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## Mom's Social Media Account Featuring Her Kids: New York's Amended Coogan Act Exemplifies the Method to Regulate Parental Exploitation

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**NOTE**  
**MOM'S SOCIAL MEDIA ACCOUNT FEATURING  
HER KIDS: NEW YORK'S AMENDED COOGAN  
ACT EXEMPLIFIES THE METHOD TO REGULATE  
PARENTAL EXPLOITATION**

I. INTRODUCTION

Imagine waking up one day and finding out that your parent(s) quit their job(s).<sup>1</sup> Why? Well, it so happens that you are so famous that you have attained a level of fame and influence that could be used to sustain a living for them by posting videos or pictures.<sup>2</sup> This has the potential to be “cool,” but is it still “cool” if you are a minor?<sup>3</sup> Katie Stauffer was able to quit her job and live off of her twin daughters, Mila and Emma, by the time they turned four years old.<sup>4</sup>

Before quitting her job, Stauffer worked as an escrow officer.<sup>5</sup> While she was still working, Stauffer had an Instagram account where she posted pictures and videos of her daughters; it started when she found out she was pregnant with them, and the posting continues today.<sup>6</sup> As the girls got older, Stauffer posted pictures and videos of Mila and Emma marketing products and movies, which resulted in payouts from

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1. See Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents*, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968> [<https://perma.cc/3YB3-NCF5>].

2. *See id.*

3. *See id.*

4. *Id.* Stauffer, who is from Arizona, proudly told a local news outlet that she was able to quit her job and fully pursue her daughters' social media account after they became Instagram-famous. *Id.*

5. Erin E. O'Neill, Essay, *Influencing the Future: Compensating Children in the Age of Social-Media Influencer Marketing*, 72 STAN. L. REV. ONLINE 42, 43 (2019).

6. *Id.*

the advertised companies.<sup>7</sup> These paid partnerships allowed her to quit her job and continue posting her daughters for earned income.<sup>8</sup>

There are federal and state laws that protect children from having their incomes exploited by their parents; however, these laws do not apply to social media child stars.<sup>9</sup> The Fair Labor Standards Act (“FLSA”) does not clearly place child stars within the protection of federal laws.<sup>10</sup> This leaves state laws as the children’s primary form of protection.<sup>11</sup> The applicable state laws protect children who are hired by an employer, but the social media child influencers are not employed by the platforms.<sup>12</sup> Parents of child influencers willingly record content involving their children, post it, and eventually get paid based on its popularity.<sup>13</sup> Because the children are not employed and it is the parents who are posting, parents are not required to follow any labor laws; this leaves the children’s earnings in a vulnerable state.<sup>14</sup>

This Note argues that, as the times are changing, the laws need to adapt and keep up with the changes so that no one falls in between the cracks.<sup>15</sup> Social media platforms have allowed parents to profit from posting their children and have created limited regulations that actually protect the children.<sup>16</sup> One proposed solution to this problematic

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7. *Id.*; see, e.g., Katie Stauffer (@kcstauffer), INSTAGRAM (May 1, 2019), <https://www.instagram.com/p/Bw8LhzFhYRg> [<https://perma.cc/5XJ7-MC5B>] (showing multiple photos of Mila and Emma eating cheese as an advertisement for Babybel).

8. Katherine Rosman, *Why Isn’t Your Toddler Paying the Mortgage?*, N.Y. TIMES (Sept. 27, 2017), <https://www.nytimes.com/2017/09/27/style/viral-toddler-videos.html> [<https://perma.cc/HJQ4-CC8H>] (quoting Stauffer explaining that her Instagram account “is really lucrative” but she “wish[es] people knew that this is [her] job now”).

9. See, e.g., *Child Labor in NYS: Keeping Kids Safe in the Workplace*, N.Y. STATE DEP’T OF LAB., <https://dol.ny.gov/employment-minors> [<https://perma.cc/986E-H8XT>] (last visited Apr. 15, 2024).

10. See 29 U.S.C. § 212(c) (stating that employers cannot employ oppressive child labor); Melody Burke, *New Child Labor Laws Needed to Protect Child Influencers*, ONLABOR (Apr. 27, 2022), <https://onlabor.org/new-child-labor-laws-needed-to-protect-child-influencers> [<https://perma.cc/3P7Y-7NVB>].

11. Burke, *supra* note 10.

12. *See id.*

13. *See generally id.* (explaining that there are blurred lines between recording a child having fun and child labor).

14. *See id.* (stating that the Coogan laws are limited to the protection of those in the traditional entertainment industry and not social media platforms).

15. *See generally* Aditya Shastri, *Our Society Keeps Changing. Does the Law Change Too?*, MEDIUM (May 20, 2019), <https://medium.com/@adityashastri/our-society-keeps-changing-does-the-law-change-too-e12f4071d4> [<https://perma.cc/Y38F-Q8KB>] (arguing that there is a correlation between changing society and changing times).

16. *See generally* Julia Carrie Wong, *‘It’s Not Play If You’re Making Money’: How Instagram and YouTube Disrupted Child Labor Laws*, 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/8JD7-9FGP>] (stating that the

exploitation of children and their earnings would be to include a section in the FLSA regarding child actors and have it cover social media platforms as well.<sup>17</sup> With this incorporation, parents would be required to have a trust account for their children.<sup>18</sup> However, that incorporation still leaves a legal loophole because of its associated technicalities, such as determining the place of production and having an employer.<sup>19</sup> The two main issues are: social media stars usually produce their content in their homes, and they are not employed, so this solution would not solve the issue at hand.<sup>20</sup> There needs to be another solution available for them.<sup>21</sup> It is important to comprehend that this Note is written from the point of view that the children are considered to be working and not playing in front of the camera.<sup>22</sup> This Note argues that parents need to be held accountable for their exploitations on two grounds: New York State legislation and social media platforms.<sup>23</sup> New York State has written a bill, which has yet to pass, as an attempt to address this issue.<sup>24</sup> Even though this is a start to addressing the problem, the bill is inadequate.<sup>25</sup> There are amendments that need to be made that can better protect the children.<sup>26</sup> Once the amended bill is passed, the next level of protection will come from the social media platforms directly.<sup>27</sup> The platforms would then need to conform with the bill and include protections in their terms

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laws that “were designed to protect child stars from exploitation by both their parents and their employers[] are not being regularly applied to today’s pint-sized celebrities”).

17. *See id.*

18. *See* Caroline Sisson, Comment, *All Work and No Play Can Make a Kid a Millionaire: Child Labor Laws and the Role of the DOL to Protect Minors in the Growing Industry of Social Media Employment*, 7 ADMIN. L. REV. 160, 178 (2022) (explaining that if the FLSA gets revisited, the Department of Labor can enforce new regulations).

19. *See* Burke, *supra* note 10.

20. *See id.*

21. *See generally* Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers,”* 169 U. PA. L. REV. 577 (2021) (explaining that states should provide financial protection through the Coogan laws).

22. *See* Wong, *supra* note 16.

23. *See infra* Part IV; *see also* Madeline Holcombe, *What Happens When Parents Abuse and Exploit Children for Internet Fame?*, CNN, <https://www.cnn.com/2019/03/22/us/hobson-parents-youtube-abuse-claims/index.html> [<https://perma.cc/3MDC-498D>] (Mar. 22, 2019, 6:05 AM) (discussing how the law puts the power largely in the hands of parents such that the children are not protected).

24. Assemb., 3720, 2021-2022 Assemb., Reg. Sess. (N.Y. 2021).

25. *See infra* Part IV; Masterson, *supra* note 21, at 607.

26. *See infra* Part IV; Masterson, *supra* note 21, at 607.

27. *See generally* Mary McNamara, *Column: Social Media Platforms Must Stop the Exploitation of Child Performers. Now*, L.A. TIMES (Dec. 20, 2022, 11:26 AM), <https://www.latimes.com/entertainment-arts/story/2022-12-20/column-social-media-must-stop-exploiting-child-performers> [<https://perma.cc/R64M-DQAX>] (“If platforms and advertisers are going to profit from content involving children, they must ensure that that content is made under the protection of child labor laws.”).

and conditions.<sup>28</sup> The additional protection in the terms and conditions would consequently also hold the advertisers and endorsers responsible.<sup>29</sup>

Part II of this Note will explain the history of social media and when and how children got involved.<sup>30</sup> It will also discuss the history of child labor laws.<sup>31</sup> More specifically, Part II discusses the original Coogan Act originating in California and why it was created.<sup>32</sup> Additionally, Part II will cover famous child performers, how they were affected prior to the enactment of any child labor laws, and the effects of the first Coogan Act.<sup>33</sup> Lastly, Part II will discuss how recent social media child stars are currently being affected by this legal issue.<sup>34</sup> Part III will explain how one earns an income through social media.<sup>35</sup> It further lays out how other states have attempted to address this issue and analyzes the terms and conditions of the social media platforms most popular among parents to display their children.<sup>36</sup> Next, Part III discusses the various Coogan laws that were created after the initial California Coogan Act was enacted.<sup>37</sup> More importantly, it will discuss the argument that children are not at play, but rather working on the social media platforms.<sup>38</sup> Part IV will introduce an amendment to the New York State law that will hold parents accountable for their actions as well as an additional clause in the terms and conditions of the social media platform.<sup>39</sup> Finally, this Part will present counterarguments to the amendments but will also justify why these amendments are appropriate.<sup>40</sup> Part V of this Note affirms that parental exploitation of children on social media platforms needs to be addressed on two grounds: on the state level and on social media platforms—this way it could be enforced on both ends.<sup>41</sup>

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28. *See id.* (“Putting a child to work isn’t supposed to be easy, at least not in California. If a child has a career, especially one that requires a parent to manage it full-time, that child is working. And in California, there are laws to protect them. Those laws need to be enforced.”).

29. *See supra* note 27 and accompanying text.

30. *See infra* Part II.A.

31. *See infra* Part II.B.

32. *See infra* Part II.C.

33. *See infra* Part II.C.

34. *See infra* Part II.D.

35. *See infra* Part III.A.

36. *See infra* Part III.B.

37. *See infra* Part III.C.

38. *See infra* Part III.D.

39. *See infra* Part IV.A–B.

40. *See infra* Part IV.C.

41. *See infra* Part V.

