Likes, Camera, Action: Safeguarding "Child Influencers" Through Expanded Coogan Protections and Increased Regulation of Social Media

Dana D. Joss

Follow this and additional works at: https://scholarship.law.wm.edu/wmblr

Part of the Communications Law Commons, and the Entertainment, Arts, and Sports Law Commons

Repository Citation
Dana D. Joss, Likes, Camera, Action: Safeguarding "Child Influencers" Through Expanded Coogan Protections and Increased Regulation of Social Media, 15 Wm. & Mary Bus. L. Rev. 441 (2024), https://scholarship.law.wm.edu/wmblr/vol15/iss2/6

Copyright c 2024 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
https://scholarship.law.wm.edu/wmblr
LIKES, CAMERA, ACTION: SAFEGUARDING “CHILD INFLUENCERS” THROUGH EXPANDED COOGAN PROTECTIONS AND INCREASED REGULATION OF SOCIAL MEDIA

DANA D. JOSS*

ABSTRACT

As a result of the increased popularity of influencer marketing, various “child influencers” have risen to stardom on popular social media platforms such as YouTube, TikTok, and Instagram. To date, these children have no protections under the law to safeguard them from the dangers of the influencer industry. Namely, there are no safeguards from financial exploitation by parents and guardians; children hold no guarantee that they can retain their earnings from social media. Further, there are no regulations in place regarding the number of hours child influencers may work and such children sometimes maintain little control over the extent of the content posted on their platforms. In fact, some parents log chronicles of their children before, during, and immediately after birth and continue to display their children’s lives as they grow and develop.

This Note addresses the dangers that child influencers face and compares the current crisis to the struggles of childhood actors. Further, it recommends the expansion of child actor laws to also cover child influencers while recognizing potential oversight problems that may follow. Critics of other literature on this topic suggest that it is too difficult to track and regulate parents filming children in the home. To address oversight problems, this Note suggests further action through a three-pronged solution: (1)
expand existing child actor laws to cover child influencers; (2)
enact greater regulation of social media companies themselves to
ensure compliance with child labor laws; and (3) increase en-
forcement through social media platforms’ community guidelines.
Cracking down on social media companies and content posted on
their platforms leads to a discussion about immunity under Sec-
tion 230 of the Telecommunications Act. To that end, this Note calls
for a revision of Section 230 to account for changes in the modern
era. Together, these three solutions can help prevent the exploita-
tion of children and afford them the protections they deserve.
TABLE OF CONTENTS

INTRODUCTION ............................................................................ 444

I. A HISTORY OF INFLUENCING .................................................... 447
   A. The Rise of Influencing ...................................................... 447
   B. The Dangers That Social Media Poses for Children ........ 450

II. CURRENT CHILD ACTOR LAWS AND THE NEED FOR CHILD
    INFLUENCER LAWS .............................................................. 453
   A. Child Labor Laws in Hollywood and the History Behind
      the Coogan Act ............................................................... 453
   B. Child Influencing and Child Acting—Are They One
      and the Same? ................................................................. 455

III. CHILD INFLUENCERS NEED COOGAN PROTECTIONS, BUT THIS
     SOLUTION ALONE MAY FALL SHORT .................................... 457
   A. A Solution to the Problem: Amending Coogan Laws to
      Include Child Influencers ................................................. 458
   B. The Counterargument: How Changing the Coogan
      Protections Falls Short .................................................... 461

IV. RECONSIDERING REGULATION OF THE INTERNET IN THE
    MODERN ERA ...................................................................... 462
   A. Overview ............................................................................ 462
   B. The Federal Communications Commission and the
      Regulation of Social Media ................................................. 463
   C. Responding to First Amendment Concerns: Protecting
      Child Influencers by Reconsidering Section 230 in a
      Modern Era .................................................................... 467
   D. A Final Step: Requiring Regulation by and of Social
      Media Companies ........................................................... 472

CONCLUSION ............................................................................... 473
INTRODUCTION

A projected 313.68 million Americans will use social media in 2024.¹ Inevitably, these users will sit down on their phones, tablets, computers, or other devices to scroll on social media platforms like Facebook, TikTok, Instagram, and YouTube.² Perhaps without even noticing, they will be exposed to branded content created by influencers who are in partnership with various brands.³ Following the advent of social media, aforementioned platforms such as Instagram, TikTok, Twitter, and Facebook have become increasingly monetized.⁴ The rise of the online “influencer” has completely changed the way companies market their products and the way users seek entertainment.⁵ Influencers can make thousands of dollars by using a company’s product in a fifteen-second video or just by posting a “story” that disappears in 24 hours.⁶ Because of its novelty, little regulation exists surrounding social media at all.⁷ In turn, little regulation exists to regulate

---


² Hussein Kesvani, I Figured Out How Far I Scrolled In a Year, and Now I Hate Myself, MEL (2020), https://melmagazine.com/en-us/story/how-far-you-scroll-in-a-year [https://perma.cc/5QTQ-Z5EC] (“[A] normal person will have traveled at least five miles a year with their thumbs.”).


⁶ See Bradley, supra note 4 (“From posting a picture to the main feed with #ad to sharing swipe-up links in a series of Stories, sponsored content takes on many different shapes.”).

the relationship between social media and children. It is no secret that child social media stars make thousands—if not millions—of dollars that can go directly into their parents’ pockets.

