

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 10

SPRING 2023

ISSUE 2

CHILD CONTENT CREATORS AND JUST COMPENSATION:

A POLICY EXPANSION ON
'COOGAN LAW' FOR CHILD SOCIAL MEDIA STARS

Deanna Cooper

I. INTRODUCTION

Children say the most amazing things. One instance may be funny, leading mom or dad to film and post it online. The funny little clip may go viral, and before the parents realize it, the child has hundreds of thousands of followers on all social media platforms. Furthermore, this occurrence could lead the child to be on the horizon of business dealings with Mattel and Hasbro. With the rapid growth of social media, thousands of people are turning to various platforms to build a career. Children are no exception to this trend. While Hollywood and the film industry have had legislation in place to protect child entertainers' assets since the beginning of World War II,¹ the earnings of child entertainers in the social media and online user-generated content realm are vastly unregulated. In this legal note, I will make the public policy argument that lawmakers should expand the Coogan Law to include child

¹ *Child Actor*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/arts/encyclopedias-almanacs-transcripts-and-maps/child-actors> (last visited Nov. 24, 2022).

entertainers who are performing on social media platforms and producing user-generated content.

II. ORIGINS OF CHILD ACTORS & COMPENSATION

The early twentieth century is when the first child actors began their rise to fame. A challenge that the film industry faced with employing young actors was the assumption by law that minors were incapable of understanding the contents of a legal contract. Thus, the common law infancy doctrine² was codified in California in 1872 so that children had the right to disaffirm contracts that provided more than their basic needs. Children now had the right to terminate contracts, including employment contracts, without facing any legal repercussions.³ In the 1920s, Hollywood found a loophole by engaging in the “studio system,” allowing studios such as Warner-Brothers, Metro-Goldwyn-Mayer (“MGM”), and others to hire actors in seven-year contracts to work exclusively for the respective studio, which would then hold the exclusive name, image, and voice rights of the actor.⁴ These contracts were not exclusive to children. Adult actors such as Clark Gable, Joan Crawford, and Rock Hudson were also bound to them.

In response to the pressure from the film industry, the California legislature allowed for the removal of a minor’s right to disaffirm a contract once the contract was “approved by the superior court of the county where such minor resides or is employed.”⁵ In other words, production companies such as MGM solely had to find a judge to approve and bind a minor to a contract. Furthermore, no contractual standard had to be reached before it was approved, leaving children with no means of escape.⁶

² CAL. FAM CODE §§ 6710-6713 (Deering, LEXIS through 2022 Reg. Sess.).

³ Jennifer Gonzalez, *More Than Pocket Money: A History of Child Actor Laws*, THE LIBRARY OF CONGRESS BLOGS (June 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws/>.

⁴ Khalid Elhassan, *Hollywood Studios Used to Own Their Actors and Actresses*, HISTORY COLLECTION (Jan. 3, 2022), <https://historycollection.com/hollywood-studios-used-to-own-their-actors-and-actresses/2/>.

⁵ Gonzalez, *supra* note 3.

⁶ *Id.*

III. COOGAN LAW

John Leslie “Jackie” Coogan was one of Hollywood’s first child actors. Charlie Chaplin, the silent actor, discovered Coogan, and he subsequently rose to fame from his roles in *The Kid* (1921), *Oliver Twist* (1922), *A Boy of Flanders* (1924), and *Tom Sawyer* (1930).⁷ Coogan was also one of the first child stars heavily marketed on merchandise.⁸ Coogan appeared on peanut butter, stationery, whistles, dolls, figurines, records, and other Coogan-themed merchandise.⁹ As such, Coogan roughly earned \$3 to \$4 million (\$44 to \$59 million in 2021 dollars)¹⁰ as a child star.¹¹ These earnings were well-managed and safeguarded by Coogan’s father, who unfortunately died in a tragic car crash before Coogan reached the age of 21.¹² Coogan’s fortune was then rapidly depleted by his mother and stepfather through frivolous purchases of fur coats, diamonds, luxury jewelry, and expensive cars by Coogan’s mother and his stepfather, Arthur Bernstein.¹³ They claimed that Jackie was simply enjoying himself and just playing in front of a camera.¹⁴ His mother described him as a bad boy and stated there were never any promises to give Jackie anything.¹⁵

In 1938, Coogan filed suit against his mother and stepfather for \$4 million in an attempt to finally gain access to his earnings as a child actor.¹⁶ While the lawsuit settled out-of-

⁷ Jackie Coogan (1914-1984), IMDB, https://www.imdb.com/name/nm0001067/?ref=fn_al_nm_0 (last visited Nov. 25, 2022).

⁸ Neil Patrick, *Jackie Coogan- From the child star in Chaplin’s The Kid through WWII flight officer to Uncle Fester in Adams Family*, THE VINTAGE NEWS (Sept. 22, 2016), <https://www.thevintagenews.com/2016/09/22/jackie-coogan-from-the-child-star-in-chaplins-the-kid-through-wwii-flight-officer-to-uncle-fester-in-adams-family/?safari=1>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Patrick, *supra* note 8.

¹⁵ *Id.*

¹⁶ Associated Press, *Jackie Coogan Sues Mother*, PRESCOTT EVENING COURIER, Apr. 12, 1938, at 1.

court for a measly amount of \$150,000, the publicity of the vulnerability of child actors' earnings and how easily their money can be mismanaged and squandered led to state legislation coining 'Coogan Law.'¹⁷ This law granted judges the discretionary power to require that a contract set aside some of a child actor's income into a trust fund or savings account, only to be opened when the child reached the age of majority.¹⁸ In addition, the money that went into the child's trust fund or savings account came from a child's net income after subtracting any managerial fees and other fees.¹⁹ Despite the progress in the 1939 legislation, loopholes and concerns remained.²⁰ At the time the California Child Actor's Bill was drafted and codified, the law did not specify an amount to go into the child entertainer's trust accounts.²¹ The bill only stated that a discretionary amount had to be placed in these accounts, and the legislation did not protect contracts with minors that were not court-approved.²² This allowed parents to create methods of retaining their child's earnings. For example, Judy Garland's mother requested a stipend out of Judy's salary, and, in return, "she promised to chaperone Judy and ensure that Judy met the studio's demands."²³ Elizabeth Taylor's mother also arranged a similar situation by taking ten percent of her "daughter's salary in exchange for being Elizabeth's manager."²⁴

After sixty-one years of California's Coogan Law going untouched, revisions were made in 2000, amending the Coogan Act to what it is today. The changes reaffirmed that earnings by minors in the entertainment industry are the property of the minors, not their parents. At the time of Coogan's earnings battle, California had a provision stating that a child actor's earnings belonged to the family unit because it was a community property state, a term that is now only used in the

¹⁷ *Id.*

¹⁸ Gonzalez, *supra* note 3.