## II. LOADING: HOW DID WE GET HERE?

Part II of this Note explains how social media came about and how children got involved.<sup>42</sup> Subpart A discusses the different social media platforms and why children are participating in them today.<sup>43</sup> Subpart B gives a brief history of child labor laws and explains why these laws are applicable to social media child stars today.<sup>44</sup> It also introduces the story of Jackie Coogan, which led to the creation of the Coogan Act.<sup>45</sup> Subpart C explains the enactment of the Coogan Act and why it changed over time.<sup>46</sup> Subpart D provides examples of current child stars who need protection.<sup>47</sup>

The digital world has come to us in full force in the past decade.<sup>48</sup> It has become one of our main forms of communicating and connecting with one another.<sup>49</sup> Today, people of all ages are engaging on some kind of social media platform, whether it be YouTube, Facebook, Instagram, Snapchat, or TikTok, among others.<sup>50</sup> More recently, the stars of these platforms, or “influencers,” are children being recorded by their parents.<sup>51</sup> As their followers, subscribers, and views increase, their price tags increase as well.<sup>52</sup> Generally speaking, this is beneficial for the family, but who is protecting the child’s income?<sup>53</sup>

### A. Social Media History

Before social media platforms took over the internet and began serving as a primary source of communication, we mainly

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42. See *infra* Part II.

43. See *infra* Part II.A.

44. See *infra* Part II.B.

45. See *infra* Part II.B.

46. See *infra* Part II.C.

47. See *infra* Part II.D.

48. See generally Mitchell Roshong, *Communicating in the Digital Age*, STRATEGIC FIN. (Oct. 1, 2019), <https://www.sfmagazine.com/articles/2019/october/communicating-in-the-digital-age> [<https://perma.cc/RC6B-RR2F>] (explaining how the way that people connect and communicate with each other has evolved).

49. *Id.*

50. See, e.g., Emily A. Vogels et al., *Teens, Social Media and Technology 2022*, PEW RSCH. CTR. (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022> [<https://perma.cc/N65Q-PQ8K>].

51. See *Rise of Child Influencers: Kidfluencers Exploitation, Rights*, LAWFLUENCERS, <https://lawfluencers.com/rise-of-child-influencers> [<https://perma.cc/4FYG-6XN6>] (last visited Apr. 15, 2024).

52. See *id.* (stating that “kidfluencers” collaborate with brands and companies to promote products and services to their followers).

53. See *id.* (explaining the different risks that kidfluencers may be subject to because they do not fully understand the nature of their work).

communicated on the internet through email and online chatting via email accounts.<sup>54</sup> As early as 1997, social media networks made their first appearance, beginning with Six Degrees.<sup>55</sup> The early 2000s gave us Friendster, LinkedIn, Myspace, Facebook, Reddit, and Twitter.<sup>56</sup> Today, the social media networks that are popular among children are Instagram, Snapchat, TikTok, and YouTube.<sup>57</sup>

A 2021 survey<sup>58</sup> showed that children's use of social media has risen in recent years and that media use among tweens and teens had increased seventeen percent from 2019 to 2021.<sup>59</sup> The reason for this media usage increase is the COVID-19 pandemic.<sup>60</sup> Thirty-eight percent of tweens and eighty-four percent of teens use social media as of 2021.<sup>61</sup> The social media influencer marketing industry was estimated to be worth almost \$13.8 billion dollars at that time.<sup>62</sup> Interestingly, it is becoming more common for parents to post their children on their social media rather than posting themselves.<sup>63</sup> Many parents started posting content on social media out of pride for their families and as a way to

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54. See *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?*, MARYVILLE U. BLOG, <https://online.maryville.edu/blog/evolution-social-media> [https://perma.cc/HP6Z-7X53] (last visited Apr. 15, 2024).

55. *Id.*; see *Six Degrees Social Engine*, SIX DEGREES, <http://sixdegrees.com> [https://perma.cc/Q4PL-Z73S] (last visited Apr. 15, 2024). This social network is advertised as “The Most Exclusive Invite Only Social Network Where You Will Meet Amazing People Based on Your

Interests.” *Id.* It is meant to be used to build professional networks and start a group of friends based on similar interests. *Id.*

56. *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?*, *supra* note 54.

57. See *id.*

58. VICTORIA RIDEOUT ET AL., THE COMMON SENSE CENSUS: MEDIA USE BY TWEENS AND TEENS, 2021 (2022), <https://www.common-sense-media.org/research/the-common-sense-census-media-use-by-tweens-and-teens-2021> [https://perma.cc/8CVH-VM8P]. The survey focused on three primary measures of young people's engagement with media: how much they enjoy various media activities, how often they engage in each of these activities, and how much time they spend engaging with each type of media activity per day. *Id.* at 1.

59. *Id.* at 3; Melinda Wenner Moyer, *Kids as Young as 8 Are Using Social Media More Than Ever*, *Study Finds*, N.Y. TIMES (Mar. 24, 2022), <https://www.nytimes.com/2022/03/24/well/family/child-social-media-use.html> [https://perma.cc/E8RZ-VCXH].

60. See RIDEOUT ET AL., *supra* note 58, at 3, 7, 15.

61. *Id.* at 5.

62. See Steven Lai, *Influencer Marketing Industry Expected to Be Worth \$13.8 Billion This Year*, INFLUENCER ORCHESTRATION NETWORK, <https://www.ion.co/influencer-marketing-industry-to-reach-13-8-billion-in-2021> [https://perma.cc/U5VA-R3LD] (last visited Apr. 15, 2024) (emphasizing the sizable increase from 2020, when influencer marketing was worth \$9.7 billion).

63. See Katie Collins, *TikTok Parents Are Taking Advantage of Their Kids. It Needs to Stop*, CNET (Aug. 7, 2022, 5:00 AM), <https://www.cnet.com/tech/services-and-software/tiktok-parents-are-taking-advantage-of-their-kids-it-needs-to-stop> [https://perma.cc/9SKS-PCEM].

stay connected to family and friends.<sup>64</sup> Gradually, some parents began to actively promote their children by creating and posting content involving them when they realized it was becoming a source of income.<sup>65</sup> Parents are able to direct the children's behavior and ensure it is suitable for the platform.<sup>66</sup> However, the issue here is that once the intent behind the posting changes from enjoyment to compensation, the children's status then changes to a worker's status.<sup>67</sup>

### B. Brief History on Child Actor Laws

Originally, children and their incomes were not subject to any legislative regulation.<sup>68</sup> The courts believed that the state had no place regulating the rearing of children in one's private home.<sup>69</sup> For example, in *Pierce v. Society of Sisters*,<sup>70</sup> the Supreme Court held that the state cannot unreasonably interfere with the liberty of parents and guardians to raise or educate children under their control.<sup>71</sup> Additionally, it emphasized that the United States Constitution preempts any state law that unreasonably tries to control parents, which is an important factor as to why there was no federal law regarding child labor in place until 1939.<sup>72</sup>

In 1938, the United States Congress came to an agreement that "premature and excessive child labor" was not appropriate for the country.<sup>73</sup> During the Great Depression, child labor legislation gave unemployed adults the jobs that the children once held.<sup>74</sup> It was during this time that the FLSA was passed.<sup>75</sup> The FLSA prohibited children under the age of sixteen from working during the school year and from working dangerous jobs throughout the year.<sup>76</sup> Furthermore, the FLSA placed restrictions on the employment of children under the age of eighteen and

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64. *5 Reasons Not to Post About Your Child on Social Media*, JELLIES, <https://perma.cc/KG8C-5YJV> (last visited Apr. 15, 2024).

65. See Collins, *supra* note 63.

66. See, e.g., The Mighty McClures, *The Cutest Twins Meetup Ever!*, YOUTUBE (May 11, 2019), <https://www.youtube.com/watch?v=-wr5PRu5WJ4> [<https://perma.cc/U66S-BL7N>] (showing the parents behind the cameras telling the children what to do).

67. See Masterson, *supra* note 21, at 592.

68. See *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 518 (1925).

69. See, e.g., *id.* at 534-35.

70. 268 U.S. 510 (1925).

71. *Id.* at 534-35.

72. *Id.* at 535.

73. M. Neil Browne et al., *Universal Moral Principles and the Law: The Failure of One-Size-Fits-All Child Labor Laws*, 27 HOUS. J. INT'L L. 1, 6, 9 (2004) (quoting *Hammer v. Dagenhart*, 247 U.S. 251, 280 (1918)).

74. *Id.* at 9.

75. *Id.*

76. *Id.*



their work conditions.<sup>77</sup> Importantly, the FLSA did not preempt any state law that provided additional protection regarding the employment of children.<sup>78</sup>

Once this federal law was enforced, some people challenged the validity of the state laws that followed.<sup>79</sup> For example, in *Prince v. Massachusetts*,<sup>80</sup> the Supreme Court held that even though parents are the primary individuals responsible for the well-being of the child, the state may impose restrictions and regulations on parental authority when it comes to the child's welfare.<sup>81</sup> However, the federal child labor laws have a child performer exemption—the Shirley Temple Act, which states that any child employed as a performer is not subject to the protections of the federal law.<sup>82</sup> Today's social media stars fall under this provision.<sup>83</sup>

Prior to 1939, child performers were not given any rights to their earnings and lacked adequate protection.<sup>84</sup> The leading cause that led to the protection of child performers' labor was Jackie Coogan.<sup>85</sup> Jackie was the son of parents who were in the entertainment industry.<sup>86</sup> At the age of five, he rose to fame when Charlie Chaplin, the well-known silent film actor, recognized Jackie's talent and included him in his movies; notably, Coogan starred in "A Day's Pleasure" and "The Kid."<sup>87</sup> From there, his fame grew and so did his income, amounting to up to four

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77. MARK A. ROTHSTEIN ET AL., EMPLOYMENT LAW: CASES AND MATERIALS 544 (9th ed. 2020).

78. *Fact Sheet #43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Non-agricultural Occupations*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture> [<https://perma.cc/MNH8-GMF8>] (Dec. 2016) ("Both Federal and State laws govern the employment of young workers and when both are applicable, the law with the stricter standard must be obeyed.").

79. See Seymour Moskowitz, *Malignant Indifference: The Wages of Contemporary Child Labor in the United States*, 57 OKLA. L. REV. 465, 470-71, 483-84 (2004).

80. 321 U.S. 158 (1944). In this case, Prince appealed her convictions for violating state child labor laws when she permitted her niece to preach and sell religious pamphlets in the street. *Id.* at 159-62.

81. *Id.* at 167.

82. Munirat Suleiman, *Is Kidfluencing Child Labor?: How the Youngest Influencers Remain Legally Unprotected*, COLUM. UNDERGRADUATE L. REV. (June 16, 2022), <https://www.culawreview.org/journal/is-kidfluencing-child-labor-how-the-youngest-influencers-remain-legally-unprotected> [<https://perma.cc/B5JB-2DXJ>].

83. See *id.*

84. Edduin Carvajal, *Jackie Coogan's Lawsuit Against Mom and the Coogan Act—Story of America's First Child Star*, AMOMAMA (Aug. 23, 2020, 11:00 AM), <https://news.amomama.com/223973-jackie-coogans-lawsuit-mom-coogan-act-st.html> [<https://perma.cc/KN3A-6LE2>].