Influencer marketing has created the opportunity for “regular people” to endorse products, and it has quickly become an incredibly profitable industry. Unfortunately, the rise of influencer marketing and the mass usage of social media has also led to the exploitation of these child influencer stars. Many compare this problem to the tragic story of Jackie Coogan, one of the first major child stars in the United States. Jackie starred in a television series, The Kid, yet lost all four million dollars of his fortune after his parents squandered it. As a result, California passed the California Child Actor’s Bill, which established safeguards to protect child actors’ money earned as child entertainers so that they may use it as adults. This type of protection,

---


10 *What Is Influencer Marketing: How to Develop Your Strategy*, SPROUT SOCIAL (Apr. 17, 2023), https://sproutsocial.com/insights/influencer-marketing/ [https://perma.cc/44BV-SE9Q] (“A decade ago, the influencer marketing arena was limited only to celebrities and a few dedicated bloggers. Now, social media influencers have risen and saturated the market. At a fundamental level, influencer marketing is a type of social media marketing that uses endorsements and product mentions from influencers—individuals who have a dedicated social following and are viewed as experts within their niche . . . . [t]he industry reached $16.4 billion by 2023.”).

11 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/KSS2-AHAZ] (“[S]ince the family blogging boom of the 2010s, adults have been kickstarting influencer careers with their existing kids via YouTube. Families . . . . have amassed millions of subscribers, chronicling their children’s morning routines, holiday traditions, and even visits to the emergency room.”).

12 See id.

13 See id.

14 See id.
however, does not yet exist for child influencers who are making excessive amounts of money.¹⁵

Part I of this Note tracks the history of “influencing” and explains the dangers that it poses to children—including exploitation and privacy concerns. Part II details the stark contrast between the treatment and safeguards surrounding childhood stars in Hollywood and current-day child social media stars. In particular, Part II details current childhood entertainment laws like the California Child Actor’s Bill and offers similar laws that could be created to protect these childhood stars. Part II also touches on the repercussions of childhood stardom and the consent issues that arise through this type of fame at such a young age.

Parts III and IV then provide a three-pronged solution for this problem. Part III addresses the first prong, suggesting an extension of the Coogan Laws to give child influencers the same protections as child actors. However, Part III argues that these protections fail to account for a prominent counterargument: the problem of oversight.

As an answer to the oversight problem, Part IV suggests a second prong: regulation of social media companies themselves, at least to the extent that children are involved in the content. The proposed amendment to Section 230 of the Communications Act of 1996 would allow for codified standards surrounding this industry. In its current state, Section 230 grants immunity to social media companies from liability for content posted on their platforms by third parties.¹⁶ In particular, such an amendment should be directed at companies that own and operate these social media platforms, requiring that the users of their platforms comply with federal and state/local labor laws.¹⁷ This way, the onus will not rest solely on the parents for compliance, and companies will share in the cost of protecting these children.¹⁸ Finally,

¹⁵ Bright, supra note 9 (“Laws on the books in many states require parents to put a minimum of 15% of their child’s earnings aside. But because being an influencer isn’t seen as work, earnings from these kidfluencer posts are necessarily being set aside for the very kids who make posts popular.”).
¹⁷ See infra Part IV.
¹⁸ Other literature exists on this topic arguing for the passage of similar laws to the Coogan Act: this Note agrees that these legislative proposals could help mitigate some of the problems, but that the additional responsibility placed on social media outfitters will help deter future violations of child labor laws.
Part IV suggests a third prong: changes in social media companies’ community guidelines or terms of service in order to ensure content creators themselves comply with child labor laws. By placing greater responsibility on social media companies, they will have incentives to make sure that their users also comply with child labor laws.

I. A HISTORY OF INFLUENCING

In recent years, influencer marketing has become an increasingly popular strategy for many brands. However, this type of work poses dangers for children. Children are not only subject to potential exploitation for money, but they may also have their entire lives on display for millions to see.

A. The Rise of Influencing

Over the last few decades, companies have shifted their marketing schemes from traditional methods to the use of influencers with a “trusted voice” to market their products. This type of marketing allows companies to connect with more consumers. According to a 2021 article in Forbes, “since 2016, there has been an annual increase of at least 50% in [social media marketing’s] estimated market size.” Additionally, utilizing influencers who are “trusted figures within a niche community” helps promote brand loyalty.

21 Id.
22 See Shirdan, supra note 19.
23 See id.
24 Id.
Brands formerly utilized scheduled television as one of the largest outlets for advertising because it was one of the only forms of mass media that consumers could access. Now, with many forms of media available to consumers, brands face the problem of reaching potential customers. Influencer marketing creates a solution for this problem: influencers within niche communities have already built the followings that these brands search for. This strategy hinges on the idea that “it might be more efficient to influence a small number of people if those individuals can convince others, having a multiplicative effect.”

In answering the question as to why companies choose to use this type of marketing—to put it shortly—it works. Indeed, by orienting marketing activity around influencers, “brands can attract and retain customers on a long-term basis.” Generally, consumers no longer trust ads, but they trust people; hence, they trust that these influencers will advocate for quality products. Further, customers “acquired through word-of-mouth have a 37 percent higher retention rate,” and “businesses make $6.50 for every dollar invested in influencer marketing.” This cost-to-benefit relationship helps conceptualize why so many companies have shifted to social media marketing: investing in influencers tends to bring profits back into the company.

