

Winter 2022

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### Recommended Citation

Nila McGinnis, *“They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save them from their Parents*, 87 Mo. L. REV. ()

Available at: <https://scholarship.law.missouri.edu/mlr/vol87/iss1/10>

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## NOTE

### “They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save them from their Parents

*Nila McGinnis\**

#### I. INTRODUCTION

In May 2020, American social media influencer Myka Stauffer, who boasted almost one million followers across various internet platforms at the peak of her career,<sup>1</sup> announced that she and her husband were “rehomeing” their autistic son, Huxley, whom they adopted from China three years prior.<sup>2</sup> Over the course of their journey to adopt Huxley, the Stauffers monetized dozens of posts and videos across several channels and accounts on YouTube and Instagram, prominently featuring Huxley in advertisements for brands like Dreft, Danimals, and Playtex Baby.<sup>3</sup> The Stauffers, who were also accused of duct taping Huxley’s hands to stop him from sucking his thumb, were investigated and subsequently cleared from these and other abuse allegations after Huxley was placed in a new

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\*B.S., Washington University in St. Louis, 2016; J.D., University of Missouri School of Law, 2021; Associate Member, *Missouri Law Review*, 2020–2021. I am grateful to Professor Oliveri for agreeing to advise me on this piece.

<sup>1</sup> Jen Juneau, *Who Is Myka Stauffer? All About YouTuber Who Placed Son with New Family 2 Years After Adoption*, PEOPLE (May 28, 2020), <https://people.com/parents/myka-stauffer-youtuber-placed-son-adoption-explainer/> [https://perma.cc/2FB2-CEJC].

<sup>2</sup> Stephanie McNeal, *A YouTuber Placed Her Adopted Autistic Son From China With A New Family — After Making Content With Him For Years*, BUZZFEED NEWS (May 28, 2020, 8:45 PM), <https://www.buzzfeednews.com/article/stephaniemcneal/myka-stauffer-huxley-announcement> [https://perma.cc/XW3U-KS6T].

<sup>3</sup> Jen Juneau, *Kate Hudson Confirms YouTube Mom Who Dissolved Adoption Was ‘Terminated’ by Fabletics*, PEOPLE (May 29, 2020, 1:30 PM), <https://people.com/parents/myka-stauffer-company-sponsorships-dropped-adoption-controversy/> [https://perma.cc/Z8AS-PYXW].

home through the help of his adoption agency.<sup>4</sup> What will young Huxley see of the estimated tens of thousands of dollars his parents earned from his appearances in online videos and posts featuring personal information about his mental and physical disabilities, therapy, and progress before being placed into another home?<sup>5</sup> According to California Law, he is not entitled to a single dime.<sup>6</sup> Neither are any of the Stauffer's four biological children, nor any other social media star earning money online who happens to be a minor.<sup>7</sup>

Some of the best known and highest-paid child stars of the 21st-century have become famous for appearing in posts and videos made on social media platforms by their parents.<sup>8</sup> This phenomenon coincides with the rise of influencer marketing, in which companies focus their attention on advertising through the recommendation of influential figures, as opposed to mass media campaigns to large, targeted markets.<sup>9</sup> Children with large social media followings have been indispensable to the rise of influencer marketing, an industry estimated to be worth more than \$13 billion at the time of this writing.<sup>10</sup> Marketing giant Hootsuite estimates

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<sup>4</sup> Louise Randell, *YouTuber Accused of Taping Autistic Son's Hands & Crowdfunding Adoption to Boost Followers*, MIRROR (May 28, 2020, 1:06 PM), <https://www.mirror.co.uk/3am/celebrity-news/youtuber-accused-taping-autistic-sons-22100368> [<https://perma.cc/VMF5-LAEC>]; Scott Stump & Diana Dasrath, *YouTuber Myka Stauffer will not Face Charges After Investigation into Adopted Son's Welfare*, TODAY (July 1, 2020, 5:23 PM), <https://www.today.com/parents/youtuber-myka-stauffer-will-not-face-charges-after-investigation-adopted-t185729> [<https://perma.cc/C5T3-9ER6>].

<sup>5</sup> McNeal, *supra* note 2; Werner Geysler, *Influencer Rates: How Much do Influencers Really Cost in 2022?*, INFLUENCER MKTG. HUB (Nov. 26, 2021), <https://influencermarketinghub.com/influencer-rates/> [<https://perma.cc/2V7P-4PN9>].

<sup>6</sup> Julia Carrie Wong, *'It's Not Play if You're Making Money': How Instagram and YouTube Disrupted Child Labor Laws*, THE GUARDIAN (Apr. 24, 2019, 1:00 PM), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> [<https://perma.cc/A7N5-TVMR>].

<sup>7</sup> *Id.*

<sup>8</sup> Sapna Maheshwari, *Online and Making Thousands, at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [<https://perma.cc/4888-RMGL>].

<sup>9</sup> Jason Gordon, *Influencer Marketing – Explained. What is Influencer Marketing?*, BUS. PROFESSOR (July 23, 2021), [https://thebusinessprofessor.com/en\\_US/principles-of-marketing/what-is-influencer-marketing](https://thebusinessprofessor.com/en_US/principles-of-marketing/what-is-influencer-marketing) [<https://perma.cc/SFD9-K922>].

<sup>10</sup> Werner Geysler, *Influencer Marketing Benchmark Report 2021*, INFLUENCER MKTG. HUB (Feb. 2, 2022), <https://influencermarketinghub.com/influencer->

that "at least 10 percent"<sup>11</sup> of digital marketing budgets in this country go toward influencer marketing, and the trend continues to grow as digital media usage flourishes.

Despite the popularity of influencer marketing, minors working as influencers in the United States have no legal right to the money they earn by appearing in content posted by themselves or their parents.<sup>12</sup> This creates a large risk of exploitation—physically, financially, and emotionally.<sup>13</sup> Because states have not recognized social-media content creation or user-generated content production as a form of labor, child entertainers have no specific protections under employment law.<sup>14</sup>

The rules concerning the financial future of children earning money on social media have yet to be written.<sup>15</sup> Parents control their children's image, privacy settings, and financial gains on social media without regulation in this country.<sup>16</sup> Widespread change must come soon. Several states long ago enacted legislation to protect child actors in traditional media like film and television from the risk of financial exploitation, most notably in the form of "Coogan laws."<sup>17</sup> These laws vary wildly, but typically require children to acquire work permits, mandate the number of hours children can work and be on set, and require that a certain percentage of a child's earnings be placed into a trust, which can only be accessed by them upon reaching adulthood.<sup>18</sup> These protections have not yet been extended to children working exclusively on social media platforms, and

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marketing-benchmark-report-2021/ [https://perma.cc/8HYW-94AD]; Audrey Schomer, *Influencer Marketing: State of the Social Media Influencer Market in 2020*, BUS. INSIDER (Dec. 17, 2019), https://www.businessinsider.com/influencer-marketingreport [https://perma.cc/ZQP9-YYEG].