¹⁹ *Id.*

²⁰ Amanda Bronstad, *Coogan Law loophole leaves child actors at financial risk*, THE NAT'L L.J. (Apr. 18, 2011), <https://www.vrmlaw.com/sitecontent/media/news/Coogan-Law-Loophole-Leaves-Child-Actors-at-Financial-Risk.pdf>.

²¹ *Id.*

²² *Id.*

²³ Gonzalez, *supra* note 3.

²⁴ *Id.*

context of dividing marital assets.²⁵ The provision ultimately gave Coogan's mother access to his accumulated earnings.²⁶ However, California ultimately repealed this provision²⁷ and instead codified that earnings and accumulations of an unemancipated minor relating to a contract, as described in Section 6570, shall remain the sole legal property of the minor child.²⁸ Because minors cannot legally control their own money, California law governs their earnings and creates a fiduciary relationship between the parent and the child.²⁹ California law also requires that fifteen percent of all minors' earnings be set aside in a blocked trust account, commonly known as a Coogan Account.³⁰ In addition, a child's Coogan Bank Account must receive a deposit of fifteen percent of the child actor's gross earnings within fifteen days of employment.³¹ The producer of the project is responsible for making sure that happens.³²

California Family Code Sections 6750 through 6753³³ plainly and explicitly state who and what entities must comply with the statutes; the definition of gross earnings, contract regulations, compliance standards for the parent(s) of the child entertainer; trustee and trust account requirements; and specific parameters for the trust accounts.³⁴ The revisions and amendments to the Coogan Act now make any situation, such as what Jackie Coogan faced, nearly impossible.

Other states that are popular destinations for the film industry have enacted similar laws to California's Coogan Act.

²⁵ Brad Smithfield, *Coogan Act: Stopped parents of famous child actors seizing all the child's money*, THE VINTAGE NEWS (Oct. 29, 2016), <https://www.thevintagenews.com/2016/10/29/coogan-act-stopped-parents-of-famous-child-actors-seizing-all-the-childs-money/?safari=1>.

²⁶ *Id.*

²⁷ CAL. FAM. CODE § 771 (Deering, LEXIS through 2022 Reg. Sess.).

²⁸ *Id.*

²⁹ *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> (last visited Nov. 25, 2022).

³⁰ Loring Weisenberger, *A Producer's Guide to Coogan Law*, WRAPBOOK (July 28, 2022), <https://www.wrapbook.com/blog/producers-guide-coogan-law>.

³¹ *Id.*

³² *Id.*

³³ CAL. FAM. CODE §§ 6750-6753 (Deering, LEXIS through 2022 Reg. Sess.).

³⁴ *Id.*

For example, New York, home to Broadway and many music recording studios, enacted the New York Child Performer Education and Trust Act in 2003, which took effect in 2004.³⁵ Various American labor unions in the entertainment industry, such as the Screen Actors Guild, the American Federation of Television and Radio Artists,³⁶ and the Actors Equity Association (AEA), supported the Act.³⁷ The law covered things such as education requirements for children in the entertainment industry and the general concepts of a Coogan account.³⁸ However, unlike trust account requirements in California,³⁹ New York trust accounts are not blocked.⁴⁰ Parents of child entertainers in New York must place fifteen percent of the child's earnings into a trust account per Article 7 of New York's Estate, Powers and Trusts law.⁴¹ Failure to comply with this regulation prevents the Department of Labor from renewing the child's work permit as a child performer.⁴² The child's parents or guardian must establish the Child Performer Trust account to comply with this requirement. Furthermore, they must provide the child performer's employer with the information necessary to transfer these monies to the account.⁴³ The child's parents or guardians may set up the trust account anywhere as long as: (1) it is set up as required by New York state law, (2) the employer can complete the required transactions, and (3) it meets the standards required by a New York State Uniform Transfer to Minors Act trust account (UTMA)⁴⁴ or a New York State Uniform Gift to Minors

³⁵ Child Performer & Education Trust Act of 2003, 12 NYCRR 186, <https://dol.ny.gov/system/files/documents/2021/02/part186-child-performer.pdf>.

³⁶ Most commonly known as SAG-AFTRA, a labor union in the United States for individuals in the entertainment & arts industries.

³⁷ *Child Performer Laws in New York (Work Permits, Work Hours, and more)*, BIZPARENTZ FOUND. (Mar. 21, 2018) <https://www.bizparentz.org/new-york-child-entertainment-laws/>.

³⁸ *Id.*

³⁹ CAL. FAM. CODE § 6753 (Deering, LEXIS through 2022 Reg. Sess.).

⁴⁰ *Child Performer Laws in New York*, *supra* note 38.

⁴¹ *Child Performer Trust Accounts*, N.Y. STATE DEP'T OF LAB., <https://dol.ny.gov/child-performer-trust-accounts> (last visited Mar. 1, 2023).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ All requirements of a UTMA can be found at N.Y. EST. POWERS & TRUSTS LAW § 7-6.1-.26 (Consol. 2022).

Act trust (UGMA)⁴⁵ account, or it is a blocked “California Coogan” type account.⁴⁶

To comply with New York state law regarding child performer trust accounts,⁴⁷ employers, parents, and/or guardians of the child performer must act in accordance with their obligations.⁴⁸ Employers must obtain the information required to make the transfers and transfer the appropriate amounts into the child’s trust account.⁴⁹ When the employment contract is for thirty days or less, the employer must transfer fifteen percent of the child’s gross earnings within thirty days following the final day of the child’s employment.⁵⁰ When the employment contract is longer than thirty days, the employer must transfer fifteen percent of the child’s gross earnings at the end of each payroll period.⁵¹ By request of the parent/guardian or custodian, the amount transferred by the employer can be greater than fifteen percent.⁵² If the parent/guardian or custodian has not provided the necessary information within fifteen days of the start of employment, or no such account has been established, the employer must transfer the money together with the child performer’s name and last known address to the State Comptroller for placement into the child performer’s holding fund.⁵³ Furthermore, the employer must contact the State Comptroller about the matter via telephone.⁵⁴ The parent or guardian must:

Set up a child performer trust account and notify
the child’s employer of the existence of the

⁴⁵ UGMA was replaced by UTMA in 1997; however, existing accounts which fall under UGMA are still valid in the same way UTMA is today.

