their own needs to meet those of their children simultaneously.⁵⁸ Our legal systems have evolved to offer parents assistance to create healthier living environments for their children⁵⁹ and to give the state tools to take action that protects children from harm (and risks of future harm) within the home.⁶⁰ Similarly, parents rarely exploit their children online because they are intentionally malicious.⁶¹ Most do so because they are unaware of the risks such oversharing presents or need the financial or social assistance such oversharing provides.⁶² The state must have tools to empower parents to make smarter sharing decisions for their families.⁶³ And the state must also have tools to step in and protect children when parents fail to do so or when harm is significantly likely to occur.⁶⁴

56. Ayten Doğan Keskin, Nazan Kaytez, Mustafa Damar, Fatma Elibol & Neriman Aral, *Sharenting Syndrome: An Appropriate Use of Social Media?*, 11 HEALTHCARE 1359, 1372 (2023). This article seems to be the only previous research on the link between sharenting and child abuse. It terms this category of harm as “sharenting syndrome.” *Id.* at 1361 (“Children who become well known on social media may be vulnerable to neglect and abuse due to their developmental characteristics. Child neglect and abuse are not spontaneous situations but are instead caused by people. Similarly, in sharenting syndrome, the child is at risk due to the sharing of the parents, and in some cases may be exposed to neglect and abuse. While sharenting syndrome may not always result in visible harm to the child involved, it can lead to problems in social, emotional, or mental development. From this perspective, sharenting syndrome can be exposed a form of child abuse and neglect.”) (footnote omitted).

57. *See, e.g.*, PAUL BYWATERS, LISA BUNTING, GAVIN DAVIDSON, JENNIFER HANRATTY, WILL MASON, CLAIRE MCCARTAN & NICOLE STEILS, *THE RELATIONSHIP BETWEEN POVERTY, CHILD ABUSE AND NEGLECT: AN EVIDENCE REVIEW* 48 (2016).

58. *Id.* at 31; *see also* Dorothy Roberts, *Why Abolition*, 61 FAM. CT. REV. 229, 232 (2023).

59. *Introduction to the Child Welfare System*, JUV. L. CTR., <https://jlc.org/introduction-child-welfare-system> [<https://web.archive.org/web/20250618203118/https://jlc.org/introduction-child-welfare-system>].

60. Bywaters et al., *supra* note 57, at 34. Some critics argue that the system actually does not achieve this result and is inherently broken or beyond repair—calling for abolition and total replacement of the current scheme. *See* Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT (2021), <https://dissentmagazine.org/article/abolish-family-policing-too> [<https://perma.cc/AL48-8AHP>].

61. Steinberg, *supra* note 14, at 867.

62. *Id.*

63. This can be accomplished through a best interest model of child protection.

64. This can be best accomplished through a legal framework recognizing that the state must step in when parents harm children through oversharing.

I. CHILD PROTECTION IN THE UNITED STATES

In the United States, strong deference is given to parents to raise their children as they see fit.⁶⁵ Courts are reluctant to interfere with parental decision-making, except in the most limited of circumstances.⁶⁶ However, laws exist to protect children from parental abuse and neglect.⁶⁷ Parents have also been held accountable for exploiting their children in a myriad of ways.⁶⁸ Indeed, children do not belong to their parents.⁶⁹ But the relationship between children and their parents remains a space where the state generally refuses to enter.⁷⁰

A. EVOLUTION OF FEDERAL CHILD PROTECTION LAWS

Child welfare laws gained traction during the middle of the eighteenth century. A case often cited as creating the first child abuse laws in the country tells of a young girl who was physically abused. While Mary Ellen's injuries and the neglect she suffered were gruesome, concerned community members were hard-pressed to find an existing legal mechanism to protect the child.⁷¹ A lawyer, the president of the New York Society for the Prevention of Cruelty to Animals, was able to argue successfully for her

65. See Barbara Bennett Woodhouse, "Who Owns the Child?": Meyer and Pierce and the Child as Property, 33 WM. & MARY L. REV. 995, 1115 (1992).

66. *Id.*; see also Pierce v. Soc'y of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534–35 (1925); Meyer v. Nebraska, 262 U.S. 390, 399–401 (1923); Prince v. Massachusetts, 321 U.S. 158, 165–67 (1944); Wisconsin v. Yoder, 406 U.S. 205, 232, 232–34 (1972).

67. FLA. DEP'T OF CHILD. & FAMILIES, *supra* note 13, at 6.

68. See, e.g., Ramon Ramirez, *What Will It Take?: In the Wake of the Outrageous "Balloon Boy" Hoax, a Call to Regulate the Long-Ignored Issue of Parental Exploitation of Children*, 20 S. CAL. INTERDISC. L.J. 617, 618–19 (2011).

Concerned children's rights advocates have further decried the incident, now known as the "Balloon Boy" hoax, as an example of "the potential for the exploitation of kids by their own parents in the world of reality TV," a world regulated solely by a patchwork of various state laws in the absence of any federal regulation. . . . For some time, parents have exploited their children in film and sports—other industries in which there is minimal, if any, legal protection for children.

Id.

69. Woodhouse, *supra* note 65, at 1122.

70. *Prince*, 321 U.S. at 166.

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter. But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty.

Id. (citation omitted).

71. Mary Ellen's case was first noticed by an ailing neighbor who heard the abuse occur through the walls and reported to a Methodist missionary that her dying wish was to see the little girl saved. Given that there were no child welfare laws to enforce, the missionary sought assistance from what would become the predecessors to social workers: the police, "benevolent societies . . . whose object it was to care for children" and "charitable citizens" who all could or would not find legal mechanisms to help. See JACOB A. RIIS, *THE CHILDREN OF THE POOR* 142–43 (1892).

protection by citing animal welfare laws.⁷² This remained the norm for many years.⁷³

In the later parts of the nineteenth century, Progressive activists urged the government to do more to protect the nation's children.⁷⁴ The "child saving movement" focused on numerous harms facing children, including poor health, abusive labor, delinquency, poverty, failed families, and institutionalization.⁷⁵ One realm of reformation focused on the need to "Americanize" children of immigrants so that they could become more a part of American communities and more accepting of American culture.⁷⁶ This same time period saw an influx in calls to create child welfare standards, focusing on setting minimum standards for child and maternal health, labor, and needy children.⁷⁷ As child welfare became more standardized, states were incentivized to create laws that both protected children and held adults accountable for the well-being of children under their care.⁷⁸

As the twentieth century got underway, conferences and calls for standardization grew.⁷⁹ Social welfare programs expanded under the New Deal and throughout World War II, providing funding to help create programs that allowed for these new reforms and standards to make their

72. *Id.* at 143 ("The child is an animal. . . . [I]f there is no justice for it as a human being, it shall at least have the rights of the stray It shall not be abused.") (quoting Mary Ellen's lawyer Henry Bergh).

73. Andrew L. Yarrow, *History of U.S. Children's Policy, 1900–Present*, FIRST FOCUS 3 (Apr. 2009), <https://firstfocus.org/wp-content/uploads/2014/06/Childrens-Policy-History.pdf> [<https://perma.cc/X3VK-Q5WY>].

74. *Id.* at 1.

The turn of the 20th century was a time of profound transition both in the status of children in American life and in the role of the federal government in child policy. Childhood increasingly was seen as a developmentally distinct stage of life, and children were viewed with greater tenderness—reflecting a new, middle-class belief in childhood's importance and concern with children's vulnerability. Concurrently, the federal government was becoming much more involved in implementing policies to promote the welfare of Americans, young and old.

Id. (footnote omitted).

75. *Id.*

76. *Id.* at 4.

77. *Id.* at 3.

78. *Id.* at 3–4.

79. *Id.* at 5.

The Progressive impulse to improve children's health, education, and morality largely languished during the 1920s, until the Hoover Administration. President Herbert Hoover convened the third White House conference on children to "study the present status of the health and well-being of the children of the United States and its possessions; to report what is being done; [and] to recommend what ought to be done and how to do it." This massive undertaking brought together experts across the country over a 16-month period, culminating in a November 1930 Washington meeting. Four committees—focusing on medical, public health, education and training, and disability issues—issued a 643-page report to 3,000 attendees and the public, as well as a 32-volume, 10,511-page set of appendices. A Children's Charter made 19 proposals, calling for increased scientific research to improve child well-being, and public assistance to 10 million mentally and physically "deficient" children.

Id. (footnote omitted).

way into children's home lives.⁸⁰ The Social Security Act of 1935, for example, included provisions (known as Title VI) geared at helping children in need.⁸¹ During this time period and the decades that followed, federal policies focused on providing education to young people, providing child care for needy families, restricting child labor, instituting nutrition programs, and promoting childhood vaccination.⁸²

During the Kennedy administration, these efforts continued. Congress developed the National Institute of Child Health and Human Development ("NICHD"), which focused on "conduct[ing] and coordinat[ing] national biomedical and social science research on child and maternal health and on physical, intellectual, and emotional development. NICHD has supported research on birth defects . . . stimulated the expansion of pediatrics as a medical specialty, and provided an official imprimatur to the idea that that adult health and behavior is shaped during childhood."⁸³ This period also saw the inception and development of scientific research regarding "battered children," and by 1966, "every state had passed legislation requiring better reporting and intervention in cases of child abuse."⁸⁴ With these developments, parenting became a budding subject of interest in the public health sphere.

Federal legislation aimed at creating a uniform system of child protection can be traced to the Child Abuse Prevention and Treatment Act of 1974 ("CAPTA").⁸⁵ This Act has been most recently reauthorized in 2019 through the Victims of Child Abuse Reauthorization Act of 2018.⁸⁶ Through federal grants, states are provided with funding to "improve child protective services, including mandatory reporting of child maltreatment, intake, screening, investigations, risk and safety assessments, case management and training."⁸⁷ While funds provided through this Act represent some of the

80. *Id.* at 5–6.

81. *See id.* (providing cash to needy families funds now known as Temporary Assistance to Needy Families or TANF funds).

82. *Id.* at 8–11.

83. *Id.* at 13–14.

84. *Id.*

85. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., ABOUT CAPTA: A LEGISLATIVE HISTORY 1 (2019), <https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/about.pdf> [<https://perma.cc/6JWP-ZMNR>].

86. *Id.*

87. CASEY FAMILY PROGRAMS, THE CHILD ABUSE PREVENTION AND TREATMENT ACT: KEEPING CHILDREN SAFE AND STRENGTHENING FAMILIES IN COMMUNITIES 8 (May 2019), https://www.casey.org/media/CAPTA-Paper_web.pdf [<https://perma.cc/D8DF-NTEZ>].

earliest allocations of federal money to states to protect children, they currently make up a small part of the funding models states use to protect children.⁸⁸

The Adoption Assistance and Child Welfare Act of 1980 also marked a turning point in child welfare legislation in the United States.⁸⁹ This federal law focused on keeping families together, as many state agencies were separating families at alarming rates in efforts to resolve child welfare problems.⁹⁰ Now, many laws protecting children were focused not only on physical health, but on morality and culture as well. For example, the Children’s Television Act of 1990 regulated what TV stations could broadcast.⁹¹ During the Clinton years, efforts centered on ensuring parents of young children had access to high-quality childcare and family support.⁹² In his policy draft, Andrew Yarrow writes, “In her book *It Takes a Village* [] First Lady Hillary Clinton strongly reaffirmed the principle that society—and, by implication, government—bears a strong responsibility for child welfare and successful child development.”⁹³

In the late 1990s, as technology became ever more present, the government began creating laws giving parents more control over their children’s digital lives.⁹⁴ Yarrow writes:

The 1996 Telecommunications Act called for the broadcast, cable, and motion picture industries to develop voluntary ratings for TV programs

88. *Id.* at 12.

