

# BEYOND THE YELLOW BRICK ROAD: THE BURGEONING ISSUE OF CHILD EXPLOITATION IN MODERN MEDIA

Gabriella Miller\*

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## INTRODUCTION

This Article explores the issue of child exploitation on social media, a new branch of entertainment that has few regulations protecting young performers in the United States. This Article compares proposed laws in the United States that would protect child social media performers to laws in other nations that have already taken measures to protect child performers

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\* Gabriella Miller belongs to the Vermont Law and Graduate School Class of 2025. She earned her B.A. from the University of Vermont, where she double majored in English and Psychology. This Article, inspired by the dark secrets behind old Hollywood's silver screens, would not exist without the support of her faculty advisor, Benjamin Varadi, and her editors, Hannah Koniar and Ryan Sterling. She would also like to thank the following *Vermont Law Review* editors for their diligent work: Hadley Chance, Brett Francis, Ilinca Johnson, Julia Wickham, Ariana Richmond, and Benjamin Albertson. Finally, she would like to extend her deepest and most ardent gratitude for the loyal support of her cats, Willie and Cupcake, whose contributions made everything possible.

from exploitation on the internet. Finally, it proposes potential remedies and applicable strategies that could help online child performers in the United States. Part I of this Article provides a history of relevant laws and examples of exploitation. Part II focuses on legislation relating to those issues as well as how foreign laws address similar issues. Finally, Part III suggests changes to United States law by adopting language from foreign legislation, expanding on existing laws, and addressing potential counterarguments.

## I. BACKGROUND

From the early days of cinema, the issue of child exploitation has pervaded the entertainment industry, especially regarding parents using their children's talents for financial gain.<sup>1</sup> The passing of the Coogan Law<sup>2</sup> targets children in entertainment, with a focus on rectifying problems specifically within the film and television industry. As a result, child performers on social media remain largely unprotected.<sup>3</sup> Children featured on their parents' social media accounts do not fall under the protection of the Coogan Law because these accounts are private, rather than associated with a larger production industry.<sup>4</sup> Because parents own these accounts and are legally responsible for their children, children's labor to create the content does not need to be compensated.<sup>5</sup> Child entertainers in general are also not protected by the Fair Labor Standards Act (FLSA), which provides restrictions on how long employees can work.<sup>6</sup> Further, parents are able to share their child's likeness without the child's consent because they are in charge of their minor child's images.<sup>7</sup> Unless new laws are implemented to combat these issues, they will remain vulnerable to exploitation.

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1. Jennifer González, *More Than Pocket Money: A History of Child Actor Laws*, LIBR. OF CONG. BLOGS (June 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws/>.

2. The Coogan Law mainly protects children who work in film and television and was revised in 2000 to further combat the issues of child exploitation in these fields. CAL. FAM. CODE § 6752(b)(1) (West 2025).

3. Margaret Arabpour, *Lights, Camera, (Legal) Action: Expanding Child Entertainment Laws to Protect Children on Social Media*, AM. UNIV. J. GENDER, SOC. POL'Y, & THE L. BLOG, <https://jgspl.org/lights-camera-legal-action-expanding-child-entertainment-laws-to-protect-children-on-social-media/> (last visited Mar. 30, 2025).

4. *Id.*

5. See 17 U.S.C. § 102 (2018); Taylor Lorenz, *There Are Almost No Legal Protections for the Internet's Child Stars*, WASH. POST (Sept. 1, 2023), <https://www.washingtonpost.com/technology/2023/04/08/child-influencers-protections-congress/>.

6. 29 U.S.C. § 213(c)(3) (2018).

7. See generally 15 U.S.C. § 6501(9) (2018); Lorenz, *supra* note 5.

### A. Child Exploitation in Entertainment

Judy Garland, star of Metro-Goldwyn-Mayer's 1939 film *The Wizard of Oz*, is a classic example of child exploitation in entertainment. Garland's mother would "drug her with stimulants so she would stay awake for 72-hour shoots, only to then force-feed her sleeping pills to knock her out when she wasn't required on set."<sup>8</sup> This behavior by Garland's mother began when Garland was 10 years old and led to her eventual dependence on these drugs.<sup>9</sup> At only 16, Garland was "groped and harassed repeatedly by Louis B. Mayer, the . . . co-founder of Metro-Goldwyn-Mayer studios."<sup>10</sup> Further, Garland was "hounded to lose weight and made to feel ugly," which increased her drug dependence and led her to abuse alcohol as well.<sup>11</sup> Tragically, Garland died at only 47 years old, due to a sleeping pill overdose.<sup>12</sup>

Brooke Shields was similarly exploited both by Hollywood and by her family. At 11, she portrayed a child prostitute in the 1978 film *Pretty Baby*, during which her mother was also her manager.<sup>13</sup> Shields's mother hired a photographer to "take nude photographs of [Shields] for the Playboy publication *Sugar 'n' Spice*" when Shields was only 10 years old.<sup>14</sup> Shields

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8. Tom Taylor, *The Uncomfortable Truth Behind Judy Garland's 'Wizard of Oz' Experience*, FAR OUT (Nov. 28, 2024), <https://faroutmagazine.co.uk/truth-behind-judy-garland-wizard-of-oz-experience/>.

9. *Id.*

10. Michael S. Rosenwald, *'I'll Ruin You': Judy Garland on Being Groped and Harassed by Powerful Hollywood Men*, WASH. POST (Nov. 14, 2017), <https://www.washingtonpost.com/news/retropolis/wp/2017/11/14/ill-ruin-you-judy-garland-on-being-groped-and-harassed-by-powerful-hollywood-men/>; see also Andrea Park, *Judy Garland was Allegedly Molested by "Wizard of Oz" Munchkins*, CBS NEWS (Feb. 8, 2017), <https://www.cbsnews.com/news/judy-garland-allegedly-molested-munchkins-wizard-of-oz/> (stating that Garland was also groped by the actors who played the munchkins on *The Wizard of Oz*, who "would make Judy's life miserable on set by putting their hands under her dress . . . [They] were 40 or more years old" and "thought they could get away with anything because they were so small").

11. Rosenwald, *supra* note 10.

12. Suyin Haynes, *The True Story Behind the Movie Judy*, TIME (Sept. 26, 2019), <https://time.com/5684673/judy-garland-movie-true-story/>; see also Lynette Rice, *Oscars Flashback: The Tragic Life and Death of Former Disney Star Bobby Driscoll*, ENT. WKLY. (Jan. 22, 2019), <https://ew.com/oscars/2019/01/22/bobby-driscoll-former-disney-star-oscar-winner/> (discussing sudden cancellation of *Peter Pan* star Bobby Driscoll's contract with Walt Disney Studios). Driscoll's treatment by Walt Disney Studios led him to a life of crime and drug abuse, similar to Judy Garland. *Id.* Driscoll eventually died alone and unidentified in an abandoned New York City apartment. *Id.*

13. Rhonda Garelick, *Brooke Shields and the Curse of Great Beauty*, N.Y. TIMES (Apr. 12, 2023), <https://www.nytimes.com/2023/04/03/style/brooke-shields-pretty-baby.html>.