Understanding the market for influencers helps one to understand the value that these individuals provide to brands. That

26 Id.
27 Id.
28 Id.
31 Id.
32 See id.
33 Id.
34 Id.
35 Id. (“When the individual isn’t a talking head but a true advocate, brands see a great return on investment.”).
being said, the influencers themselves have a strong incentive to enter this market as well.\textsuperscript{36} Indeed, stars on TikTok and other social media platforms can charge as much as half a million dollars per post, and many top stars average between one hundred thousand to two hundred fifty thousand dollars per post.\textsuperscript{37} Charli D’Amelio, who garners the most support on TikTok with her 148.3 million followers to date, made over $17.5 million on the app in 2021.\textsuperscript{38} Many other social media stars make comparable amounts across the board.\textsuperscript{39} Though these examples are on the higher end of the spectrum for average influencer income, influencer families and child influencers can also earn millions of dollars from their platforms.\textsuperscript{40}

There is no question that this market is extremely lucrative and creates revenue for both influencers and brands alike.\textsuperscript{41} However, this profitability does not mean that the industry exists without potentially harmful flaws. The following section will detail one particular flaw: the exploitation of child labor in the social media setting.


\textsuperscript{38} \textit{Id}.

\textsuperscript{39} Zoha Qamar, \textit{Why Kidfluencers’ Have So Few Protections—even as Americans Support Regulating the Industry}, FIVETHIRTEYEIGHT (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/6652-8M62] (“Two of the top 10 YouTube earners in 2021 were kid-forward accounts . . . . 11-year-old American Ryan Kaji raked in roughly $27 million from his toy reviews and unboxing videos. And those figures only include money made directly through ads on the site, as brand deals can add millions more.”).

\textsuperscript{40} \textit{Cole LaBrant Net Worth Breakdown: Famous Family and Father}, NEO-REACH (June 13, 2023), https://neoreach.com/cole-labrant-net-worth-breakdown/ [https://perma.cc/T6WC-JX34] (“The Labrant Fam’ is a family that has over 3 billion views. Cole and Savannah LaBrant, alongside their three children, get paid between $200 to $20,000 per branded promotion on TikTok, and make approximately $5.5 million in revenue per year.”).

\textsuperscript{41} Walker, \textit{supra} note 11 and accompanying text.
B. The Dangers That Social Media Poses for Children

Social media influencing is a growing market with expanding opportunities for companies and influencers alike. However, a major issue with the industry arises within the niche group termed “child influencers.”42 According to one scholar, “despite the popularity of influencer marketing, minors working as influencers in the United States have no legal rights to the money they earn by appearing in content posted by themselves or their parents. This creates a large risk of exploitation.”43

For some children, their online footprint starts before they are even born when parents post and create content about pregnancy.44 This content often includes doctors’ visits, photos of ultrasounds, and even vlogs at the hospital during childbirth.45 Indeed, some child influencers have their very first moments on earth posted on YouTube for millions of subscribers to view.46

In addition to the moral implications behind posting content before a child is able to understand consent, there is another issue that arises with posting young children’s content online: profiting from the content.47 Just like other influencers, young children with large social media followings can earn millions of dollars per year.48 Yet, many parents argue that influencing is not really “work” at all.49 This notion allows parents to skirt

42 See discussion infra Section I.B.
44 Walker, supra note 11.
45 Id.
46 See The LaBrant Fam, The Live Birth of our Daughter, YOUTUBE (June 8, 2022), https://www.youtube.com/watch?v=aSP8kc2Beew [https://perma.cc/5EGT-YNLW]. This video contains content from childbirth, including some of the child’s first moments outside the womb. Id. This family vlog channel has more than 13 million subscribers, and the video itself has gained over 3.1 million views. Id. The vloggers disabled the comments for this video. Id.
47 See McGinnis, supra note 43, at 250.
48 See id. at 250, 256–57.
child labor laws and avoid setting aside any money earned from influencing activities on social media for the children themselves.\(^{50}\) Alongside the risks associated with losing the profits they rightfully earned themselves, children face other harms from influencing as children.\(^{51}\) These child influencers have their entire lives and formative moments plastered on the Internet for millions to see.\(^{52}\) A great example of this problem appeared on the LaBrant Fam channel on YouTube.\(^{53}\) YouTube stars Cole and Savannah LaBrant “pranked” their daughter and videoed her in distress, crying and hiding her face under a blanket.\(^{54}\) Her parents had told her that they were planning to give away her dog as an April Fool’s joke, and the result ended with tears and anguish.\(^{55}\) While counterparts may argue that this type of behavior is not a “big deal” or that it did not truly affect this young girl, it is interesting to look into the true effects of fame at such a young age.\(^{56}\) Everleigh—the girl filmed crying in the aforementioned video—is certainly not able to consent to her private, vulnerable moments being placed online, nor are the thousands of other children whose lives are posted on social media.\(^{57}\)

\(^{50}\) See McGinnis, \textit{supra} note 43, at 265 (“While most social media platforms have minimum age limits, many parents skirt around these rarely enforced requirements by placing a disclaimer in the bio of their child’s account stating that the account has been created and maintained by the parents. Additionally, nothing prevents parents from featuring their children on their own social media pages or profiting off of their children’s likeness.”); \textit{see also} TikTok, TikTok Terms of Service [hereinafter TikTok, Terms of Service], https://www.tiktok.com/legal/page/us/terms-of-service/en [https://perma.cc/CJN9-SL7C] (“If you are under age 18, you may only use the Services with the consent of your parent or legal guardian.”) (last updated July 2023). So long as parents give consent, these children can have a social media presence on TikTok. \textit{Id.}

\(^{51}\) McGinnis, \textit{supra} note 43, at 263–64 (“Children lose their privacy, have their images associated with certain brands and products, and may also suffer psychological harm from heavy internet usage at such a young age.”).

\(^{52}\) See \textit{id.} at 247.