Most federal funding for child welfare goes to support the “back end” of the continuum, namely services to children who have been removed from home and placed in foster care. These services include foster care maintenance payments and administration; independent living services; adoption assistance and administration; and guardianship assistance. All of those are governed by Title IV-E of the Social Security Act.

Id.

89. Martin Guggenheim, *General Overview of Child Protection Laws in the United States, in REPRESENTING PARENTS IN CHILD WELFARE CASES: ADVICE AND GUIDANCE FOR FAMILY DEFENDERS* (AM. BAR ASS’N 2015), <https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/224751148/Excerpt%20from%20Chapter%201.pdf> [https://web.archive.org/web/20250613224822/http://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/224751148/Excerpt%20from%20Chapter%201.pdf].

90. *Id.* at 3.

The 1980 law mandates that states receiving federal money comply with specifications designed to prevent unnecessary separation of children from their parents, to assure a careful monitoring of children who are separated, and to provide an infusion of services into the family to speed the ultimate return of children to their parents.

Id.

91. Yarrow, *supra* note 73, at 23 (“Continuing the decades-long reaction to the effects of popular culture on children, Congress passed the Children’s Television Act of 1990. The law gave the Federal Communications Commission loose powers to require TV stations to devote time to ‘educational and informative’ programming.”).

92. *See, e.g.*, Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6.

93. Yarrow, *supra* note 73, at 24.

94. *Id.* at 25.

based on their degree of violent or sexual content. In tandem, TV manufacturers were required by 2000 to install “V-chips” to enable parents to block programming. The 1998 Child Online Protection Act was one of several legislative efforts to restrict children’s access to web-based pornography, although courts have ruled the law unconstitutional. The Children’s Online Privacy Protection Act [sic] (COPPA), which took effect in 2000, restricted commercial web sites from collecting personal information from children under 13.⁹⁵

These efforts to both standardize and unify the nation’s efforts toward enhancing child development continue today.⁹⁶

A common theme seen throughout these policy initiatives is the focus on empowering parents, first and foremost, to shape the welfare of their children, and to dictate the environment in which a child comes of age.⁹⁷ However, equally important in these schemes is the recognition that government, through its *parens patriae* model of child protection, also has a role to play.⁹⁸

This broad overview of child welfare policy includes policies focused on protecting children from abuse and neglect. Research overwhelmingly shows that our child welfare system, also referred to as a “family regulation system,”⁹⁹ disproportionately removes children from Black and Brown families.¹⁰⁰ Scholars have called for abolition of this family regulation system,¹⁰¹ arguing that it is irreparably broken and biased against families of color.¹⁰² While this Article will not discuss this important topic in detail, it supports a dismantling of current broken systems and suggests that a new system can be created that addresses the systemic bias of our current practices and incorporates the evolving needs of children online.¹⁰³

95. *Id.* at 25–26.

96. *See id.* at 27–28.

97. *Id.* at 1–2.

98. *See generally* Prince v. Massachusetts, 321 U.S. 158 (1944).

99. This term was popularized by Dorothy Roberts. Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, THE IMPRINT (June 16, 2020, 5:26 AM), <https://imprintnews.org/child-welfare-2/abolishing-policing-also-means-abolishing-family-regulation> [https://perma.cc/5JLN-M24U].

100. *See* S. Lisa Washington, Essay, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1103 & n.11 (2022).

101. *See generally* Roberts, *supra* note 60.

102. *Id.*

103. Special thanks to Naomi Cahn for identifying this important issue and encouraging me to discuss it.

B. EARLY COURT DECISIONS REGULATING PARENTAL CONDUCT

The courts have also interposed their own views on parental conduct. “Blackstone deemed ‘the most universal relation in nature . . . (to be) that between parent and child.’ ”¹⁰⁴ The parental rights arising from this relationship rest not only in law and precedent, but also “in nature and human instinct.”¹⁰⁵ Throughout our Nation’s history, the Supreme Court has held the rights of parents to be fundamental.¹⁰⁶ In the seminal case of *Meyer v. Nebraska*, decided in 1923, the Court “described the parental right as ‘the right to control,’ corresponding with the duty of a parent to educate their children.”¹⁰⁷ This understanding of parental rights was further expounded on two years later in *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus and Mary*, holding that “[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”¹⁰⁸ Yet, the Court has also recognized that there are times when the state must curb parental authority to protect children.¹⁰⁹

In *Prince v. Massachusetts*, the Court noted that “the family itself is not beyond regulation in the public interest, as against a claim of religious liberty.”¹¹⁰ In *Prince*, a child sold religious magazines on the street, and her

104. *In re J. P.*, 648 P.2d 1364, 1373 (Utah 1982) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *446). The court further observed that “[t]he integrity of the family and the parents’ inherent right and authority to rear their own children have been recognized as fundamental axioms of Anglo-American culture, presupposed by all our social, political, and legal institutions.” *Id.*

105. *Id.*

106. *See, e.g., Prince v. Massachusetts*, 321 U.S. 158, 165 (1944).

107. Jessica Quinter & Caroline Markowitz, *Judicial Bypass and Parental Rights After Dobbs*, 132 YALE L.J. 1908, 1921 (2023).

Canonically, the foundational case for parental rights under the U.S. Constitution is *Meyer v. Nebraska*. There, the Court held that a Nebraska law prohibiting schools from teaching any language other than English before the eighth grade was unconstitutional under the Due Process Clause of the Fourteenth Amendment. In so holding, the Court invoked the “right of parents” to “engage” a teacher to instruct their children in German and reasoned that such a right was “within the liberty of the [Fourteenth] Amendment.” The Court described the parental right as “the right of control,” corresponding with the duty of a parent to educate their children.

Id. (footnotes omitted) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)).

108. *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 535 (1925).

109. *Prince*, 321 U.S. at 165.

Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state’s assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man’s land where this battle has gone on.

Id.

110. *Id.* at 166 (citing *Reynolds v. United States*, 98 U.S. 145 (1878); *Davis v. Beason*, 133 U.S. 333 (1890)).

caregiver argued that this was permissible not only because it was at the direction of a person acting *in loco parentis*, but also that it was permissible as an exercise of both the child's and the caregiver's religious liberties. However, the Court noted the dangers streets pose to children, stating that "[p]arents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves."¹¹¹

II. CHILDREN'S PRIVACY IN THE AGE OF SOCIAL MEDIA

Just as the state gives parents wide latitude in determining how to raise their children in the physical world, parents also regulate a child's virtual world.¹¹² The cases cited above, which lay out the rights of parents but also highlight the role of the state in protecting children from parental overreach, have not yet been applied to parental oversharing on social media, nor have they been contemplated in discussions surrounding parental oversight (or lack of oversight) regarding their children's social media use. Parents can allow their children practically unlimited access to the internet, can choose not to monitor their website viewing, and can allow their children to post on social media without seeing any legal repercussions.¹¹³

111. *Id.* at 170.

We think that with reference to the public proclaiming of religion, upon the streets and in other similar public places, the power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms, and the rightful boundary of its power has not been crossed in this case.

Id.

112. Lee B. Erickson, Pamela Wisniewski, Heng Xu, John M. Carroll, Mary Beth Rosson & Daniel F. Perkins, *The Boundaries Between: Parental Involvement in a Teen's Online World*, 67 J. ASS'N FOR INFO. SCI. & TECH. 1384, 1385 (2016) ("In today's online world, where physical proximity no longer dictates the interactions people have with one another, parents struggle to establish both real world and virtual world boundaries to protect their teens from online dangers while their children struggle to act independently.") (citing Diana Baumrind, *Patterns of Parental Authority and Adolescent Autonomy*, 108 NEW DIRECTIONS FOR CHILD & ADOLESCENT DEV. 61, 61-63 (2005); Karen Bradley, *Internet Lives: Social Context and Moral Domain in Adolescent Development*, 108 NEW DIRECTIONS FOR YOUTH DEV. 57, 69-70 (2005)).

113. Twenty-one percent of parents polled did not use any form of parental control online. KASPERSKY LAB, CONSUMER SECURITY RISKS SURVEY 2016: CONNECTED BUT NOT PROTECTED 21 (2016), https://media.kasperskycontenthub.com/wp-content/uploads/sites/45/2018/03/08233604/B2C_survey_2016_report.pdf [<https://perma.cc/Q8WH-DD5H>].

A. SHARENTING AND BEYOND

Parents have almost unfettered discretion to share about their children in the virtual world much like they do in the brick-and-mortar world.¹¹⁴ Just as the state generally does not step in when a parent talks about their child with friends, schools, community members, or the public, the state does not step in when a parent posts about a child online.¹¹⁵ In almost all circumstances, this makes sense and is consistent with our democratic ideals of free speech and with our nation's strong deference to parental autonomy.¹¹⁶ However, unlike a conversation, information shared by a parent online has the potential to last long into the future,¹¹⁷ possibly following a child into adulthood in ways not generally contemplated by parents or the public.¹¹⁸

Well-informed parents are generally best suited to decide how much to share online about their children.¹¹⁹ Parents who are aware of the risks of oversharing online will take steps to censor themselves, keeping private matters private and embarrassing stories about their children to themselves.¹²⁰ However, many parents are not aware of the risks that come

114. See Tawfiq Ammari, Priya Kumar, Cliff Lampe & Sarita Schoenebeck, *Managing Children's Online Identities: How Parents Decide What to Disclose About Their Children Online*, in PROC. OF THE 33RD ANN. ACM CONF. ON HUM. FACTORS IN COMPUTING SYS. 1895, 1896 (2015); Steinberg, *supra* note 14, at 882.

115. The Kids Online Safety Act ("KOSA") was first proposed in the 2022 Congressional Session by Senators Marsha Blackburn (R-TN) and Richard Blumenthal (D-CT) and was reintroduced in the 2023 Session. Kids Online Safety Act, S. 1409, 118th Cong. § 1 (2023). The bill has been criticized heavily for censorship concerns. See, e.g., STOP KOSA, FIGHT FOR THE FUTURE, <https://www.stopkosa.com> [<https://perma.cc/YTJ9-MYAF>]; Press Release, ACLU, *ACLU Slams Senate Passage of Kids Online Safety Act, Urges House to Protect Free Speech* (July 30, 2024, 1:00 PM), <https://www.aclu.org/press-releases/aclu-slams-senate-passage-of-kids-online-safety-act-urges-house-to-protect-free-speech> [<https://perma.cc/VZ5M-TTNK>].

116. *Meyer v. Nebraska*, 262 U.S. 390, 399–400 (1923).

117. ELISABETH STAKSRUD, CHILDREN IN THE ONLINE WORLD: RISK, REGULATION, RIGHTS 28 (2013), <https://library.oapen.org/bitstream/handle/20.500.12657/75345/9781317167839.pdf> (citing Pia Christensen & A. Prout, *Anthropological and Sociological Perspectives on the Study of Children*, in RESEARCHING CHILDREN'S EXPERIENCE: APPROACHES AND METHODS 42, 42–60 (S. Greene & D. Hogan eds., 2005)).