85. See *id.*

86. *Id.*

87. *Id.*

million dollars.<sup>88</sup> Unfortunately, when he turned twenty-one, his mother and stepfather told him that they were not giving him the money he accrued as a child because as a minor, he had no legal rights to his earnings.<sup>89</sup> By the age of twenty-three, Coogan was penniless, so he filed suit to reclaim his money.<sup>90</sup> The suit was settled out of court, and he received a fraction of the money that he earned.<sup>91</sup>

### C. Reasons for the Enactment of the Coogan Act

Following the Jackie Coogan suit, the Coogan Act was passed in California in 1939.<sup>92</sup> It protected a child actor's money by requiring a percentage of the earnings be placed in a court-administered trust account that cannot be accessed until the child reached the age of eighteen.<sup>93</sup> Nonetheless, the Coogan Act had loopholes that left child actors "financially vulnerable" to their parents.<sup>94</sup> For example, the law did not apply to contracts with minors that were not court-approved, and there was no fixed percentage as to how much was to go into the Coogan account.<sup>95</sup> Because the law was not applicable to contracts that were not court-approved, the Coogan account did not have to be created, and the money would still belong to the parents.<sup>96</sup> Unsurprisingly, there were more contracts that were not court-approved than were court-approved.<sup>97</sup>

For example, in *Scheller v. Bowery Savings Bank*,<sup>98</sup> a former child actor sought to recover his earnings from his mother, who had promised to keep his earnings in a trust until he turned eighteen.<sup>99</sup> Once he turned the age of majority, his mother was supposed to relinquish his earnings to him, but she spent it all.<sup>100</sup> His mother believed that she could get

88. See *id.*; James Barron, *Jackie Coogan, Child Star of Films, Dies at 69*, N.Y. TIMES (Mar. 2, 1984), <https://www.nytimes.com/1984/03/02/obituaries/jackie-coogan-child-star-of-films-dies-at-69.html> [<https://perma.cc/D6T2-9D7A>].

89. Carvajal, *supra* note 84.

90. *Id.*

91. *Id.*; Barron, *supra* note 88. Following the suit, Coogan was "blackballed by the studios," and he struggled to find jobs in the industry. *Id.*

92. Carvajal, *supra* note 84.

93. *Id.*; Amanda Bronstad, *Coogan Law Loophole Leaves Child Actors at Financial Risk*, NAT'L L.J. (Apr. 18, 2011), <https://www.vrmlaw.com/sitecontent/media/news/Coogan-Law-Loophole-Leaves-Child-Actors-at-Financial-Risk.pdf> [<https://perma.cc/F7L6-PFS8>].

94. Jennifer González, *More Than Pocket Money: A History of Child Actor Laws*, LIBR. CONG. BLOGS (June 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws> [<https://perma.cc/5VR9-46GJ>].

95. Bronstad, *supra* note 93.

96. See *id.*

97. *Id.*

98. 630 N.Y.S.2d 62 (App. Div. 1995).

99. *Id.* at 63.

100. *Id.* at 63-64.

away with it because in New York a parent had a legal right to possession of funds belonging to an infant charge.<sup>101</sup> However, that rule was subject to change if there were private arrangements.<sup>102</sup> Because the mother did not maintain the private arrangement she had with her son (promising to keep his earnings in a trust), New York awarded the son \$261,609.<sup>103</sup>

Some notable child stars who were affected by the loopholes of the Coogan Act were Judy Garland, Elizabeth Taylor, Shirley Temple, and Macaulay Culkin.<sup>104</sup> Garland's mother took a stipend out of her salary and Taylor's mother contracted ten percent of her salary.<sup>105</sup> Temple made more than both of her parents and was the main source of income for her family of twelve.<sup>106</sup> At the age of twenty-two, she only had \$44,000 in her bank account even though she earned about \$3.4 million as a child.<sup>107</sup> Lastly, Culkin's parents used his money in a custody battle over him and his siblings.<sup>108</sup>

#### *D. Recent Social Media Child Stars*

Today, many children are benefiting financially by posting videos and photos online.<sup>109</sup> The social media star earning the most, at \$20 million on YouTube for opening a toy box, is Ryan Kaji.<sup>110</sup> Kaji has a YouTube channel called Ryan's World.<sup>111</sup> On his channel, one will find numerous videos of him playing around, as well as educational videos with his parents.<sup>112</sup> His family started his channel in March 2015, and he has 36.8 million subscribers as of April 2024.<sup>113</sup> As soon as the "GIANT Lightning McQueen Egg Surprise with 100+ Disney Cars Toys" video earned one billion views, Kaji's mother quit her full-time job to work on

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101. *See id.* at 64.

102. *Id.*

103. *Id.* at 63.

104. González, *supra* note 94.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *See* Moe Sid, *Influencers Under 10? Yes, Kids Are Making Money*, AFLUENCER, <https://afluencer.com/influencers-under-10> [<https://perma.cc/282P-GR9X>] (last visited Apr. 15, 2024).

110. *See id.*

111. *See* *Ryan's World*, YOUTUBE, <https://www.youtube.com/@RyansWorld> [<https://perma.cc/RF85-QND5>] (last visited Apr. 15, 2024).

112. *See id.* (showing the videos that Ryan's family posted on his YouTube page).

113. *Id.*

his channel.<sup>114</sup> By 2016, both Kaji's parents quit their jobs to make the videos full time.<sup>115</sup> Luckily for Kaji, his parents distribute his earnings in multiple accounts: college savings, minor accounts, and Coogan accounts.<sup>116</sup>

Everleigh Rose is a notable Instagram star who has an estimated net worth of about \$23.2 million from Instagram alone.<sup>117</sup> She currently has about five million followers.<sup>118</sup> With a fanbase as big as hers, she could generate \$9.29 million in one year if she were to make one promoted post every day.<sup>119</sup> As of 2020, Rose earned about \$16,687 per post.<sup>120</sup> Overall, her Instagram page consists of dance recital performances and photoshoot poses.<sup>121</sup> However, you can also find some pictures that are paid advertisements.<sup>122</sup> Her mother, Savannah LaBrant,<sup>123</sup> has been managing her account since 2013.<sup>124</sup> It is said that Savannah makes a living from documenting her family life and profits from her children's social media accounts as well as her own.<sup>125</sup>

Maia Knight's fraternal twin daughters, Violet and Scout, are widely known on TikTok.<sup>126</sup> Knight began posting about the girls on her

114. See Sid, *supra* note 109; Belinda Luscombe, *How Ryan Kaji Became the Most Popular 10-Year-Old in the World*, TIME (Nov. 12, 2021, 7:00 AM), <https://time.com/6116624/ryan-kaji-youtube> [<https://perma.cc/3G55-AA3N>].

115. Luscombe, *supra* note 114.

116. KC Ifeanyi, *How 9-Year-Old YouTube Millionaire Ryan Kaji Is Building a Kids' Media Empire*, FAST CO. (Apr. 23, 2021), <https://www.fastcompany.com/90619551/how-9-year-old-youtube-millionaire-ryan-kaji-is-building-a-kids-media-empire> [<https://perma.cc/SNK6-MMRZ>].

117. *Everleigh Rose Net Worth & Earnings*, NET WORTH SPOT, <https://perma.cc/9KND-AXEN> (Jan. 1, 2023).

118. Everleigh Rose (@everleighrose), INSTAGRAM, <https://www.instagram.com/everleighrose> [<https://perma.cc/7LRX-QCYS>] (last visited Apr. 15, 2024).

119. *Everleigh Rose Net Worth & Earnings*, *supra* note 117.

120. Luxurylaunches, *Everleigh Rose Soutas, Elle Lively and Alaia Marie McBroom, Mila and Emma Stauffer – the 10 Highest-Earning Child Instagram Influencers Under the Age of 10*, STYLE (Oct. 15, 2020), <https://www.scmp.com/magazines/style/celebrity/article/3105511/everleigh-rose-soutas-elle-lively-and-alaia-marie-mcbrorm> [<https://perma.cc/246B-Q9BG>].

121. See Rose, *supra* note 118.

122. See, e.g., Everleigh Rose (@everleighrose), INSTAGRAM (Oct. 9, 2020), <https://www.instagram.com/p/CGJcz1mDKgN/?igshid=YmMyMTA2M2Y%3D> [<https://perma.cc/N4RX-EWKA>] (showing Everleigh posing with the LOL Surprise Remix dolls).

123. Luxurylaunches, *supra* note 120. LaBrant is a fashion blogger and photographer. *Id.*

124. See *Everleigh Rose Smith-Soutas*, GOLDEN, [https://golden.com/wiki/Everleigh\\_Rose\\_Smith-Soutas-Y3MA5W9](https://golden.com/wiki/Everleigh_Rose_Smith-Soutas-Y3MA5W9) [<https://perma.cc/Q5FS-CZMZ>] (last visited Apr. 15, 2024).

125. See Teresia Mwangi, *What Is the Labrant's Family Net Worth? Everything You Need to Know*, TUKO, <https://www.tuko.co.ke/facts-lifetips/celebrity-biographies/458490-what-labrants-family-net-worth-everything-know> [<https://perma.cc/N4EV-5MGJ>] (Sept. 1, 2023, 12:33 PM).

126. Audrey McQuillan, *Fraternal-Twins Violet, Scout, Mother Maia Knight, Have Stolen the Hearts of Millions of TikTokers*, POST (Jan. 30, 2022, 10:05 PM), <https://www.thepostathens.com/article/2022/01/maia-knight-violet-scout-twins-tiktok> [<https://perma.cc/2MTM-M4N8>].

TikTok account shortly after their father abandoned her.<sup>127</sup> The girls were born in March 2021.<sup>128</sup> Now, Knight primarily posts about what it is like to be a single parent raising twins.<sup>129</sup> The Knight account currently has 7.9 million followers.<sup>130</sup> The girls' popularity allows Maia to get paid about \$8,000 per TikTok post.<sup>131</sup> Her yearly earnings are estimated to be between \$500,000 to \$1 million.<sup>132</sup> Social media is Knight's main source of income.<sup>133</sup>

### III. POST! . . . AND THE PROBLEM BEGINS: HOW SOCIAL MEDIA CREATES AN EXPLOITATION ISSUE

Part III of this Note argues that the legislation in place is not adequate to protect social media child stars.<sup>134</sup> Subpart A demonstrates how one can earn money using social media.<sup>135</sup> Subpart B discloses how the terms and conditions of the different social media platforms contribute to the issue of parental exploitation.<sup>136</sup> Subpart C analyzes how different states have constructed their own variations of the Coogan Act.<sup>137</sup> It also explains why these variations are not sufficient to solve the issue at hand.<sup>138</sup> Subpart D disputes the argument that social media child stars are not working but rather enjoying themselves.<sup>139</sup>

The legal issue is that parents are financially exploiting their children on social media.<sup>140</sup> This can lead parents to continuously encourage their children to create content to generate income.<sup>141</sup> Unfortunately, this kind of pressure has the potential to have negative consequences because the children may have nothing to show for all their hard work later in life.<sup>142</sup>

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127. *Id.*

128. *See Maia Knight Net Worth*, SK WIKI, <https://wiki.sportskeeda.com/tiktok/maia-knight-net-worth> [<https://perma.cc/B6BT-RPLC>] (last visited Apr. 15, 2024).