\(^{53}\) Wong, \textit{supra} note 49.

\(^{54}\) \textit{Id.}

\(^{55}\) \textit{Id.}

\(^{56}\) \textit{Id.}

\(^{57}\) Parents can get around this by consenting to the use of their child’s image themselves. \textit{See also} Walker, \textit{supra} note 11 (“It must feel alienating for a child to be lectured on the importance of consent when online strangers may
Caroline Easom, a prominent content creator on TikTok and Instagram, is a strong advocate who speaks against this child exploitation problem.58 In one of her videos, Caroline shared an anonymous letter from a child influencer which described the negative experiences of the teen’s monetized childhood, urging parents to refrain from using their children to profit from their content.59 The teen wrote: “your children will be sent inappropriate messages and videos . . . there will be some sick guy or girl out there . . . I know because it happens to me all the time.”60 This teen laments further, “I never consented to being online. I wouldn’t have been able to anyway. I was two or three when I went viral for the first time . . . I never signed a contract, but somehow . . . this is legal, and I can’t escape.”61 Clearly, this teen has suffered from the effects of being posted about online without her consent, but she is not alone; many others suffer the same fate and have no way to escape.62

Alongside exploitation of their income and labor, as well as the side effects from being posted about without their consent, child influencers also miss out on other aspects of life.63 Indeed, these children may not have the opportunity to participate in programs vital to their social and mental development, such as school, sports programming, and socialization, in normal environments.64 For all of the reasons mentioned, it is clear that have already been privy to details of their potty-training woes and embarrassing videos of nuclear tantrums.”).

59 Id.
60 Id. These types of inappropriate comments have been the source of concern for many parents online—in particular, one child influencer—Wren Eleanor (a three-year-old girl)—sparked a great deal of controversy in 2022. See Walker, supra note 11 (“Concerned web sleuths have recently noted the amount of likes, saves, and disturbing comments on Wren Eleanor’s potentially exploitative videos, such as one featuring Wren play-acting with one of her mother’s tampons.”). In response, many parents have determined to take down all content involving children; yet many parents of child influencers continue to post, despite the potentially predatory effects. Id.
61 Easom (@carolineeasom), supra note 58.
62 See Walker, supra note 11.
63 McGinnis, supra note 43, at 263.
64 Id.
the use of a child’s image for influencing creates risks that could potentially harm that child.\textsuperscript{65} Unfortunately, there are no current protections afforded to these children.\textsuperscript{66} In Part II, this Note will explain in further detail how child influencers are like child actors and offer one potential solution to this problem: enacting statutes to protect these children as they have with child actors.

\section*{II. CURRENT CHILD ACTOR LAWS AND THE NEED FOR CHILD INFLUENCER LAWS}

Part I of this Note detailed the history of influencer marketing and the dangers this type of work poses for children. Part II draws a comparison between laws formed to protect child actors and the absence of any such laws for child social media stars. This Part tells the history behind child actor laws and then compares the lives of child film stars to those of social media stars. It ends by pointing out one crucial difference between the two groups: child influencers lack forms of protection against exploitation by their parents or guardians.

\subsection*{A. Child Labor Laws in Hollywood and the History Behind the Coogan Act}

The California Child Actor’s Bill—also known as “The Coogan Act”—requires that “15 percent of the minor’s gross earnings pursuant to the contract be set aside by the minor’s employer . . . . These amounts shall be held in trust, in an account or other savings plan and preserved for the benefit of the minor.”\textsuperscript{67} The California Legislature first passed the Coogan Act in 1939 after child star Jackie Coogan sued his parents for spending his fortune before he had the opportunity to access it himself.\textsuperscript{68}

\textsuperscript{65} Id. at 263–64.
\textsuperscript{66} McGinnis, supra note 43, at 263 (“[C]hild entertainers have no specific protection under employment law . . . . The rules concerning the financial future of children earning money on social media have yet to be written. Parents control their children’s image, privacy settings, and financial gains on social media without regulation in this country.”).
\textsuperscript{67} CAL. FAM. CODE \S\ 6752(b) (West 2020).
\textsuperscript{68} Harper Lambert, \textit{Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents}, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), https://
Jackie Coogan’s complaint alleged that prior to Jackie’s appearance in the motion picture *The Kid*, his parents earned only a meager income from his father’s small acting career.69 When Jackie Coogan began earning money from the motion picture, as well as profits from his name, image, and likeness, this money was “collected and taken by the plaintiff’s father, and by his mother, [and] stepfather.”70 Allegedly, this amounted to four million dollars.71 Rather than saving this money in a trust, the only money given to Coogan was “what was necessary for his shelter, food, clothing, education, and transportation,” as well as small sums and a weekly allowance of $6.25.72 After his twenty-first birthday, Coogan demanded his parents give him his money, to which his mother replied, “You haven’t a cent; it’s all mine and Arthur’s; there never has been a cent belonging to you . . . .”73 Indeed, after the culmination of his lawsuit, Coogan only gained back $126,000 out of the four million his parents and stepfather squandered away.74

In an effort to prevent this type of exploitation from occurring to future child stars, California enacted the Coogan Act, requiring a percentage of earnings to be set aside and also for “state courts to ratify the contracts of child performers.”75 In addition to this Act, the California legislature created other legal protections, such as requirements to obtain work permits and strict regulations on working hours for child actors.76 Further, producers are required to safeguard “the health, welfare, safety, and moral well-being of the children’ on set.”77 Each of these protections promotes the policy goal of safeguarding the well-being of children, which has its roots in the


[70] Id.