118. Pietro Ferrara, Ignazio Cammisa, Giovanni Corsello, Ida Giardino, Mehmet Vural, Tudor Lucian Pop, Clara Pettoello-Mantovani, Flavia Indrio & Massimo Pettoello-Mantovani, *Online "Sharenting": The Dangers of Posting Sensitive Information About Children on Social Media*, J. PEDIATRICS 2, June 2023, at 1, 2 ("Even as children grow up, information about their childhood continues to exist, and this can cause emotional damage due to shame or embarrassment over some online content. Despite parents' initial good intentions, the negative consequences of a digital footprint can follow individuals for years after the fact.").

119. Steinberg, *supra* note 14, at 878 ("While the law might never offer children complete protection from their parents' choice to disclose personal information online, society is beginning to recognize that there are inherent safety and moral risks involved in many of today's common parental sharing practices.").

120. Ferrara et al., *supra* note 118, at 2 ("Because of the growing concern about the risks of the internet, parents have begun posting photos of their children in which only the back of the head is visible

alongside online sharing about children.¹²¹ Adults today are the first generation of parents to raise kids alongside social media—understanding the implications of growing up shared can be a complicated task for even the most well-educated parents—and many parents remain un- or underinformed about the risks that come when parents overshare online.¹²² A few informed parents choose to share about their children despite being fully aware of the risks.¹²³

While oversharenting is generally more of a public health concern that demands a public health response, oversharenting can also become a legal concern.¹²⁴ However, unlike typical forms of child endangerment, our legal system is currently ill-equipped to mount an appropriate legal response.

States rarely step in to regulate parental online sharing not only because parents generally have the substantive due process right to make most decisions for their children, but also because of a parent’s First Amendment right to free speech.¹²⁵ Just as courts rarely step in to restrain individuals from posting about matters online generally, courts would be reluctant to step in to restrain a parent from similar conduct.¹²⁶ The right to free speech is very broad, and its role in online sharing is consistent with the right as it is practiced in other contexts. Moreover, not only do individuals have strong free speech rights protecting words already spoken, but courts are also especially reluctant to put a prior restraint on parental speech not yet said.¹²⁷

This analysis is best begun by a brief overview of how courts hesitate to limit speech that has not yet been spoken. This area of law is often

or only after pixelating the child’s face.”).

121. *Id.*

122. STACEY STEINBERG, GROWING UP SHARED: HOW PARENTS CAN SHARE SMARTER ON SOCIAL MEDIA—AND WHAT YOU CAN DO TO KEEP YOUR FAMILY SAFE IN A NO-PRIVACY WORLD 4 (2020).

123. See Katherine Blunt, *The Influencer Is a Young Teenage Girl. The Audience Is 92% Adult Men*, WALL ST. J. (June 15, 2024, 9:00 PM), <https://www.wsj.com/tech/young-influencers-instagram-meta-safety-risks-6d27497e> [<https://web.archive.org/web/20240701093333/https://www.wsj.com/tech/young-influencers-instagram-meta-safety-risks-6d27497e>].

124. Other countries provide children with legal remedies when parents overshare. See, e.g., Loi 2024-120 du 19 Février 2024 Visant à Garantir Le Respect du Droit à l’Image des Enfants [Law 2024-120 of February 19, 2024 Aimed at Guaranteeing Respect for Children’s Image Rights], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 20, 2024, p. 1.

125. See, e.g., *Shak v. Shak*, 144 N.E.3d 274, 279 (Mass. 2020) (“However, as important as it is to protect a child from the emotional and psychological harm that might follow from one parent’s use of vulgar or disparaging words about the other, merely reciting that interest is not enough to satisfy the heavy burden of justifying a prior restraint.”); see also U.S. CONST. amends. I, XIV.

126. See *Shak v. Shak*, 144 N.E.3d at 279; see also U.S. CONST. amends. I, XIV. But see Anna Hagg, *First Amendment Rights or the Best Interests of the Child?: The Tension Between Parents’ and Children’s Rights in Non-Disparagement Agreements*, 56 NEW ENG. L. REV. 79, 82 (2021) (“The U.S. Supreme Court has ruled that protecting children’s well-being and mental health can be a compelling state interest to overcome the unconstitutional presumption against prior restraints.”).

127. *Shak*, 144 N.E.3d at 279–80.

governed by what is known as the doctrine of prior restraint.¹²⁸ Under the doctrine, the state cannot prohibit “the publication of speech prior to its distribution, including orders to remove an expression that has already been published.”¹²⁹ There are exceptions to the prior restraint doctrine. As Ariel Bendor and Michal Tamir write, courts have approved prior restraints where

the speech is deemed obscene, where a prior restraint is needed to fulfill the right to a fair trial, where the expression is part of an unprotected commercial speech, where the speech was part of a continuing course of conduct, and where the expression could endanger national security in time of emergency. Courts have also approved prior restraint in order to protect privacy, in order to prevent employment discrimination, in order to protect property, in order to regulate public forums, and in order to prevent misleading commercial expressions.¹³⁰

In the context of sharenting, prior restraint would generally bar the state from prohibiting a parent from speaking in the virtual world about their child, much as it would do in the brick-and-mortar world.¹³¹ It would also stop the state from being able to require speech made by parents to be removed from social media, absent significant exigent circumstances.¹³²

Thus, one can understand why parents have such wide latitude to share online about their children. At least two constitutional principles are at play for parents—both their Fourteenth Amendment right to raise their children as they see fit and their First Amendment right to free speech.

128. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931).

129. The doctrine only applies in instances where the state is trying to restrict speech. *See* Ariel L. Bendor & Michal Tamir, *Prior Restraint in the Digital Age*, 27 WM. & MARY BILL RTS. J. 1155, 1156–59 (2019) (“The Doctrine of Prior Restraint applies to the government and courts only.”). But private online platforms, such as Facebook, X, and YouTube, are not subject to the doctrine and generally are allowed to censor publications or use them in accordance with their terms and conditions or as the platform sees fit. *See id.* at 1159; Andrew Tutt, *The New Speech*, 41 HASTINGS CONST. L.Q. 235, 238 (2014).

130. Bendor & Tamir, *supra* note 129, at 1161–62 (first citing *Nebraska Press Ass’n v. Stuart*, 427 U.S. 538, 569–70 (1976); then citing *San Antonio Cmty. Hosp. v. S. Cal. Dist. Council of Carpenters*, 125 F.3d 1230, 1239 (9th Cir. 1997); then citing *Lothschuetz v. Carpenter*, 898 F.2d 1200, 1208–09 (6th Cir. 1990); then citing *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971); then citing Alexander Tsesis, Essay, *Terrorist Speech on Social Media*, 70 VAND. L. REV. 651, 692 (2017); then citing *Porco v. Lifetime Entm’t Servs., LLC*, 116 A.D.3d 1264, 1266 (N.Y. App. Div. 2014); then citing *Aguilar v. Avis Rent A Car Sys., Inc.*, 980 P.2d 846, 875 (Cal. 1999); then citing *Barlow v. Sipes*, 744 N.E.2d 1, 8–9 (Ind. Ct. App. 2001); then citing *Advanced Training Sys., Inc. v. Caswell Equip. Co., Inc.*, 352 N.W.2d 1, 11 (Minn. 1984); then citing *Guion v. Terra Mktg. of Nev., Inc.*, 523 P.2d 847, 848 (Nev. 1974); then citing *Mazzocone v. Willing*, 369 A.2d 829, 831 (Pa. Super. Ct. 1976), *rev’d*, 393 A.2d 1155 (Pa. 1978); then citing *Thomas v. Chi. Park Dist.*, 534 U.S. 316, 325 (2002); then citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 571 n.13 (1980); and then citing *Amalgamated Acme Affiliates, Inc. v. Minton*, 33 S.W.3d 387, 395 (Tex. App. 2000)).

131. *See* Steinberg, *supra* note 44, at 453–59.

132. *See e.g., Shak*, 144 N.E.3d at 279–80.

Of course, there are times when even the Constitution will not protect parents who share online.¹³³ Generally, this is limited to criminal behavior. A parent sharing child sexual abuse material, for example, would receive no protection under the First or Fourteenth Amendments and could be prosecuted to the fullest extent of the law.¹³⁴ While the First Amendment allows individuals to create, view, and share pornographic material, it offers no protection to those who create or share child sexual exploitation material, nor does it protect those who view or share such illicit material.¹³⁵ And while the Fourteenth Amendment allows parents much discretion to raise their child as they see fit, they do not have the right to sexually abuse their child or to allow others to do so.¹³⁶

Every time a parent chooses to share online about their child, they make a decision that has the potential to have lasting consequences for their child.¹³⁷ When parents choose to share embarrassing information, for example, it could come to the child's attention in unexpected ways.¹³⁸ A well-meaning friend of the parent could misinterpret the information and see it as a joke, later sharing it with the child in a public setting.¹³⁹ Children of

133. See Stacey Steinberg, *Changing Faces: Morphed Child Pornography Images and the First Amendment*, 68 EMORY L.J. 909, 911 (2019).

134. *Id.*

135. See *New York v. Ferber*, 458 U.S. 747, 764 (1982) (holding child pornography is not in the realm of First Amendment protection); *Osborne v. Ohio*, 495 U.S. 103, 109–11 (1990) (extending *Ferber* to permit states to criminalize the possession of child pornography).

136. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS., DEFINITIONS OF CHILD ABUSE AND NEGLECT 5 (2025), <https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes/define> [<https://perma.cc/7HRL-P6KT>].

All States . . . include sexual abuse in their definitions of child abuse. Some States refer in general terms to sexual abuse, while others specify various acts as sexual abuse. Sexual exploitation is an element of the definition of sexual abuse in most jurisdictions. Sexual exploitation includes allowing the child to engage in prostitution or in the production of child pornography.

Id.

137. See Alicia Blum-Ross & Sonia Livingstone, "Sharenting," *Parent Blogging, and the Boundaries of the Digital Self*, 15 INT'L J. MEDIA & CULTURE 110 (2017); Steinberg, *supra* note 26; Maja Sonne Damkjaer, *Sharenting = Good Parenting?: Four Parental Approaches to Sharenting on Facebook*, in DIGITAL PARENTING: THE CHALLENGES FOR FAMILIES IN THE DIGITAL AGE 209 (Giovanna Mascheroni et al. eds., 2018); see also L. Lin Ong, Alexa K. Fox, Laurel Aynne Cook, Claire Bessant, Pingping Gan, Mariea Grubbs Hoy, Emma Nottingham, Beatriz Pereira & Stacey Barell Steinberg, *Sharenting in an Evolving Digital World: Increasing Online Connection and Consumer Vulnerability*, 56 J. CONSUMER AFFS. 1106 (2022).

138. Gaëlle Ouvrein & Karen Verswijvel, *Sharenting: Parental Adoration or Public Humiliation? A Focus Group Study on Adolescents' Experiences with Sharenting Against the Backdrop of Their Own Impression Management*, 99 CHILD. & YOUTH SERVS. REV. 319 (2019).