129. *Id.*

130. Maia Knight (@maiaknight), TIKTOK, <https://www.tiktok.com/@maiaknight?lang=en> [<https://perma.cc/K99G-RFNH>] (last visited Apr. 15, 2024).

131. *See Maia Knight Net Worth*, *supra* note 128.

132. *Id.*

133. *Id.*

134. *See infra* Part III.

135. *See infra* Part III.A.

136. *See infra* Part III.B.

137. *See infra* Part III.C.

138. *See infra* Part III.C.

139. *See infra* Part III.D.

140. *Rise of Child Influencers: Kidfluencers Exploitation, Rights*, *supra* note 51.

141. *Id.*

142. *See id.* (stating that pushing kidfluencers to promote products can lead to stress and mental health issues).

When the FLSA was enacted, it did not—and still does not—require consent from or notice to parents before their child is allowed to work.<sup>143</sup> The decision to work is almost always left to the child.<sup>144</sup> Consequently, youth employment often fails to teach children the life skills needed to become responsible adults, as their earnings are usually spent on luxury items.<sup>145</sup> With that being said, the Coogan Act was enacted to protect children from exploitation, but it only protects child performers employed in the entertainment industry.<sup>146</sup>

In order for the FLSA to be triggered, the children must be employed.<sup>147</sup> However, the FLSA neither extends to children on social media nor provides any legal protections that can help prevent their parents from exploiting them financially.<sup>148</sup> The issue with the Coogan Act is that children who perform on social media platforms are not employed to post content.<sup>149</sup> It is hard to extend this protection because home video-blogging and self-recording create a self-employed status.<sup>150</sup> More specifically, the New York Coogan law contributes to the legal issue because it allows parents to be the custodians of their children's trust accounts.<sup>151</sup> Therefore, social media child stars are not covered by New York's Child Performer Education and Trust Act ("the Act"); even if they were, their parents still have access to the account well before the minors reach the age of majority.<sup>152</sup>

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143. Moskowitz, *supra* note 79, at 469.

144. *See id.*

145. *Id.* at 468.

146. *See Coogan Accounts: Protecting Your Child Star's Earnings*, MORGAN STANLEY, <https://advisor.morganstanley.com/the-yellowstone-group/articles/global-sports-and-entertainment/protecting-your-child-star-s-earnings> [<https://perma.cc/XZ4Q-8GVX>] (last visited Apr. 15, 2024) ("Currently, social media stars, or 'influencers,' are not subject to child entertainer labor law and are not mandated to open Coogan accounts in any state.").

147. *See Handy Reference Guide to the Fair Labor Standards Act*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa> [<https://perma.cc/8T3V-J5ZU>] (Nov. 2023) ("The FLSA child labor provisions are designed to protect the educational opportunities of minors and prohibit their employment in jobs and under conditions detrimental to their health or well-being.").

148. *See* Ellen Walker, *Nothing Is Protecting Child Influencers from Exploitation*, WIRED (Aug. 25, 2022, 9:00 AM), <https://www.wired.com/story/child-influencers-exploitation-legal-protection> [<https://perma.cc/YB9R-V7L4>].

149. Margaret Arabpour, *Lights, Camera, (Legal) Action: Expanding Child Entertainment Laws to Protect Children on Social Media*, AM. U. J. GENDER, SOC. POL'Y & L., <https://jgspl.org/lights-camera-legal-action-expanding-child-entertainment-laws-to-protect-children-on-social-media> [<https://perma.cc/U455-39YN>] (last visited Apr. 15, 2024).

150. *See* Walker, *supra* note 148.

151. *See Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/37V5-BLSY>] (last visited Apr. 15, 2024).

152. Child Performer Education and Trust Act, N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (Consol. 2022).

### A. Earning Money Through Social Media

Social media is no longer just a place to have fun and express yourself.<sup>153</sup> Now it can also be a place where you can earn money and make a living.<sup>154</sup> Before one can start earning money from a social media platform, one must prove to the platform that they are worth being paid; this is done by becoming an influencer.<sup>155</sup> In order to become an influencer, one has to find their niche, choose their social media platform(s), develop their content and content strategy, develop a strong follower base, and build a connection with their followers.<sup>156</sup> Once one has established their status as an influencer, one can earn money.<sup>157</sup> The most common ways for social media influencers to earn money are posting sponsored content and producing content for companies, brands, and services.<sup>158</sup>

The social media platforms do not protect the financial interests of children being exploited by their parents.<sup>159</sup> TikTok has a monetization Creator Fund program that allows users eighteen and older to opt in if they qualify for the program.<sup>160</sup> Even though the account holder has to be older than eighteen, there are no restrictions that monitor content involving children.<sup>161</sup> This creates a legal loophole that allows a parent to contract with TikTok and use a child to generate the income.<sup>162</sup> Snapchat has a program called Spotlight that pays influencers for posting

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153. Neal Schaffer, *How Do Influencers Make Money from Social Media?*, NEAL SCHAFFER, <https://nealschaffer.com/how-do-influencers-make-money> [<https://perma.cc/Z733-X88H>] (Aug. 16, 2023).

154. *Id.*

155. See Aya Masango, *7 Social Media Platforms That Pay You to Create Content*, MUO, <https://www.makeuseof.com/social-media-platforms-that-pay-creators> [<https://perma.cc/KQ77-G7AL>] (Sept. 12, 2023) (explaining the different ways to get paid for creating content).

156. Neal Schaffer, *How to Become a Social Media Influencer and Make Money from It*, NEAL SCHAFFER, <https://nealschaffer.com/how-to-become-social-media-influencer> [<https://perma.cc/9LWW-EAU7>] (Aug. 15, 2023). A social media influencer is defined as a person who has the “power” to affect another person’s decision to buy a product based on the person’s online presence and their connection with their followers. *Id.*

157. *Id.*

158. *Id.*

159. Arabpour, *supra* note 149.

160. See *TikTok Creator Fund: Your Questions Answered*, TIKTOK (Mar. 25, 2021), <https://newsroom.tiktok.com/en-gb/tiktok-creator-fund-your-questions-answered> [<https://perma.cc/BN95-STMM>] (showing no restriction on content involving children from generating income using the Creator Fund as long as the content fits within TikTok’s regular terms of service). Such qualifications include attaining at least 100,000 video views in the last thirty days; having at least 10,000 followers; and posting content that complies with TikTok’s Community Guidelines and terms of service. *Id.*

161. See Arabpour, *supra* note 149.

162. See *id.*

content.<sup>163</sup> The company reserves and distributes \$1 million a day to users who create the top Snaps.<sup>164</sup> The top Snaps are determined by the number of views a Snap gets per day.<sup>165</sup> This adds to the problem, though, because Snapchat has a young user base.<sup>166</sup> YouTube Shorts<sup>167</sup> are monetized such that creators who make creative Shorts can be compensated; YouTube reaches out to let the creators know that they qualify for a Shorts bonus.<sup>168</sup> Lastly, another way that children can earn income from social media is by posting sponsored content.<sup>169</sup>

### B. Current Social Media Terms and Conditions

The platforms that parents most often profit from are YouTube, Instagram, and TikTok.<sup>170</sup> These platforms all contribute to the overall issue of child exploitation.<sup>171</sup> The social media platforms are doing little to nothing to mitigate the potential risks of child exploitation.<sup>172</sup> Each of the platforms has policies which mention protecting children's privacy, but there are no specific protections from parental exploitation.<sup>173</sup> This

163. See Sarah Perez, *Snapchat Launches a TikTok-Like Feed Called Spotlight, Kick-started by Paying Creators*, TECHCRUNCH (Nov. 23, 2020, 9:00 AM), <https://techcrunch.com/2020/11/23/snapchat-launches-a-tiktok-like-feed-called-spotlight-kick-started-by-paying-creators> [<https://perma.cc/9PLT-CDW6>].

164. *Id.*

165. *Id.*

166. See *id.* (suggesting that direct payments “will likely encourage plenty of participation among Snapchat’s young user base”).

167. See *Get Started Creating YouTube Shorts*, YOUTUBE HELP, <https://support.google.com/youtube/answer/10059070?hl=en> [<https://perma.cc/LYC2-NFXM>] (last visited Apr. 15, 2024). YouTube Shorts are short-form videos that last up to sixty seconds. *Id.*

168. See *YouTube Shorts Monetization Policies*, YOUTUBE HELP, <https://support.google.com/youtube/answer/10923658?hl=en> [<https://perma.cc/UQ93-DB3T>] (last visited Apr. 15, 2024). To be eligible for a bonus, channels need to have uploaded at least one eligible Short in the last 180 days; abide by YouTube’s Community Guidelines, copyright rules, and monetization policies; and upload original content. *Id.* Creators must be thirteen or older in the United States or the age of majority in their country/region. *Id.* Creators between thirteen and eighteen years old must have a parent or guardian accept terms and create an AdSense account for payment on their behalf, unless an AdSense account is already linked to the channel. *Id.*

169. 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/6GDN-VF76>].

170. See Sid, *supra* note 109 (explaining how it is now common for parents to share videos and photos of their children on social media to make money); McNamara, *supra* note 27.

171. See McNamara, *supra* note 27.

172. Walker, *supra* note 148.

173. See, e.g., *Help Center*, INSTAGRAM [hereinafter *Help Center*, INSTAGRAM], [https://help.instagram.com/1417489251945243/?helpref=hc\\_global\\_nav](https://help.instagram.com/1417489251945243/?helpref=hc_global_nav) [<https://perma.cc/823T-H2RJ>] (last visited Apr. 15, 2024) (showing that Instagram’s community guidelines include a protection against child nudity on the platform, but not parental exploitation); *Terms of Service*, YOUTUBE [hereinafter *Terms of Service*, YOUTUBE],



lack of regulation actively allows parents to exploit their children without any repercussions.<sup>174</sup>

### 1. Instagram

At the time this Note was written, Instagram has contributed to the exploitation issue through the absence of any regulation.<sup>175</sup> Instagram has not made any effort to regulate the issue of child influencers.<sup>176</sup> When asked by CNET about what safeguards Instagram has taken to protect child influencers, the company did not respond.<sup>177</sup> Instagram is a Meta Product provided by Meta Platforms, Inc.<sup>178</sup> The Meta Products include Instagram, Facebook, Messenger, and Meta Portal-branded devices, among others.<sup>179</sup> Meta Platform Terms only has one term related to protecting children: “You also must comply with all applicable laws and regulations (including the Children’s Online Privacy Protection Act (“COPPA”) and the Video Privacy Protection Act (“VPPA”).”<sup>180</sup> COPPA places regulations on website operators and online services that are directed to children under the age of thirteen, as well as those that are collecting personal online information from children under the age of thirteen.<sup>181</sup> Such regulations consist of the following: requiring the operator to provide notice on what information is being collected from the child and how the operator is going to use it; requiring parental consent; and, most importantly, establishing a reasonable procedure to protect the

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<https://www.youtube.com/static?template=terms> [<https://perma.cc/QR8Y-5RJY>] (last visited Apr. 15, 2024). TikTok’s terms of service do not mention children’s privacy, but the platform has a separate Children’s Privacy Policy. *See Terms of Service*, TIKTOK [hereinafter *Terms of Service*, TIKTOK], <https://www.tiktok.com/legal/page/us/terms-of-service/en> [<https://perma.cc/2CNM-FHHU>] (Nov. 2023); *Children’s Privacy Policy*, TIKTOK [hereinafter *Children’s Privacy Policy*, TIKTOK], <https://www.tiktok.com/legal/privacy-policy-for-younger-users?lang=en> [<https://perma.cc/3N9B-TD6R>] (Jan. 1, 2023).