<sup>11</sup> Christina Newberry, *Influencer Marketing in 2019: How to Work with Social Media Influencers*, HOOTSUITE (May 2, 2019), https://blog.hootsuite.com/influencer-marketing/ [https://perma.cc/B6LT-G8T2].

<sup>12</sup> Kristina Cappetta, *Do Child Social Media Stars Have Legal Protections*, PARENTOLOGY (Sept. 4, 2019), https://parentology.com/do-child-social-media-stars-have-legal-protection/ [https://perma.cc/J3X2-SCGH].

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Katie Goldstein, *I'm a Mom and Children's Privacy Lawyer: Here's What I Do and Don't Post About My Kid Online*, PARENTS (May 29, 2019), https://www.parents.com/kids/safety/internet/im-a-mom-and-childrens-privacy-lawyer-what-i-do-and-dont-post-online/ [https://perma.cc/6PN8-WKHT].

<sup>17</sup> Cappetta, *supra* note 12.

<sup>18</sup> *Summary Chart*, CAL. DEP'T INDUS. RELS., https://www.dir.ca.gov/dlse/minorsummarycharts.pdf [https://perma.cc/HWP2-5A56] (last visited Jan. 5, 2022).

the risk for exploitation therefore continues to fester.<sup>19</sup> Because of the prominence of so-called “family vloggers,” or social media family channels that document the lives of parents and children, the need for this type of protection to be afforded to children by the law grows each day.<sup>20</sup> States need to apply Coogan-style laws to child social influencers and seriously examine other social and political measures that can be enacted to protect child social media stars from exploitation.

An expansion of protections afforded to child stars earning money on social media requires an array of uncharted legislative decisions.<sup>21</sup> This Note will argue, however, that children earning money and providing labor for monetized social media accounts deserve legal protection from the states to protect their financial, physical, and emotional well-being. After introducing the problems with the meager protections in place today, Part II of this Note will analyze and explore the history of child labor protections and the exceptions for child actors and work overseen by parents that have been carved out in state and federal law. Part III will explore recent developments in the law and specific issues in the realm of children on social media that have emerged in the 21st century. Part IV will discuss the unique challenges facing legislators, parents, and regulators alike and will propose solutions for these challenges. The Note will culminate with a call to action, imploring those in power to enact rapid change to protect some of society’s most vulnerable members.

## II. LEGAL BACKGROUND

Children who boast large social media followings can earn millions of dollars each year through sponsored advertising posts and videos, as well as kickbacks from social media platforms that sell advertisements on their content.<sup>22</sup> These minors may live all over the country, as parents in the digital age do not need networking connections, a production set, or

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<sup>19</sup> *Child Entertainment Laws as of January 1, 2022*, U.S. DEP’T LABOR (Jan. 2022), <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [https://perma.cc/RZ5C-GWH5].

<sup>20</sup> *Top Family Vloggers*, NEOREACH. (July 21, 2020), <https://neoreach.com/family-vloggers/#:~:text=Family%20vloggers%20have%20become%20increasingly,those%20numbers%20continue%20to%20rise> [https://perma.cc/5WB6-KKSM].

<sup>21</sup> See Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PA. L. REV. 577, 580 (2021).

<sup>22</sup> Maheshwari, *supra* note 8.

any of the other resources required for child stars of the past.<sup>23</sup> Parents simply need a smartphone or a camera, a cute kid, and a connection to the Internet to share photos and videos.<sup>24</sup> While most social media platforms have minimum age limits,<sup>25</sup> many parents skirt around these rarely enforced requirements by placing a disclaimer in the bio of their child's account stating that the account has been created and maintained by the parents.<sup>26</sup> Additionally, nothing prevents parents from featuring their children on their own social media pages or profiting off of their children's likenesses. While it is true that some teenagers post their own content and run their own monetized accounts, this Note will focus on child-centric accounts created and run by the parents or guardians of child social media stars.

The Fair Labor Standards Act ("FLSA") is the predominant legislation in this country concerning working conditions for children.<sup>27</sup> Passed in 1938, this set of federal child-labor regulations was passed to "ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities."<sup>28</sup> These regulations were passed after the height of the Great Depression and only

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<sup>23</sup> Compare *Why it was not a Wonderful Life for Macaulay Culkin After he Found Fame in the Hit Christmas Film Home Alone*, BELFAST TELEGRAPH (Dec. 15, 2018, 10:00 AM) <https://www.belfasttelegraph.co.uk/life/weekend/why-it-was-not-a-wonderful-life-for-macaulay-culkin-after-he-found-fame-in-the-hit-christmas-film-home-alone-37620091.html> [<https://perma.cc/J5RW-WGTY>] (tracing the rise and fall of child star Macaulay Culkin), with Rebecca Jennings, *TikTok Fame Fades*, VOX (Feb. 27, 2020, 8:30 AM) <https://www.vox.com/the-goods/2020/2/27/21153364/tiktok-famous-backlash> (describing the fast-paced nature of attaining fame on TikTok).

<sup>24</sup> See generally INSTAGRAM, <https://www.instagram.com/> [<https://perma.cc/GZ84-HWY3>] (last visited Mar. 14, 2022).

<sup>25</sup> Paul Harper, *How old do you have to be for Snapchat, Facebook, Instagram accounts? Social media age restrictions explained*, THE SUN (Jan. 21, 2020), <https://www.the-sun.com/lifestyle/tech/289567/how-old-do-you-have-to-be-for-snapchat-facebook-instagram-accounts-social-media-age-restrictions-explained/#:~:text=Nearly%20all%20social%20networking%20sites,Privacy%20Protection%20Act%20> [<https://perma.cc/WMW3-CFKL>] (COPPA).

<sup>26</sup> See, e.g., Kate Fowler, *Baby Internet Star Finally Protects Pouring Skills after Months of Videos*, NEWSWEEK (June 16, 2021, 11:14 AM) <https://www.newsweek.com/internet-star-baby-uncle-go-viral-drink-pouring-series-tiktoks-1601218> [<https://perma.cc/R7VQ-8XG5>].