Adolescents on the other hand, are very serious about the consequences of embarrassing posts. They did not only describe the implications in the short run, but also referred to how this might stand in their way when looking for a job. Some scholars referred in this context to digital tattoos made by parents, instead of digital footprints.

Id.

139. *Id.*

the well-meaning friend could use their parent's phone and see the content, later using it to tease or bully the child who was the subject of the embarrassing post.¹⁴⁰ If the information is shared publicly, the parent has no control over how the information is used in the future.¹⁴¹ If a parent shares the information "privately" with a limited audience, the parent may think they can control the spread of the information.¹⁴² But even when parents feel a sense of security by sharing on a "friends only" account or with a limited audience, such a comforting feeling may not be warranted as information can be saved and shared in many ways—coming back to hurt the child years into the future.¹⁴³

Online parental sharing geared toward building community may best be termed as sharenting to obtain social capital. Some parents "sharent" not only to build social capital within their network, but also in pursuit of financial capital, which requires them to entice and entertain a wider audience. In both instances, parents play the role of gatekeeper and gate-opener for their children's personal information.¹⁴⁴ Parents act as gatekeepers when they protect a child's personal information and as gate-openers when they share a child's personal information.¹⁴⁵ When parents are building financial capital through sharing children's content, parents are often moving beyond typical

140. *Id.*

141. Emma Nottingham, 'Dad! Cut that Part Out!' *Children's Rights to Privacy in the Age of 'Generation Tagged': Sharenting, Digital Kidnapping and the Child Micro-Celebrity*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF YOUNG CHILDREN'S RIGHTS 183, 189 (Jane Murray, Beth Blue Swadener & Kylie Smith eds. 2019) ("When parents infringe their children's privacy through 'sharenting', parent blogs or family vlogging, children lose the protectors of their privacy, since they cannot easily assert their own rights. This is especially the case for young children who might not be aware of what is happening until they are older and who are not in a position to discuss their concerns with their parents.").

142. However, information shared with a small group could later be reshared more publicly. See Michel Walrave, Sofie Robbé, Luna Staes & Lara Hallam, *Mindful Sharenting: How Millennial Parents Balance Between Sharing and Protecting*, FRONTIERS PSYCH., July 25, 2023, at 1, 2 ("Moreover, as sharenting within an online networked environment makes children's personal information available to online contacts, the recipients can also share this information with a wider audience.").

143. Nottingham, *supra* note 142, at 189–90.

Children in this situation are also at risk of harms developing in the future, including emotional harm, once they discover that images, videos or information about themselves have been posted on social media by their parents. Information about a child could also be stolen by fraudsters who will open up accounts in a child's name, having accumulated and stored information about a child throughout their entire life up until adulthood.

Id.

144. This presents another unique danger to sharenting online: without a publisher, agent, or journalist on the other side of the table being seen as an opposing party in negotiations, the parent's protective role is particularly at risk of being understated and underutilized. See, e.g., Steinberg, *supra* note 14, at 870–71 (explaining that the Children's Online Privacy Protection Act places parents in the role of gatekeeper and gate-opener when third parties share information online about their children).

145. *Id.*

sharenting¹⁴⁶ and the children become a commodity, one measured either via social capital or through financial gain.¹⁴⁷

B. HOW THE U.S. TRIES (AND FAILS) TO PROTECT CHILDREN'S PRIVACY ONLINE

There are many threats to children's online privacy and governments have attempted to protect them in many ways. Individual states have enacted laws that protect children's privacy in a handful of narrow situations, few of which pertain to sharenting.¹⁴⁸ The federal government has tried to enact legislation to protect children online, but most of these efforts have repeatedly failed to become law.¹⁴⁹ Internationally, the United Nations Committee on the Rights of the Child issued General Comment No. 25, *Children's Rights in Relation to the Digital Environment*, to better recognize children's rights and needed protections online.¹⁵⁰ And many countries have acted to protect children's privacy through legislation that prohibits the

146. Ana Jorge, Lidia Marôpo & Filipa Neto, 'When You Realise Your Dad Is Cristiano Ronaldo': *Celebrity Sharenting and Children's Digital Identities*, 25 INFO., COMMUN & SOC'Y 516, 531 (2022), ("The breadth, visibility, persistence, and replicability of content, particularly visual content, generated by celebrity sharenting make it substantially different from sharenting by influencers or ordinary parents.").

147. Bayan Kojok, *Reinventing Child Labour: A Contemporary Analysis of Children's Participation in the Digital Labour Economy* 23 (Oct. 7, 2022) (M.A. Major Research Paper, University of Windsor) (on file with Scholarship @ UWindsor).

The profitability of being a social media influencer combines with the profitability of priceless and innocent childhood when we consider the market segment of mothers. This is a market that is built on emotion, as participation stems from a myriad of feelings, ranging from uncertainty to helplessness. Much like the aforementioned act of self-disclosure, mothers share their real-life mothering experiences online, which in turn gain traction with other mothers who went through similar experiences. This built a sense of community amongst the bloggers and readers, which inadvertently formed a relationship built on trust.

Id.

148. See, e.g., FLA. STAT. § 501.1735 (2024) (regulating access to social media websites for children 14 or 15 years of age or younger, with an exception for those with parental consent); Cal. Bus. & Prof. Code § 22581 (2015) (requiring website operators to permit minors to remove content posted by the minor but not content posted about the minor by third parties, including parents).

149. For an overview of past efforts in this space, see Zackary Blanton, Mark Gnatowski, Madison Jenkins, Rachel Kagan, Anabelle Roy, Libby Shaw, Bri Wendol & Monica Wilson-Reid, *Children's Online Privacy: An Overview of How Young People Use Social Media and How Lawmakers Seek to Better Protect and Empower Families Online* (Gator TeamChild Juv. L. Clinic, Working Paper No. 1, 2022).

150. See Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, at ¶ 67, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

Privacy is vital to children's agency, dignity and safety and for the exercise of their rights. Children's personal data are processed to offer educational, health and other benefits to them. Threats to children's privacy may arise from data collection and processing by public institutions, businesses and other organizations, as well as from such criminal activities as identity theft. Threats may also arise from children's own activities and from the activities of family members, peers or others, for example, by parents sharing photographs online or a stranger sharing information about a child.

Id.

sharing of children's content in certain circumstances, even punishing offenders with jail time.¹⁵¹

In the United States, COPPA is the key piece of legislation aimed at protecting children online.¹⁵² However, this Act, signed into law in 1998 and updated in 2012, is woefully inadequate to protect children's information online in the current atmosphere.¹⁵³ The internet is a very different place than it was in 1998 or 2012, and the Act does little to keep kids safe on the many websites they engage with today (such as Google and YouTube).¹⁵⁴ It does absolutely nothing to protect children when their parents are the ones acting to invade their privacy.¹⁵⁵ In fact, COPPA, like many state laws focused on children's online privacy, places parents in the driver's seat, tasking them with deciding who can collect, save, and disseminate a child's information online.¹⁵⁶

151. See, e.g., Loi 2024-120 du 19 Février 2024 Visant à Garantir le Respect du Droit à l'Image des Enfants (1) [Law 2024-120 of February 19, 2024 Aimed at Guaranteeing Respect for Children's Image Rights], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 20, 2024, p. 103; Laura Kayali, *France Aims to Protect Kids from Parents Oversharing Pics Online*, POLITICO (Feb. 28, 2023, 8:05 PM), <https://www.politico.eu/article/emmanuel-macron-france-law-aims-to-protect-kids-against-oversharing-parents> [https://perma.cc/UAE2-9ZTP]; Sophia Khatsenkova, 'Sharenting': *Why is France Trying to Stop Parents from Oversharing Their Children's Images Online?*, EURONEWS (Oct. 3, 2023, 11:16 AM), <https://www.euronews.com/next/2023/03/10/sharenting-why-is-france-trying-to-stop-parents-from-oversharing-their-childrens-images-on> [https://perma.cc/2JET-7U5C]; *France's Parliament Votes on Law to Protect Children's Images Online*, THE LOCAL FRANCE (Mar. 7, 2023), <https://www.thelocal.fr/20230307/frances-parliament-votes-on-law-to-protect-childrens-images-online> [https://web.archive.org/web/20230509012355/https://www.thelocal.fr/20230307/frances-parliament-votes-on-law-to-protect-childrens-images-online].

The bill would expand on France's existing privacy laws and the idea of a *vie privée* (private life). Under the purview of parental authority and responsibilities, the law would make it so that parents have a duty to respect their child's private life. By extension, it aims to build upon the "right to one's own image" for the child, stating that it must be respected by both parents, while also taking into account the opinion of the child. Should the parents disagree, then the text (as it is currently written) would allow for a judge to potentially prohibit one parent from publishing or posting any content without the other's authorisation. In the most serious cases—where there is "injury to the child's dignity"—the law could allow for a judge to be entrusted with the image rights for the child.

Id.

152. See Children's Online Privacy Protection Act of 1998, 15 U.S.C §§ 6501.

153. See Steinberg, *supra* note 14, at 441 ("United States federal and state laws are ill-equipped to truly offer children online privacy protections. There are few legal remedies available to young people whose data is used in malicious ways. The remedies that do exist are insufficient to simultaneously safeguard children while respecting privacy as young people mature.").

154. Google provides an overview to help content creators determine whether their material is subject to COPPA. See *Determining if Your Content Is "Made for Kids"*, YOUTUBE HELP, <https://support.google.com/youtube/answer/9528076?hl=en> [https://perma.cc/65D7-LGL9].

155. Steinberg, *supra* note 14, at 473 ("Young people need privacy both outside and within the home. U.S. views on children's privacy almost always give parents unfettered control to monitor children as well as to share about their children publicly without first obtaining any form of consent.").

156. *Id.*

COPPA sets forth requirements for online service providers to follow when their website is geared toward children under the age of thirteen.¹⁵⁷ If an online service provider seeks to engage this age group on its platform, the provider must take steps to protect the user's personal information.¹⁵⁸ To that end, the law requires that any online provider directing its website to children or collecting and maintaining personal information about a child must:

(a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information;¹⁵⁹

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children;¹⁶⁰

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance;¹⁶¹

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity;¹⁶² and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.¹⁶³

While COPPA provides some meaningful protections for young people, it remains significantly flawed.¹⁶⁴ COPPA does not provide young people with a private cause of action against website operators who violate their privacy.¹⁶⁵ It does not provide young people with a meaningful way to request deletion of the information they have shared with third parties or the public.¹⁶⁶ COPPA provides young people with no protection from parents who overshare or allow others to overshare without the young person's consent.¹⁶⁷ And it completely ignores the largest demographic of young

157. See Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–06.

158. *Id.*

159. 16 C.F.R. § 312.4(b).

160. 16 C.F.R. § 312.5.

161. 16 C.F.R. § 312.6.

162. 16 C.F.R. § 312.7.

163. 16 C.F.R. § 312.8.

164. Steinberg, *supra* note 14.

165. *Id.*; see also 15 U.S.C. § 6501.

166. 15 U.S.C. § 6501.