⁴⁶ *Child Performer Frequently Asked Questions*, N.Y. STATE DEP’T OF LAB., <https://dol.ny.gov/child-performer-frequently-asked-questions> (last visited Mar. 1, 2023).

⁴⁷ N.Y. EST. POWERS & TRUSTS LAW § 7-7.1 (Consol. 2022).

⁴⁸ *Id.*

⁴⁹ *Child Performer Trust Accounts*, N.Y. STATE DEP’T OF LAB., <https://dol.ny.gov/child-performer-trust-accounts> (last visited Mar. 1, 2023).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

account (including any details required to make transfers) within fifteen days of the start of employment, unless one already exists when the child is employed under a Temporary Fifteen-Day Online Child Performer Permit; Notify the child performer's employer of the existence of the account at the start of employment (including any details required to make transfers) by attaching trust information to the copy of the twelve-month Child Performer Permit given to the employer; Notify the employer of any change in facts that could affect the employer's obligation to make transfers; Notify the child performer's employer if they wish to transfer more than fifteen percent of the child performer's gross earnings; Appoint a trust company as custodian of the account once the balance reaches \$250,000; and [s]ubmit account information or updated information when applying for a twelve-month permit.⁵⁵ Child Performer Trust Documentation must also be provided by the parent/guardian to any employer who engages minors in paid performance work under an Employer Certificate of Group Eligibility to Employ Child Performers.⁵⁶

Louisiana is an attractive state for filmmakers as there are few restrictions, and it has a generous film incentive tax credit.⁵⁷ In 2005, Louisiana passed the Child Performer Trust Act,⁵⁸ which requires "that fifteen percent of the gross earnings for the minor under the contract be placed in a trust fund created for the benefit of the minor and . . . that the trust fund be created in a state or federally chartered financial institution,

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Louisiana Economic Development, *Production Incentives Database*, MEDIA SERV. A CAST & CREW CO. (Mar. 1, 2023), <https://www.mediaservices.com/production-incentives/production-incentive-database/?state=Louisiana>.

⁵⁸ LA. STAT. ANN. § 51:2131 – 51:2135 (LEXIS through Act 2 of 2023 First Extraordinary Sess.).

including trust companies. . . .⁵⁹ The Senate-proposed bill,⁶⁰ now law, established that the account must be a blocked trust account comparable to the California Coogan accounts and must list both parents as trustees of the account.⁶¹ In 2019, Illinois amended its Child Labor Laws to include child performance trust funds and provide a path to protect the performers' earnings.⁶² Moreover, Illinois 'Coogan' law has similar requirements as other states. For example, the parent or guardian must set up the account within fifteen days of employment and provide the employer with account details to make deposits.⁶³ The minimum requirements of a trust account are the following: "(1) that at least 15% of the gross earnings of the child performer shall be deposited into the account; (2) that the funds in the account shall be available only to the child performer; (3) that the account shall be held by a bank, corporate fiduciary, or trust company, as those terms are defined in the Corporate Fiduciary Act; (4) that the funds in the account shall become available to the child performer upon the child performer attaining the age of 18 years or until the child performer is declared emancipated; and (5) that the account meets the requirements of the Illinois Uniform Transfers to Minors Act."⁶⁴ It is important to note that the statute defines a child performer as an unemancipated individual who works in Illinois, agrees to render artistic or creative services, and is under sixteen years of age, not eighteen, as individuals ages sixteen to eighteen work as adults in the state of Illinois.⁶⁵ Another distinction of Illinois's law is that the child performer trust account does not apply to children who are deemed only to be extras, background performers, or performing in similarly situated circumstances.⁶⁶

⁵⁹ LA. STAT. ANN. § 51:2133(A)(1) (LEXIS through Act 2 of 2023 First Extraordinary Sess.).

⁶⁰ H.R. 158, 2019 Reg. Sess. (LA. 2019).

⁶¹ *Louisiana Laws*, BIZPARENTZ FOUND. (Mar. 20, 2018), <https://www.bizparentz.org/louisiana-child-entertainment-laws/>.

⁶² S. 147, Ill. 101st. Gen. Assemb. (2019).

⁶³ 820 ILL. COMP. STAT. ANN. 205/12.5 (LEXIS through P.A. 102-1140, of 2022 Reg. Sess.).

⁶⁴ *Id.* at § 205/12.5(c).

⁶⁵ *Illinois Laws*, BIZPARENTZ FOUND. (June 5, 2022), <https://www.bizparentz.org/illinois-laws/>.

⁶⁶ 820 ILL. COMP. STAT. ANN. 205/12.5(f) (LEXIS through P.A. 102-1140, of 2022 Reg. Sess.).

Although the California legislature has made it increasingly difficult for parents and guardians to mismanage their child's earnings, some prominent stars have taken legal action against their parents to recoup their lost earnings. In 1989, Gary Coleman, one of the highest-paid child actors of the 1970s and 1980s,⁶⁷ sued his parents and former manager for mismanagement of his finances. In the suit, Coleman alleged that his parents, Willie and Edmonia Coleman, and his former business advisor, Anita De Thomas, mismanaged his money and misappropriated assets for their sole benefit. In 1993, the Superior Court of California ruled in favor of Gary Coleman, holding that Coleman's parents wrongly paid themselves \$1,280,522 in excessive commissions, salaries, fees, and pension distributions from April 1, 1982, to December 31, 1987.⁶⁸ Even with the \$1.3 million ruling, Coleman filed for bankruptcy in 1999, ascribing his financial problems to the mismanagement of his trust account.⁶⁹

Country music star LeAnn Rimes sued her father, Wilbur C. Rimes, and former co-manager, Lyle Walker, in 2000, alleging that the pair swindled over \$7 million from the artist between 1995 to 2000.⁷⁰ Her complaint alleged that the two men appropriated up to thirty percent of her income at times by duplicating and augmenting management and production fees⁷¹. The complaint also alleged that they practiced improper business tactics through ventures with a transportation company and a life insurance agent – Walker's son, Layne

⁶⁷ Bob Tourtellotte, *Gary Coleman dies after brain hemorrhage*, REUTERS (May 27, 2010, 9:16 PM), <https://www.reuters.com/article/idUSTRE64R0DU20100528>.