<sup>27</sup> *Wage and the Fair Labor Standards Act (FLSA)*, U.S. DEP'T LABOR, <https://www.dol.gov/agencies/whd/flsa> [<https://perma.cc/P5G5-PMLS>] (last visited Apr. 5, 2021).

<sup>28</sup> *Child Labor*, U.S. DEP'T LABOR, <https://www.dol.gov/agencies/whd/child-labor> [<https://perma.cc/NPV6-TB2Q>] (last visited Apr. 5, 2021).

after decades of tireless advocacy.<sup>29</sup> Protections brought about by FLSA are primarily concerned with traditional occupations that are considered hazardous and aim to prioritize education over labor.<sup>30</sup> This section will discuss the history of child labor in the United States, the FLSA, its exceptions, and the gaps in federal protection that leave child actors and their modern counterparts, child social media stars, under the purview of state law and therefore largely unprotected.

#### A. Child Labor in the United States

From the Industrial Revolution until the 1930s, children were employed under various hazardous working conditions.<sup>31</sup> At the turn of the 20th century, child laborers worked in dozens of industries, some more dangerous and oppressive than others.<sup>32</sup> In urban areas, children worked on the streets selling wares, cleaning shoes, or working as newsies.<sup>33</sup> Other children worked in mines, cotton mills, factories, farms, or in home workshops.<sup>34</sup> In many parts of the country, boys as young as five were hired in light manufacturing plants or glass bottle production factories, as their small hands were ideal for completing glasswork.<sup>35</sup> Many children worked in unregulated chemical plants, used harsh machinery, and were exposed to dust and dangerous pollutants.<sup>36</sup> In 1901, census records indicate that twenty-one percent of boys under the age of fourteen were employed outside the home.<sup>37</sup>

Despite these hazardous working conditions, many adults were reluctant to support legislation to regulate child labor because of the tremendous services children provided to the labor force.<sup>38</sup> In the 19th and early 20th centuries, many families viewed newborn babies as future

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<sup>29</sup> Michael Schuman, *History of Child Labor in the United States—Part 2: The Reform Movement*, U.S. BUREAU LAB. STATS. (Jan. 2017), <https://www.bls.gov/opub/mlr/2017/article/history-of-child-labor-in-the-united-states-part-2-the-reform-movement.htm> [<https://perma.cc/UWU8-NM2Y>].

<sup>30</sup> Masterson, *supra* note 21, at 585.

<sup>31</sup> Robert Whaples, *Child Labor in the United States*, ECON. HIST. ASS'N (2005), <https://eh.net/encyclopedia/child-labor-in-the-united-states/> [<https://perma.cc/ND3Y-FUJH>].

<sup>32</sup> *Id.*

<sup>33</sup> Schuman, *supra* note 29.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

economic investments because they relied heavily on income brought home by children as young as five.<sup>39</sup> An increased awareness of dangerous child labor practices and a 1904 Congressional study prompted an unprecedented child labor rights movement in the last few decades of the 19th century, and by 1916 a majority of states had passed some regulations protecting child workers.<sup>40</sup> Debates over state sovereignty and federal power halted discussions about sweeping federal regulations for decades, and states became the primary actors in passing labor protections until the late 1930s.<sup>41</sup> When FLSA was eventually passed in 1938, children under fourteen were barred from obtaining any employment outside of the home, and children under eighteen were not permitted to work in "particularly hazardous conditions."<sup>42</sup>

In the United States economy today, the "particularly hazardous conditions" from which child laborers were protected have largely gone extinct. Even for adults working in factories or manufacturing, sweeping safeguards have been put in place by the states and the federal government to protect workers.<sup>43</sup> Today, children under fourteen in the United States typically work for friends and neighbors, doing odd jobs like babysitting or yardwork, which occur outside of school hours and do not put children at a high risk of physical harm.<sup>44</sup> However, experts estimate that more than one hundred thousand children are employed in violation of FLSA during any given month, typically in smaller companies focused on labor-intensive work that hire children younger than eighteen.<sup>45</sup> While the nature of work done by children in the 21st century has improved dramatically from the images of prepubescent children working with dangerous chemicals and open flames, children working today are still subject to exploitation and abuse because of a lack of federal or state protections.

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<sup>39</sup> *Id.*

<sup>40</sup> Catherine A. Paul, *National Child Labor Committee (NCLC): Founded April 25, 1904*, VCU LIBRS. SOC. WELFARE HIST. PROJECT (June 8, 2017), <https://socialwelfare.library.vcu.edu/programs/child-welfarechild-labor/national-child-labor-committee/> [<https://perma.cc/54ZL-G9E7>].

<sup>41</sup> Schuman, *supra* note 29.

<sup>42</sup> Masterson, *supra* note 21.

<sup>43</sup> OCCUPATIONAL SAFETY AND HEALTH ADMIN., WORKERS' RIGHTS 1, 4 (2017), <https://www.osha.gov/sites/default/files/publications/osha3021.pdf> [<https://perma.cc/H9T4-36KX>].

<sup>44</sup> Christopher Coble, *Hire a Kid to Babysit or Mow Lawn: Pay Minimum Wage?*, FINDLAW (June 16, 2015, 7:01 AM), <https://www.findlaw.com/legalblogs/law-and-life/hire-a-kid-to-babysit-or-mow-lawn-pay-minimum-wage/> [<https://perma.cc/GFX7-9BF3>].

<sup>45</sup> *Id.*



*B. Exemptions and Early Protections for Child Actors and Performers*

FLSA was never intended to provide protections in all areas of child labor.<sup>46</sup> Federal child labor laws do not extend to children who work as actors or performers in motion pictures, stage productions, or on radio or television productions.<sup>47</sup> Acting done by children is excluded from the rule for two reasons. First, Congress did not perceive acting or performing as coercive, but rather as a way for children to grow their talents.<sup>48</sup> Secondly, actress Shirley Temple was under sixteen and at the height of her career during debates on the legislation, and legislators did not want to prohibit her from continuing to act and perform in films.<sup>49</sup> This exemption is thus often referred to as “The Shirley Temple Act.”<sup>50</sup> Because the federal regulation categorically excludes child actors from FLSA protections, regulations pertaining to child actors fall on the states.<sup>51</sup>

As a consequence, depending on where the child works, rights and protections differ wildly. States such as California and New York have entertainment labor regulations in place, while other states, such as Mississippi, have none at all.<sup>52</sup> Seventeen states in total have no laws on their books governing children in the entertainment industry, and twenty-four states do not require children to have work permits in order to work as child actors or performers.<sup>53</sup> Children doing acting or entertainment work in the United States are thus subject to widely disparate treatment depending on where their work is performed or commissioned.