167. *Id.*

people online, teenagers, as it defines “child” as a person under the age of thirteen.¹⁶⁸

Ultimately, the federal government has failed to respect a young person’s online privacy and has failed to pass legislation holding online companies accountable when children are harmed due to or through online conduct. To fill the void left by lax federal laws in this space, many states have entered this space, attempting to create new laws that both recognize a child’s interest in online privacy and the state’s role in holding third parties accountable for online harm.¹⁶⁹ While these laws are an important step in protecting children online, they also have significant flaws of their own. One issue these laws present is the question of federal preemption. However,

[t]he Ninth Circuit recently held that the Children’s Online Privacy Protection Act, which gives the Federal Trade Commission authority to regulate the online collection of personal information from children under the age of 13, does not preempt consistent state law, potentially increasing the risk of class action litigation based on alleged COPPA violations.¹⁷⁰

The state law claims in *Jones v. Google LLC* provided families with a potential private cause of action for conduct that also violated COPPA.¹⁷¹

Another issue is that state laws aimed at protecting children online vary. Florida passed a law in 2024 that prohibits social media sites from allowing individuals under the age of fourteen to create accounts.¹⁷² It gives parents the authority to decide whether their fourteen- and fifteen-year-olds can use the social media platform.¹⁷³ Florida’s new law also “requires pornographic or sexually explicit websites to use age verification to prevent minors from accessing sites that are inappropriate for children.”¹⁷⁴ Like COPPA, most

168. *Id.*

169. Steinberg, *supra* note 14, at 461 (“States have stepped in to fill the gaps left open by federal lawmakers. The laws in this area are relatively new, infrequently enforced, and challenging for many families, lawyers, and even judges to understand.” (footnote omitted)).

170. Amy Heath & Kathryn Cahoy, *Ninth Circuit Holds COPPA Does Not Preempt Consistent State Law Claims Premised on COPPA Violations*, COVINGTON & BURLING LLP: INSIDE PRIVACY (Jan. 17, 2023), <https://www.insideprivacy.com/childrens-privacy/ninth-circuit-holds-coppa-does-not-preempt-consistent-state-law-claims-premised-on-coppa-violations> [<https://perma.cc/VM8G-85QB>] (discussing *Jones v. Google LLC*, 56 F.4th 735 (9th Cir. 2022)); *see also* Steinberg, *supra* note 14, at 464.

Without expressly stating that it disagreed with the courts in *Hubbard* and *H.K. Farewell*, the Ninth Circuit opined that since the state laws at issue were not inconsistent with the goals of COPPA, the state claims could move forward. A rehearing was recently denied. This is a good example of how novel these issues are for courts, leaving much confusion for policymakers and families.

Id. (footnotes omitted).

171. *See Jones v. Google LLC*, 56 F.4th 735, 738–39 (9th Cir. 2022).

172. FLA. STAT. § 501.1736 (2024).

173. *Id.*

174. Desantis, *supra* note 47; FLA. STAT. § 501.1737 (2024).

state laws place parents in control of their children's personal information when it is shared online, whether by the young person or by others. Husch Blackwell LLP, a law firm that provides services to multiple types of businesses, offers a state privacy law tracker, which is regularly updated to provide overviews of new state laws that are being introduced to provide protections for young people online.¹⁷⁵ California, Connecticut, and Florida are three states with new laws specifically focused on children's privacy.¹⁷⁶ Colorado, Hawaii, Illinois, Maryland, Minnesota, New Mexico, New York, Pennsylvania, South Carolina, Vermont, Virginia, and West Virginia all have or have had pending legislation in this arena.¹⁷⁷

Whether state or federal, most existing and proposed laws in this space recognize the central role of parents in controlling the upbringing of their children.¹⁷⁸ The laws give parents the ability to control the flow of information others share online about their kids,¹⁷⁹ require "verifiable parental consent,"¹⁸⁰ and provide parents with mechanisms to receive notice of how their children's information is being used online.¹⁸¹ But these laws do not limit what parents share about their children online, nor do they limit how parents might harm their children through their own online conduct. They do not curtail parents' rights at all and generally do not contemplate situations where parents may be the perpetrators violating the rights of their own children.¹⁸²

175. 2024 *State Children's Privacy Law Tracker*, HUSCH BLACKWELL, <https://www.huschblackwell.com/2024-state-childrens-privacy-law-tracker> [https://perma.cc/5PGB-XCNQ].

176. See Shelby Dolen, *Children's State Privacy Law Update and Tracker Released*, BYTE BACK: HUSCH BLACKWELL'S DATA PRIV. & CYBERSECURITY LEGAL RES. (Jan. 25, 2024), <https://www.bytebacklaw.com/2024/01/childrens-state-privacy-law-update-and-tracker-released> [https://perma.cc/3QRW-QZCJ].

177. *Id.*

178. See, e.g., FLA. STAT. § 501.1736 (2024). *But cf.* CAL. CIV. CODE § 1798.99.31(a)(8) (2022) ("If the online service, product, or feature allows the child's parent, guardian, or any other consumer to monitor the child's online activity or track the child's location, provide an obvious signal to the child when the child is being monitored or tracked.").

179. See FLA. STAT. § 501.1736(3)(b)(3) (2024) ("A social media platform shall . . . [a]llow the confirmed parent or guardian of an account holder who is 14 or 15 years of age to request that the minor's account be terminated. Termination must be effective within 10 business days after such request."). For further discussion, see generally Naomi Cahn, *Trusting Remedies for the Child Influencer Space: Blocked Trust Accounts and Child-Beneficiaries*, 17 DREXEL L. REV. 971 (2025).

180. 15 U.S.C. § 6501(9).

The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

Id.

181. *Id.*

182. See generally Blunt, *supra* note 123.

That said, the Illinois state legislature was the first state to recognize that there are times when a parent's use of social media may present a risk of harm to children.¹⁸³ That law

provides that a vlogger who features a minor child in a specified amount of the vlogger's content shared on an online platform must set aside a specified amount of gross earnings on the video content in a trust account to be preserved for the benefit of the minor upon reaching the age of majority.¹⁸⁴

The law applies to all influencers whose content features children in this way, not just to parents, but importantly does not provide a parental consent bypass mechanism, as some other legislation in the children's privacy arena does. This law, like California's Coogan Law, protects the earnings of child performers.¹⁸⁵ Other states are following suit,¹⁸⁶ and the Uniform Law Commission is studying the viability of a model law that other states can adopt to protect the earnings of child influencers.¹⁸⁷

One issue that has been underexplored in legal scholarship or court opinions is that of parental rights in the context of employment contracts governed by Coogan Law-type protections for minors. While parents generally can control the upbringing of their children and direct their involvement and relationships with others, a parent's signature on an

183. Originally passed in 2023 as 820 ILL. COMP. STAT. 205/2.6, 12.6 (Pub. Act 103-0556, eff. July 1, 2024), the law has been repealed and replaced within a larger overhaul of Illinois' child labor regime. See Child Labor Law of 2024, Pub. Act 103-0721, § 95, ILL. COMP. STAT. 206/95; see also Kate Walter, *Illinois Legislation First to Protect the Children of Influencers*, THE DAILY NORTHWESTERN (Sept. 27, 2023), <https://dailynorthwestern.com/2023/09/27/lateststories/illinois-legislation-first-to-protect-the-children-of-influencers> [<https://perma.cc/4WMS-S9WX>] ("The law applies to children featured in 30% of their parents' content over a 30-day period. It requires influencers to share their earnings with children featured in the content if it earns at least 10 cents per view.")

184. NAT'L CONF. OF STATE LEGISLATURES, *Social Media and Children 2023 Legislation Summary* (Jan. 26, 2024), <https://www.ncsl.org/technology-and-communication/social-media-and-children-2023-legislation> [<https://web.archive.org/web/20250926130805/https://www.ncsl.org/technology-and-communication/social-media-and-children-2023-legislation>].

185. Kate Walter, *Illinois Legislation First to Protect the Children of Influencers*, DAILY NORTHWESTERN (Sep. 27, 2023), <https://dailynorthwestern.com/2023/09/27/lateststories/illinois-legislation-first-to-protect-the-children-of-influencers> [<https://perma.cc/5YS5-3ADN>].

186. See Fortesa Latifi, *These States Are Trying to Require Influencer Parents to Pay Their Kids*, TEEN VOGUE (Feb. 1, 2024), <https://www.teenvogue.com/story/these-states-are-trying-to-require-influencer-parents-to-pay-their-kids> [<https://perma.cc/E259-TZNZ>].

In what seems like indication of a tide change over the last month, at least six other states—Maryland, California, Georgia, Missouri, Ohio, and Arizona—have introduced legislation that would mirror Illinois's groundbreaking legislation that entitles child influencers under the age of 16 to "at least 30% of the [adult vlogger's] compensated video content produced within a 30-day period [which] included the likeness, name, or photograph of the minor," if the content meets a certain monetization threshold.

Id. See also Cahn, *supra* note 179.

187. *Child Digital Entertainers Committee*, UNIF. L. COMM'N (2024), <https://www.uniformlaws.org/committees/community-home?communitykey=c9b45313-8cf8-4494-a04f-01948aa53caa> [<https://perma.cc/W755-9739>].

entertainment contract is not binding on the minor child.¹⁸⁸ Parents can be charged with a misdemeanor if they violate child labor laws governing a child's working hours.¹⁸⁹ However, when the parent is the one setting the hours for a child to be engaged in video-taking activity for monetized sharenting, federal labor laws do not apply.¹⁹⁰

A literature review suggests there are few cases discussing the intersection of child abuse and neglect proceedings and the role of parents in managing a child's entertainment career.¹⁹¹ However, the Court of Appeal for the Fourth District of California did have an opportunity to explore this space in *Suleman v. Superior Court*.¹⁹² Suleman is the mother to octuplets, born in 2009.¹⁹³ The family was the subject of much media attention—Suleman being colloquially known as “Octomom”¹⁹⁴—and has had multiple business opportunities stemming from their unique family. A stranger to the family, Paul Petersen, filed a petition seeking appointment of a guardian of the octuplets' estates to protect the children's financial interests.¹⁹⁵ The court found the allegations in the petition “insufficient to infringe on a parent's

188. Bonnie E. Berry, *Practice in a Minor Key*, L.A. LAW., May 2002, at 29, 31.

However, a parental signature does not validate an entertainment contract with a minor that has not been court approved. If the legislature intended that a parent's signature would serve the same purpose as obtaining court confirmation pursuant to Family Code Section 6751, it is highly unlikely anyone would ever need to petition the court for approval. The intent of the legislature was to allow judicial scrutiny of entertainment agreements involving minors in order to determine the reasonableness and fairness of the provisions contained in each agreement. If a parent's acceptance and execution of the agreement were sufficient, there would be no need for the judicial supervision mandated by the legislature. Additionally, for public policy reasons, an agreement is not enforceable against the minor simply because it contains a parental signature. To enforce a contract obligating a minor to perform promotes involuntary servitude.

Id.

189. *Id.* at 31 (“Parents and employers who violate [provisions outlined by California's Division of Labor Standards Enforcement] can be charged with a misdemeanor.”).

190. Federal child labor laws do not account for this kind of labor, and several states have now legislated on child labor for social media. *See supra* notes 181, 184. Compare 29 U.S.C. § 203(l)(1) (stating that minors are exempt from child labor laws where they are “[e]mploy[ed] by a parent or a person standing in a parent's place of his own child or a child in his custody under the age of sixteen years in any occupation other than manufacturing, mining, or an occupation found by the Secretary to be particularly hazardous . . .”), with 820 ILL. COMP. STAT 206/95 (providing regulation for paying children who are featured in content being produced by someone other than themselves).