⁶⁸ Associated Press, *Gary Coleman awarded \$1.3M*, THE DAILY GAZETTE, Feb. 25, 1993, at A8.

⁶⁹ Kelly Hagan and Sheila Marikar, *Gary Coleman's Parents Demanding Answers*, ABC NEWS (May 28, 2010, 6:33 AM), <https://abcnews.go.com/GMA/Media/gary-coleman-death-parents-answers-actors-wife-shannon/story?id=10787608>.

⁷⁰ *CURB'S LEANN RIMES SUES FATHER, CO-MANAGER, DALLAS PAPER SAYS*, NASHVILLE POST (May 11, 2000, 9:52 AM), https://www.nashvillepost.com/home/curbs-leann-rimes-sues-father-co-manager-dallas-paper-says/article_8538a8ad-38d9-52ef-a5bc-6ff8572604f4.html.

⁷¹ Lauren Schmitzer, *LeAnn Rimes Sues Father, Former Co-Manager for Theft*, MTV (May 12, 2000, 12:14 AM), <https://www.mtv.com/news/owrfeo/leann-rimes-sues-father-former-co-manager-for-theft>.

Walker.⁷² The suit further alleged that the defendants floated themselves no-interest loans through LeAnn Rimes Entertainment Inc., a company formed in 1995 to represent the plaintiff.⁷³ LeAnn also claimed that from 1996 to 1999, Wilbur Rimes and Lyle Walker claimed royalty payments of over \$8 million, \$5 million more than Rimes received.⁷⁴ Wilbur Rimes received a fixed percentage of his daughter's earnings in the agreement, but the lawsuit asserts that he increased his share through bloated management and production fees.⁷⁵ In March 2001, LeAnn Rimes settled her lawsuit with her former manager, but a confidentiality agreement sealed the terms and conditions of the settlement.⁷⁶ Meanwhile, Wilbur Rimes filed a countersuit against his daughter, noting that he felt LeAnn was overspending.⁷⁷ However, when love is in the air, deep wounds can be healed. During the week of LeAnn Rimes' first wedding to Dean Sheremet in February 2002, the father and daughter settled both of their lawsuits in the name of family first.⁷⁸ However, they chose not to disclose the terms of their respective settlements to the public.⁷⁹

In *Phillips v. Bank of America*, the California Court of Appeals analyzed the legislative intent behind California's Coogan law, noting that the intent is to preserve a portion of the minor's earnings for the minor's use when the minor reaches the age of majority.⁸⁰ Specifically, the court adds that the purpose of Coogan Trust Accounts is to preserve the minor's *gross*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Billboard Staff, *Rimes, Ex-Manager Settle Lawsuit*, BILLBOARD (Mar. 29, 2001), <https://www.billboard.com/music/music-news/rimes-ex-manager-settle-lawsuit-80234/>.

⁷⁷ ABC News, *LeAnn Rimes Reconciles With Dad After Bitter Feud*, ABC NEWS (Apr. 29, 2005), <https://abcnews.go.com/2020/Entertainment/story?id=715127&page=1>.

⁷⁸ Gary Susman, *LeAnn Rimes gets married*, ENT. WEEKLY (Feb. 28, 2002, 5:00 AM), <https://ew.com/article/2002/02/28/leann-rimes-gets-married/>.

⁷⁹ *Id.*

⁸⁰ See *Phillips v. Bank of Am., N.A.*, 186 Cal. Rptr. 3d 434, 438 (Cal. Ct. App. 2015) (detailing the evolution of the Coogan Law since its enactment).

[emphasis added] earnings until the minor reaches the age of majority, preventing anyone, even banks, from withdrawing deductions for taxes or fees of any kind without court approval.⁸¹ However, the case does recognize that despite these protections, the aforementioned child actors still received a small percentage of what they truly earned during their child actor careers.⁸²

IV. USER-GENERATED CONTENT

As users of social media, one typically scours the discovery or trending pages to find something to occupy their mind and hold their attention for however long one wishes to escape their current reality. So, how does the content get onto Facebook, YouTube, TikTok, or Instagram? The likely answer is content creators. A content creator is someone who creates appealing and awe-inspiring content for viewers.⁸³ The content they create can be educational, simply catchy enough to entertain viewers, or it can grab the attention of any visitor or passerby who was not previously interested in a brand.⁸⁴ But after looking at the content, the social media user develops a certain interest in the product placement and visits the webpage or the social media handles of the said brand that the content creator promoted on her page.⁸⁵ A good idea can be powerful to impact an audience positively, generating leads for the brand and attracting more customers through the content displayed.⁸⁶ The way these content creators use their ideas to change a user's purchasing power is commendable.⁸⁷ This is a double-edged sword, though.

Content does not just educate us about things; it also keeps us entertained while we smile and laugh at the memes we encounter. While Facebook could help a brand interact within the different community forums created, content

⁸¹ *Id.*

⁸² *Id.*

⁸³ Gary Henderson, *What Is A Content Creator?*, DIGIT. MKTG. BLOG (May 24, 2020, 1:15 PM), https://www.digitalmarketing.org/blog/what-is-a-content-creator_

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

creators can engage a brand's audience by creating appealing content in the form of questionnaires, which can be answered or shared.⁸⁸ For classic picture-based content, Instagram could be a brand's first pick.⁸⁹ If a brand has content in the form of pictures that are photographically appealing to an audience, the content creator can promote such content on Instagram, adding a suitable caption under it, along with hashtags that will help the brand reach a larger audience.⁹⁰ Digital content can be made more likable by the brand's target audience, who are more interested in video formats of content.⁹¹ Businesses can use digitally intriguing content, uploaded and accessed on YouTube, where the audience can like and share the content on different social networking forums.⁹² For the younger generations that a brand may not typically reach, content creators may utilize TikTok for short-form digital content while also engaging in trendy memes or dances, merging relatability and marketing genius.⁹³ Then there are short content write-ups that can be promoted on Twitter for the brand's audience to retweet.⁹⁴

Posting online to various social media outlets as a career may sound enticing. A distinction must be made between content creators and influencers, though, to understand each role on the internet best. An influencer is someone who has the power to affect the purchasing decisions of others because of his or her authority, knowledge, position, or relationship with his or her audience.⁹⁵ Content creators are not inherently selling or marketing items to viewers. Instead, content creators create original content for sharing knowledge or building a brand, while influencers post sponsored content for money and popularity.⁹⁶

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Werner Geysler, *What is an Influencer? – Social Media Influencers Defined [Updated 2023]*, INFLUENCER MKTG. HUB (Jan. 11, 2023), <https://influencermarketinghub.com/what-is-an-influencer/>.