[71] Id.

[72] Id.

[73] Id.

[74] Walker, supra note 11.

[75] Wong, supra note 49.

[76] Id.

[77] Id. This includes “screening backgrounds of the cast and crew and ensuring the children aren’t exposed to age-inappropriate sex or violence.” Id.
Fair Labor Standards Act (FLSA). The FLSA was passed “to ensure that when young people work, the work is safe and does not jeopardize their health, well-being, or educational opportunities.”

Section 212 of the FLSA outlines the child labor provisions, prohibiting oppressive child labor. It exempts from this category children younger than twelve years old who are employed by parents on a farm or children who are twelve or thirteen, and have their parents’ consent to the employment.

B. Child Influencing and Child Acting—Are They One and the Same?

Although child influencers are not actors per se, the work that they perform has many similarities to the work performed by child actors. To start, many of these children have their public lives on display from an early age. “As early as 2010, studies indicated that a quarter of children had an online presence before their birth, curated by expectant parents.” Further, these children receive money in exchange for brand deals and other payments in exchange for content. Child influencers can receive as much as $100 per 1,000 followers, meaning that an influencer with 1.5 million followers could earn as much as $15,000 per sponsored post.

In the same vein, child actors are also able to make exorbitant amounts of money through their childhood fame. During
her time as a child star of the show *Hannah Montana*, Miley Cyrus earned $15,000 per episode.\(^{87}\) Other childhood stars have received similar compensation. The Sprouse twins, famous for starring in *The Suite Life of Zack & Cody*, for example, garnered $20,000 per episode.\(^{88}\) Yet, there is potential for these per-episode salaries to pale in comparison to the frequency at which parents can create and distribute sponsored social media posts.

Say, for example, a child actor with a $15,000 rate per episode stars in a ten-episode series. The maximum amount they could make is $150,000. While filming these episodes, child labor laws restrict children from working more than eight hours a day, as well as disallowing work for more than forty hours per week.\(^{89}\) Unlike the child actor, a child influencer who does not receive these same protections could be forced to be “on set” for hours upon end in order to curate the perfect sponsored post.\(^{90}\) The ready availability of brand deals makes it easy for these parents to continue to collect $15,000 per post, potentially making millions of dollars off of their children. Yet, these child influencers, like Jackie Coogan, may never see a cent of these profits because there are no laws requiring their parents to put money aside for their children.\(^{91}\)

Another similarity between these two groups of child stars is the susceptibility to exploitation.\(^{92}\) Jennette McCurdy, former childhood star of the TV show series *iCarly*, wrote a memoir about her stardom.\(^{93}\) In speaking about her experience, she said: “My whole childhood and adolescence were very exploited . . . . It still gives my nervous system a reaction to say it.”\(^{94}\) Nickelodeon offered McCurdy $300,000 in exchange for never speaking about her experiences on the show, which she rejected.\(^{95}\)


\(^{88}\) Id.


\(^{90}\) See Walker, supra note 11.

\(^{91}\) See McGinnis, supra note 43.

\(^{92}\) See Walker, supra note 11.


\(^{94}\) Id.

\(^{95}\) Id.
mother, like many parents of child influencers, relied solely on Jennette for income and used this money accordingly.96

Though child actors and child influencers share this susceptibility to exploitation, they differ in the protections from exploitation states have chosen to provide each group.97 Indeed, many states have noted the issues that arise surrounding child entertainers and have put safeguards into place in order to protect them.98 However, child influencers receive no such protection from exploitation by their parents or others who may be earning an income from the child’s social media pages.99 The lack of legislation surrounding this issue raises the question that if these children are entertaining and earning money in similar ways as child actors, why are they not being afforded the same or similar protections? In response, parents often argue that these children are, in fact, “just playing” and not “working.”100 However, one co-author of the 1999 amendments to the Coogan Act responds to this argument perfectly, stating that “[i]t is not play if you’re making money off it.”101 Consequently, in order to protect vulnerable child influencers, states should extend the Coogan Act to child influencers to ensure they see at least a percentage of the money they earn for the work they are doing.

III. CHILD INFLUencers NEED CoOGAN PROTECTIONS, BUT THIS SOLUTION ALONE MAY FALL SHORT

Clearly, current legislation is wholly inadequate to protect child influencers from exploitation. The next two parts of this Note outline a three-pronged solution to this issue.102 The first prong suggests that state-based “Coogan laws” should be amended to include child influencers. However, there is a major problem with solely enacting laws at the state level—it fails to

96 Id.
97 See Walker, supra note 11.
98 See McGinnis, supra note 43, at 249 (“Several states long ago enacted legislation to protect child actors in traditional media like film and television from the risk of financial exploitation.”).
99 Id.
100 See Wong, supra note 49 (“Some parents of influencers point out that the kids are having fun—or are barely conscious of what they are doing.”).
101 Id.
102 See infra Parts III and IV.
account for potential difficulties with oversight and tracking exactly what goes on inside the homes of child influencers.