174. *See* Holcombe, *supra* note 23 (stating that when children are being exploited for the profit of their parents, the Children’s Online Privacy Protection Act does not offer them any protections).

175. *See Help Center*, INSTAGRAM, *supra* note 173 (lacking any mention of protections for child influencers on Instagram).

176. *See* Zulie Rane, *The Terrifying Rise of the Child Influencer and the Parents Who Profit*, ONEZERO (Oct. 25, 2021), <https://onezero.medium.com/the-terrifying-rise-of-the-child-fashion-influencer-e7b03278d887> [<https://perma.cc/52QK-7XB8>].

177. Collins, *supra* note 63.

178. *Terms of Use*, INSTAGRAM [hereinafter *Terms of Use*, INSTAGRAM], [https://help.instagram.com/581066165581870/?helpref=uf\\_share](https://help.instagram.com/581066165581870/?helpref=uf_share) [<https://perma.cc/A3HM-ABVD>] (last visited Apr. 15, 2024).

179. *What Are the Meta Products?*, FACEBOOK, [https://www.facebook.com/help/1561485474074139/?helpref=uf\\_share](https://www.facebook.com/help/1561485474074139/?helpref=uf_share) [<https://perma.cc/C7X7-6396>] (last visited Apr. 15, 2024).

180. *Meta Platform Terms*, META, <https://developers.facebook.com/terms> [<https://perma.cc/3SRN-2B9A>] (last visited Apr. 15, 2024).

181. Children’s Online Privacy Protection Act of 1998, 15 U.S.C. § 6501–05.

information gathered from the child.<sup>182</sup> The VPPA is a federal law that prohibits the disclosure of identifiable information in relation to prerecorded video cassette tapes or similar audio-visual material.<sup>183</sup> While this provision is important, the COPPA and the VPPA are no longer capable of responding to online concerns, specifically content being posted by the parents themselves.<sup>184</sup>

## 2. YouTube

YouTube does not provide any direct terms that protect child influencers.<sup>185</sup> Generally speaking, YouTube does not permit children under the age of thirteen to create a YouTube account.<sup>186</sup> There is no way of preventing parents from creating a regular account under their own name and posting their children to make a profit for themselves.<sup>187</sup> YouTube has a Child Safety Policy that prohibits the posting of videos that emotionally and physically endanger the well-being of minors.<sup>188</sup> To avoid the issue of exploitation, YouTube created the YouTube Kids channel as its form of protecting children.<sup>189</sup> YouTube Kids was created to be a place that was safer and simpler for children.<sup>190</sup> The policies associated with this channel allow parents to filter the settings to cater to their children's age.<sup>191</sup> Additionally, YouTube Kids does not allow the inclusion of paid product placements or endorsements.<sup>192</sup> These kinds of videos

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182. 15 U.S.C. § 6502(b)(1).

183. Video Privacy Protection Act of 1988, 18 U.S.C. § 2710.

184. Anna O'Donnell, Note, *Why the VPPA and COPPA Are Outdated: How Netflix, YouTube, and Disney+ Can Monitor Your Family at No Real Cost*, 55 GA. L. REV. 467, 469 (2020).

185. Collins, *supra* note 63; *Terms of Service*, YOUTUBE, *supra* note 173.

186. Rane, *supra* note 176; *Terms of Service*, YOUTUBE, *supra* note 173.

187. See Walker, *supra* note 148. *But see* Angela Brauer, *Why Parents Are Choosing Not to Post Their Kids Photos Online*, WGN9 (Oct. 14, 2021, 1:47 PM), <https://wgntv.com/news/why-parents-are-choosing-not-to-post-their-kids-photos-online> [<https://perma.cc/X3F9-SV7F>] (“There is a growing movement among parents who say they are no longer posting photos of their children online.”).

188. *Child Safety Policy*, YOUTUBE HELP [hereinafter *Child Safety Policy*, YOUTUBE], [https://support.google.com/youtube/answer/2801999?hl=en&ref\\_topic=9282679](https://support.google.com/youtube/answer/2801999?hl=en&ref_topic=9282679) [<https://perma.cc/6RPW-636J>] (last visited Apr. 15, 2024).

189. *Content Policies for YouTube Kids*, YOUTUBE HELP, [https://support.google.com/youtube/answer/10938174?hl=en&ref\\_topic=9282435](https://support.google.com/youtube/answer/10938174?hl=en&ref_topic=9282435) [<https://perma.cc/5ZQM-6537>] (last visited Apr. 15, 2024).

190. *Id.*

191. *Id.*

192. *Id.*

are removed from the channel.<sup>193</sup> However, these methods do not explicitly address the issue of kids being used to generate money.<sup>194</sup>

### 3. TikTok

TikTok does not have a separate provision that protects children and paid sponsorships.<sup>195</sup> The Community Guidelines contain a section called “Youth Safety and Well-Being,”<sup>196</sup> which prohibits activities that exploit minors, and such content is removed from the platform.<sup>197</sup> This section does not explicitly define what type of “exploitation” is unacceptable.<sup>198</sup> Rather, it has a Children’s Privacy Policy which focuses on what is done with the information collected from users under the age of thirteen.<sup>199</sup> Additionally, TikTok tries to address the exploitation issue by explaining that it has a zero-tolerance approach for sexual exploitation and protecting accounts belonging to children under the age of sixteen, but none of these policies target parents.<sup>200</sup>

#### *C. Variations of the Coogan Act*

Today, a minority of states require Coogan accounts.<sup>201</sup> The requirements vary in each state.<sup>202</sup> The leading states are California and New York.<sup>203</sup>

California was the first state to enact the Coogan Act, followed by a few states.<sup>204</sup> The original California Coogan Act enabled employers to contract with a minor.<sup>205</sup> These contracts were approved by the court so

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193. *Id.*

194. *See Content Policies for YouTube Kids*, *supra* note 189. There is no reference to parents posting on behalf of the children. *Id.*

195. *Children’s Privacy Policy*, TIKTOK, *supra* note 173.

196. *Youth Safety and Well-Being*, TIKTOK, <https://www.tiktok.com/community-guidelines?lang=en#31> [<https://perma.cc/5YW6-JAQ2>] (Mar. 2023).

197. *Id.*

198. *Id.* (“We do not allow content that may put young people at risk of exploitation, or psychological, physical, or developmental harm. This includes child sexual abuse material (CSAM), youth abuse, bullying, dangerous activities and challenges, exposure to overtly mature themes, and consumption of alcohol, tobacco, drugs, or regulated substances. If we become aware of youth exploitation on our platform, we will ban the account, as well as any other accounts belonging to the person.”).

199. *Children’s Privacy Policy*, TIKTOK, *supra* note 173.

200. Collins, *supra* note 63.

201. *Coogan Law*, *supra* note 151.

202. *Id.*

203. *See generally* González, *supra* note 94 (explaining that California was the first state to enact the Coogan Act, followed by New York).

204. *Id.*

205. *Id.*

that they could not be disaffirmed by the minor.<sup>206</sup> Prior to the Jackie Coogan lawsuit, the Coogan Act generally stated that “a certain amount of the minor’s earnings be set aside into what has become known as a Coogan account,” but there was no specific amount required.<sup>207</sup> Employers and parents were able to get around this law by not getting the contracts approved by the courts or only putting a small amount aside.<sup>208</sup> Changes were made in 2000 to guarantee that the income earned was the property of the child and not the parents.<sup>209</sup> In so doing, the state made clear that the California law governed the earnings and acted as a fiduciary between the parent and the child.<sup>210</sup> Additionally, the employers were required to place fifteen percent of the earnings in a blocked trust account until the child reached the age of eighteen.<sup>211</sup> The account must be opened with a California bank, credit union, or brokerage firm.<sup>212</sup>

In 2003, New York passed the Child Performer Education and Trust Act.<sup>213</sup> The Act requires employers to deposit at least fifteen percent of the minor’s earnings in a trust account.<sup>214</sup> In addition to that, parents have to apply for a permit to allow their children to work.<sup>215</sup> The Act urges that the trust account is pursuant to Parts 6<sup>216</sup> and 7 of Article 7 of the New York Estates, Powers and Trusts Law,<sup>217</sup> but the legislature

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206. Bronstad, *supra* note 93; González, *supra* note 94.

207. Bronstad, *supra* note 93; *see also* González, *supra* note 94.

208. Bronstad, *supra* note 93; González, *supra* note 94.

209. *Id.*

210. *Coogan Law*, *supra* note 151.

211. *Id.*

212. *Id.*

213. Child Performer Education and Trust Act, N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (Consol. 2022).

214. *Id.* § 7-7.1(2)(a).

215. *Id.*

216. *Id.* § 6.

217. CHILD PERFORMERS, 12 N.Y.C.R.R §§ 186-2.1(d), 186-3.5(a). Section 186-2.1(d) says: “Child performer’s holding fund” shall mean the special fund in the joint custody of the State Comptroller and the Commissioner of Taxation and Finance consisting of revenues received and interest accrued from transfers of a portion of a child performer’s gross earnings by employers on behalf of child performers who do not have a child performer trust account pursuant to Part 7 of Article 7 of the New York Estates, Powers, and Trusts Law, and all other monies deposited into the fund pursuant to law.

*Id.* § 186-2.1(d). Section 186-3.5(a) says:

A child performer’s parent or guardian shall establish a child performer trust account for the benefit of the child prior to the child’s first instance of paid employment as a child performer and shall maintain such account until the custodian of such account transfers the contents thereof to the child performer or the child performer’s estate pursuant to section 7-6.20 of the Estates, Powers and Trusts Law, except that a Temporary Child Performer Permit will allow the parent or guardian up to fifteen days to establish such a trust account.