⁹⁶ Neil Patel, *What's the Difference Between a Content Creator and an Influencer?*, NEILPATEL BY NPDIGITAL,

Kidfluencers⁹⁷ are children who regularly post online across various social media platforms, generating massive numbers in views and followers or subscribers, and in turn, promote sponsored content for brands and companies in exchange for money and free products.⁹⁸ Though most social media platforms require users to be at least 13 years of age, many parents of Kidfluencers bypass that rule by managing their child's account in order to preserve their online presence.⁹⁹ Ryan Kaji, better known as the cute kid from the YouTube channel 'Ryan's World,' is one of the wealthiest and most popular child YouTubers.¹⁰⁰ His channel earns approximately \$30 million per year.¹⁰¹ Kaji accumulated his following through toy reviews posted on YouTube by his father.¹⁰² According to his management team, pocket.watch, Kaji has over 40.9 million subscribers, an average of one billion monthly views, and over 57 billion lifetime views.¹⁰³ In addition, Kaji has had sponsored collaborations with brands such as Mattel,¹⁰⁴ MGA

<https://neilpatel.com/blog/creator-vs-influencer/> (last visited Mar. 1, 2023).

⁹⁷ A colloquial term used for children with large social media followings; a mash-up of the words 'Kid' and 'Influencer'.

⁹⁸ 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/> (citing Marina A. Masterson, *WHEN PLAY BECOMES WORK: CHILD LABOR LAWS IN THE ERA OF "KIDFLUENCERS"*, 169 U. PA. L. REV. 577 (2020).).

⁹⁹ 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/>.

¹⁰⁰ Shreyosi Chakraborty, *Top 10 Child Youtubers who are rocking the cyberspace*, EDUCATIONWORLD (July 14, 2021), <https://www.educationworld.in/top-10-child-youtubers-who-are-rocking-the-cyberspace/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ "RYAN FINDS A GIANT MYSTERY BREAKOUT BEASTS SLIME EGG FROM MEGA CONSTRUX!", RYAN'S WORLD, <https://ryans.world/work/ryan-finds-a-giant-mystery-breakout-beasts-slime-egg-from-mega-construx/> (last visited Nov. 25, 2022).

Entertainment,¹⁰⁵ Lunchables,¹⁰⁶ Nickelodeon,¹⁰⁷ Saban's Power Rangers,¹⁰⁸ Legoland,¹⁰⁹ Nintendo,¹¹⁰ and more. Kaji also has his own line of toys sold on his website and at major retailers such as Target, Amazon, and Walmart.¹¹¹ Everleigh Rose, the oldest child of the LaBrant family,¹¹² famously known for their Christian values and notorious controversies,¹¹³ has nearly four million subscribers on her YouTube channel.¹¹⁴ Everleigh Rose typically posts videos of herself unboxing packages she receives, food and craft tutorials, or skits with her siblings and

¹⁰⁵ "CRATE CREATURES SURPRISE DELIVERY!", RYAN'S WORLD, <https://ryans.world/work/crate-creatures-surprise-delivery/> (last visited Nov. 25, 2022).

¹⁰⁶ "ROLL THE DICE AND DOING WHATEVER IT LANDS ON CHALLENGE!!!", RYAN'S WORLD, <https://ryans.world/work/roll-the-dice-and-doing-whatever-it-lands-on-challenge/> (last visited Nov. 25, 2022).

¹⁰⁷ "RYAN'S RISE OF THE TEENAGE MUTANT NINJA TURTLES PRETEND PLAY ADVENTURE!", RYAN'S WORLD, <https://ryans.world/work/ryans-rise-of-the-teenage-mutant-ninja-turtles-pretend-play-adventure/> (last visited Nov. 25, 2022).

¹⁰⁸ "RYAN UNLOCKS THE BIGGEST POWER RANGERS NINJA STEEL SURPRISE TOYS EVER!!!", RYAN'S WORLD, <https://ryans.world/work/ryans-playdates-at-nickelodeon-animation-studio/> (last visited Nov. 25, 2022).

¹⁰⁹ "LEGOLAND FAMILY FUN AMUSEMENT THEME PARK FOR KIDS WITH RYAN!!!!", RYAN'S WORLD, <https://ryans.world/work/legoland-family-fun-amusement-theme-park-for-kids-with-ryan/> (last visited Nov. 25, 2022).

¹¹⁰ "KIRBY PLANET ROBObOT FOR NINTENDO 3DS GIANT EGG SURPRISE OPENING", RYAN'S WORLD, <https://ryans.world/work/kirby-planet-robot-for-nintendo-3ds-giant-egg-surprise-opening/> (last visited Nov. 25, 2022).

¹¹¹ RYAN'S WORLD, <https://ryansworldshop.com> (last visited Nov. 25, 2022).

¹¹² *The LaBrant Fam (@@ColeAndSav)*, YOUTUBE, https://www.youtube.com/channel/UC4-CH0epzZpD_ARhxCx6LaQ.

¹¹³ Courtney Young, *Family Vloggers Are Using Cancer As Clickbait And Coaching Tears For Views*, BETCHES (Sept. 10, 2021), <https://betches.com/family-vloggers-are-using-cancer-as-clickbait-and-coaching-tears-for-views/>.

¹¹⁴ *Everleigh Rose (@everleighrose2899)*, YOUTUBE, https://www.youtube.com/channel/UChO2Gib_jx09ym3xDKjyGhg/videos.

friends.¹¹⁵ She makes an estimated \$600,000 per year from her YouTube channel, which does not include; however, this does not include any monetary benefit she may receive from her family's YouTube channel, which she often appears on.¹¹⁶ Evan Breeze of the YouTube channel, EvanTubeHD, has posted toy reviews, science experiments, and various internet challenges with his sister for over a decade.¹¹⁷ He has almost seven million subscribers on one of his channels,¹¹⁸ and his family's worth is estimated to be \$5.74 million for their YouTube endeavors.¹¹⁹

When a man who had spent his life being exploited by the entertainment industry learned of Budding Entertainment's opportunities for the world's newest octuplets, he knew he had to look out for their financial futures in a way no one had done for him. Nadya Suleman, most famously known as Octo-Mom, gave birth to octuplets—eight children in one pregnancy, and was sued by Paul Peterson, a former child star and now child's rights activist.¹²⁰ Peterson, concerned about the financial well-being of the octuplets, asked the court to appoint a fiduciary guardian to the children due to publicity deals Suleman previously signed promoting their infancy and new life.¹²¹ This went before the 4th District Court of Appeals, where one of Suleman's attorneys argued that Peterson lacked standing as an "interested person" to bring forth this issue of guardianship.¹²² However, California Probate Code § 1510(a)¹²³ permits a petition for the appointment of a guardian to be filed by "[a]

¹¹⁵ *Id.*

¹¹⁶ Julian, *How Much Money Everleigh Rose Makes On YouTube - Net Worth*, NAILBUZZ (May 28, 2022), <https://naibuzz.com/how-much-money-everleigh-opens-toys-makes-on-youtube-net-worth/>.