191. *See Berry, supra* note 186, at 31.

192. *Suleman v. Superior Ct.*, 180 Cal. App. 4th 1287 (2010).

193. *Id.* at 1291.

194. *See* octoMOM and the Octuplets (@nataliesuleman), INSTAGRAM, <https://www.instagram.com/nataliesuleman/?hl=en> [https://perma.cc/Z63Y-L6VF].

195. *Suleman*, 180 Cal. App. 4th at 1291.

civil rights or to rebut the presumption under California law that a parent is competent to manage the finances of his or her children.”¹⁹⁶

The court considered the role of the guardianship court in providing for the safety and well-being of the children, recognizing that dependency proceedings also exist to look out for the “safety and well-being of children.”¹⁹⁷ But unlike a dependency proceeding, which is initiated by the state, a guardianship proceeding is initiated by a private party. Once a private party initiates such a proceeding, a court must determine if the parent can care for his or her own children without intervention.¹⁹⁸ If a parent lacks the capacity to do so, a court may appoint a guardian.¹⁹⁹ The court explained that “[t]he right to raise one’s own children as one sees fit is a matter of federal due process.”²⁰⁰ Citing *Prince v. Massachusetts*, it reiterated that

[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. And it is in recognition of this that these decisions have respected *the private realm of family life which the state cannot enter*.²⁰¹

Suleman is notable for three reasons. First, it recognizes the intersection of child welfare law and guardianship matters relevant to children who engage with the entertainment industry. While the Suleman octuplets rose to fame before kid and mom-influencing took center stage on social media, third parties voiced concern about their well-being and sought out a mechanism to provide for their safety. Next, the case noted the importance of a parent’s right to control the upbringing of their children at the outset, not even providing the third party or the court leeway to enter the private space of family life as referenced in *Prince*. Lastly, the case highlights that, while a scheme did exist to investigate and remedy abuse or neglect, a third party such as Petersen lacked standing to initiate this particular investigation.²⁰²

196. *Id.*

197. *Id.* at 1295 (“The Welfare and Institutions Code creates a statutory scheme that grants broad powers for the exercise of a court’s jurisdiction to intervene in familial relationships, in order to protect the safety and well-being of children.”).

198. *Id.*; *see also* *Campbell v. Wright*, 130 Cal. 380, 383 (1900) (“[T]he prima facie presumption is that the parent is competent; and hence the court is not authorized to appoint another as guardian, unless it finds to the contrary.”).

199. *Id.* at 1297.

200. *Id.* at 1296.

201. *Id.* (emphasis added) (citing *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

202. *Id.* at 1300 (“A petition must contain ultimate facts, not speculation as to what circumstances might exist. It is the burden of the petitioner to plead those facts. Petersen’s probate petition stands or falls on its own merits, and it is manifestly inadequate.”).

This scheme is vastly different from the scheme most states use to initiate child abuse and neglect investigations. Inherent in child abuse and neglect reporting requirements is the general principle that *anyone* who “*has reasonable cause to suspect*” child abuse or neglect must report it, and some even designate certain third parties as mandatory reporters.²⁰³ While Petersen lacked standing under California’s guardianship laws to initiate an investigation as to Suleman’s failure to protect her children, all individuals have standing to call a state child abuse hotline. Moreover, while Petersen’s petition failed for lack of factual allegations, reasonable suspicion is all that is needed to make a hotline call—in fact, individuals are encouraged to report suspected abuse even when they personally do not have evidence of whether the abuse occurred or not.²⁰⁴ It is for the state to conduct the investigation and bring forth facts if they indeed exist.²⁰⁵

When someone in the United States believes that a parent is placing their child at risk of harm due to their sharenting practices, they may call the state’s child abuse and neglect hotline.²⁰⁶ However, the state hotline is unlikely to accept such a call, as the risks of oversharenting are unlikely to

203. See, e.g., FLA. STAT. § 39.201.

[P]erson is required to report immediately to the central abuse hotline established in s. 39.101, in writing, through a call to the toll-free telephone number, or through electronic reporting, if he or she knows, or has reasonable cause to suspect, that any of the following has occurred: a. Child abuse, abandonment, or neglect by a parent or caregiver, which includes, but is not limited to, when a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare or when a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide such supervision and care. b. Child abuse by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child’s welfare. The central abuse hotline must immediately electronically transfer such reports to the appropriate county sheriff’s office. 2. Any person who knows, or has reasonable cause to suspect, that a child is the victim of sexual abuse or juvenile sexual abuse shall report such knowledge or suspicion to the central abuse hotline, including if the alleged incident involves a child who is in the custody of or under the protective supervision of the department.

Id.

204. VA. DEP’T OF SOC. SERVS., A GUIDE FOR MANDATED REPORTERS IN RECOGNIZING AND REPORTING CHILD ABUSE & NEGLECT 21 (July 2019), https://www.dss.virginia.gov/family/cps/mandated_reporters/cwse5691/story_content/external_files/Mandated%20Reporter%20Guide.pdf [<https://perma.cc/U6A4-9NBU>].

The purpose of mandated reporting is to identify suspected abused and neglected children as soon as possible so that they can be protected from further harm. CPS cannot act until a report is made. As a mandated reporter, you play a critical role in preventing any future harm to children. Without detection, reporting, and intervention, these children may remain victims for the rest of their lives. Abused children don’t just grow up and forget their childhood. They can carry physical and emotional scars throughout their lives, and may repeat the pattern of abuse or neglect with their own children.

Id.

205. *Id.*; see also *About the Florida Abuse Hotline*, FLA. DEPT. OF CHILD. & FAMILIES, <https://www.myflfamilies.com/services/abuse-hotline/about> [<https://perma.cc/F9F7-XAWX>] (“The Florida Abuse Hotline serves as the central reporting center for allegations of abuse, neglect, and/or exploitation for all children and vulnerable adults in Florida.”).

206. See, e.g., FLA. DEP’T OF CHILD. & FAMS., *supra* note 7, at 10.

fall under state definitions of child abuse or neglect.²⁰⁷ Even if the hotline call is accepted, state investigators lack the training necessary to assess the risk of harm caused by the parent's sharenting practices. Child welfare professionals lack the tools to provide family preservation services²⁰⁸ when parents lack information about the harms of oversharenting. And state attorneys, child welfare attorneys, and judges lack legal mechanisms to hold parents accountable when their over-sharing causes significant harm to their children.²⁰⁹

C. INTERNATIONAL APPROACHES TO PROTECTING CHILDREN'S ONLINE PRIVACY

With the exception of the United States, all United Nations member countries are parties to the United Nations Convention on the Rights of the Child.²¹⁰ As parties to this Convention, our international peer countries are also guided by General Comment No. 25 of the Committee on the Rights of the Child, on Children's Rights in Relation to the Digital Environment.²¹¹ This document outlines the rights young people hold when engaging online and when others engage in online behavior that could impact them, such as parental online sharing.²¹² While sharenting is not mentioned by name, the document acknowledges the concept, discussing how a child's right to privacy could be violated not only by individuals outside of the home, but also by those closest to them within the home, specifically including their own parents. Recognizing that children may at times need privacy from their parents, General Comment No. 25 states, "[t]hreats may also arise from children's own activities and from the activities of family members, peers or others, for example, by parents sharing photographs online or a stranger sharing information about a child."²¹³

207. *Id.* at 6–8; VA. DEP'T SOC. SERVS., *supra* note 204, at 3. It also may not be clear where the sharenting is taking place.

208. *See, e.g.*, VA. DEP'T SOC. SERVS., *supra* note 204, at 29.

209. *See, e.g.*, FLA. STAT. § 39.201.

210. The United States signed the Convention in 1995 but remains the only UN member state that has not ratified it. *See* Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter UNCRC]; *see also* United Nations Treaty Collection, <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> [<https://perma.cc/ZT3A-PCSB>] (listing signatories and ratification status).

211. U.N. Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

212. *Id.* at ¶ 11.

213. *Id.*

Data may include information about, inter alia, children's identities, activities, location, communication, emotions, health and relationships. Certain combinations of personal data, including biometric data, can uniquely identify a child. Digital practices, such as automated data processing, profiling, behavioural targeting, mandatory identity verification, information filtering and mass surveillance are becoming routine. Such practices may lead to arbitrary or

Moreover, the international community recognizes that much of the information parents share online about their children may implicate data protection laws.²¹⁴ When the European Union first drafted the General Data Protection Regulation,²¹⁵ it considered the issue of parents (and others) sharing personal data on social media, and ultimately decided that such information, shared for personal or household purposes, would be excluded from regulation.²¹⁶ However, sharing for commercial purposes, such as what this Article considers “beyond sharenting,” would be regulated, as such behavior is considered using personal information for commercial purposes.²¹⁷ While in the United States such online disclosures are viewed as speech, the European Union views the content as a form of data.²¹⁸ As such, the European Union can regulate and protect such data in many ways the United States cannot. Additionally, the right to privacy in many countries is recognized as an important right that often must be balanced against another’s right to free speech.²¹⁹ This offers individuals outside of the United States greater privacy protections than they experience stateside.²²⁰

unlawful interference with children’s right to privacy; they may have adverse consequences on children, which can continue to affect them at later stages of their lives.

Id.

214. Sheila Donovan, “Sharenting”: *The Forgotten Children of the GDPR*, 4 PEACE HUM. RTS. GOVERNANCE 35, 45–46 (2020) (“‘Sharenting’ has not, as yet, been analysed by the European Court of Human Rights and in the event of that occurring, it is anticipated that the Court might attempt to balance the child’s right to privacy and the parent’s right to freedom of expression . . .”).

215. Regulation 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 Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), art. 83(5), 2016 O.J. (L 119) 1 [hereinafter GDPR].

216. GDPR, *supra* note 215, art. 2(2)(c); *see also id.* recital 18.

217. Claire Bessant & Maximilian Schnebbe, *Does the GDPR Offer a Solution to the ‘Problem’ of Sharenting?*, 46 DATENSCHUTZ UND DATENSICHERHEIT 352 (2022).

218. Stacey Steinberg, *How Europe’s ‘Right to Be Forgotten’ Could Protect Kids’ Online Privacy in the U.S.*, WASH. POST (July 11, 2018), <https://www.washingtonpost.com/news/parenting/wp/2018/07/11/how-europes-right-to-be-forgotten-could-protect-kids-online-privacy-in-the-u-s/> [https://perma.cc/ZJP8-XRCE].

219. Ravi Antani, *The Resistance of Memory: Could the European Union’s Right to Be Forgotten Exist in the United States?*, 30 BERKELEY TECH. L.J. 1173, 1183–84 (2015).

The United States’ climate for establishing a right to be forgotten fundamentally differs from that in Europe due to important cultural and historical experiences in the two regions. Many European member states have developed a deep respect for privacy, growing in part out of the post-Holocaust skepticism about the power dynamic created by personal information being available to a central authority. In contrast, the right to free speech has become paramount in the United States, even with extreme forms of speech that would implicate significant privacy and dignity concerns in Europe.

Id. (citing Francesca Bignami, *European Versus American Liberty: A Comparative Privacy Analysis of Anti-Terrorism Data-Mining*, 48 B.C. L. REV. 609, 688 (2007)).