14. Emine Saner, *Brooke Shields on Child Stardom, Sexualisation and Nailing Comedy: 'It's Not in My Nature to Be a Victim'*, THE GUARDIAN (Nov. 22, 2021), <https://www.theguardian.com/lifeandstyle/2021/nov/22/brooke-shields-on-child-stardom-sexualisation-and-nailing-comedy-its-not-in-my-nature-to-be-a-victim>.

“understood early that her career provided the family’s sole income.”<sup>15</sup> She had to “detach herself from reality” and live within a “vaporous existence” due to the continued sexualization on film and the overall exploitation of her talents.<sup>16</sup> Shields’s experiences were so damaging that she was amazed to have survived them.<sup>17</sup> Even so, Shields “probably” would have let her daughters perform in a film like *Pretty Baby* in 1977 because “[i]t was a different era.”<sup>18</sup>

Shirley Temple is another particularly egregious example of Hollywood exploiting its young stars. Temple has been described to have a “fundamentally pedophilic appeal” and to possess an “infantile sexuality” onscreen.<sup>19</sup> Indeed, Temple was “fondled by grown men” in multiple films, even depicting a prostitute in the movie *War Babies* when she was 3 years old.<sup>20</sup> Temple’s sexualization, however, was not limited to the silver screen. When Temple was 12, movie producer Arthur Freed “exposed himself” to her, and when she was 8, a reviewer stated that Temple “measure[d] a man with agile studio eyes [and] with dimpled depravity” in one of her films.<sup>21</sup> In 1945, after marrying her second husband, Temple discovered that “most of her childhood earnings had been frittered away, poorly invested or spent by her parents and relatives.”<sup>22</sup>

These examples illustrate a large problem that has plagued the entertainment industry since the early days of cinema and extending into modern times. These stories establish a worrying pattern of parents stealing the money their famous children earn, simultaneously disregarding their children’s well-being for the sake of fame and fortune.<sup>23</sup> While it is clear that child exploitation in the entertainment industry is not a new phenomenon, it is certainly one that requires further regulations to prevent its extensive reach. Regulations such as the FLSA and the Coogan Law seek to address the shortcomings in this industry by providing financial- and labor-related protections for children.

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15. Garelick, *supra* note 13.

16. *Id.*

17. *Pretty Baby: Brooke Shields: Part One* (Hulu released Jan. 20, 2023).

18. Saner, *supra* note 14.

19. Ara Osterweil, *Reconstructing Shirley: Pedophilia and Interracial Romance in Hollywood’s Age of Innocence*, 24 CAMERA OBSCURA 1, 1–2 (2009).

20. Rua Fay, *The Sinister, Untold History of Shirley Temple*, CINEMASTERS (Apr. 3, 2024), <https://www.cinemasters.net/post/the-sinister-untold-history-of-shirley-temple>.

21. *Id.*

22. Gertrude & Shirley, CHI. TRIB. (Aug. 8, 2021), <https://www.chicagotribune.com/1988/10/20/gertrude-shirley/>.

23. González, *supra* note 1.

*B. Fair Labor Standards Act*

In the early days of cinema, children were afforded almost no legal protections.<sup>24</sup> Movie studios were hesitant to sign contracts with children because children could break contracts at any time, without the repercussions that adult performers would face for breach of contract.<sup>25</sup> Child performers were provided even fewer protections in 1927, when the California Family Code was updated to disallow young performers from breaking contracts based on their status as a minor.<sup>26</sup>

Currently, child entertainers are still exempt from the restrictions created by the FLSA, which restricts the hours and types of work that children can perform.<sup>27</sup> Thus, state laws control the regulation of child entertainers' work in the entertainment industry.<sup>28</sup> These laws have major discrepancies from state to state.<sup>29</sup> For example, California has "extensive requirements" that must be met to allow a child to perform, including documentation from school districts (alongside other permits), while Georgia requires only a special permit and written consent from the Commissioner of Labor.<sup>30</sup>

The FLSA is important because it protects employees—adults and children alike—from exploitation at the hands of their employers.<sup>31</sup> According to the FLSA, children under the age of 17 are generally not allowed to do work that puts them at risk of injury or work hours that interfere with their education.<sup>32</sup> However, these provisions do not apply to children who are "employed as an actor or performer in motion pictures or theatrical productions."<sup>33</sup> While child movie stars do have some legal protections based on state-specific laws, children who perform on social media do not have any protections because they are not considered

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24. *Id.*

25. *Id.*

26. CAL. FAM. CODE § 6751(a) (West 2024).

27. 29 U.S.C. § 213(c)(3) (2018).

28. Arabpour, *supra* note 3.

29. *Child Entertainment Laws as of January 1, 2023*, U.S. DEP'T OF LAB.: WAGE AND HOUR DIV., <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> (last updated Jan. 1, 2023).

30. Compared to states like Georgia, California's child-entertainer laws are extensive. Georgia has fewer requirements to allow children to perform. Child performers must only have a permit and permission from the Commissioner of Labor in Georgia, while California law also requires a permit issued by its Commissioner of Labor. Minors are also required to provide documentation from their school districts in California and cannot miss more than five consecutive days of school. They are also required to procure other work permits to work in California's entertainment industry. *See id.*

31. *See, e.g.*, 29 U.S.C. § 213(c) (2018).

32. *Id.* § 213(c)(4)–(5).

33. *Id.* § 213(c)(3).

employees in movies, theatrical productions, or radio shows, as required by the FLSA.<sup>34</sup>

### C. The Coogan Law

One of the first child movie stars, Jackie Coogan, achieved massive stardom when he performed the lead role in Charlie Chaplin's movie, *The Kid*.<sup>35</sup> When he turned 21 and went to claim his fortune, Coogan discovered that his parents spent most all of it.<sup>36</sup> After suing his parents, Coogan managed to recover only \$126,000 of his \$4 million fortune.<sup>37</sup> Jackie Coogan's story exposed the lack of legal protections for performers at the time.<sup>38</sup> His story provided the basis for California's Coogan Law. This entertainment law ensures that a child performer's contract must set aside a portion of their earnings in a trust, for the performer's benefit, which could not be opened until the child reached the "age of majority."<sup>39</sup>

Unfortunately, the Coogan Law was not enough to prevent child exploitation. Judy Garland and Elizabeth Taylor's mothers were paid stipends from their daughters' salaries because they acted as their daughters' managers.<sup>40</sup> A similar issue occurred with *Home Alone* star Macaulay Culkin, whose parents took 15% of his earnings in a situation where Culkin was the family's sole source of income.<sup>41</sup> The Coogan Law has since been reformed to target these issues and now requires that 15% of a minor performer's contracted earnings be set aside in a trust for the minor's benefit.<sup>42</sup>

Social media is a fairly new phenomenon and, as such, child entertainers on various social media platforms are not afforded many protections.<sup>43</sup> Currently, the Coogan Law does not apply to social media entertainers because it only applies to contracts between a child and a third-party employer—contracts in which the parent or guardian is assumed to be

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34. *Id.*

35. González, *supra* note 1.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. González, *supra* note 1.

41. Susie Linfield, *Trouble in the House that Mac Built: A Custody Battle for Macaulay Culkin by his Parent-Managers Offers a Glimpse into what Can Happen in Hollywood when a Son Is Also a Star*, L.A. TIMES (Nov. 5, 1995), <https://www.latimes.com/archives/la-xpm-1995-11-05-tm-64948-story.html>.