¹¹⁷ Maressa Brown, *Kid YouTube Stars: A Parent Guide*, PARENTS (May 5, 2022), <https://www.parents.com/fun/entertainment/kid-youtube-stars/>.

¹¹⁸ EvanTubeHD (@evantube), YOUTUBE, <https://www.youtube.com/user/evantubehd>.

¹¹⁹ Brown, *supra* note 118.

¹²⁰ Lou Ponsi, *Octomom lawyer: This is not your business*, THE ORANGE COUNTY REGISTER (Dec. 9, 2009, 2:02 PM), <https://www.ocregister.com/2009/12/09/octomom-lawyer-this-is-not-your-business/>.

¹²¹ Suleman v. Superior Court, 103 Cal. Rptr. 3d 651, 664 (Cal. App. Ct. 2010).

¹²² See Ponsi, *supra* note 120.

¹²³ *Id.*

relative or other person on behalf of the minor.”¹²⁴ In July 2009, Superior Court Judge Johnston appointed a guardian ad litem over the children to investigate the allegations.¹²⁵ Suleman’s attorney filed an appeal in August after the Judge ruled that there was no statutory requirement that a petitioner must be an “interested person” or enjoy any type of relationship with the minor or minors named in the petition.¹²⁶

The 4th District Court of Appeals later overturned Johnston’s order, ruling there was insufficient evidence to support the appointment.¹²⁷ The Court vacated the order that authorized the SSA (Orange County Social Services Agency) to investigate and provide a report with a recommendation to the probate court. Furthermore, the Court did not address whether the probate court would have had sufficient grounds to order an investigation.¹²⁸ Suleman went on to be the center of several documentaries about her life with the children in 2009.¹²⁹ Today, Suleman has nearly a quarter of a million followers on Instagram, where she routinely posts photos of her octuplets’ lives.¹³⁰

Companies are on the hunt for kidfluencers to be the face of new, trending toys. GRIN, a self-proclaimed pioneer behind the world’s first creator management platform, posted a round-up of twelve kidfluencers that companies should target and collaborate with for their next big campaign.¹³¹ GRIN is a platform built to support every brand’s journey to connecting with consumers through authentic creator relationships.¹³² GRIN also promotes templates that marketing teams can use to strengthen outreach to management teams and the kid

¹²⁴ *Id.*

¹²⁵ *Suleman*, 180 Cal. App. at 664.

¹²⁶ *Id.*

¹²⁷ *Ponsi*, *supra* note 120.

¹²⁸ *Young*, *supra* note 113.

¹²⁹ *Octomom: The Incredible Unseen Footage* IMDB, <https://www.imdb.com/title/tt1494808/> (last visited Nov. 25, 2022).

¹³⁰ *Nayda Suleman*, (@NatalieSuleman), INSTAGRAM, <https://www.instagram.com/nataliesuleman/> (last visited Mar. 1, 2023).

¹³¹ *12 Kid Influencers That Can Help You Target the Younger Generation*, GRIN, <https://grin.co/blog/kid-influencers/> (last visited Nov. 25, 2022).

¹³² *What is Creator Management?*, GRIN, <https://grin.co/creator-management/> (last visited Nov. 25, 2022).

influencers' parents.¹³³ GRIN prides itself in taking the work out of influencer marketing by managing the relationships between the influencer and the brands.¹³⁴ GRIN represents not only influencers but also brands looking to explore the world of influencer marketing.¹³⁵ Even if one does not wish to pursue a management-style team in her influencer marketing career, GRIN provides free online resources for analytic and engagement purposes.¹³⁶ This platform is most akin to talent agencies in Hollywood, which connect entertainers to companies and crews who want to hire people.¹³⁷ Talent agencies can send their clients—actors, writers, directors, and other creatives—to auditions and meetings with various people in the entertainment industry.¹³⁸ Agents at a talent agency may act as a mentor, guiding a client's career by offering advice and wisdom on everything from creative decisions to public relations and branding.¹³⁹ Much like the 'Big Four'¹⁴⁰ of Hollywood, the creators of GRIN launched the platform to bridge the need for a creative management company in influencer marketing.¹⁴¹

V. EXPANSION IN SOCIAL MEDIA ENDORSEMENT REGULATIONS

Influencer marketing and content creation compensation are akin to the Wild West. While there are some regulations, there is no limit on the amount an influencer can

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Free Influencer Marketing Tools*, GRIN, <https://grin.co/influencer-marketing-tools/> (last visited Nov. 25, 2022).

¹³⁷ Todd Waddick, *Essential Guide: Talent Agencies*, WRAPBOOK, (Mar. 2, 2022), <https://www.wrapbook.com/blog/essential-guide-talent-agencies>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ The Big Four consists of Hollywood's biggest talent agencies: the Creative Artists Agency, United Talent Agency, William Morris Endeavor Talent Agency, and International Creative Management Partners.