*Id.* § 186-3.5(a).

enforces Uniform Transfers to Minors Act (“UTMA”) accounts.<sup>218</sup> The UTMA is an extension of the Uniform Gift to Minors Act, which enables minors to receive gifts without the aid of guardians or trustees.<sup>219</sup> An UTMA account allows the custodian to manage the minor’s account until they reach the age of eighteen.<sup>220</sup>

The Act has three main issues.<sup>221</sup> The first issue with the Act is that the parent is allowed to be the custodian of the child’s trust account.<sup>222</sup> Being a custodian means that the individual is allowed to have full access to the child’s account until the balance reaches \$250,000, upon which the trust company becomes the custodian of the account.<sup>223</sup> Ultimately, the account is more like a savings account for the child rather than a true trust account that is not accessible.<sup>224</sup> This is problematic because the custodian, in most cases, is the parent, and they can take money out of the account before the minor reaches the age of majority.<sup>225</sup> Comparatively, California’s Coogan Act eliminated this issue by requiring the account to be blocked from both the parents and the child.<sup>226</sup>

The second issue with the Act is that children on social media are not employed.<sup>227</sup> Nowadays, the issue is prevalent in the digital world because it does not protect social media child stars.<sup>228</sup> Under section 186-2.1(b), a child performer is defined as any child under the age of eighteen who either resides or does not reside in the state of New York but “agrees to or is employed to render artistic or creative services either

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218. *Id.* §§ 186-2.1(d), 186-3.5(a).

219. Julia Kagan, *Uniform Transfers to Minors Act (UTMA)*, INVESTOPEDIA, <https://www.investopedia.com/terms/u/utma.asp> [https://perma.cc/664R-B795] (Mar. 16, 2024).

220. *Id.*

221. *See infra* text accompanying notes 221-36.

222. CHILD PERFORMERS, 12 N.Y.C.R.R. § 186-3.5(b) (“The parent(s) or guardian(s) of a child performer may serve as the custodian(s) of the child performer trust fund subject to the limitation set forth in subdivision (f) of this section.”); *see also Child Performer Laws in New York (Work Permits, Work Hours and More)*, BIZPARENTZ FOUND. (Mar. 21, 2018) [hereinafter *Child Performer Laws in New York*], <https://www.bizparentz.org/new-york-child-entertainment-laws> [https://perma.cc/5KXM-89LP] (explaining that in the 2013 update, parents were allowed to appoint themselves to be a responsible person or appoint another parent).

223. Marie-Andrée Weiss, *New York State May Soon Protect Child Influencers*, MAWL. (Feb. 12, 2021), <https://www.maw-law.com/author/marie-andreemaw-law-com> [https://perma.cc/E9FJ-XP6].

224. *Child Performer Laws in New York*, *supra* note 222.

225. *Id.*

226. *Coogan Law*, *supra* note 151.

227. *See generally* Burke, *supra* note 10 (explaining that states are supposed to regulate child labor but that state Coogan laws do not extend to children who are earning money through social media).

228. *Id.*

within or outside the State of New York.”<sup>229</sup> Social media platforms do not employ anyone to post content on their platforms.<sup>230</sup> However, once an individual accrues a certain number of followers, the platform pays the individual for their content; even so, they are not considered an employee.<sup>231</sup> Because the child stars are not technically covered by this Act, parents do not have to create this trust account and can exploit the earnings.<sup>232</sup>

The final issue with the Act is regarding the length of time the child works for.<sup>233</sup> Under section 186-6.2(n), when a child is using their residence to create content, this section “applies to the number of hours the child performer may provide such services.”<sup>234</sup> Usually, the children are only “working” for a few minutes rather than multiple hours like the children in the entertainment industry.<sup>235</sup> However, if the child is dedicating hours out of their day to film content for their parents’ social media accounts, then they are supporting the idea that the children are working.<sup>236</sup>

Notably, some of the other states that have addressed the Coogan account issue have taken steps in the direction New York should be heading.<sup>237</sup> For example, Illinois, Louisiana, and New Mexico all allow the account to be opened with any bank in any state.<sup>238</sup> Illinois places restrictions on everyone, such as parents and employers, before the child can start performing.<sup>239</sup> Illinois requires the creation of a blocked trust

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229. CHILD PERFORMERS, 12 N.Y.C.R.R. § 186-2.1(b).

230. Cordeiro, *supra* note 169; *see, e.g.*, Arabpour, *supra* note 149.

231. *See, e.g.*, Cordeiro, *supra* note 169; *see also* Coogan Accounts: Protecting Your Child Star's Earnings, *supra* note 146.

232. *See* Coogan Accounts: Protecting Your Child Star's Earnings, *supra* note 146.

233. *See* Masterson, *supra* note 21, at 581, 598-99 (explaining that regulating the content production is difficult because social media production takes place at home).

234. CHILD PERFORMERS, 12 N.Y.C.R.R. § 186-6.2(n).

235. *See generally* Masterson, *supra* note 21 (explaining that content creation is managed by the parents, who are usually in complete control over the conditions of the child's work and therefore the length as well).

236. Suleiman, *supra* note 82 (“The blurred line between work and play for these kidfluencers also make them susceptible to overbearing control, or potential exploitation and coercion, at the hands of their parents, their sponsors, and (potentially) the very social media platforms that they post their content on.”).

237. *See* Coogan Accounts: Protecting Your Child Star's Earnings, *supra* note 146 (explaining the variations between the states and their version of the Coogan Act).

238. *Id.*

239. 820 ILL. COMP. STAT. ANN. § 205/12.5(c). Under Illinois's Child Performers Law, a child performer is defined as an “unemancipated person under the age of sixteen who is employed by in this State and who agrees to render artistic or creative services.” *Id.* § 12.5(a). Following California's Coogan Act, it also requires that at least fifteen percent of the gross earnings should be deposited into the account. *Id.* § 12.5(c). However, the funds have to be in a bank, corporate fiduciary, or trust accompany as defined in the Corporate Fiduciary Act. *Id.* The account can only be available to

account prior to the distribution of the working permit.<sup>240</sup> Louisiana<sup>241</sup> differs from the other states by requiring the employer to send fifteen percent of the earnings to the state to hold until the minor reaches the age of majority if the child's parent does not create a Coogan account for the minor.<sup>242</sup> New Mexico, however, only requires the parent to open a blocked trust account if the earnings are more than \$1,000 per employment contract.<sup>243</sup> Illinois and Louisiana are moving in the right direction that will help prevent parental exploitation, even if the parents are the ones making the videos.<sup>244</sup> New Mexico, however, is adding to the problem because the children are not employed and the platforms usually start at a few hundred dollars.<sup>245</sup>

#### D. Counterargument

As of late, parents of child social media stars argue about two things.<sup>246</sup> The first argument is that the children are not working but rather are “playing” in front of a camera.<sup>247</sup> The second argument is that the primary reason for the recordings is for “family vlogging” instead of social media content.<sup>248</sup> In the age where everything is recorded, children do not have to consent, contract, or agree to be recorded.<sup>249</sup> If parents happen to post it and make an income, that is just a benefit they incur.<sup>250</sup> These arguments are inconclusive for the following reasons: “playing” with toys does not come with an income, and the FLSA was enacted to protect children from parents who change the narrative as to

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the child performer, and the performer must be eighteen years old to access the funds or be declared emancipated. *Id.*

240. *Id.*

241. LA. STAT. ANN. § 51:2131–32 (2023).

242. *Id.*; O'Neill, *supra* note 5, at 50.

243. *Coogan Law*, *supra* note 151.

244. *See Coogan Law*, *supra* note 151 (requiring parents to open a Block Trust Account with any bank, in any state).

245. *Id.*

246. *See infra* text accompanying notes 247–52.

247. Wong, *supra* note 16.

248. Arabpour, *supra* note 149.

249. *Id.*

250. *Id.*

what their intentions are.<sup>251</sup> All of this confusion comes from the lack of a real definition of what constitutes a child performer.<sup>252</sup>

The platforms themselves can also argue that they are taking measures to try to avoid the problem. For example, YouTube created YouTube Kids to give children a safe space to explore on their own and to ease parents' minds regarding what their kids are watching.<sup>253</sup> However, this creation does not prevent parents from getting paid for posting on YouTube directly.<sup>254</sup> The common policies found on the platforms are related to the children's privacy or their protection against inappropriate exposure, but there is no protection against parental exploitation.<sup>255</sup>

#### IV. WAIT, WHY AM I POSTING THIS? TACKLING THE ISSUE ON BOTH ENDS: AMENDING NEW YORK'S COOGAN LAW AND SOCIAL MEDIA PLATFORMS' TERMS AND CONDITIONS

Part IV of this Note will explain why New York needs to amend its proposed bill to incorporate social media child stars under its protection.<sup>256</sup> Subpart A elaborates on the best definition that can help protect children.<sup>257</sup> It also explains how to distinguish between parents who are posting for their enjoyment and parents who are looking to make a profit.<sup>258</sup> Subpart B discusses the appropriate amendment that needs to be made to the platforms' terms and conditions.<sup>259</sup> Subpart C argues that

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251. See Cordeiro, *supra* note 169 (“Many parents and guardians will object to the idea that they have ‘pushed’ their children into social media, instead they suggest that this was a choice—one that their children have made because they enjoy the platforms.”). The parents focus on exposing their children to entrepreneurial skills and business development but overlook public scrutiny because at the end, the parents are the ones benefiting. *Id.*

252. See Jennifer Venis, *Social Media: Rise of ‘Kidfluencers’ Pushes Legislators to Engage with Children’s Rights Online*, INT’L BAR ASS’N (Sept. 6, 2022), <https://www.ibanet.org/Social-media-Rise-of-kidfluencers-pushes-legislators-to-engage-with-childrens-rights-online> [<https://perma.cc/AQQ6-4A9V>].

253. YOUTUBE KIDS, [https://www.youtube.com/intl/ALL\\_us/kids](https://www.youtube.com/intl/ALL_us/kids) [<https://perma.cc/RX39-6EX7>] (last visited Apr. 15, 2024).

254. See *For Kids & Families: What’s a Paid Product Placement?*, YOUTUBE HELP, <https://support.google.com/youtube/answer/10502576?hl=en#zippy=%2Cfor-parents-or-guardians-understand-paid-product-placements-sponsorships-endorsements> [<https://perma.cc/P4M7-KBSH>] (last visited Apr. 15, 2024) (“Being a YouTube Creator can be a full-time job and many popular channels have teams that support the creation of their videos.”).

255. See, e.g., *Terms of Use*, INSTAGRAM, *supra* note 178 (laying out the policies regarding protecting the privacy of children); *What Are the Meta Products?*, *supra* note 179; *Child Safety Policy*, YOUTUBE, *supra* note 188; *Children’s Privacy Policy*, TIKTOK, *supra* note 173.