The belief that child acting is non-oppressive, which prevailed when FLSA was written, persists in the age of social media.<sup>54</sup> As social media, advertising and e-commerce affects interstate commerce and content is

<sup>46</sup> Jonathan Grossman, *Fair Labor Standards Act of 1938: Maximum Struggle for a Minimum Wage*, U.S. DEP’T LAB. HIST., <https://www.dol.gov/general/aboutdol/history/flsa1938> [https://perma.cc/AH63-N3PP] (last visited Jan. 5, 2022).

<sup>47</sup> *Entertainment Industry Employment*, U.S. DEP’T LAB., <https://www.dol.gov/general/topic/youthlabor/entertainmentemployment> [https://perma.cc/5CS7-WW2Y] (last visited Jan. 5, 2022).

<sup>48</sup> Kimberlianne Podlas, *Does Exploiting a Child Amount to Employing a Child? The FLSA’s Child Labor Provisions and Children on Reality Television*, 17 U.C.L.A. ENT. L. REV. 29, 58 (2010).

<sup>49</sup> 29 U.S.C. § 213(c) (2006); Podlas, *supra* note 48.

<sup>50</sup> Podlas, *supra* note 48.

<sup>51</sup> *Id.* at 69.

<sup>52</sup> *Id.* at 70 n.251.

<sup>53</sup> Peter M. Christiano, *Saving Shirley Temple: An Attempt to Secure Financial Futures for Child Performers*, 31 MCGEORGE L. REV. 201, 204 (2014).

<sup>54</sup> 29 U.S.C. § 213(c) (2006).

seen across state boundaries,<sup>55</sup> federal regulations could legislate to protect the labor performed by children in the realm of social media. Unfortunately, attempts at regulating this industry at the federal level have been historically unsuccessful.<sup>56</sup>

### 1. Early Instances of Abuse and Action

Parents have been abusing and exploiting their children for millennia, but children with the potential to contribute financially and socially to their household have always been especially vulnerable to abuse. The first children thrust into truly global stardom appeared as actors on the stage in theater productions, in silent films, and in print advertisements.<sup>57</sup> The assets they earned in the world of show business received no legal protections until 1939 with the passage of The California Child Actor's Bill, known as the first "Coogan" law.<sup>58</sup> Jackie Coogan was a child actor in the early 20th century, made famous after starring in Charlie Chaplin's comedy film "The Kid," which premiered in 1921.<sup>59</sup> Although Coogan boasted a leading role in dozens of films and reportedly earned more than \$4 million before his 18th birthday, his mother and step-father squandered his earnings on jewelry, homes, and cars, leaving him with less than \$2000 on his 18th birthday.<sup>60</sup> His mother later stated "No promises were ever made to give Jackie anything. Every dollar a kid earns before he is 21

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<sup>55</sup> Bret Swanson, *If any economic activity meets the definition of interstate commerce, it's the internet*, AM. ENTER. INST. (Oct. 13, 2017), <https://www.aei.org/technology-and-innovation/telecommunications/the-internet-is-interstate-commerce/> [https://perma.cc/TW3J-WYGM].

<sup>56</sup> Adam Beam, *California Could Tighten Social Media Rules for Children*, AP NEWS (Sept. 12, 2019), <https://apnews.com/article/c30c100b189645989628c27c8a07a4b0> [https://perma.cc/A4J5-J9K5].

<sup>57</sup> See Ian Wojcik Andrews, *Children in Film*, OXFORD, <https://www.oxfordbibliographies.com/view/document/obo-9780199791286/obo-9780199791286-0087.xml> [https://perma.cc/BC7Z-YRNQ] (last modified Dec. 19, 2012).

<sup>58</sup> See generally Saira Din, *Chapter 667: Instituting Proper Trust Funds and Safeguarding the Earnings of Child Performers from Dissipation by Parents, Guardians and Trustees*, 35 MCGEORGE L. REV. 473 (2004) (discussing the history and implementation of Coogan Laws).

<sup>59</sup> Jackie Coogan Biography, IMDB, <http://www.imdb.com/name/nm0001067/bio> (last visited Mar. 26, 2021).

<sup>60</sup> Brad Smithfield, *Coogan Act: Stopped Parents of Famous Child Actors [from] Seizing all the child's money*, VINTAGE NEWS (Oct. 29, 2016), <https://www.thevintagenews.com/2016/10/29/coogan-act-stopped-parents-of-famous-child-actors-seizing-all-the-childs-money/> [https://perma.cc/2UFH-XJDM].

belongs to his parents.”<sup>61</sup> In 1938, after the death of Coogan’s stepfather and when Coogan realized that most of his earnings were gone, he sued his mother and former manager, but walked away with only \$126,000 of his original earnings.<sup>62</sup> The lawsuit garnered the attention of the California Legislature, which passed the first “Coogan law” the next year, requiring a portion of earnings to be placed into a trust accessible only by the child upon reaching adulthood.<sup>63</sup>

## 2. The Lasting Legacy of Shirley Temple

With more than forty films under her belt by the age of twelve, a tale similar to Coogan’s befell 20th century superstar Shirley Temple, who was a primary inspiration for the FLSA child acting exemption.<sup>64</sup> Temple was one of the box office’s biggest earners in the 1930s, and at the height of her career in 1936, she was raking in \$10,000 a week,<sup>65</sup> which equates to more than \$9.8 million dollars a year in 2021.<sup>66</sup> At the time of her retirement, she was shocked to find that her accounts held only \$44,000, as opposed to the more than \$3 million she had earned in her career.<sup>67</sup> Temple’s father had allegedly failed to place her earnings in a court-ordered trust, and Temple paid the price for her stardom and fame both financially and emotionally.<sup>68</sup> While Congress did not want to exempt young starlets from actually performing on stage or in film, her plight inspired Congress to protect young actors financially.<sup>69</sup>

Protections for child stars grew out of stories like Coogan’s and Temple’s and have evolved over the course of the 20th and 21st centuries. After working in unregulated conditions, Coogan, Temple, and many other child performers in the early twentieth century lost millions of their own

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Destiny Lopez, *7 Celebs Whose Parents Decimated Their Fortunes*, INSIDER (Apr. 2, 2014), <https://www.businessinsider.com/7-celebs-whose-parents-decimated-their-fortunes-2014-4> [<https://perma.cc/NBF5-WRK2>].