42. CAL. FAM. CODE § 6752(b)(1) (West 2025).

43. See Arabpour, *supra* note 3.

the child's advocate and the legally responsible party in the agreement.<sup>44</sup> The Coogan Law also repeatedly references the "parent or guardian" and "the minor's employer," presuming the two are separate entities.<sup>45</sup> For minors, the law requires parental consent for "the collection, use, or disclosure of personal information."<sup>46</sup> These clauses, however, provide little to no protection if the parents themselves are the ones disseminating their child's images for monetary gain. When parents are directly in charge of putting their child's images on social media, there is no contract between the social media conglomerate and the child that could potentially fall under the scope of the Coogan Law. Rather, the only agreement that exists is between the parent and the social media company.<sup>47</sup>

#### *D. Examples of Exploitation on Social Media*

The exploitation of children's talent is certainly not limited to the big screen. With social media becoming a more and more prevalent form of entertainment, new ways to exploit vulnerable parties are also coming to light. In recent years, "sharing mundane aspects of life on social media has become commonplace" and "more parents have made money and gained attention by posting about their children online."<sup>48</sup> As the ability to gain attention and make money on social media grows, parents are beginning to exploit their children the same way young stars in old Hollywood were exploited.<sup>49</sup> This time, however, legal recourse is more complicated because modern social media allows parents to be guardians, producers, and managers all in one, and there are no protective contracts involved like in traditional entertainment.

A recent example of child exploitation on social media is the now-defunct 8 Passengers YouTube channel, owned by Ruby Franke, which features the daily lives of her and her six children.<sup>50</sup> Franke's videos delve deeply into her children's personal lives, and she is considered just one of many content creators who "force children, too young to consent, to trade their privacy for her financial gain."<sup>51</sup> What set Franke apart from others,

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44. CAL. FAM. CODE § 6752(a)–(b) (West 2025).

45. *Id.*

46. 15 U.S.C. § 6502(b)(1)(A)(ii) (2024).

47. Arabpour, *supra* note 3.

48. Lorenz, *supra* note 5.

49. *Id.*; see *supra* Part I.A. (discussing exploitation of child actors in historical Hollywood).

50. Emily Olson, *Who Is Ruby Franke? What to Know About the Mommy Vlogger Accused of Child Abuse*, NPR (Sept. 1, 2023), <https://www.npr.org/2023/09/01/1197289217/ruby-franke-utah-youtube-child-abuse>.

51. *Id.*

however, was her open abuse of her children.<sup>52</sup> Franke reportedly took away her children's "bedroom privileges" and commonly withheld food as punishment—all of which was filmed for the entertainment of her millions of followers.<sup>53</sup> Franke was arrested after her 12-year-old son escaped their home in a state of malnourishment and physical anguish, having suffered lacerations from being tied up with a rope.<sup>54</sup> She was charged with four counts of aggravated child abuse and sentenced to up to 60 years in prison.<sup>55</sup>

Some social media families will go to great lengths to create content that will garner more followers and therefore more money, even at the expense of their children. Myka and James Stauffer, who ran a YouTube channel dedicated to creating family-oriented content, adopted a child from China for that express purpose.<sup>56</sup> Videos on their channel that featured any of their children tended to gain more views, thus prompting them to have their children on screen more, monetize their pregnancies, and even document the adoption process from start to finish.<sup>57</sup> Documenting the adoption process brought the Stauffers hundreds of thousands of views and followers.<sup>58</sup> They were even able to make money through adoption-related fundraising schemes and company sponsorships.<sup>59</sup> When the behavioral issues of their adopted child became overwhelming, however, the Stauffers ultimately gave him up to another family.<sup>60</sup> Notably, the Stauffers have since left YouTube and are no longer making money from their children.<sup>61</sup>

In these and many other instances of child exploitation online, the main issue is that children have no protections on the internet, especially when their parents are the ones putting them online.<sup>62</sup> Laws like the Coogan Law

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52. *Id.*

53. *Id.*

54. *Id.*

55. Olivia Craighead, *Ruby Franke Sentenced to up to 60 Years in Prison*, THE CUT (Feb. 20, 2024), <https://www.thecut.com/article/ruby-franke-sentenced-up-to-60-years-prison.html>.

56. Caitlin Moscatello, *Un-Adopted YouTubers Myka and James Stauffer Shared Every Step of Their Parenting Journey. Except the Last.*, THE CUT (Aug. 18, 2020), <https://www.thecut.com/2020/08/youtube-myka-james-stauffer-huxley-adoption.html>.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Fourteen-year-old YouTube star Piper Rockelle's successful channel is run by her mother, Tiffany Smith. Eleven other children, known as "Rockelle's Squad," were regularly featured on Rockelle's channel. Although Rockelle's channel pulls in up to \$625,000 per month, the "Rockelle's Squad" members were not compensated for their work and were, in fact, "frequently subjected to an emotionally, physically, and sometimes sexually abusive environment." Mary McNamara, *Social Media Platforms Must Stop the Exploitation of Child Performers*, NOW, L.A. TIMES: VOICES (Dec. 20, 2022),



protect traditional media stars,<sup>63</sup> which does not extend to online child stars, who are either in charge of their own content or participate in creating content that is overseen by their parents.<sup>64</sup> Not only are online child entertainers at risk of not being compensated for their work, but they also do not have the other protections that film and television stars do: on-site educators to ensure that they are keeping up with their schoolwork and limited working hours.<sup>65</sup>

Another important issue facing this industry is that the agencies that enforce child labor laws are unfamiliar with social media and its stars.<sup>66</sup> These young social media performers seem to fall into a gray area where their work certainly meets the definition of “work” because they are generating income, yet this “work” is not considered as legitimate as child performers on film and television.<sup>67</sup> These performers should be provided with the same legal protections as their traditional media costars by incorporating those protections into new legislation that would apply to new media.<sup>68</sup>

## II. HOW OTHER COUNTRIES ADDRESS THE GAP IN U.S. LAWS

Compared to other countries, the United States is underdeveloped in terms of online entertainment laws and how these laws protect children’s rights. There are many concerns associated with parents sharing their children’s images and information online, such as financial exploitation, the risk of sexual exploitation, and a general lack of privacy.<sup>69</sup> This Part discusses other countries that the United States should look to for

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<https://www.latimes.com/entertainment-arts/story/2022-12-20/column-social-media-must-stop-exploiting-child-performers>.