¹⁴¹ GRIN, *supra* note 132.

earn nor how many campaigns per year in which an influencer may participate.¹⁴²

According to a 2020 study, only fourteen percent of influencers' posts fully comply with the Federal Trade Commission (FTC) guidelines.¹⁴³ As stated on the FTC website, "If you [the influencer] endorse a product through social media, your endorsement message should make it obvious when you [the influencer] have a relationship ("material connection") with the brand. A 'material connection' to the brand includes a personal, family, or employment relationship or a financial relationship—such as the brand paying you or giving you free or discounted products or services."¹⁴⁴

When a connection between the endorser (typically the influencer) and the seller (typically the brand) might materially affect the weight or credibility of the endorsement, the connection must be fully disclosed. If the endorser is not known to a significant portion of the viewing public, a disclosure statement is required.¹⁴⁵ In influencer marketing, many of the videos or posts made by influencers are used by the brand on their social media channels as well. Therefore, a simple, plain language disclosure such as #PaidPartnership, #Ad, or #Sponsored included in plain view on the post or a statement such as, "Thank you to X brand for Y products today that I will be reviewing and sharing!" is sufficient in the eyes of the FTC.¹⁴⁶ The endorser must also be honest while presenting herself with the endorsement, and the endorser must be a bona fide user of the endorsed product at the time she received the endorsement.¹⁴⁷

Social media is not going anywhere, and neither is influencer marketing. In 2021, companies spent an estimated 13.8 billion dollars on influencer marketing internationally, and

¹⁴² Ana Saragoza, *The Kids Are Alright? The Need for Kidfluencer Protections*, 28 AM. U.J. GENDER SOC. POL'Y & L. 575 (2020)

¹⁴³ Werner Geyser, *The State of Influencer Marketing 2020: Benchmark Report*, INFLUENCER MKTG. HUB, (Feb. 8, 2022), <https://influencermarketinghub.com/influencer-marketing-benchmark-report-2020/>.

¹⁴⁴ *Disclosures 101 for Social Media Influencers*, FED. TRADE COMM'N, (Nov. 2019), <https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers>.

¹⁴⁵ 16 C.F.R. § 255.5 (2022).

¹⁴⁶ *Disclosures 101 for Social Media Influencers*, *supra* note 144.

¹⁴⁷ 16 C.F.R. § 255.1 (2022).

this method is expected to continue growing.¹⁴⁸ The only real regulations that influencers must follow are the FTC disclosure guidelines, making influencer marketing akin to the California Gold Rush—with a few striking gold and making thousands of dollars per sponsored post.¹⁴⁹ While a solution for stricter regulations on influencer marketing is not clear, what is clear is that one is needed sooner rather than later.

VI. ARGUMENT: EXPANDING COOGAN LAW TO INCLUDE SOCIAL MEDIA CHILD CONTENT CREATORS

Lawmakers should expand Coogan Law to safeguard the earnings of child content creators' user-generated content. As it stands, no laws protect the earnings of children who have an online presence or receive revenue from social media outlets. In 2018, California lawmakers attempted to fix this issue with a bill that sought to add the term "social media advertising" to the definition of employment in child labor law.¹⁵⁰ "Under this 'kidfluencer' bill, minors working in the digital sphere would have to obtain a work permit and follow measures similar to those required by the Coogan Law."¹⁵¹ Eventually, lawmakers killed the bill because of the scrutiny that the work permit provision faced.¹⁵² Many stated that enforcing the work permits in a private setting, such as in one's home, where most people shoot vlogs and online influencing campaigns, would be increasingly difficult compared to a film set.¹⁵³ The work permits and Coogan accounts, legislatively, go hand-in-hand

¹⁴⁸ Alana Sheppard, *Regulating Sponsored Influencer Marketing*, THE REGUL. REV., (June 1, 2022), <https://www.theregreview.org/2022/06/01/sheppard-regulating-sponsored-influencer-marketing/>.

¹⁴⁹ CBS News, *Kid influencers: Few rules, big money | Full Documentary*, YOUTUBE (Aug. 23, 2019), <https://www.youtube.com/watch?v=8XkaSouYTbg>.

¹⁵⁰ Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, THE 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/>.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

because if the Coogan account is not set up or used properly, then the child performer's work permit is voided.¹⁵⁴

Child actors have the protection of the Coogan account but make pennies compared to the money from brand deals that Kidfluencers make. The child actor industry standard for a television episode is up to \$1,000 an episode or \$3,500 per week, and child performers on Broadway can expect employers to pay them up to \$2,000 per week.¹⁵⁵ All the while, Ryan Kaji of the 'Ryan's World' YouTube channel made \$22 million for posting videos unboxing toys in 2018.¹⁵⁶ Ryan is one of many children at the heart of the Kidfluencer industry in which families of Kidfluencers receive compensation for sponsored content promoted on social media platforms, digital advertisements, and merchandising.¹⁵⁷ Although the parents can choose to set aside the child's earnings, nothing stops them from spending the money in a way that leaves Ryan Kaji in the same position as Gary Coleman or Jackie Coogan. While Kaji's parents state that they set back a substantial amount of his earnings, they do not legally have to do so.¹⁵⁸

"Nine out of ten brands are using some form of influencer marketing."¹⁵⁹ A 2020 report found that for every dollar a brand spends on influencer marketing, the brand makes an average of \$5.78.¹⁶⁰ As stated previously, companies spend billions of dollars annually on influencer marketing, which is increasing each year exponentially.¹⁶¹ Boasting nearly

¹⁵⁴ *Id.*

¹⁵⁵ Diana Miller, *How much do child actors get paid?*, KIDS CASTING ACADEMY, (Jan. 11, 2023, 6:15 AM), <https://academy.kidscasting.com/how-much-do-child-actors-get-paid/>.

¹⁵⁶ Marina A. Masterson, *WHEN PLAY BECOMES WORK: CHILD LABOR LAWS IN THE ERA OF "KIDFLUENCERS,"* 169 U. PA. L. REV. 577 (2020).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Lynn Corbitt, *How You Can Build a Powerful Influencer Marketing Strategy*, BIGCOMMERCE, <https://www.bigcommerce.com/blog/influencer-marketing/> (last visited Mar. 1, 2023).

¹⁶⁰ Digital Marketing Institute, *20 Surprising Influencer Marketing Statistics*, DIGIT. MKTG. INST., (Oct. 19, 2021), <https://digitalmarketinginstitute.com/blog/20-influencer-marketing-statistics-that-will-surprise-you>.