256. See *infra* Part IV.

257. See *infra* Part IV.A.

258. See *infra* Part IV.A.1–2.

259. See *infra* Part IV.B.



even though there are other propositions out there to address this issue, they are not the most appropriate at the moment.<sup>260</sup>

Appropriate and effective interventions need to be made to provide social media child stars with the protection they deserve.<sup>261</sup> Notably, two states have made attempts to include “child influencers” under their legislation to cover social media child stars: New York and California.<sup>262</sup> The solution, however, is twofold because New York State and the social media platforms must get involved to hold the parents accountable.<sup>263</sup>

#### A. New York State Law Amendment

The idea to protect child social media stars under state law was attempted in 2018.<sup>264</sup> Part of the reason that the current New York Coogan law is not fully effective is that there is no true definition of a social media child performer.<sup>265</sup> California attempted to add social media advertising under the definition of employment.<sup>266</sup> Doing this would require parents to get a work permit and follow the California Coogan Act requirements.<sup>267</sup> Even though it was signed into law, it was substantially adulterated; it allowed those children who were unpaid and worked less than an hour to be exempt from the work permit requirement.<sup>268</sup> This alteration does not cover the social media child stars because the posted videos are all under an hour, and there is no real way to prove how long a child worked for the social media content.<sup>269</sup>

New York has also attempted to attack this issue on the legislative level.<sup>270</sup> New York State Assembly Bill 3720 was introduced in the New York Assembly as an attempt to include “children who participate in online videos that generate earnings.”<sup>271</sup> This change would allow children on social media platforms to be considered performers under the New York Labor Law.<sup>272</sup> The bill proposed to add “influencer” to the list

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260. See *infra* Part IV.C.

261. See Lambert, *supra* note 1.

262. See *id.*; Weiss, *supra* note 223.

263. See Cordeiro, *supra* note 169 (stating that regulation is needed to help resolve the exploitation of children).

264. Lambert, *supra* note 1.

265. *Id.* (stating that in the absence of clearly defined rules and regulations, the representatives of the child influencers have to protect the children).

266. *Id.*

267. *Id.*

268. *Id.*

269. *Id.*

270. Assemb., 3720, 2021-2022 Assemb., Reg. Sess. (N.Y. 2021).

271. *Id.*

272. Weiss, *supra* note 223; see N.Y. LAB. L. §§ 150-54.

of “artistic or creative services” and defined it as someone who “participates in a video that is posted to a video-sharing social networking internet website which generates earnings from sponsors or by other means, based on the number of views of such video, based on the number of clicks on a link leading to such video.”<sup>273</sup> More specifically, “child performer” would be defined as a child who “agrees to render artistic or creative services where such artistic or creative service was recorded in the state of New York or uploaded to a sharing and/or social networking internet website.”<sup>274</sup> This bill, however, has not been passed yet.<sup>275</sup>

New York should follow through with the bill as the first step to resolving this issue.<sup>276</sup> Furthermore, New York should also better define who is considered a child performer when it comes to social media.<sup>277</sup> A more appropriate definition would be: “Child performer shall mean any child under the age of eighteen who agrees to render artistic or creative services whose primary purpose for posting on social networking is for profit.”<sup>278</sup> With this new definition, more children creating content in their residences will be protected in the state of New York.<sup>279</sup>

In addition to passing the bill, New York should add a provision to hold the parents who predominantly post their children on their account accountable.<sup>280</sup> Doing so would first require seeing how a parent uses their social media account: Are they using it to promote their children, or are they posting for themselves?<sup>281</sup> The state could find some guidance by looking to see if the posts are paid content sponsors or if there are any notable brands being displayed in the content; once the parents are properly distinguished, they should be held accountable.<sup>282</sup>

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273. N.Y. 3720.

274. *Id.*

275. Weiss, *supra* note 223.

276. *Id.* (stating that New York has proposed a new bill to protect child performers).

277. See Burke, *supra* note 10 (stating that there is hope that Coogan-like laws can be amended to protect child influencers).

278. Cf. Burke, *supra* note 10. This article describes the France 2020 law, which broadens the coverage of children under sixteen years old “to include those ‘whose activity consists in making audiovisual recordings of which the main subject is a child under the age of sixteen, with a view to distribution for profit on a video-sharing platform service.’” *Id.* It also imposes financial obligations on legal representatives as well as the marketing companies. *Id.* Lastly, it gives minors the “right to be forgotten,” meaning the minor can choose to be removed from internet searches. *Id.* This right ensures that the child’s privacy is still protected. *Id.*

279. *See id.*

280. *See infra* Part IV.A.2; *see also Child Performer Laws in New York, supra* note 222.

281. Maeve Duggan et al., *Parents Use a Variety of Social Network Sites, with Facebook Being the Most Popular*, PEW RSCH. CTR. (July 16, 2015), <https://www.pewresearch.org/internet/2015/07/16/main-findings-14> [<https://perma.cc/43SM-3ZZQ>] (elaborating on parents and non-parents’ social media usage).

282. *See, e.g.,* Stauffer, *supra* note 7 (showing multiple photos of Mila and Emma Stauffer eating cheese as an advertisement for Babybel).

## 1. Distinguishing Between Children Working in Social Media and Children in the Entertainment Business

In order for this new legislation to work, society must be able to distinguish between parents sharing content featuring their kids and parents sharing for a profit.<sup>283</sup> Crystal Abidin, Associate Professor of Curtin University,<sup>284</sup> researched internet culture and found that influencer parents tend to reach a turning point in their lives.<sup>285</sup> This turning point is what determines the parent's true intention.<sup>286</sup> Sometimes, it is as simple as what they decide to do when their children's school friends realize they are famous or when the child does not want to post anymore.<sup>287</sup> The primary way to distinguish between the children working in social media and those working in the entertainment industry is that the social media children's personal lives are displayed for the world to see while the entertainment children are playing fictional characters.<sup>288</sup> The legislatures can use this definition as guidance for who falls under the new definition of a child performer.<sup>289</sup>

## 2. Holding Parents Accountable

First and foremost, parents must understand the responsibility they have toward their children.<sup>290</sup> Because the children are usually too young to consent to the content being posted, it is up to parents to treat their children's privacy with care.<sup>291</sup> The American Academy of Pediatrics has recommended that parents ask themselves a series of questions before they post their children.<sup>292</sup> The five questions are as follows:

Why are you sharing it? Would you want someone to share it about you? Could your child be embarrassed about it now, or in the future? Is

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283. Collins, *supra* note 63.

284. *Id.*

285. *Id.*

286. *Id.*

287. *Id.*

288. Collins, *supra* note 63. Children who are on reality shows also have their personal lives on display for the world to see, but they are actually getting paid for their content. *Id.*

289. See *Advocates Believe Kid Influencers Deserve Same Protections as Other Child Stars*, CARU (May 10, 2019), <https://carunews.blogspot.com/2019/05/advocates-believe-kidfluencers-deserve.html> [<https://perma.cc/RW2J-WP5Q>]. Former Democratic California Assemblymember Kansen Chu introduced a bill that amended the Coogan Act to cover "employment of a minor in social media advertising." *Id.*

290. Lauren Mak, *The Dangers of Sharenting – How to Protect Your Kids' Privacy*, VPN OVERVIEW, <https://vpnoverview.com/internet-safety/kids-online/sharenting> [<https://perma.cc/6RDX-FC5Z>] (Aug. 30, 2022).

291. *Id.*

292. *Id.*

there anyone in the world who shouldn't see this about your child? Is this something you want to be part of your child's digital footprint?<sup>293</sup>

Parents should also consider if they will likely make a profit from posting the content.<sup>294</sup> If they do make a profit, parents should set some of their earnings aside for the child being portrayed.<sup>295</sup>

Once parents understand their responsibilities, they have to recognize that they could be held accountable for their actions in the future.<sup>296</sup> Monetary rewards occasionally sidetrack parents' obligations to protect their children.<sup>297</sup> Just like in the *Scheller* case, parents could be brought to court for not setting money aside for the child.<sup>298</sup> The leading way to hold parents accountable outside of court, however, would be to follow TikTok's policy to remove accounts if parents are not honoring the new legislation.<sup>299</sup>

### B. Social Media Terms and Conditions Amendment

An amendment of the New York State law is the first step for the solution because state legislation forces compliance.<sup>300</sup> However, it is important to note that most social media users accept the terms without reading them.<sup>301</sup> Still, this does not change the necessity to amend the terms and conditions to provide more protection.<sup>302</sup> Changing the terms and conditions is the appropriate second step to take.<sup>303</sup> TikTok, for example, already includes in its terms that if one does not agree to any changes to the terms, one must stop using the platform.<sup>304</sup>

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293. *Id.*

294. *Id.*

295. See Rosie Hopegood, *The Perils of 'Sharenting': The Parents Who Share Too Much*, AL JAZEERA (Oct. 11, 2020), <https://www.aljazeera.com/features/2020/10/11/facing-the-music-the-parents-who-share-too-much> [<https://perma.cc/LM8K-AFV4>] (explaining that traditionally, money earned must be held in a trust for children, but this rule is not applied when it comes to social media).

296. See, e.g., *Scheller v. Bowery Savings Bank*, 630 N.Y.S.2d 62, 64 (App. Div. 1995).

297. Rane, *supra* note 176.

298. *Scheller*, 630 N.Y.S.2d at 64 (holding that the mother had to pay back all the money she took from her children because she did not honor their private contract).

299. See *supra* note 198.

300. Becky Beaupre Gillespie, *Why Do People Obey the Law?*, UNIV. OF CHI. L. SCH. (Jan. 13, 2015), <https://www.law.uchicago.edu/news/why-do-people-obey-law> [<https://perma.cc/XL4R-YP7G>].

301. Tim Peterson, *Know Your Rights When Social Media Companies Change Their Terms of Service*, LEGAL ZOOM, <https://www.legalzoom.com/articles/know-your-rights-when-social-media-companies-change-their-terms-of-service> [<https://perma.cc/DFJ4-AEWS>] (Nov. 1, 2023).

302. See *id.* (explaining that "even those who take the time to familiarize themselves with the terms of use and any updates might feel a sense of hopelessness in asserting their rights").

303. See *supra* notes 198-200 and accompanying text.

304. *Terms of Service*, TIKTOK, *supra* note 173.