A. A Solution to the Problem: Amending Coogan Laws to Include Child Influencers

It is abundantly clear that current Coogan laws fail to provide child influencers with proper protections.\(^{103}\) One way the law may be able to afford protection to these children and prevent exploitation of financial assets is to amend the existing state Coogan laws in order to include social media stars under the same umbrella as child actors and entertainers.\(^{104}\) In 2018, California legislators attempted to do precisely that; unfortunately, their legislation failed to pass.\(^{105}\) California Assemblyman Kansen Chu sought to protect children by regulating “the employment of [minors] in social media advertising.”\(^{106}\) Those opposed to changing the law argued that these amendments would be difficult to oversee because “social media advertisements can be filmed at any time.”\(^{107}\) This differs from the film process in Hollywood, where schedules, times, and dates are more readily available.\(^{108}\) However, the criticisms from the opposition miss the mark because they fail to see this labor for what it truly is—labor—which puts these child influencers at risk.\(^{109}\)

Curiously, while it seems that politicians do not view child influencing as “work,” various polls of the American public show that most Americans in fact want stronger protections for

\(^{103}\) Ana Saragoza, The Kids Are Alright? The Need for Kidfluencer Protections, 28 AM. U. J. GENDER SOC. POL’Y & L. 575, 586 (2020) (“Without similar protections afforded to child actors, kidfluencers run the risk of turning eighteen and learning that their parents squandered or misappropriated millions of dollars in earnings. Kidfluencers will face the same problems Jackie Coogan faced, given the inadequate protections that they currently receive.”).

\(^{104}\) See id. at 578.

\(^{105}\) See id. at 577.

\(^{106}\) See id. at 583.

\(^{107}\) See id. at 584, n.62 (“[I]t would be unreasonable to send an on-set educator to a kidfluencer’s home when they film YouTube Videos in the basement.”).

\(^{108}\) See id. at 583.

\(^{109}\) Id. at 586 (“Despite California’s Coogan Law . . . contemporary child actors still fall victim to their parent’s financial manipulation of child actor earnings, suggesting that kidfluencers might also see identical outcomes.”).
child influencers. In order to mitigate the exploitation risks surrounding child influencers, the first step that lawmakers must take is recognizing social media for what it is: a job. In another one of her videos criticizing the parents of child influencers, Caroline Easom remarked that:

[I]nfluencing is a real job . . . it's a series of tasks that we perform for money, and that's what work is . . . . I say this because there are thousands of kids currently doing this job, and their parents love that you don't see influencing as work because it makes exploiting their children that much easier.

The reality is that many of these children are not just “in the basement” filming these advertisements. Child influencers perform many of the same tasks as adult influencers—they have contracts, photoshoots, brand deals, and many obligations that entail work and should be clearly recognized as the labor that it is. Amending the Coogan Act, including other similar Coogan laws and creating them in states that do not have them, to include child influencers is an easy step to take, particularly given the aforementioned similarities between the two groups.

One practical way to protect child influencers from exploitation is to require parents to create “Coogan trusts” for social

---

110 See Qamar, supra note 39 (“A YouGov poll from December 2022 found that a majority of Americans thought that child labor laws should extend to kids who are social media influencers, while around two-thirds said that underage influencers are exploited by a parents or guardian at least somewhat often.”).

111 See id.

112 See Wong, supra note 49.


114 See McGinnis, supra note 43, at 259; see also Alexis Patterson, How Your Kid Can Become a Social Media Influencer, DFW CHILD (June 24, 2022), https://dfwchild.com/how-your-kid-can-become-a-social-media-influencer/ [https://perma.cc/8ZR2-48UC] (explaining that the workload of child influencers is “definitely a process. Influencers have contracts, photo shoots, reshoots, brand approvals, posting, audience engagement . . . . [I]t may not be something your kids are really up for.”).

115 See Patterson, supra note 114.
media earnings.\textsuperscript{116} In particular, states should “require a trust account containing at least fifteen percent of a child’s earnings . . . the appointment of a neutral trustee and steep penalties for parents if they do not comply.”\textsuperscript{117} Without such protections, these children have no guarantee that they will ever see the earnings that they worked for.\textsuperscript{118} Certainly, this type of incentive will help mitigate some of the risks associated with child influencing, as it will deter parents from refusing to set aside money for these children.

Though these types of laws do not currently exist within the United States, one of the few precedents for such regulation currently exists in France.\textsuperscript{119} In 2020, France introduced a new law containing protections for young social media stars.\textsuperscript{120} The French law targets children who “spend significant amounts of time working online and whose work generates an income.”\textsuperscript{121} The law requires the same protections for child influencers that child models and actors already receive.\textsuperscript{122} France, a pioneer of such protective legislation, provides a great example for the application of such laws within the United States.\textsuperscript{123} In the same way that France extended its child labor laws for child influencers, states within the United States can and should extend Coogan protections to child influencers.

Across the board, it is overwhelmingly clear that participating in child influencing is a job, and it should be treated as

\textsuperscript{116} See McGinnis, supra note 43, at 249.
\textsuperscript{117} Id. at 265.
\textsuperscript{118} See Wong, supra note 49 (“But while today’s child stars can achieve incredible fame and fortune without ever setting foot in a Hollywood studio, they may be missing out on one of the less glitzy features of working in the South California-based entertainment industry: the strongest child labor laws for performers in the country.”).
\textsuperscript{119} See Qamar, supra note 39.
\textsuperscript{121} Id.
\textsuperscript{122} Id. (“The change offers the same protections as those given to child models and actors in France, with their earnings placed in a bank account until they turn 16. Companies wishing to employ child influencers must also receive permission from local authorities.”).
\textsuperscript{123} See Qamar, supra note 39.
such.124 Much of the literature that exists, as well as the attempts at legislation, focus on amending the Coogan Act or the regulation of parents.125 These types of changes are a good place to start, but this Note argues that regulation should go beyond parental regulation. Part III suggests that a trust requirement will help the issue but that the law should take it a step further by implementing legislation that also regulates the social media platforms themselves.