220. *Id.*

France has been a leader in recognizing a child's right to privacy, even in contexts where that right conflicts with rights of parents.²²¹ In 2024, the French National Assembly voted unanimously to pass a law protecting the images of minors and providing some guidelines about how parents could share about their children online.²²² The law recognizes that children have a right to privacy and that parents generally are the ones tasked with protecting that right.²²³ It also provides that the parents shall, according to the child's age and maturity, inform and include the child in these kinds of decisions to model and pass down healthy habits.²²⁴ However, it also allows for a judge to step in when parents, jointly or individually, do not adequately protect their child's privacy right.²²⁵ When the "dissemination of the child's image by his parents seriously harms the child's dignity or moral integrity," the judge is entitled to reassign the right to the child's image to a concerned third party or the non-offending parent.²²⁶

221. Magalie Dansac Le Clerc & Juliette Lepoiteux, *France Introduces New Law to Enhance the Protection of Children's Rights in France*, CONNECT ON TECH (Mar. 19, 2024), www.connectontech.com/france-introduces-new-law-to-enhance-the-protection-of-childrens-rights-in-france [https://perma.cc/AU3J-38AN].

222. Loi 2024-120 du 19 Février 2024 Visant à Garantir le Respect du Droit à l'Image des Enfants [Law 2024-120 of February 19, 2024 Aimed at Guaranteeing Respect for Children's Image Rights], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Feb. 20, 2024, p. 103.

223. Code civil [C. civ.] [Civil Code] art. 372-1 (Fr.) ("Parents jointly protect the right to the image of their minor child, in compliance with the right to privacy mentioned in Article 9.").

224. *Id.* ("Parents associate the child with the exercise of his right to the image, according to his age and degree of maturity.").

225. Adithyan P, *France's New Law Bans Parents from Sharing Photos of Their Children on Social Media*, NEWS 18 (Mar. 20, 2023), <https://www.news18.com/buzz/frances-new-law-bans-parents-from-sharing-photos-of-their-children-on-social-media-7337977.html> [https://perma.cc/9WE8-5DET]

French lawmakers have approved a new legislation that seeks to protect the privacy of children online. The new law prevents parents from posting pictures of their kids on the internet without their permission. The proposal was presented by MP Bruno Studer, who said that it aims to empower parents and to teach young people that their parents don't have an absolute right over their image. The law was unanimously approved by the French National Assembly. Studer highlighted that a 13-year-old child has an average of 1,300 images of themselves circulating on the internet. These photos can be used for child pornography or lead to bullying in the school environment. He also mentioned that 50% of the photographs exchanged on child pornography forums were initially posted by parents on social media. The first two articles of the bill aim to establish the protection of privacy as one of the responsibilities of parents as holders of parental authority. The family judge may make a forced partial delegation of parental authority in extreme cases where parents misuse their child's image rights. Studer is a member of the delegation for children's rights, founded in September 2022.

Id.

226. Code civil [C. civ.] [Civil Code] art. 377 (Fr.) (as amended by Loi 2024-120 of Feb. 19, 2024). When the dissemination of the child's image by his parents seriously harms the child's dignity or moral integrity, the individual, the establishment or the departmental service of social assistance to the child who took in the child or a family member may also refer the matter to the judge for the purpose of having the exercise of the right to the child's image delegated.

Id.

III. A NEW FRAMEWORK FOR REGULATING PARENTAL ONLINE CONDUCT

The United States currently has sparse and scattered laws aimed at regulating parents' online conduct. While some states appear to be stepping in to protect the earnings of children whose images generate financial profit online,²²⁷ they have yet to create comprehensive laws that address or remedy the harm parents can cause through online sharing for increased social capital, financial capital, or otherwise. Furthermore, few standards exist to delineate low-risk sharenting from higher-risk sharenting that exploits or risks exploiting children.²²⁸

Family preservation principles can and should be applied in cases of exploitative sharenting to both empower parents to make better decisions for their families and to protect of children from the harm of oversharing. This aligns with current systems aimed at curbing abuse and neglect, and it brings this practice into the protection child welfare systems can provide to families online. This requires an educated child welfare workforce, well-versed in the risks of exploitative sharenting but also able to guide families toward smarter online sharing practices without alienating ill-informed parents who may benefit from efforts to strengthen families.

A. EVOLVING STANDARDS OF ONLINE CONDUCT TO REGULATE ABUSIVE SHARENTING

States have not precluded parents from online sharing except in the most limited of circumstances.²²⁹ Courts have occasionally been asked to limit parents from oversharing online in child custody and dependency cases, but judges are tasked with evaluating these cases without any uniform standards or expert agreement as to the limits of appropriate parental online conduct and conduct that is potentially harmful to children.²³⁰ Without such

227. See, e.g., 820 ILL. COMP. STAT. 206/95, 206/100 (2025) (formerly 820 ILL. COMP. STAT. 205/2.6, 205/12.6, repealed 2025).

228. See *What You Need to Know About "Sharenting": Expert Tips on Protecting Your Child's Privacy in the Digital Age*, UNICEF, <https://www.unicef.org/parenting/child-care/sharenting> [<https://web.archive.org/web/20251009065647/https://www.unicef.org/parenting/child-care/sharenting>].

229. See *Tinsley v. Tinsley*, 211 So. 3d 405, 420 (La. Ct. App. 2017) (declining to enjoin father from posting pictures of child on social media); see also *Shak v. Shak*, 144 N.E.3d 274 (Mass. 2020) (holding nondisparagement order in custody proceedings was impermissible prior restraint where no showing of grave, imminent harm to child); see also Steinberg, *supra* note 14 (discussing *Tinsley*, in which the Louisiana appellate court declined to enjoin a father from posting embarrassing pictures of his child, reluctant to "interfere with a fit parent's constitutional right to parent," and *Shak*, in which the Massachusetts Supreme Judicial Court held that a prior restraint on parental speech requires a showing of grave, imminent harm to the child, which the mother could not meet where the child was too young to read or access social media).

230. Steinberg, *supra* note 55.

guidance, similarly situated cases may be adjudicated drastically differently from courtroom to courtroom, and many cases of children needing protection likely go unheard due to a lack of clear mechanisms for concerned community members or state actors to bring forth an investigation or suit against potentially offending parents.²³¹

Some would likely suggest that sharenting is a realm of family life where the state should not enter. However, there are many realms of family life that the state refused to enter in the past that it now, thankfully, wades into thoroughly. Like sharenting, parental discipline was once a realm of family life where the state refused to enter.²³² Legal corporal punishment and child abuse all fell into the same “bucket” of parental privilege two hundred years ago.²³³ It was only later that the state recognized that, at times, children needed protection from caregivers who used their parental privilege in an abusive manner.²³⁴ To protect children from child abuse, states needed to

231. See, e.g., *Suleman v. Superior Ct.*, 180 Cal. App. 4th 1287, 1291 (2010).

232. *Child Abuse—A History*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/child-abuse-history> [<https://web.archive.org/web/20150526142730/http://www.nytimes.com/1995/10/08/magazine/the-society-that-pretends-to-love-children.html?pagewanted=3>].

Parental discipline was typically severe, and parents, teachers, and ministers found support for stern discipline in the Bible. Several verses in Proverbs (Proverbs 22:15, Proverbs 23:13–14, and Proverbs 29:15), summed up in the phrase, “Spare the rod and spoil the child,” were cited as justification for beating children. It should be noted that the biblical “rod” referred to was a shepherd’s rod, used to guide the sheep in the right direction, not to beat the sheep. Church elders taught that children were born corrupted by original sin, and the only path to salvation was “to beat the Devil out of the child.” (In Christian theology, original sin is humankind’s inherent tendency to sin as a result of Adam’s rebellion against God.) Some colonial legislatures even passed “stubborn children laws,” giving parents the legal right to kill unruly children. According to journalist Roger Rosenblatt, Massachusetts enacted a law in 1646 that allowed the death penalty for a rebellious child, though the law was never enforced (“The Society That Pretends to Love Children,” *New York Times Magazine*, October 8, 1995).

Id.

233. *Id.*

234. Marvin Ventrell, *The Practice of Law for Children*, 28 *HAMLIN J. PUB. L. & POL’Y* 75, 85–86 (2006).

Mary Ellen Wilson, a 10-year-old girl, had been abused and neglected by her caretakers for years. In 1871, a church worker, no longer able to tolerate Mary Ellen’s cries, convinced Henry Bergh from the New York Society for Prevention of Cruelty to Animals to help save the child. Mary Ellen was beaten routinely, cut with scissors, never allowed outside, locked in a bedroom, and given a small rug on which to sleep. Mr. Gerry, who had been Mr. Bergh’s legal counsel, eventually devised a writ de homine replegiando (similar to a writ of habeas corpus and not the animal rights theory of popular myth in child protection circles) and convinced a New York judge to allow these citizens to save Mary Ellen. This case is often thought to be the first child protection case. Although Mary Ellen was not the first child protection case, it is significant in that it recognizes that there are degrees of child maltreatment that society will not tolerate. It is not remarkable in its acknowledgment that the state may remove a child from a caregiver. Clearly the state had been exercising that authority for over a century as to vagrant and “pre-criminal” children. The case, and the founding of the NYSPPC, led to the founding of numerous anti-cruelty to children societies and the extension of the states’ *parens patriae* authority to child abuse victims. These child abuse cases, however, represent a small number of children’s cases as society’s focus continued to be vagrant children.

Id. (citing Mason P. Thomas, Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix*,

create a new system for community members to report abuse, for law enforcement to investigate the abuse, and for judges to adjudicate abuse in a manner that both recognized the rights of parents to discipline their children²³⁵ and the state's right under *parens patriae* to protect children from online harm caused by their parents.

Though the courts and the legislature have not taken up the issue of exploitative sharenting in earnest yet, grassroots movements made up of concerned viewers have become a staple in forcing many of these influencers to wholly re-evaluate their content and the return on investment. As detailed in *An Update on Our Family* on HBO, online sleuths have investigated Myka and James Stauffer. For many years, the Stauffers featured their young children, including their adopted son Huxley, on their YouTube vlog, a channel with approximately 700,000 subscribers. Myka and James Stauffer shared information about their struggles caring for the young boy, who apparently had multiple medical and behavioral issues that the parents struggled to address adequately. Huxley began appearing on the channel less and less frequently until eventually, he disappeared entirely from the vlog. The vlog's vocal audience expressed outrage. An online firestorm ensued, wherein viewers made both online and offline accusations that the parents had mistreated the young boy. Eventually, the parents announced their decision to "rehome" Huxley, causing even more public fury.

Just as the Mary Ellen story highlighted the need to better investigate and regulate parental discipline, the Stauffer story and HBO documentary might highlight the need to better investigate and regulate sharenting. Amateur internet sleuthing, for all the good it has done so far, is a limited resource and not the proper mechanism for creating long-lasting, equitable, systemic change. The greater public has limited resources for investigation, internal differences of opinion, and other shortcomings that render the apparatus unfit for this kind of regulation and for addressing the wide gray areas that exist within the practice of sharenting. Instead, legislators should be able to use the momentum of the movement and documentary to expand our existing legal framework to include a broader definition of abuse as was done with corporal punishment.