63. See CAL. FAM. CODE § 6752(b)(1) (West 2025) (applying protections for minors who enter into a contract to earn wages).

64. 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/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968/>.

65. *Id.*

66. McNamara, *supra* note 62.

67. *Id.*

68. “New media” refers to digital media, including media published online to a mass audience. *New Media*, OXFORD REFERENCE, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100231836> (last visited Apr. 11, 2025).

69. Stacey B. Steinberg, *Sharenting: Children’s Privacy in the Age of Social Media*, 66 EMORY L. J. 839, 850 (2017); *Posting Photos of Your Children on Social Media? Experts Warn There May Be Consequences*, CBS NEWS (June 9, 2022) <https://www.cbsnews.com/sacramento/news/posting-photos-of-your-children-on-social-media-experts-warn-there-may-be-consequences/>.

recommendations to improve the way that the United States protects children online.

*A. The Gap in U.S. Laws*

The United States does not have laws in place that sufficiently protect online child performers. Similar to the arrival of film, the advent of social media brings novel issues to the legal field. As in the early days of film, children are vulnerable to exploitation in this largely unregulated area.<sup>70</sup> The lack of regulation within this industry makes it a “wild west” where parents are the only people with any control over how much their child performers work, how much they are exposed to online, and what happens with the money they earn.<sup>71</sup>

One of the most egregious issues that child entertainers face is being sexualized, which is only encouraged by their parents selling exclusive “VIP” photos or creating Amazon wish lists for fans to fulfill.<sup>72</sup> While this is not “technically illegal,” parents who engage in this behavior “[place] their children in a gray area that is not explicitly sexual but that many people would consider to be sexualized.”<sup>73</sup> The main issue here is that profiting off of one’s children, especially in ways that place them in danger of exploitation, is not “technically illegal.”<sup>74</sup> Additionally, children whose careers are completely controlled by their parents have no limits on how many hours they work, nor are there specifications on how much of their earnings should actually be allocated to them.<sup>75</sup> Because there are limited legal regulations or protections for child performers on social media, the United States has a large gap in its laws that should be rectified.

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70. See *supra* Part I.

71. Katie Collins, *TikTok Parents Are Taking Advantage of Their Kids. It Needs to Stop*, CNET (Aug. 7, 2022), <https://www.cnet.com/tech/services-and-software/tiktok-parents-are-taking-advantage-of-their-kids-it-needs-to-stop/>.

72. *Id.*; see also Gabriela Barkho, *More Platforms Are Helping Influencers Make Wish Lists for Fans*, MODERNRETAIL (Dec. 22, 2023), <https://www.modernretail.co/technology/more-platforms-are-helping-influencers-make-wish-lists-for-fans/> (explaining Amazon wish lists are a form of “digital gifting” where fans can view what their favorite influencers put on their wish list and purchase it for them).

73. Collins, *supra* note 71; see also EJ Dickson, *A Toddler on TikTok Is Spawning a Massive Mom-Led Movement*, ROLLING STONE (July 20, 2022), <https://www.rollingstone.com/culture/culture-news/tiktok-wren-eleanor-moms-controversy-1385182/> (discussing four-year-old Wren Eleanor, whose mother often posts videos of her on TikTok). Viewers have expressed concern about Eleanor’s possible sexual exploitation due to the page’s questionable content, such as fans that are suspected pedophiles and inappropriate searches for concerning videos featuring the four-year-old, like “Wren scandalous outfits.” *Id.*

74. Collins, *supra* note 71.

75. *Id.*

Other countries have laws that specifically or tangentially address the issues outlined above. Countries like France legislate specific protections for online child performers.<sup>76</sup> Countries like Thailand do not have laws specific to online child performers, but they do limit sharing photos of adopted children online for a certain period of time.<sup>77</sup> The United States should consider similar restrictions to protect children from being exploited online.

### 1. The Fair Labor Standards Act and Child Employment

The Fair Labor Standards Act (FLSA) and associated judicial decisions are not clear as to whether children performing for their parents' social media accounts is considered child labor.<sup>78</sup> While these children are certainly working, it is difficult to regulate that work because it is within the family and parents generally have a right to raise children the way they want.<sup>79</sup> Additionally, under the FLSA, parents are not considered people who can inflict oppressive labor conditions upon their own children.<sup>80</sup> Therefore, it is difficult to establish child labor violations regarding child influencers whose work is controlled by their parents.<sup>81</sup>

The Supreme Court addressed parents' rights in *Meyer v. Nebraska*, where parents challenged a Nebraska law that prohibited children from learning foreign languages until they passed the eighth grade.<sup>82</sup> In this case, the Court stated that individuals have a right to "establish a home and bring up children . . . according to the dictates of [their] own conscience."<sup>83</sup> This

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76. Sounak Mukhopadhyay, *World-First Law Bans Parents from Sharing Children's Photos on Social Media*, MINT (Mar. 22, 2023), <https://www.livemint.com/news/world/worldfirst-law-bans-parents-from-sharing-children-s-photos-on-social-media-11679458176060.html>; Laura Kayali, *France to Introduce Legal Protection for YouTube Child Stars*, POLITICO (Oct. 6, 2020), <https://www.politico.eu/article/france-to-introduce-legal-protection-for-youtube-child-stars/>.

77. Thai Family Law Child Adoption Act § 32, THAI. L. ONLINE, <https://www.thailandlawonline.com/thai-family-and-marriage-law/thai-family-law-child-adoption-act> (last visited Apr. 11, 2025); Charissa Cheong, *Footage of a YouTuber Saying She Canceled an Adoption Because She Wouldn't Be Able to Film the Child Has Resurfaced, Shocking Viewers*, INSIDER (June 5, 2023), <https://www.insider.com/resurfaced-clip-influencer-cancels-adoption-film-child-2023-6>.

78. See *supra* Part I.B.

79. Valeriya Safronova, *Child Influencers Make Big Money. Who Gets It?*, N.Y. TIMES (Oct. 13, 2023), <https://www.nytimes.com/2023/10/10/style/children-influencers-money.html>.

80. See 29 U.S.C. § 203(l) (2018) (discussing "oppressive child labor" as a type of employment that occurs only when the employer is not the parent or guardian of an employee under the age of 16; as such, parents cannot, by definition, inflict oppressive labor conditions upon their own children).