<sup>65</sup> *Id.*

<sup>66</sup> *Value of 520,000 in 1936*, SAVINGS.COM, <https://www.saving.org/inflation/inflation.php?amount=10,000&year=1930> [<https://perma.cc/K3Z6-B3NS>] (last visited Jan. 5, 2022).

<sup>67</sup> Lopez, *supra* note 64.

<sup>68</sup> Stephanie Marcus, *Shirley Temple’s Death Reminds Us There Are Still Few Protections For Child Stars*, HUFFPOST (Feb. 17, 2014), [https://www.huffpost.com/entry/child-stars-protection-coogans-law\\_n\\_4775408](https://www.huffpost.com/entry/child-stars-protection-coogans-law_n_4775408) [<https://perma.cc/X5HX-BXAW>].

<sup>69</sup> *See id.*

earnings to the greed of their parents.<sup>70</sup> Their tragic and widely publicized stories inspired Congress to protect future young performers from a similar fate by passing FLSA to provide a minimum standard of physical and financial protections.<sup>71</sup> The tireless work of child advocates in the early twentieth century has paved the way for regulations in today's economy. However, the changes made almost one hundred years ago have not been adequately updated to protect children in the modern age doing paid work online.

### III. RECENT DEVELOPMENTS

Today's performers see a vastly different working landscape than the stars of prior days. Coogan requirements vary from state to state, but typically, protections are only available to guard some financial assets held or earned by child actors.<sup>72</sup> While many states regulate a child acting in some way, at present, Coogan-style financial protections are required by law only in California, New York, Louisiana, and New Mexico.<sup>73</sup> Two American labor unions, the Screen Actors Guild and the American Federation of Television and Radio Artists, have been instrumental in obtaining greater protections for those in the entertainment industry.<sup>74</sup> The two groups joined together and lobbied extensively in the late 1990s to close several gaps allowing parents to get around certain Coogan protections, including a loophole requiring a court order for Coogan

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<sup>70</sup> *Id.*

<sup>71</sup> *See id.*

<sup>72</sup> Christiano, *supra* note 53, at 209.

<sup>73</sup> N.M. STAT. ANN. § 50-6-18(E) (2019).

<sup>74</sup> Diep Tran, *SAG-AFTRA Approves New Influencer Agreement*, BACKSTAGE (Feb. 10, 2021), <https://www.backstage.com/magazine/article/sag-aftra-approves-new-influencer-agreement-72636/> [<https://perma.cc/8KW6-STLN>]. SAG-AFTRA announced in February 2021 that they will soon allow influencers to join their union, although child influencers will still be at the mercy of their parent's wishes. *Id.* ("According to a representative from SAG-AFTRA, the new agreement will categorize "influencer-generated branded content" as a form of advertising, and SAG-AFTRA members who do that type of work will be able to qualify for health and pension benefits. The branded content that would be covered under the influencer agreement is video or audio work, it does not include still imagery. But what constitutes video is left broad: It can be an Instagram story or a short TikTok video. . . . There is no mandated contract minimum; fees and rates will still be independently negotiated between the influencer and the advertiser.").

protections to be put in place.<sup>75</sup> Their membership of more than 160,000 united to preserve the hard-won earnings of young people.<sup>76</sup>

California amended its Coogan law in 2000 and now has the largest number of Coogan-style protections of any state.<sup>77</sup> California now recognizes earnings made by minors as belonging solely to the minor, not their parents.<sup>78</sup> California law creates a fiduciary relationship between parents or guardians and their child until the child has the legal standing to control their own finances.<sup>79</sup> California also requires that fifteen percent of all minors' earnings be set aside in a blocked trust account at a bank located in California.<sup>80</sup> The law outlines strict investment guidelines for funds placed in these accounts, limiting such investments to certain government bonds and securities, mutual funds, and other lower-risk investments.<sup>81</sup> If a child actor's parents do not set up a Coogan account, the child's employer is required to send fifteen percent of their earnings to the state-backed Coogan fund, which the child can access upon turning eighteen.<sup>82</sup> California also includes protections regarding the child's well-being, including restrictions on the number of hours a child can be on set and educational requirements, such as requiring a teacher to be present on set so that children are given proper access to education.<sup>83</sup> California employs a fairly broad use of the term 'entertainment industry' as well, defining it as any organization employing a minor in a "motion picture of any type . . . using any format . . . by any medium . . .; photography,

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<sup>75</sup> *Id.*

<sup>76</sup> *About*, SAG-AFTRA, <https://www.sagaftra.org/about> [<https://perma.cc/M6GM-DV5B>] (last visited Jan. 5, 2022); *see* LA. STAT. ANN. § 51:2133(E) (2006) (requiring employers to forward 15% of a child performer's earnings to the state to hold if the child's parents do not open a Coogan account).

<sup>77</sup> CAL. LAB. CODE § 1310 (West 2019); *see also* A.B. 3288 2018 Leg., Reg. Sess. (Cal. 2018), *available at* [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2388](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2388) [<https://perma.cc/6M6G-N86G>].

<sup>78</sup> *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/M2HY-22RC>] (last visited Jan. 5, 2022).

<sup>79</sup> *Guardianship*, JUD. BRANCH CAL., <https://www.courts.ca.gov/selfhelp-guardianship.htm?rdeLocaleAttr=en> [<https://perma.cc/KU3K-C5GC>] (last visited Jan. 5, 2022).