The terms and conditions of a platform provide the users with rules for who can use it and for what use.<sup>305</sup> The terms of service of a social media platform is a legally binding contract between the user and the platform.<sup>306</sup> A legally binding contract consists of an offer, acceptance, and consideration.<sup>307</sup> Most commonly, the platforms usually imply consent to and acceptance of the terms through the use of the platform.<sup>308</sup> Consideration requires each side to give up something of value that they are legally free to pursue.<sup>309</sup> The social media platform fulfills this requirement by creating a website that one uses and derives value from.<sup>310</sup> In turn, the user provides content and loses their privacy via website tracking of usage and cookies.<sup>311</sup>

With the legally binding contract between the platforms and the users, social media platforms should have a fiduciary duty to their users.<sup>312</sup> The platforms should act as information fiduciaries.<sup>313</sup> An information fiduciary is defined as an entity that deals with information and must comply with legal obligations to be trustworthy.<sup>314</sup> Platforms that are information fiduciaries have duties of care, confidentiality, and loyalty toward their users and especially the children on social media.<sup>315</sup> With this responsibility, the platforms would be held to a higher standard to make sure that they are following the law.<sup>316</sup>

With the platforms' legal standard as an information fiduciary and their legally binding contracts with the users, they should amend their

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305. Roberta Codemo, *Creating Your Website Terms and Conditions*, LEGAL ZOOM, <https://www.legalzoom.com/articles/creating-your-website-terms-and-conditions> [<https://perma.cc/B2GT-68P7>] (Jan. 31, 2023).

306. Peterson, *supra* note 301.

307. *What Is Consideration and How Much Is Required?*, FINDLAW, <https://www.findlaw.com/smallbusiness/business-contracts-forms/what-is-consideration-and-how-much-is-required> [<https://perma.cc/3SD9-UGSF>] (Sept. 8, 2023).

308. See Peterson, *supra* note 301. Other platforms require the user to signal their compliance by clicking accept to the terms, but even then, the user can ignore the terms, scroll down to the bottom, and accept the terms. *Id.*; *Terms of Service*, TIKTOK, *supra* note 173 (“Your continued access or use of the Services after the date of the new Terms constitutes your acceptance of the new Terms.”).

309. *What Is Consideration and How Much Is Required?*, *supra* note 307.

310. Peterson, *supra* note 301.

311. *Id.*

312. Jack M. Balkin, *Fixing Social Media's Grand Bargain* 12 (Hoover Working Grp. on Nat'l Sec., Tech., & L., Aegis Series Paper No. 1814, 2018).

313. *Id.*

314. Cassidy Shapiro, *Information Fiduciary Duty – Do Private Entities Have a Legal Responsibility to Be Trustworthy with Your Data?*, COTCHETT PITRE & MCCARTHY LLP (Nov. 1, 2019), <https://www.cpmlegal.com/blogs-Advocates-For-Justice/information-fiduciary-duty-do-private-entities-have-responsibility-to-protect-privacy> [<https://perma.cc/A94L-3GRR>].

315. Balkin, *supra* note 312.

316. *Id.*

terms and conditions to comply with the new law that includes a proper definition of a social media star.<sup>317</sup> Complying with the new legislation would require parents to create a Coogan account for their child if they are profiting from the use of their child on their social media accounts.<sup>318</sup> The platforms should also add a provision that informs parents that if they are using their accounts to post their children for profits, the platform will provide them with notice and a contract that requires them to comply with the new provision in the New York legislation.<sup>319</sup> The notice should be sent to the email associated with the account.<sup>320</sup> It would state: “In accordance with the new legislation, this account is considered to be an account for profit using a child performer, therefore requiring you to create a Coogan account in New York.”<sup>321</sup> The email will require parents to acknowledge receipt of the email and give them a set number of days to comply with the law.<sup>322</sup> Following TikTok’s lead, the platforms will also let them know that non-compliance will lead to account suspension for a few days until compliance, or permanent deletion if a Coogan account is never made.<sup>323</sup>

### C. Counterargument to the Solution

Generally, regulating child social media stars is a difficult task.<sup>324</sup> Some have argued that each of the fifty states or the federal government should adopt a new set of laws entirely to address social media.<sup>325</sup> That idea is not the best approach because the current FLSA does not cover social media stars, and a new set of laws would take a long time to

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317. See Michael A. Cusumano et al., *Pushing Social Media Platforms to Self-Regulate*, REGUL. REV. (Jan. 3, 2022), <https://www.theregreview.org/2022/01/03/cusumano-yoffie-gawer-pushing-social-media-self-regulate> [<https://perma.cc/BNV8-DEWL>] (explaining that the number of videos posted is too much to truly be policed, and there are no financial incentives for social media companies to police themselves).

318. Burke, *supra* note 10.

319. Cusumano et al., *supra* note 317.

320. See Bill Schneider, *Push Notification Strategies Top Social Media Brands Are Using: What Digital Marketers Can Learn*, AIRSHIP (Sept. 7, 2017), <https://www.airship.com/blog/push-notification-strategies-top-social-media-brands> [<https://perma.cc/5NRB-3MPB>] (explaining the different ways social media companies communicate with their users).

321. Burke, *supra* note 10 (supporting the need for Coogan accounts to be made for child social media influencers).

322. See, e.g., *Terms of Service*, TIKTOK, *supra* note 173 (explaining that TikTok will communicate with the user regarding any non-compliance with the platform’s rules).

323. See, e.g., *id.* (stating that if you do not agree to the new terms, you must stop accessing or using the services).

324. Masterson, *supra* note 21, at 581.

325. Nila McGinnis, Note, “*They’re Just Playing*”: *Why Child Social Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents*, 87 MO. L. REV. 247, 264 (2022).

enact.<sup>326</sup> Others have argued that the method used in France is the best approach to the issue because the posts can be removed in the future.<sup>327</sup> The French way is a method that gives minors the choice to remove their presence from internet searches.<sup>328</sup> That idea is beneficial in the long run but it does not address the current issue of parental exploitation.<sup>329</sup> Another commentator has suggested that Congress and the Department of Labor should work together to create a federal requirement of maximum work hours and a work permit.<sup>330</sup> In order to do this, the commentator states that the Department of Labor would require companies to report when a minor signs a contract to work with a company.<sup>331</sup> The first problem with this solution is that calculating the number of hours a child has worked in their home would be based completely on guesses.<sup>332</sup> This method is also not suitable to address the issue because parents are the owners of the account and the minors are not legally bound to any contracts.<sup>333</sup> Overall, the reason so many potential solutions are being generated is because social media has not been regulated since it was created.<sup>334</sup> However, the solution that this Note argues is the most appropriate approach to resolving the exploitation of child influencers.<sup>335</sup>

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326. See Burke, *supra* note 10. See generally *Enactment of a Law*, CONGRESS.GOV, <https://www.congress.gov/help/learn-about-the-legislative-process/enactment-of-a-law> [<https://perma.cc/YRG5-NRGX>] (last visited Apr. 15, 2024) (explaining the process of how a law is enacted).

327. Jessica Patcht-Friedman, Note, *The Monetization of Childhood: How Child Social Media Stars Are Unprotected from Exploitation in the United States*, 28 CARDOZO J. EQUAL RTS. & SOC. JUST. 361, 384 (2022).

328. Burke, *supra* note 10.

329. See *id.* (stating that children have a right to be forgotten if they choose to have their information removed from the internet when they reach the age of majority); see also Anne Marie Tomchak, *Are You Guilty of Sharenting? Why There's Now a Shocking Rise of Children Suing Their Parents for Documenting Their Lives on Social Media*, GLAMOUR (Jan. 7, 2021), <https://www.glamourmagazine.co.uk/article/child-privacy-social-media-risks> [<https://perma.cc/N4V3-NFD3>] (stating that the right to be forgotten is a theoretical victory and that even though the child's name is removed from the internet, they could be found somewhere else).

330. Sisson, *supra* note 18.

331. *Id.*

332. Walker, *supra* note 148.

333. See Arabpour, *supra* note 149; see also Emma Granha Piatì, *Child Exploitation—“Mommy Run Accounts,”* GOOD MEN PROJECT (Aug. 5, 2022), <https://goodmenproject.com/featured-content/child-exploitation-mommy-run-accounts> [<https://perma.cc/SEN6-FZXB>].

334. Zoha Qamar, *Why ‘Kidfluencers’ Have So Few Protections—Even As Americans Support Regulating the Industry*, FIVE THIRTY EIGHT (Jan. 3, 2023, 11:33 AM), <https://fivethirtyeight.com/features/why-kidfluencers-have-so-few-protections-even-as-americans-support-regulating-the-industry> [<https://perma.cc/4AUY-LJGJ>].

335. See Lambert, *supra* note 1; Weiss, *supra* note 223.

## V. CONCLUSION

As the times change and our world becomes more digital, we need to be able to continue to protect our children like we have in the past.<sup>336</sup> The American Bar Association has emphasized that lawyers need to remain informed of the pros and cons of the relevant technology.<sup>337</sup> Changes should not be an excuse as to why some children are being protected and others are not.<sup>338</sup>

Social media once primarily served as a source of communication, but it has now also become a source of income.<sup>339</sup> Parents today are using their children to create content that they post on their social media accounts, for which they are compensated.<sup>340</sup> The profit made from the posts change the child's status from playing to working, but most parents are keeping the profit for themselves.<sup>341</sup> The current child labor laws do not adequately protect child performers.<sup>342</sup> The only available law to protect these children is the Coogan law, but it currently does not cover social media child stars.<sup>343</sup> Many states have attempted to amend the original California Coogan Act, but they were not able to resolve the issue of parents having complete control over their children's Coogan accounts.<sup>344</sup> The appropriate way to address this issue is to amend the New York Coogan law's definition of a child performer<sup>345</sup> and for the platforms to amend their terms and conditions to require the creation of a Coogan account.<sup>346</sup>

It is important to realize that this solution is only the beginning.<sup>347</sup> The rising number of social media child stars is a prime example of how influential social media is to society.<sup>348</sup> As our children participate more in the digital world, it is up to the parents and guardians to properly

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336. See Cordeiro, *supra* note 169.

337. Walker, *supra* note 148.

338. Haley Dominique, Blog, *Why "Kidfluencers" Deserve Monetary Protections Like Child Actors*, U. CIN. L. REV. (Nov. 10, 2022), <https://uclawreview.org/2022/11/10/why-kidfluencers-deserve-monetary-protections-like-child-actors> [<https://perma.cc/L29H-FMP2>].

339. Roshong, *supra* note 48; Cordeiro, *supra* note 169.

340. See Cordeiro, *supra* note 169. *But see* Brauer, *supra* note 187 ("There is a growing movement among parents who say they are no longer posting photos of their children online.").

341. Wong, *supra* note 16.

342. Sisson, *supra* note 18.

343. Lambert, *supra* note 1.

344. *Coogan Law*, *supra* note 151.

345. Burke, *supra* note 10.

346. See generally Peterson, *supra* note 301 (explaining that changes to the social media platforms' terms of services must be easy to understand and digest).

347. See generally Walker, *supra* note 148 (suggesting that the "uptick in discussions" surrounding child influencers could be a temporary solution for the exploitation).

348. *Rise of Child Influencers: Kidfluencers Exploitation, Rights*, *supra* note 51.



evaluate their actions and how they affect their children.<sup>349</sup> The children are our future, so we have to do everything that we can to protect them while they are still young.<sup>350</sup>

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349. *Id.*

350. *See generally id.* (explaining that parents and guardians have to protect children).

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