Statutes are in place to protect young people from online harm caused by third parties. For example, many states have cyberbullying laws criminalizing individuals who bully others through digital platforms.²³⁶

and *Social Perspectives*, 50 N.C. L. REV. 293, 308–11 (1972).

235. *Id.* at 84.

236. Adele Kimmel & Nancy Willard, *Cyberbullying, from Schoolhouse to Courthouse*, TRIAL, Jan. 2018, at 20–21, <https://www.publicjustice.net/wp-content/uploads/2024/03/Cyberbullying-From-School-house-to-Courthouse-Adele-Kimmel-Nancy-Willard-January-2018.pdf> [<https://perma.cc/DT4E-DV36>].

However, unlike the traditional children's free speech jurisprudence, these laws do not contemplate situations where "the call is coming from inside the house": situations where the bully is in control of the victim and their ability to assert their rights.²³⁷ Additionally, the federal government has comprehensive laws protecting individuals' medical and educational records from unwanted third-party disclosure that rely on parental enforcement.²³⁸ And similarly, these laws do not contemplate situations where the parent is the one exposing these records.²³⁹

The evolution of our legal system's approach to corporal punishment and child abuse did not develop in a vacuum or overnight. It evolved over time with an infusion of child safety experts, psychologists, and legal experts as policymakers to develop a uniform way to balance a parent's right to control the upbringing of their children with the child's need for safety.²⁴⁰ What started as a state-by-state approach has developed into a relatively uniform, federally mandated system of laws that ensure children are protected from abuse in every state.²⁴¹

B. A PATH FORWARD

This section sets forth key principles for federal and state lawmakers to consider when attempting to protect minors from abusive forms of oversharenting.²⁴² It is critical to note at the outset that any attempt to limit parents' rights to share on social media must be done with the strictness of scrutiny, as a parent's right to determine how to raise their child is a fundamental right under the Due Process Clause of the Fourteenth

Bullying has been a problem for generations, but the scope and depth of its harm has greatly expanded through the use of cell phones, computers, and tablets to intentionally and repeatedly harass, threaten, humiliate, or otherwise harm another person. Examples of cyberbullying include sending hurtful text messages; spreading rumors electronically; posting videos mocking other students on video-sharing websites, such as YouTube, or social media platforms, such as Instagram or Snapchat; creating webpages to humiliate other students; and posting or electronically sharing intimate images or messages sent privately between two students.

Id.

237. These laws do consider when children are bullied within the home by individuals sending online messages from outside the home. *See, e.g.*, Karly Zande, *When the School Bully Attacks in the Living Room: Using Tinker to Regulate Off-Campus Student Cyberbullying*, 13 BARRY L. REV. 103 (2009). These decisions rest on a child's right to free speech. *See, e.g.*, J.S. *ex rel.* M.S. v. Manheim Twp. Sch. Dist., 263 A.3d 295, 317 (Pa. 2021); S. Ernie Walton, *In Loco Parentis, First Amendment & Parental Rights—Can They Coexist in Public Schools?*, 55 TEX. TECH L. REV. 461 (2023); MARY A. LENTZ, LENTZ SCHOOL SECURITY § 1:16 (2023).

238. Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2.

239. Steinberg, *supra* note 14.

240. *See* Ventrell, *supra* note 234.

241. *Id.*

242. Steinberg, *supra* note 14, at 878.

Amendment.²⁴³ Most parents share responsibly, and most parents want to learn how to share in ways that keep their children safe from harm.²⁴⁴

1. Family Preservation

A key principle in child welfare policy is that the role of the state is to help strengthen families primarily, aiming to eliminate the need for removal in most cases that come to the attention of child abuse and neglect investigators.²⁴⁵ Today, child welfare investigators routinely make referrals to provide parents with housing and food assistance, referrals for drug and anger management treatment, and encourage parents to engage in counseling services to be better able to meet their children's needs.²⁴⁶ The Family First Prevention Services Act of 2018 set forth the government's strong goal of strengthening families through services provided directly to families, without the need for child welfare courts to intervene.²⁴⁷

2. Identifying Uniform Standards for What Constitutes Sharenting and What Constitutes Abusive Forms of Oversharenting

Currently, there are no federal- or state-sponsored organizations in the United States that have a primary aim of empowering parents to share more responsibly online,²⁴⁸ yet there are a multitude of organizations that seek to

243. See *Pierce v. Soc'y of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510, 534–35 (1925); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1941); *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972) (“This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.”).

244. See MAEVE DUGGAN, AMANDA LENHART, CLIFF LAMPE & NICOLE B. ELLISON, PARENTS & SOCIAL MEDIA, PEW RSCH. CTR. (July 16, 2015), <https://www.pewresearch.org/wp-content/uploads/sites/9/2015/07/Parents-and-Social-Media-FIN-DRAFT-071515.pdf> [<https://perma.cc/Y6D9-UTB7>]; see also Ferrara et al., *supra* note 118; Walrave et al., *supra* note 142.

245. See Kristine E. Nelson, *Family Preservation—What Is It?*, 19 CHILD. & YOUTH SERVS. REV. 101, 102 (1997).

Family preservation has been developing as a secondary goal of the child welfare system for almost 100 years. The primary goal, child protection, dates from the efforts of charitable organizations in the 19th century to rescue children from abuse, neglect, and, all too often, poverty by placing them in institutions or foster homes far from their families and neighborhoods.

Id.; see also Jacqueline McCroskey, *What is Family Preservation and Why Does it Matter?*, 5:2 J. FAM. STRENGTHS 1 (2001).

246. *Circuit 4 Family Preservation Protocol*, FLA. DEPT. OF CHILD. & FAMS. (Feb. 8, 2011), <https://www.myflfamilies.com/sites/default/files/2023-05/Circ4-FamPresProt2-11.pdf>.

247. Family First Prevention Services Act of 2018, Pub. L. No. 115-123, tit. VII (codified in 42 U.S.C. § 671 et seq.); see also *Family First Prevention Services Act (FFPSA)*, FLA. DEP'T OF CHILD. & FAMS., <https://www.myflfamilies.com/kids/news/family-first-prevention-services-act-ffpsa> [<https://perma.cc/JG9E-9989>].

248. The Department of Homeland Security maintains a list of state-sponsored advice to keep young people safe online. It contains tips to teach to young children and teens, but it does not mention the role of a parent's online conduct in protecting children from exploitation. *Know2Protect: Take Action*, DEP'T OF HOMELAND SEC., <https://www.dhs.gov/know2protect/take-action> [<https://perma.cc/SDC3-E2J7>].

educate young people on how they can more safely use social media.²⁴⁹ Is it not ironic that, while parents often have little control over their teenager's social media practices and complete control over their own, the primary focus of online safety organizations is helping parents to encourage their young people to share smarter instead of helping the parents make better choices about their *own* disclosures to keep their children safe online?²⁵⁰

Such organizations are needed. These organizations or working groups should be composed of child welfare professionals, attorneys, cybersecurity experts, law enforcement, mental health providers, public health experts, and young people who have come of age after having grown up shared. Working together, instead of in silos, these groups could begin to formulate sound public policies outlining what conduct constitutes appropriate sharenting, what is questionable sharenting or exists in a gray area, and what is exploitative and harmful sharenting. By bringing these separate groups together, each can offer its own unique expertise to ensure that policies are well-informed, grounded in child safety and social science principles, and able to withstand First Amendment and Due Process constitutional challenges.

3. Train and Equip Child Welfare Officials

Currently, state law enforcement and child welfare investigators are ill-equipped to understand and investigate exploitative sharenting. State agencies must train personnel to recognize harmful oversharenting and to educate parents about the risks of oversharenting. Most parents engage in online sharenting, so all who interact with families and have opportunities to provide parent education should have the knowledge and tools necessary to delineate whether a parent is simply engaging with their community via their sharenting or whether a parent is placing their child at risk through their disclosures. Parents could also be advised of the important role of privacy in childhood development.²⁵¹

249. See, e.g., *Social Media and Youth Mental Health*, DEP'T OF HEALTH & HU. SERVS., <https://www.hhs.gov/surgeongeneral/priorities/youth-mental-health/social-media/index.html> [https://perma.cc/H2DN-C2GJ].

250. Stacey Steinberg, *How Parents Can Share Smarter on Social Media*, TEDXVIENNA (Oct. 2021), https://www.ted.com/talks/stacey_steinberg_how_parents_can_share_smarter_on_social_media?subtitle=en [https://perma.cc/JZJ4-CRLF].

251. Special thanks to Claire Bessant for making this important contribution to this work. Much of the world has been made aware of the importance and codification of a child's right to privacy, but as the only non-ratifier of the UNCRC, American parents are less likely to have knowledge of the issue and are immune from any enforcement by the international community.

4. Update Child Welfare Laws

Legislators, especially at the state level, must provide attorneys with tools to bring forth cases of exploitative and harmful oversharenting. Most parents who share on social media do so in ways that, as of 2026, appear minimally harmful to children²⁵² and may even provide important and meaningful connections for all individuals within the family unit.²⁵³ Even parents who share personal information, such as medical updates, likely do so to build family and community connections and wish to share in a way where the benefits to their child greatly outweigh any harm such sharing could cause.

However, the law must be prepared to regulate at the margins and to take action to protect children when parents engage in harmful online sharing practices. Like child removals for abuse or neglect, the state must show that reasonable efforts were made to prevent the need for removal, such as the initiation of the family preservation services discussed above. Any legal action taken against a parent for exploitative over-sharing must only come once parents have had the opportunity to learn about the harms that over-sharing can cause and a meaningful opportunity to adjust their sharing practices. Federal legislatures may wish to also address these issues in future child safety legislation, as children's online safety has been identified by the U.S. Surgeon General Dr. Vivek Murthy, as a public health concern.²⁵⁴

CONCLUSION

The United States has failed to protect children from the harms caused by their parents' online conduct. While parents have free speech protections and the right to raise their children as they see fit, they should not have legal protections that enable them to violate their children's privacy in ways that could cause long-term harm to them as they come of age under the watchful eyes of social media.

Mia's disclosure to Ms. Drake could have changed her life for the better and led her mother to get the financial and online safety help she needs, if only the child welfare laws were suitably tailored to protect her from the horrors that her mom, unwittingly or not, has subjected her to. These laws, written decades ago, are too focused on harms children face in their offline

252. Parents who sharent often choose to utilize privacy settings and adhere to what they believe are reasonable personal boundaries. While many children are embarrassed by some posts, that tends to be the extent of the harm in the vast majority of cases. Ouvrein, *supra* note 138.

253. Steinberg, *supra* note 14.

254. U.S. Surgeon Gen., *Social Media & Youth Mental Health: Surgeon General's Advisory*, U.S. DEP'T OF HEALTH & HUM. SERVS. (May 2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf> [<https://perma.cc/A9PC-J8NW>].

world and must be expanded to include harms that can be caused by online sharing.

Just as our views regarding child abuse evolved, our views regarding sharenting must evolve. The law can both protect parental autonomy and honor children's privacy through a comprehensive and multidisciplinary new approach toward protecting children online that allows for thoughtful investigation, education, remediation, and prosecution of parents who use social media in ways that are significantly harmful to their children. This conduct, which falls beyond sharenting, is ripe for legal interventions that reset the balance between a parent's right to share and a child's right to online privacy and safety.