<sup>80</sup> *Coogan Law*, *supra* note 78.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Loring Weisenberger, *Producer's Guide: Child Acting Laws*, WRAPBOOK (Mar. 4, 2020), <https://www.wrapbook.com/blog/child-actor-labor-laws> [<https://perma.cc/3R6R-KZ3Q>].

recording, modeling, theatrical, productions; publicity; rodeos; circuses; musical performances; and any other performances.”<sup>84</sup> At first glance, this could be seen to include protections for social media actors. However, social media marketers and lobbyists have worked to ensure that these extensions are not construed to apply to social media in California or any other state.<sup>85</sup>

In 2018, a California legislator proposed one of several extensions to the state’s Child Actor’s Bill to include “social media advertising,” and thus child influencers, in the definition of employment under the scope of the law.<sup>86</sup> The bill and several extensions were passed, but any language containing “social media” was removed from the bill signed by the Governor.<sup>87</sup> It also included sweeping exemptions for social media creators and gaping loopholes that remove Coogan protections and render enforcement practically impossible.<sup>88</sup>

#### IV. DISCUSSION

Production of social media content presents unique challenges for regulation. Even if states wanted to protect child social media influencers, it could be difficult because most of the work takes place in the home, on a child’s hours outside of school, and under the direct supervision of a parent or guardian.<sup>89</sup> On one hand, parents want to be able to control their children’s earning potential. One such parent came under fire online and responded with an oft-heard argument. Katie Stauffer, an Arizona mom who runs an account with more than 4 million followers featuring her daughters, responded to online criticisms accusing her of using her daughters as money-making tools by stating, “if my kids are having fun,

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<sup>84</sup> See, e.g., 29 U.S.C. § 213(c)(3) (2018); *Sec. 11751 – Entertainment Industry Defined; Employment of Minors in the Entertainment Industry*, CORNELL L. SCH., <https://www.law.cornell.edu/regulations/california/8-CCR-Sec-11751> [<https://perma.cc/6NJT-PPA3>] (last visited Jan. 5, 2022).

<sup>85</sup> Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, HOLLYWOOD REP. (Aug. 20, 2019), <https://www.hollywoodreporter.com/news/why-childsocial-media-stars-need-a-coogan-law-protect-parents-1230968> [<https://perma.cc/H9NU-U7DD>].

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Gal Mux, *Are Child Content Creators Protected from Exploitation?*, MEDIUM (Oct. 29, 2020), <https://medium.com/illumination/are-child-content-creators-protected-from-exploitation-from-their-parents-43cbf791e57> [<https://perma.cc/W8YP-NWWY>].

what's the big deal?"<sup>90</sup> Advocates for child labor protections don't see it that way. Anne Henry, co-founder of child advocacy non-profit BizParents, countered online, "If you're lending your image and you're doing something to sell a product, it's work," she counters. "If it's work, then [the child's] money should be protected."<sup>91</sup> Advocates note that lawmakers may find it increasingly difficult to distinguish children's work online from play, as it often looks on camera like fun activities, unboxing, crafting, or creating – all while having fun with friends or family and under the supervision of parents or guardians.<sup>92</sup> As such, lawmakers must balance the need for family autonomy with the unique challenges and potential harm that could come to child social media influencers in making policy decisions.<sup>93</sup> This Part will analyze the constitutionality of labor regulations and the distinctive modalities of social media influencing that make it difficult to regulate.

*A. Unique Challenges in Regulating Social Media Production:  
Parental Autonomy*

Parental autonomy proves to be a large barrier to regulating the use of a child's likeness on social media. The Supreme Court of the United States has routinely affirmed that parents have a right to raise their children as they see fit.<sup>94</sup> This right is "essential" to the lives of parents.<sup>95</sup> As such, children working for or with their parents are generally exempted from employment regulations concerning child labor.<sup>96</sup> Although federal and state laws limit children's ability to work, the Supreme Court has held steadfast in upholding a parent's right to raise their child how they see fit.<sup>97</sup> As a result, parents are typically exempted from child-labor laws and entrusted with their children's online privacy.<sup>98</sup> The Supreme Court has

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<sup>90</sup> Lambert, *supra* note 85.

<sup>91</sup> *Id.*

<sup>92</sup> Wong, *supra* note 6.

<sup>93</sup> *Id.*

<sup>94</sup> See *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

<sup>95</sup> *Id.* (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

<sup>96</sup> Vanessa Cezarita Cordeiro, "Kidfluencers" and Social Media: The Evolution of Child Exploitation in the Digital Age, HUMANIUM (Feb. 23, 2021), <https://www.humanium.org/en/kidfluencers-and-social-media-the-evolution-of-child-exploitation-in-the-digital-age/> [<https://perma.cc/43PV-D674>].

<sup>97</sup> *Stanley*, 405 U.S. at 651.

<sup>98</sup> Cezarita, *supra* note 96.

only prohibited certain conduct in the employment and advertising spheres when the risk for harm to a child is substantial.<sup>99</sup>

Congress has also recognized a parent's right to control the privacy of their children on the internet.<sup>100</sup> The Childhood Online Privacy Protection Act (COPPA), which was first passed in 1998, "imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age."<sup>101</sup> COPPA gives parents authority over what kind of information websites can collect from their children who are under the age of thirteen.<sup>102</sup> This provides an important look into the amount of autonomy parents have over their children's lives on the internet.<sup>103</sup> When it comes to websites advertising to children online, children are left in the hands of their parents or guardians.<sup>104</sup> While the FTC has published guidelines for influencers and other advertisers, which require disclosure of paid advertisements and public relations gifts, there are no specific provisions aimed at children.<sup>105</sup>

### 1. Nature of Social Media Income & Production

Children working as social media influencers can earn money in a variety of ways. First, they may receive money from posting sponsored

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<sup>99</sup> *Definitions of Child Abuse and Neglect*, CHILD WELFARE INFO. GATEWAY (Mar. 2019), <https://www.childwelfare.gov/pubPDFs/define.pdf> [<https://perma.cc/B3YX-JNXZ>].

<sup>100</sup> See *Children's Online Privacy Protection Rule ("COPPA")*, FTC, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule> [<https://perma.cc/DU7L-KPVF>] (last visited Jan. 5, 2022).

<sup>101</sup> *Id.*

<sup>102</sup> See *Complying with COPPA: Frequently Asked Questions*, FTC, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> [<https://perma.cc/WW6T-2M2K>] (last visited Mar. 14, 2022).

<sup>103</sup> See generally CHILD.'S ADVERT. REV. UNIT, A PARENT'S GUIDE TO ADVERTISING AND YOUR CHILD, [https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru---parents-guide-to-advertising.pdf?sfvrsn=5a66570f\\_2](https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/caru/caru---parents-guide-to-advertising.pdf?sfvrsn=5a66570f_2) [<https://perma.cc/9WHH-MX8V>].

<sup>104</sup> FTC, 16 C.F.R. § 255.5 GUIDES CONCERNING THE USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING (2009), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf> [<https://perma.cc/7BZU-FBG6>].