81. *Id.*

82. 262 U.S. 390, 396–97 (1923).

83. *Id.* at 399.

allowed parents to make decisions about their children's learning, overriding the Nebraska law.<sup>84</sup> However, in *Prince v. Massachusetts*, the Court established that states do have the power to regulate the family in certain instances, especially when it comes to child labor as it pertains to child welfare.<sup>85</sup> The Court stated that "the state as *parens patriae* may restrict the parent's control by . . . regulating or prohibiting the child's labor" and that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare."<sup>86</sup> These cases pose an interesting dichotomy between deference towards parents' abilities to choose how to raise their children and the state's ability to act in the child's best interest, as each is permissible in different circumstances.

If parents are considered to be their children's employer, there are several federal labor provisions that some of these parents consistently violate. For example, Child Labor Regulation No. 3 limits the hours that 14- and 15-year-olds can work to non-school hours between 7 a.m. and 7 p.m.<sup>87</sup> A prevalent problem that child influencers face is that they often work "excessive hours" at the behest of their parents.<sup>88</sup> Some of these children do not even meet the youngest age stipulations under the FLSA—many are between 2- to 4-years old and have been online since they were born.<sup>89</sup> However, in its definition of "oppressive . . . labor," the FLSA explicitly excludes parents.<sup>90</sup> This means when parents inflict these oppressive labor conditions upon their own children, the law does not recognize it as illegal.<sup>91</sup>

Child performers are subject to state laws since there is no federal standard for this area of work.<sup>92</sup> However, child influencers do not enjoy what protections might be available to traditional media stars in most

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84. *Id.* at 403.

85. 321 U.S. 158, 158–59, 166 (1944).

86. *Id.* at 166–67.

87. Children can only work less than three hours on school days and less than eight hours on non-school days. 29 C.F.R. § 570.35 (2023).

88. Lorenz, *supra* note 5; see also Rachel Dunphy, *The Abusive 'Pranks' of YouTube Family Vloggers*, N.Y. MAG.: INTELLIGENCER (Apr. 28, 2017), <https://nymag.com/intelligencer/2017/04/daddyofive-youtube-abuse-controversy-explained.html> (discussing "DaddyOfive" YouTube channel's abuse scandal, which exemplifies the issue of children always being on-camera, having no control over labor conditions, and having their parents completely in control of income the children are partially responsible for earning).

89. Sapna Maheshwari, *Online and Earning 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>.

90. 29 U.S.C. § 203(l) (2018).

91. *Id.*

92. U.S. DEP'T OF LAB.: WAGE AND HOUR DIV., *supra* note 29.

states.<sup>93</sup> Because they earn money from performing, child influencers should be considered employees, even if they perform for their parents' social media accounts.

## 2. Intellectual Property Concerns

Child influencers are targets for exploitation because they do not own the content that they help create. According to the Copyright Act, copyright protection applies to original authorship.<sup>94</sup> Since many child influencers are too young to make their own social media accounts or are forced to perform for their parents' accounts, they do not own the content that they participate in—their parents do.<sup>95</sup> Because parental employment is more private and less formal than work completed under legitimate productions, many labor laws treat the two differently.<sup>96</sup> Therefore, child influencers do not have the rights to the content they participate in. To rectify this problem, the United States should recognize children as employees under labor laws or create laws that mandate compensation for their work.

Copyright law protects creative works, which include “pictorial, graphic, and sculptural works” alongside “motion pictures and other audiovisual works.”<sup>97</sup> As such, copyright law certainly covers the content that child influencers create or participate in for social media. Furthermore, the U.S. Copyright Office states that a minor can own a copyright, as there are no age restrictions on copyrighting creative works.<sup>98</sup> Complications arise because, while minors can hold a copyright, the Federal Rules of Civil Procedure prevent them from enforcing this copyright in federal court.<sup>99</sup>

Child influencers are further limited by Children's Online Privacy Protection Act (COPPA), which requires parental consent for social media users under the age of 13.<sup>100</sup> This means the parents of children under 13 govern the personal information shared on social media.<sup>101</sup> While this is not necessarily a negative consequence of COPPA, it provides another route for

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93. CAL. FAM. CODE § 6752(b)(1) (West 2025); Ananya Bhattacharya, *Child Influencers in Illinois Have a Jazz Age Actor to Thank for Their Earnings*, QUARTZ (Aug. 24, 2023), <https://qz.com/child-influencers-in-illinois-have-a-jazz-age-actor-to-1850769254>.

94. 17 U.S.C. § 102 (2018).

95. Safronova, *supra* note 79.

96. *Id.*

97. 17 U.S.C. § 102(a)(5)–(6) (2018).

98. *Who Can Register?*, COPYRIGHT.GOV, <https://www.copyright.gov/help/faq/faq-who.html> (last visited Apr. 8, 2025).

99. FED. R. CIV. P. 17(c).

100. 15 U.S.C. § 6501(1) (2018).

101. 15 U.S.C. § 6502 (2018).

parents to exploit their children creatively and financially when acting against their best interests. Additionally, the Federal Rules of Civil Procedure limit minors over 13 who are pursuing a copyright lawsuit in federal court, forcing them to rely on parents who could exploit them for their financial gain.<sup>102</sup>

Recognizing children who perform for their parents' social media accounts as employees is not a perfect solution to the issue of who owns the copyrighted works because employers typically own the work that they hire their employees to make.<sup>103</sup> The Copyright Act implies that "work[s] made for hire" are works that are necessarily compensated by the employer, though economic scholarship indicates that artists consider themselves better off when they own the copyright themselves.<sup>104</sup> However, even if child influencers cannot fully own the work they help create, recognizing them as employees would mandate financial compensation for their work.

#### *B. Laws in France, Thailand, and India*

Recent legislation in France represents a step forward for protecting children's online privacy.<sup>105</sup> The French legislature is contemplating a new bill that "would allow courts to prohibit parents from posting images of their youngsters online, with both parents being held responsible for their children's image rights."<sup>106</sup> Another important aspect of this bill is that it would take children's choices about how their images are shared into account, which is not currently provided for in U.S. laws.<sup>107</sup>

Because U.S. laws place children's privacy rights under their parents' protection, these laws do not give children the opportunity to opt out of having their image shared online.<sup>108</sup> More specifically, COPPA gives parents control over what information is collected from the child.<sup>109</sup> This means that parents can control how much of their children's information, like their children's image, is exposed to the world. COPPA is in direct contrast with France's proposed law, which would offer children the

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102. FED. R. CIV. P. 17(c).

103. 17 U.S.C. § 201(b) (2018).

104. See I. Trotter Hardy, *An Economic Understanding of Copyright Law's Work-Made-for-Hire Doctrine*, 12 COLUM. J.L. & ARTS 181, 183 (1988).