¹⁶¹ Geysler, *supra* note 143.

four and a half million subscribers, the FishFam on YouTube, known for their home-style video-blog posts featuring their twins Taytum and Oakley Fisher, stated that completing three to four brand deals in one month brought in over \$150,000.¹⁶² When parents Madison and Kyler Fisher were asked about setting aside money that the twins earned themselves, the father sidestepped the question and retorted, “Who actually does the work? Do they do the work by just being in a photo? Or do we [the parents] do the work by getting them to the set, negotiating brand deals, etc., to give them this opportunity? (Paraphrased for clarity).”¹⁶³ They stated that they do save for their children, but the amount or percentage is no one’s business.¹⁶⁴ Their mother, Madison Fisher, stated that the children do have Coogan accounts for the traditional media opportunities that they partake in.¹⁶⁵ However, they emphasized that there are no legal requirements to set aside any earnings on vlogging or brand deals, but they do shame parents who take earnings from those avenues and use it frivolously.¹⁶⁶ The Fisher family takes the earnings to “provide a life for our girls,” meaning they use those income streams in their family account as one would do with a traditional salary.¹⁶⁷

Influencers commonly make money from YouTube advertisement revenue, Facebook advertisement revenue, and brand deals.¹⁶⁸ The McClure family, who has 2.38 million subscribers on YouTube, appeared to have stepped away from social media in 2020. As stated in the CBS documentary, the McClure family set up college savings accounts for their children, and they try to contribute monthly to those accounts.¹⁶⁹ This same family stated that they make an average of \$11,000 monthly solely from YouTube.¹⁷⁰ Making unthinkable amounts of money from posting videos online should allow a family to have the luxury of saving more money

¹⁶² CBS News, *Kid influencers: Few rules, big money* | Full Documentary, YOUTUBE (Aug. 23, 2019), <https://www.youtube.com/watch?v=8XkaSouYTbg>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

for their child compared to the average family unit with a traditional salary.

Influencers are under constant stress to churn out new content for the entertainment of others, a daily struggle that is vastly different from children who are in the typical entertainment industry.¹⁷¹ Once filming has wrapped up on the set of a film or television series, the child actor can go home, relax, and recharge before the promotion of the project or before the next project starts. Kidfluencers do not have that luxury – the camera is always rolling in their own home. Dr. Karen North, Director of the University of Southern California’s Social Media Program, stated, “[p]eople have always been fascinated by child actors, and we see all the difficulties that they go through because there’s so much scrutiny. But, the difference between traditional child actors and social media influencers is that it’s not a kid pretending to be somebody first for a show; instead, the show is the kid. And where does that send their lives because we don’t know yet.”¹⁷² “Though child actors can gain access to numerous protection mechanisms, Kidfluencers are treated differently because their activity takes place in a private home setting on a platform in which parents consensually participate.”¹⁷³ Furthermore, these children are not performing; rather, they are undertaking normal activities on camera, and their activities fail to be viewed as ‘work’ due to the absence of an employer-employee relationship.¹⁷⁴ Parents of Kidfluencers state that if they ‘feel’ that there could be a good life lesson involved, then the camera is rolling.¹⁷⁵ Parents of Kidfluencers state that this is not truly a job because the children are having fun.¹⁷⁶ Jackie Coogan’s mother stated similar statements when asked why he should not be entitled to

¹⁷¹ CBS News, *Kid influencers: Few rules, big money* | Full Documentary, YOUTUBE (Aug. 23, 2019), <https://www.youtube.com/watch?v=8XkaSouYTbg>.

¹⁷² *Id.*

¹⁷³ 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/>.

¹⁷⁴ *Id.*

¹⁷⁵ *Kid influencers: Few rules, big money* | Full Documentary, *supra* note 171.

¹⁷⁶ *Id.*

his film earnings.¹⁷⁷

As of now, seventeen states do not regulate child entertainment labor standards.¹⁷⁸ After public outrage over the abusive treatment of children on the set of *Jon & Kate Plus 8*, the Pennsylvania legislature enacted the Pennsylvania Child Labor Act, which set new requirements for children in the entertainment industry.¹⁷⁹ These requirements included protections for children a part of reality television, specific work permits, specialized trust accounts, educational requirements, and a certain number of adults present on the set.¹⁸⁰ In 2010, Pennsylvania Representative, Tom Murt, expressed grave concern¹⁸¹ for the Gosselin children and all children in the film industry after sitting in on a child labor panel hosted by Paul Peterson, the same activist who sued Nayda Suleman.¹⁸² While working to pass the Pennsylvania Child Labor Act,¹⁸³ Robert O'Brien, the executive deputy secretary for the state's Department of Labor and Industry, expressed concern about keeping up with the new technologies, reality television and the internet, suggesting that the legislature fill the gaps in the law for children in the entertainment industry.¹⁸⁴ As of late 2022, there have been no changes to evolve online protections of Kidfluencers. If public outcries from a popular TLC reality show can create change in one state legislature, then a public uproar over Kidfluencers could spark a legislative movement across the nation. Kidfluencer laws could be one fiduciary scandal away from regulation.

¹⁷⁷ Patrick, *supra* note 8.

¹⁷⁸ *Child Entertainment Laws As of January 1, 2023*, U.S. DEP'T OF LAB. (Jan. 1, 2023), <https://www.dol.gov/agencies/whd/state/child-labor/entertainment>.

¹⁷⁹ Child Labor Act, PA. STAT. ANN §§ 40.1-40.11 (2022).

¹⁸⁰ *Id.*

¹⁸¹ Marsha Mercer, *Few protections for child performers*, USA TODAY (Aug. 29, 2013, 5:53 PM), <https://www.usatoday.com/story/news/nation/2013/08/29/child-actors-protections-laws-pew/2734035/>.

¹⁸² See Ponsi, *supra* note 120.

¹⁸³ *Id.*

¹⁸⁴ Jesse Reilly, *Rise of reality TV spurs look into Pennsylvania's child labor laws*, THE CHILD LAB COAL. (Apr. 20, 2010), <https://stopchildlabor.org/rise-of-reality-tv-spurs-look-into-states-child-labor-laws-2/>.

Although California requires Coogan accounts for children in the traditional media, there is not enough regulation for children who are social media stars, leaving them immensely vulnerable. No one wants to believe that parents could be cruel enough to take their children's earnings; however, it has happened numerous times before, and it is bound to happen again if no regulation is implemented. Millions of dollars of a child's future are at stake.

VII. SOLUTION / CONCLUSION

Each of the fifty states must enact Coogan-like accounts or expand their current laws to include child content creators, which will safeguard the earnings they make from user-generated content. Compared to traditional child actors, Kidfluencers make copious amounts of money for a social media post endorsing a certain brand or product. Currently, there are no laws or regulations regarding a child's earnings on social media. Kidfluencers are only required to follow the FTC disclosure guidelines and Coogan laws *if* they participate in traditional media such as photoshoots, television, or commercials. Influencer marketing is a growing field, with billions of dollars pumped into it each year. Children with a strong social media presence and a large following will be the target audience for influencer marketing. Many Kidfluencers are already earning thousands per post. With the ever-evolving internet, lawmakers must modernize the law to best protect the next generation's future. Hopefully, no Kidfluencer must be the sacrificial lamb, like Jackie Coogan, for action to happen.