<sup>105</sup> *Id.*



content.<sup>106</sup> This is content – images, text, graphics, or video clips – that advertises a product or service featuring the child influencer as a type of spokesperson.<sup>107</sup> Companies large and small hire influencers to come onto the screens of consumers and tout the company’s products and services.<sup>108</sup> Large brands like Mattel, Target, and Fisher-Price use influencers with huge followings to update their followers on new releases, upcoming launches, and hot trends in the marketplace.<sup>109</sup> Seeing children playing with toys or advertising a product can create huge sales and public relations boosts for brands big and small.<sup>110</sup> Influencers have been known to contribute to the sold-out launches of many products, from shoes and clothing to food and travel products.<sup>111</sup>

Another way that child influencers earn money is through advertising kickbacks from major social media platforms.<sup>112</sup> Google’s AdSense, TikTok’s Creator Fund, and YouTube’s Partner Program all incentivize creators with a certain number of followers to post content.<sup>113</sup> These platforms will typically insert advertisement banners, clips, or images into a creator’s content, and give the creator a percentage of earnings based on the traffic followers of their channel drive to an advertiser’s page or

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<sup>106</sup> Cezarita, *supra* note 96.

<sup>107</sup> See, e.g., Courtney Moore, *How Baby Influencers are Making Big Bucks*, FOX BUS. (Oct. 15, 2019), <https://www.foxbusiness.com/lifestyle/baby-influencers-how-infants-and-kids-are-making-big-bucks-on-social-media-from-lacking-legal-regulation> [<https://perma.cc/E6MH-YV53>].

<sup>108</sup> *Id.*

<sup>109</sup> See, e.g., Grace Donelson, *Toy Review Influencers Unboxing Major Brands This Holiday Season*, TAGGER (Dec. 2, 2021), <https://www.taggermedia.com/blog/toy-review-kid-influencers> [<https://perma.cc/R2UE-T3NM>].

<sup>110</sup> Moore, *supra* note 107.

<sup>111</sup> See, e.g., Seren Morris, *20 Products that Have Sold Out Because of TikTok Popularity*, NEWSWEEK (Apr. 9, 2021), <https://www.newsweek.com/20-products-sold-out-because-tiktok-popularity-1581946> [<https://perma.cc/GG4V-JR5C>]; see generally Shane Barker, *How to Boost Your Product Launch with Influencer Marketing*, PIXLEE, <https://www.pixlee.com/blog/how-to-boost-your-product-launch-with-influencer-marketing/> [<https://perma.cc/5SZU-THH8>] (last visited Apr. 12, 2021).

<sup>112</sup> See, e.g., Vanessa Pappas, *Introducing the \$200M TikTok Creator Fund*, TIKTOK NEWSROOM U.S. (July 22, 2020), <https://newsroom.tiktok.com/en-us/introducing-the-200-million-tiktok-creator-fund> [<https://perma.cc/SEM2-8GN7>].

<sup>113</sup> See *id.*; Google AdSense, GOOGLE, <https://www.google.com/adsense/start/> [<https://perma.cc/9MEP-HHGJ>] (last visited Nov. 29, 2021); Antoni Saurina, *How to Join the YouTube Partner Program, and Boost Your Corporate Channel*, WE ARE MARKETING (Oct. 29, 2020) <https://www.wearemarketing.com/blog/how-to-join-youtube-partner-program.html> [<https://perma.cc/8ZXA-P2CA>].

product.<sup>114</sup> These all create the possibility of a lucrative stream of income for creators as young as a few months on channels or accounts run by their parents.<sup>115</sup>

Children, typically younger than thirteen, are too young to write or produce content themselves.<sup>116</sup> This leaves the job of writing and publishing content up to the parents of the young starlets.<sup>117</sup> Most social media parents set up the production of any sponsored content, prepare the children and supply the wardrobe and props, and then feed the children lines off-camera to produce splashy advertisements featuring followers' favorite internet kids.<sup>118</sup> The parents have almost complete control over the working conditions of their children when producing such content for the internet.<sup>119</sup>

## 2. Social Media as Work

While many parents of kid influencers argue that children are not actually "working" when producing online content, there is risk in allowing children to hawk products on the internet for cash. These concerns stem from several areas. A child may suffer harm from some of the most common pitfalls of child acting. A child may miss school, the opportunity to compete in sports programs, and the opportunity to socialize with other young people in normal environments.<sup>120</sup> There are also several particularized risks associated with children on social media. Children lose their privacy, have their images associated with certain brands and products, and may also suffer psychological harm from heavy

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<sup>114</sup> James Wellemeyer, *How Teens are Getting Rich from TikTok*, N.Y. POST (Jan. 22, 2020), <https://nypost.com/2020/01/22/how-teens-are-getting-rich-from-tiktok/> [<https://perma.cc/FMV3-3XTG>].

<sup>115</sup> *Id.*

<sup>116</sup> See Taylor Mooney, *Companies make millions off kid influencers, and the law hasn't kept up*, CBSN ORIGINALS (Aug. 26, 2019, 6:19AM), <https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals/> [<https://perma.cc/5E8S-RT7S>].

<sup>117</sup> *Id.*

<sup>118</sup> Maheshwari, *supra* note 8; see also Jeff Sonderman & Millie Tran, *The definition of 'sponsored content'*, AM. PRESS ASS'N, (Nov. 13, 2013), <https://www.americanpressinstitute.org/publications/reports/white-papers/the-definition-of-sponsored-content/> [<https://perma.cc/JLB2-K9CN>].

<sup>119</sup> Maheshwari, *supra* note 8.

<sup>120</sup> See Cezarita, *supra* note 96.

internet usage at such a young age.<sup>121</sup> These effects could result from anything from cyber-bullying to threats of violence posed by internet users worldwide.<sup>122</sup>

Because of the nature of social media content creation, it may be difficult for states to enforce work permits, mandatory breaks, or enforcement mechanisms to check on the educational opportunities being provided for children starring in clips filmed by their parents in their own homes.<sup>123</sup> This creates an immense challenge for legislators hoping to create safe working conditions for child internet workers earning money from their presence online.<sup>124</sup> In considering enacting protections for these minors, states need to consider all of the policy points and the unique nature of this type of work.<sup>125</sup> While it may be difficult, there are many solutions and potential positive outcomes that may better protect children in the online arena.

### *B. Proposals for State-Level Protections*

Each of the fifty states or the federal government should adopt new and separate laws that apply to children in the realm of social media. Existing laws protecting actors or traditional performers should be comprehensively reformed to include children working in the entertainment industry on social media.<sup>126</sup> There are several solutions that might assist in protecting the child influencer and ensure the best possible outcome for the child's financial, physical, and emotional well-being.