105. Mukhopadhyay, *supra* note 76.

106. *Id.*

107. *Id.*

108. Arabpour, *supra* note 3.

109. 15 U.S.C. § 6502(b)(1)(B) (2018).

opportunity to decide if their image is shared based on their age and maturity level.<sup>110</sup>

France's proposed bill specifically "seeks to punish influencer parents who try to gain followers and earn money by posting images of their children," thereby reducing the risk of child exploitation online.<sup>111</sup> France emphasizes parents respecting their children's privacy, which the United States should seek to do as well.<sup>112</sup>

French law also requires YouTube channels featuring children under 16, whether that channel is owned by the parents or the children themselves, to obtain official authorization from an administrative authority.<sup>113</sup> Penalties for breaking this law include fines of up to €75,000 (\$81,400) and five years in prison.<sup>114</sup> This law presents an important juxtaposition to U.S. laws: it showcases how little restitution there is in the United States for children who perform on online platforms.

The United States should adopt platform-specific laws, like France's YouTube law, to provide more structure to websites that do not already have sufficient restrictions to protect their young users. The United States should consider serious ramifications for violations—such as France's high fines and jail time—to deter circumvention and protect vulnerable individuals.

Additionally, France's YouTube law is significant because it requires parents to obtain official permission to run a YouTube channel—a platform that does not have very specific user restrictions to begin with.

Thailand is another country that implements strict laws to protect its children. One of its laws specifically prohibits adoptive parents from posting their adoptive child's photo or information online before that adoption is finalized.<sup>115</sup> Because no similar laws exist in the United States, adopting children from Thailand poses a unique restriction that some consider an insurmountable challenge.

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110. Mukhopadhyay, *supra* note 76.

111. *Id.*

112. *Id.*; see generally Sarah Szczypinski, *Kids Deserve Privacy. As Parents, We Need to Give it to Them—Online and IRL*, WASH. POST (Mar. 7, 2019), <https://www.washingtonpost.com/lifestyle/2019/03/07/kids-deserve-privacy-parents-we-need-give-it-them-online-irl/>.

113. Laura Kayali, *France to Introduce Legal Protection for YouTube Child Stars*, POLITICO (Oct. 6, 2020), <https://www.politico.eu/article/france-to-introduce-legal-protection-for-youtube-child-stars/>.

114. *Id.*

115. Thai Family Law Child Adoption Act § 32, THAI. L. ONLINE, <https://www.thailandlawonline.com/thai-family-and-marriage-law/thai-family-law-child-adoption-act> (last visited Apr. 8, 2025); Cheong, *supra* note 77.

One couple in particular, the Phillippis, specifically cited Thailand's law as the reason they did not go through with their adoption of a child from Thailand.<sup>116</sup> Their issues with the social media restriction implied they sought adoption primarily to generate income from the process.<sup>117</sup> Posting the child's information online garnered traffic to the Phillippis' social media accounts because interest in the adoption brought in millions of viewers.<sup>118</sup> This situation exemplifies common concerns with "young children being used as a source of income by their parents and family," thus leading to their exploitation.<sup>119</sup> The ability to profit from adoption on social media in the United States and other countries displays the breadth of areas children can be exploited online.

Thailand provides a positive example of how targeted laws can protect children from exploitation. The United States does not have similar laws that limit how much parents can share of their children—including their adoptive children.<sup>120</sup> Targeting a specific area in which children are vulnerable, like adoption, can allow the United States to eliminate child exploitation in that area. It is particularly concerning that even a child's adoption can be exploited on social media. However, if the United States were to adopt a law like Thailand's to limit the initial time frame in which adopted children can be posted online, this would help limit the online exploitation of children.

Laws in India provide a more drastic option for online protection. India has proposed a law that would limit social media usage for people under the age of either 18 or 21.<sup>121</sup> While this law is extremely restrictive and somewhat unrealistic for use in the United States, the reasoning behind this law displays the government's desire for strong protections for its young citizens.<sup>122</sup> The High Court in India cited maturity concerns for the use of social media.<sup>123</sup> While this law would not directly target the exploitation of children on social media, it would tangentially prevent this from occurring

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116. Cheong, *supra* note 77.

117. *Id.*

118. *Id.*

119. Hannah Lacy, *YouTube Mom Admits She Canceled Adoption Because She Couldn't Post Child Online*, CAFEMOM (June 6, 2023), <https://cafemom.com/parenting/youtube-mom-admits-she-canceled-adoption>.

120. See generally Lambert, *supra* note 64.

121. *Why Court Wants to Put an Age Limit on Using Social Media in India*, ECON. TIMES (Sept. 20, 2023), <https://economictimes.indiatimes.com/news/how-to/why-court-wants-to-put-an-age-limit-on-using-social-media-in-india/articleshow/103801209.cms>.

122. *Id.*

123. *Id.*



by prohibiting minors from using social media entirely.<sup>124</sup> Although this is a drastic measure that the United States should not necessarily adopt, it should also consider children's maturity when looking at their online presence. Some U.S. laws, however, are catching up to the standards being set internationally.

### III. CHANGING U.S. LAW

Laws in countries like France and Thailand provide an international comparison to the less stringent laws found in the U.S. Online entertainment is a fairly new form of entertainment, but based on the advancements made in other countries, the United States can clearly create new legislation to create protections for these modern issues. It is important to create a new law that specifically protects child entertainers because this realm is just as vulnerable to exploitation as the movie industry. Much like the Coogan Law in 1939, a new law could provide monetary protections for online child entertainers.<sup>125</sup> Additionally, a new law could allow children to protect their own image and exercise some control over the release of their own personal information.

A recent Illinois law protects online child performers.<sup>126</sup> This law is novel in the United States because it mandates that online child performers, more commonly known as "influencers," are entitled to a percentage of the earnings from content that they help create.<sup>127</sup> This law is actually based on the Coogan Law, which provides protections for children who work in traditional media.<sup>128</sup> This Illinois law is important because it is the first of its kind in the United States and sets a precedent for other states that might be interested in creating similar legislation.

#### *A. The Importance of Federal Law*

The recent law in Illinois that entitles child influencers to a certain percentage of their earnings sets an important precedent for the rest of the country.<sup>129</sup> However, the United States should establish a federal law to provide similar protections throughout the country. Based on the Coogan

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124. *Id.*

125. See CAL. FAM. CODE § 6752(b)(1) (West 2025) (requiring employers to set aside 15% of a minor's gross earnings).

126. Bhattacharya, *supra* note 93.

127. *Id.*

128. *Id.*

129. *Id.*

Law, the Illinois law specifically targets children’s earnings instead of providing them with broader protections.<sup>130</sup> A limitation of the Coogan Law, like the Illinois law, is that it is state-specific and does not apply to other states.<sup>131</sup> Some states, like Mississippi and New Hampshire, do not provide any regulations at all.<sup>132</sup> Furthermore, as discussed earlier, “[c]hild entertainers are exempt from the federal labor laws created by the Fair Labour Standards Act [sic], which means that they are completely dependent on state law to protect them.”<sup>133</sup>

Federal law is important because it would provide standardized protections in every state. Some state-based provisions are inconsistent with federal labor laws.<sup>134</sup> This means that whichever law is more restrictive—state or federal—will apply.<sup>135</sup> Eliminating such discrepancies would not only reduce confusion, but also would provide child entertainers in all states with a predictable standard of protection.