B. The Counterargument: How Changing the Coogan Protections Falls Short

Those who oppose expansion of Coogan protections often argue that because parents have almost complete control over the working conditions of their children when producing content, it is too difficult for states to “enforce work permits, mandatory breaks, or [other] enforcement mechanisms.”126 California Assemblyman Kansen Chu faced this opposition when attempting to pass the “kidfluencer bill” that required minors to “obtain a work permit and follow measures similar to those required by the Coogan Law.”127 Chu was forced to edit the bill into a law that was “diluted significantly” from his previous proposal.128

While it is true that amending Coogan laws could further protect these child influencers, the issue lies with enforcement.129 For this reason, the bill signed into law did not include a work permit provision, which “effectively [prevented] the bill from enforcing Coogan Law protections because in Hollywood, they’re a package deal.”130

While some lawmakers argue that this type of regulation is too difficult because of the issues with work permits and oversight,

---

124 See discussion supra Section II.B.
125 See, e.g., McGinnis, supra note 43, at 250.
126 See id. at 264.
127 See Lambert, supra note 68.
128 Id.
129 Id. (“No one thought it was realistic to send a studio teacher into a private home where kids are doing YouTube videos in their basement.”).
130 Id. (“If a parent doesn’t provide the studio with a Coogan account number, his or her child’s work permit is voided. And if work permits aren’t the mandatory for kidfluencers, their parents have no legal obligation to open a Coogan account.”).
one solution is to take a step further than simply amending Coogan protections. Examples of such regulations will be discussed further in Section D below.

IV. RECONSIDERING REGULATION OF THE INTERNET IN THE MODERN ERA

A. Overview

In the literature that exists on this issue, one of the major counterarguments presented against the regulation of child social media stars is that this work “can be perceived as family work under parental supervision.” Indeed, attempting to regulate child influencers in the exact same way as child actors presents lawmakers with difficult hurdles to regulation. Enforcing work permits on child influencers is difficult because of the increased flexibility of their work schedules compared to the lack of flexibility enjoyed by child actors. Hence, a work permit regulation scheme would not fully protect these child influencers from exploitation. Rather than placing the onus solely on parents to comply with child labor laws, some of this burden should be shared by the social media platforms themselves.

Part III outlined the need for a change in the Coogan protections that already exist in most states and suggested that these should extend to child social media stars. In Part IV, this Note argues that legislation should take a step further and regulate the social media platforms themselves. Part IV suggests that social media is an industry that can and should be regulated in a

---

131 Qamar, supra note 39 (“Complication arises with kidfluencers, who are typically under the purview, if not the complete management, of their parents or legal guardian, and a heavier legislative hand could be seen as crossing a family boundary line.”).

132 McGinnis, supra note 43, at 264 (“Because of the nature of social media content creation, it may be difficult for states to enforce work permits, mandatory breaks, or enforcement mechanisms to check on the educational opportunities being provided for children starring in clips filmed by their parents in their own homes. This creates an immense challenge for legislators hoping to create safe working conditions for child internet workers earning money from their presence online.”).

133 Saragoza, supra note 103, at 583 n.61.

134 See discussion supra Part III.
similar way to how the government chose to regulate radio broadcasting through the creation of the Federal Communications Commission (FCC) and its amendments. In particular, Part IV takes a look at the policy and purpose behind the creation of the Telecommunications Act of 1996. After explaining the background of this Act, Part IV adds two more prongs to the solution. The second prong suggests a reconsideration of Section 230 of the Telecommunications Act of 1996 to account for changes in the modern era, and the third prong recommends changes to community guidelines to ensure user compliance with child labor laws.

B. The Federal Communications Commission and the Regulation of Social Media

It is helpful to understand the background of the FCC to better understand the regulation of social media (or rather, the lack thereof). Congress passed the Communications Act of 1934 to regulate telephones, telegraphs, and radio. Throughout the years since its inception, the Act has been updated to account for new communications technologies. In particular, it was amended in 1996 with the Telecommunications Act of 1996. The goal of the amendment was to “let anyone enter any communications business—to let communications business compete in any market against any other.” Further, the Telecommunications Act

138 See id.
139 See id.; see also Thomas M. Johnson, Jr., The FCC’s Authority to Interpret Section 230 of the Communications Act, FCC (Oct. 21, 2020, 10:30 AM), https://www.fcc.gov/news-events/blog/2020/10/21/fccs-authority-interpret-section-230-communications-act [https://perma.cc/4M5Y-JYNB] (“In 1934, Congress adopted the Communications Act in its original form, establishing the FCC as an independent establishing the FCC as an independent federal agency charged with regulating interstate and international communications.”).
140 See The Communications Act of 1934, supra note 137.
updated the Communications Act for the “then-nascent Internet age.”

Though the FCC is charged with “regulating interstate and international communications,” the FCC does not heavily regulate communications made through social media. In fact, there is no designated authority that says what social media platforms can or cannot do. In many instances, social media companies argue that the First Amendment prevents government regulation of their platforms. This is, in part, because of the addition of passed Section 230 to the Communications Act. Section 230 states that “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” In other words, companies “hosting other speech, aren’t saying it, and aren’t liable.” This freedom from liability for user-posted content is what has allowed social media companies to exist today.