#### 1. Financial Protections Through Coogan Laws

Financial protections are among the first regulations that should be in place to protect a child's work in the social media industry. It can be difficult to ascertain exactly how finances in a social media influencer's

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<sup>121</sup> Suzanne Bearn, *Would You Let Your Child Become a 'Kid Influencer?'*, BBC NEWS (Aug. 23, 2019), <https://www.bbc.com/news/business-49333712> [<https://perma.cc/67PE-NU4R>].

<sup>122</sup> *Id.*

<sup>123</sup> See Ines Novacic, *"It's kinda crazy": Kid influencers make big money on social media, and few rules apply*, CBSN ORIGINALS (Aug. 23, 2019), <https://www.cbsnews.com/news/kid-influencers-instagram-youtube-few-rules-big-money-cbsn-originals/> [<https://perma.cc/S9TY-7VG7>].

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> See, e.g., Mooney, *supra* note 116.

business can be credited and distributed, so states must tread carefully in requiring protections and Coogan trusts.

States should consider, in regulating contracts between companies and a child's parents, how much work the child must contribute to a certain job. Also, states need to consider that not every family uses banking services or financial education resources. To best protect children, states should require a trust account containing at least fifteen percent of a child's earnings over a certain amount, the appointment of a neutral trustee, and steep penalties for parents if they do not comply.<sup>127</sup> These measures will serve to alleviate some of the major pitfalls that arise when parents are named trustees to the child's Coogan account or attempt to abolish the trust upon the child's eighteen birthday, both of which occur with some frequency in California today.<sup>128</sup>

## 2. Physical Considerations and Solutions

Regulating workplace conditions will be especially difficult under any legislative scheme. First, social media posting is global, easily done from almost any location with internet access, and wildly popular among a vast number of parents across the country.<sup>129</sup> Requiring conditional work permits could be a feasible solution.<sup>130</sup> Parents whose children who are granted a work permit for digital labor could agree to periodic welfare checks by the state, for example.<sup>131</sup> Regular child-welfare checks for children in the spotlight would require additional governmental involvement, but could potentially save children from exploitation.<sup>132</sup>

Children's privacy can also be protected by safeguarding their media presence until they reach the age of majority, rendering any images, videos, or intellectual property containing their likeness under their

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<sup>127</sup> *Id.*

<sup>128</sup> Danielle Ayalon, *Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment*, 35 HASTINGS COMM. & ENT. L.J. 351, 366 (2013).

<sup>129</sup> See Tara Haelle, *Do Parents Invade Children's Privacy When They Post Photos Online?*, NPR (Oct. 23, 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/VBQ5-48LH>].

<sup>130</sup> See Cezarita, *supra* note 96.

<sup>131</sup> See *id.* See generally CHILD WELFARE INFO. GATEWAY, HOW CHILD WELFARE SYS. WORKS 3 (Oct. 2020), <https://www.childwelfare.gov/pubpdfs/cpswork.pdf> [<https://perma.cc/3ZEE-D77N>].

<sup>132</sup> *Id.*

exclusive legal control.<sup>133</sup> In ensuring that children retain the right to remove or delete any postings of their likeness from birth until adulthood, they will retain valuable bodily autonomy.<sup>134</sup> Although this may be difficult to regulate,<sup>135</sup> giving children power over their own images upon reaching adulthood could also encourage parents to improve working conditions.<sup>136</sup>

### 3. Mental, Psychological, and Emotional Well-being Clauses

While it may be the most difficult, regulating certain activities based on the emotional and psychological well-being of a child would be powerful measures in ensuring that children are protected.<sup>137</sup> State legislatures will want to consider how best to protect children without being overly intrusive on the right of parents to raise their children as they see fit. Ensuring the welfare of children who are making money online should be in a state's top priorities.

This goal could be achieved in many ways. States should start by publishing guidelines on working hours, conditions, breaks, educational requirements, and production conditions.<sup>138</sup> Regulations could also be in place for the number of sponsorships children can accept, the types of products children can endorse, and greater marketing and educational guidelines for how to communicate to children the nature and requirements of their work. While this may require creative thinking by legislators and advocates alike,<sup>139</sup> states need to act in order to protect vulnerable children.

## V. CONCLUSION

With the rise of social media and children serving as internet influencers has come a huge vat of unregulated labor in the United States.

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<sup>133</sup> See Kerry Breen, *New law aims to protect finances, privacy of child social media stars*, TODAY (Oct. 9, 2020), <https://www.today.com/parents/law-protects-finances-privacy-child-social-media-stars-t193881> [<https://perma.cc/Y2BU-GLXP>].

<sup>134</sup> See *id.*

<sup>135</sup> See *Children's online privacy protection rule: a six-step compliance plan for your business*, FTC, <https://www.ftc.gov/tips-advice/business-center/guidance/childrens-online-privacy-protection-rule-six-step-compliance> [<https://perma.cc/CG8V-YU2Z>] (last visited Jan. 5, 2022).

<sup>136</sup> See Breen, *supra* note 133.

<sup>137</sup> Cezarita, *supra* note 96.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

Children all across the country are spending a majority of their days in front of a camera, selling goods, advertising services, and earning money for their parents with little control over their privacy or earnings. The entertainment industry has seen a long history of this type of exploitation and even abuse in the film industry in the early part of the 20th century, and parents are often to blame. With little regulation among the states and no federal requirements to speak of, a large class of kids remains vulnerable online.

Unlike typical entertainment work arrangements where actors convene on a set and answer to a director or producer, children on social media work mainly from their own homes under the purview of their parents.<sup>140</sup> Work permit regulations, limits on working hours, educational guidelines, and other protections do not extend to children filming social media content or posting photographs from accounts run by their parents on the Internet.<sup>141</sup>

As a result of this country's complex marketplace, children working on social media can be exploited through a variety of means by their parents, businesses, advertisers, or even social media platforms themselves. Lawmakers should put protections in place to ensure that children are able to keep their hard-won earnings, live healthy lives in clean and safe working environments, and maintain an emotional balance that will produce well-adjusted adults as they mature into their future careers. States need to step up and enact comprehensive legislation to address the major gaps that leave some of our most vulnerable at risk for substantial harm.

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<sup>140</sup> Mooney, *supra* note 116.

<sup>141</sup> Cezarita, *supra* note 96.