For traditional media stars, production is concentrated in states like California and New York.<sup>136</sup> Therefore, these states have stricter guidelines in terms of what certificates, permits, and parental consent are required for child performers to work.<sup>137</sup> However, this model is not strictly applicable to online child performers because these performers can work in one state with the same level of production as they might have in another state.<sup>138</sup> Additionally, because these performers create online content, exploitative parents could move them to a different state to take advantage of less stringent laws unavailable to traditional media stars.<sup>139</sup> While the mobility of being an online creator is often beneficial because of the flexibility it can provide, this is also something that parents can take advantage of, to their children’s detriment. Therefore, Congress should implement a federal law to protect online child performers, providing consistent standards throughout the country.

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130. *Id.*

131. CAL. FAM. CODE § 6752(b)(1) (West 2025).

132. U.S. DEP’T OF LAB.: WAGE AND HOUR DIV., *supra* note 29.

133. González, *supra* note 1.

134. See generally U.S. DEP’T OF LAB.: WAGE AND HOUR DIV., *supra* note 29; CAL. FAM. CODE § 6752(a)–(b) (West 2025).

135. 29 U.S.C. § 218(a) (2018).

136. U.S. DEP’T OF LAB.: WAGE AND HOUR DIV., *supra* note 29.

137. *Id.*

138. Maheshwari, *supra* note 89 (discussing the fact that “child labor guidelines vary by state”).

139. Katie Collins, *The U.S. Is Finally Dealing With the Exploitation of Child Influencers*, CNET (Feb. 17, 2023), <https://www.cnet.com/news/politics/the-us-is-finally-dealing-with-the-exploitation-of-child-influencers/>.

*B. Suggestions*

There are many avenues that the United States can take to offer better protections for child influencers and even child performers in general. These avenues include allowing children to take ownership of their own image when they are old enough, creating new legislation to target issues that child influencers face, and giving these child influencers the same protections as traditional child performers.

One provision that the new legislation could include is allowing children of a certain age to request that content featuring their image be taken down.<sup>140</sup> Many children whose parents are in charge of their online presence have no control over content posted about them, even after they are adults and are concerned about having those posts “weaponized against” them.<sup>141</sup> Children’s privacy should be protected, and children should have the right to control their image once they obtain a certain level of maturity.

New legislation should target the issues of “sacrifice of privacy, excessive hours, and lack of fair compensation” that online child stars face.<sup>142</sup> These issues persist because of the lack of “protection and oversight” that occurs when content is made at home without the supervision of an official production studio.<sup>143</sup> Without the standards that movie and television studios have had in place since the 1920s, online child stars are left without similar protections.<sup>144</sup> New legislation will prevent modern child stars from facing these already well-known problems.

Another possible solution is to give online child stars the same protections as children working within the realm of traditional media. For example, states like Florida require employers to show the Division of Labor the exact dates and amount of time that minors worked in the entertainment industry.<sup>145</sup> New York requires certificates and permits for minors to work, and sometimes requires some of the minor’s earnings to be set aside in a trust.<sup>146</sup> Such provisions, if extended to online child stars, would provide them with some protections, as the amount of time they work would be regulated and at least some of their earnings would be protected.

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140. Jacqueline Yoo et al., *Social Media Posts by Parents Bring Concern for Children’s Privacy, Safety*, ABC NEWS (July 6, 2023), <https://abcnews.go.com/US/social-media-posts-parents-bring-concerns-childrens-privacy/story?id=100706825>.

141. *Id.*

142. Lorenz, *supra* note 5.

143. *Id.*

144. *See generally* Part I.

145. U.S. DEP’T OF LAB.: WAGE AND HOUR DIV., *supra* note 29.

146. *Id.*

*C. New Proposed Legislation*

There are many potential routes that would prevent the exploitation of the vulnerable population of child influencers. While adopting legislation from other countries or states are viable options, new legislation could also effectively protect child influencers. This legislation should focus on providing these children with the same protections as children who work in traditional media. Child influencers who perform for their parents should be treated as employees, paid for their work, given reasonable control over their image, and decide how much of themselves they choose to share with the world. The proposed legislation reads as follows:

**Proposed Federal Legislation to Protect Minors Who Perform on Internet-Based Entertainment Platforms**

1. Minor children who perform for a social media account owned by a parent or guardian shall be considered employees and are entitled to fair compensation of no less than the federal minimum wage.
2. The minor child's employer shall set aside 15% of the minor's earnings to be held in a trust, savings account, or other savings plan until the minor reaches the age of majority.
  - a. If the minor performs for a social media account owned by the minor, the minor's parent or guardian shall set aside 15% of the minor's earnings to be held in a trust, savings account, or other savings plan until the minor reaches the age of majority.
3. Minor children who perform for a social media account owned by someone other than themselves shall be considered employees under the Fair Labor Standards Act. Minor children shall not work more hours per week than mandated by their state of residence, and shall not engage in any labor that their state deems hazardous.
4. Parents or guardians who wish to feature a minor child in photos or videos broadcast to more than 10,000 audience members must obtain a license from their state of residence's department of labor.
5. Minor children who are featured on a social media account are, once they reach the age of majority, entitled to have content

featuring their image removed if the state deems it exploitative, harmful, or excessive.

6. Social media account owners who utilize minors for content that is sexually suggestive or explicit, physically or emotionally abusive, or deliberately harmful in other ways will have their account removed and may be fined up to \$10,000.

7. Minor children who move to a new state will be subject to their prior state's labor laws for a period of 12 months.

8. Adopted or fostered children are not eligible to appear on their parent or guardians' social media accounts for a period of 12 months after the adoption or foster situation is made official.

#### IV. COUNTERARGUMENTS

##### *A. Parents' Rights*

Online safety is an important concern for parents. Maryland and California have proposed bills to create social media safety measures, and Utah has already enacted such laws.<sup>147</sup> Utah's law specifically "requires social media companies to provide a parent or guardian 'access to the content and interactions of an account held by a Utah resident under the age of 18.'"<sup>148</sup> Concerns about children's mental health, especially when it comes to participation on social media, prompted the Surgeon General to create an advisory on the subject, upon which the Utah law is based.<sup>149</sup> The solution lawmakers found for the problems outlined by the Surgeon General, and largely linked to social media usage, was to get parents more involved.<sup>150</sup>

However, this solution raises issues with privacy rights for minors.<sup>151</sup> The United Nations addressed this issue and ultimately deemed that a child has a lawful right to privacy.<sup>152</sup> In the United States, however, parental rights over children are prioritized.<sup>153</sup> For example, *Pierce v. Society of*

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147. Alfred Ng, *Where Parental Snooping Is Becoming the Law*, POLITICO (Apr. 11, 2023), <https://www.politico.com/news/2023/04/11/social-media-privacy-parents-kids-00091400>.

148. *Id.*

149. *Id.*; OFF. OF THE SURGEON GEN., PROTECTING YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL'S ADVISORY 25 (2021).

150. Ng, *supra* note 147.

151. *Id.*

152. G.A. Res. 44/25, Convention on the Rights of the Child, Art. 16 (Nov. 20, 1989).

153. Ng, *supra* note 147.

*Sisters* established that parents have the right to choose what type of school to send their children to, despite a state statute mandating that children attend public school.<sup>154</sup> Further, the right of parents to make decisions for their children was established in *Troxel v. Granville*, which held that judges could not force parents to allow more visitation with their children's grandparents than the parents wanted.<sup>155</sup>

While it is important for parents to have rights over their children, it is also important for children to have a certain amount of privacy. Parents having more control over their children's social media usage could help protect them, but could also lead to increased exploitation when parents hold all of the control.

### B. Free Speech

Sharing information about their children online is a method for parents to communicate with friends and family.<sup>156</sup> While it is important to establish boundaries regarding what and how much is shared, users can largely share what they want unless the platforms themselves opt to take that content down.<sup>157</sup> The Supreme Court has explicitly dissuaded the government from interfering with internet users' freedom of expression.<sup>158</sup> The Court stated that the government "cannot prohibit private actors from expressing certain views" on major social media platforms to suit the government's "values and priorities," as this would be a violation of the First Amendment.<sup>159</sup> Therefore, a counterargument to giving parents less control over their children's social media accounts is that it can be difficult to limit a parent's ability to share information about their children as doing so would have both legal and social implications.<sup>160</sup>

Minors also have a right to free speech, even in an unfamiliar medium like social media, as established by way of violent video game sales in *Brown v. Entertainment Merchants Association*.<sup>161</sup> In this case, the

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154. 268 U.S. 510, 534–35 (1925).

155. 530 U.S. 57, 69–70 (2000).

156. Michel Walrave et al., *The Limits of Sharenting: Exploring Parents' and Adolescents' Sharenting Boundaries Through the Lens of Communication Privacy Management Theory*, 7 SEC. EDUC. PSYCH., at 2 (2022).

157. Adam Liptak, *Supreme Court to Hear Challenges to State Laws on Social Media*, N.Y. TIMES (Sept. 29, 2023), <https://www.nytimes.com/2023/09/29/us/supreme-court-social-media-first-amendment.html>.

158. *Moody v. NetChoice*, L.L.C., 603 U.S. 707 (2024).

159. *Id.* at 743.

160. *Id.*

161. 564 U.S. 786, 805 (2011).

Supreme Court held that “video games qualify for First Amendment protection.”<sup>162</sup> The Court emphasized that, generally, the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”<sup>163</sup> Additionally, the Court recognized that “minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected materials to them.”<sup>164</sup> Therefore, minors are able to participate in activities related to free speech without broad governmental restrictions.

In *Brown*, the Court also pushes responsibility for children’s access to seemingly dangerous items like violent video games onto the parents: “[P]arents who care about the matter can readily evaluate the games their children bring home. Filling the remaining modest gap in concerned parents’ control can hardly be a compelling state interest.”<sup>165</sup> The Court also points out that restricting minors’ ability to purchase violent video games would limit “the First Amendment rights of young people whose parents (and aunts and uncles) think violent video games are a harmless pastime.”<sup>166</sup> Minors have a right to free speech through platforms such as social media and video games, and the Court has shown a general tendency to lean towards keeping parents in charge of that.<sup>167</sup>

Restricting both parents’ and children’s use of social media could fall into the category of First Amendment free speech restrictions. Additionally, the Supreme Court has shown a tendency to defer to parents in oversight of the media their children are exposed to—this is not considered a government issue.

### *C. Mental Health Considerations*

Some argue that parents should be completely in charge of their children’s social media presence because social media can lead to an increase in mental health issues in adolescents.<sup>168</sup> However, this issue does

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162. *Id.* at 790.

163. *Id.* at 790–91 (2011) (quoting *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 573 (2002)).

164. *Id.* at 794 (2011) (quoting *Erznoznik v. Jacksonville*, 422 U.S. 205, 212–13 (1975)).

165. *Id.* at 803.

166. *Id.* at 805.

167. *Id.* at 803–04.

168. See Jean M. Twenge et al., *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, 6 *ASS’N PSYCH. SCI.* 15 (2018).

not apply when parents are exploiting their children by posting their children's information online on their own accounts.<sup>169</sup>

Caymi Barrett, who grew up with her mom constantly sharing personal information about her on the internet, experienced many negative effects from this type of oversharing.<sup>170</sup> After suffering stalking and bullying due to her online presence, Barrett eventually dropped out of high school.<sup>171</sup> She is now extremely private and does not have a relationship with her mom.<sup>172</sup>

Barrett provides an example of why parental control is not always the answer: for some children, parents are the ones damaging their mental health by oversharing and giving them little to no privacy. It is true that, "[i]n the United States, parental authority supersedes a child's right to privacy . . ."<sup>173</sup> Because there are no laws protecting children in Barrett's situation, putting children's social media presence entirely in the hands of their parents could prove detrimental in certain situations.

#### CONCLUSION

Child exploitation on social media is a growing issue. Performers whose audience is online are not offered the same protection as their more traditional counterparts. This situation has led to rampant child exploitation, as many people seek to make money on the internet and often do so through their children. This is not a new issue; it is a familiar one that has spread to a uniquely modern method of entertainment. The lack of rights provided to child entertainers in old Hollywood has gradually brought about more protections in the modern day. These protections should be expanded to child influencers as well, who can benefit from laws that already target traditional child performers. Additionally, Congress should craft legislation to protect children who are in the unique situation of performing online under the management of their parents, since their parents already control their children's social media use.

Creating federal laws to protect the interests of children would help child influencers and traditional performers alike. This solution would standardize laws across the country and provide equal benefits to young

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169. Kate Lindsay, *The First Social-Media Babies Are Growing Up—And They're Horrified*, ATLANTIC (May 23, 2023), <https://www.theatlantic.com/technology/archive/2023/05/parents-posting-kids-online-tiktok-social-media/674137/>.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*



performers no matter where they live. Instead of perpetuating the suffering that performers like Judy Garland and Jackie Coogan endured, lawmakers can implement protections for child performers in the modern day who face similar types of exploitation.