Congress passed Section 230 with a lengthy amount of policy concerns in mind. In particular, Section 230 states that

it is the policy of the United States: (1) To promote continued development of the internet and other interactive media; (2) To preserve the vibrant and competitive free market that presently exists in for the internet . . . unfettered by Federal or State regulation; (3) to encourage the development of technologies which maximize user control over what information is received

---

142 Johnson, supra note 139.
143 Id.
144 See Coldewey, supra note 136 (“Industries like medicine, energy, alcohol and automotive have additional rules, indeed, entire agencies specific to them; not so with social media companies.”).
146 Id.
149 Id.
150 47 U.S.C. § 230(c)(1); 230(b).
by individuals, families, and schools . . . ; (4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children’s access to objectionable or inappropriate online material; and (5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.\footnote{Id.}

These policy considerations point toward Congress’s goal to advance the “availability of educational and informational resources” for U.S. citizens.\footnote{Id.}

In 1996, only twenty million American adults had access to the Internet.\footnote{Farhad Majoo, The Internet of 1996 is Almost Unrecognizable Compared With What We Have Today, SLATE (Feb. 24, 2009, 5:33 PM), https://slate.com/technology/2009/02/the-unrecognizable-internet-of-1996.html [https://perma.cc/C8FD-WKF4].} Furthermore, for those Americans with Internet access in 1996, they spent, on average, “fewer than 30 minutes a month surfing the web.”\footnote{Id.} Clearly, in the last twenty-eight years, the Internet has evolved drastically.\footnote{Kim Ann Zimmermann & Jesse Emspak, Internet History Timeline: ARPANET to the World Wide Web, LIVESCIENCE (Apr. 8, 2022), https://www.livescience.com/20727-internet-history.html#section-1990-2000 [https://perma.cc/585N-7VXQ].} In 2022, the average American spent seven hours and four minutes each day looking at a screen.\footnote{Josh Howarth, Alarming Average Screen Time Statistics (2023), EXPLODING TOPICS (Jan. 13, 2023), https://explodingtopics.com/blog/screen-time-stats [https://perma.cc/2TT2-GWLJ].} As of 2019, ninety percent of adults in the United States use the Internet, either irregularly or frequently.\footnote{Ani Petrosyan, Internet Usage in the United States—Statistics and Facts, STATISTA (Aug. 31, 2023), https://www.statista.com/topics/2237/internet-usage-in-the-united-states/#editorsPicks [https://perma.cc/7CEF-6X7H].} It is unlikely that in 1996, Congress anticipated the usage of the Internet to become so widespread and accessible through the use of smartphones.\footnote{What You Should Know About Section 230, the Rule that Shaped Today’s Internet, PBS (Feb. 21, 2023, 10:55 AM), https://www.pbs.org/newshour/politics/what-you-should-know-about-section-230-the-rule-that-shaped-todays-internet [https://perma.cc/K7A4-8W4F].} It is also unlikely that Congress could have
predicted that social media platforms would become so widely popular nor that they would shift into the monetized entities that they have become today.\footnote{159 Annie Brown, How Social Media Monetization Is Evolving in the Face of Algorithmic Bias: A Discussion With Nick McCandles, FORBES (Nov. 14, 2021, 4:55 PM), https://www.forbes.com/sites/anniebrown/2021/11/14/how-social-media-monetization-is-evolving-in-the-face-of-algorithmic-bias-a-discussion-with-nick-mccandless/?sh=5bd092de739e (mainly “While many of us were still enjoying making connections with friends and families on Facebook and Instagram, these platforms changed . . . and became way more business conscious. The percentage of people that now use these platforms business is growing at an alarming rate.”) (last visited Jan. 4, 2024).}

When looking at the policy goals of the Telecommunications Act of 1996, it is clear that many of these goals have been achieved within the last twenty-eight years.\footnote{160 47 U.S.C. § 230(b)(1)–(5).} Indeed, the availability of the Internet is so widespread that in 2021 ninety-three percent of U.S. adults used the Internet.\footnote{161 Internet/Broadband Fact Sheet, PEW RESEARCH CENTER (Apr. 7, 2021), https://www.pewresearch.org/internet/fact-sheet/internet-broadband/ [https://perma.cc/7HWX-LGQW].} Using Section 230 as a shield to prevent any type of regulation of social media today seems improper when many of those policy goals have shifted.\footnote{162 See Coldewey, supra note 136.} The public is presented with an Internet that looks very different than it did twenty-eight years ago; accordingly, social media has turned the Internet into a monetized industry that requires at least some form of regulation.\footnote{163 Id.}

Further, there are many other similar industries within the United States that are federally regulated.\footnote{164 Business Guidance, FTC, https://www.ftc.gov/business-guidance/industry [https://perma.cc/7T4B-2LR2].} The Federal Trade Commission (FTC) regulates a myriad of industries, including alcohol, appliances, automobiles, clothing and textiles, finance, tobacco, and others.\footnote{165 Id.} In addition to regulating these industries, the FTC has regulations regarding advertising and marketing as it relates to social media.\footnote{166 Advertising and Marketing Basics, FTC, https://www.ftc.gov/business-guidance/advertising-marketing [https://perma.cc/NMW3-F6XQ].} On their website, the FTC notes that those who advertise directly to children must comply with “truth
in advertising standards,” explaining that when using endor-
sements, influencers must follow the standards of FTC’s guide-
lines concerning the use of endorsements and testimonials in
advertising.167

Because social media exists on the Internet, the regulation
would need to be twofold—both from the FCC and the FTC. To-
gether, these agencies, through the assistance of Congress, could
create narrowly tailored regulations to ensure compliance with
child labor laws.168 That being said, effectuating this change
may require a shift in the comprehensive protection from liabil-
ity granted to social media companies under passed Section 230.
It is clear that the policy goals considered in its enactment no
longer bear the same weight as they once did.169 As the following
section suggests, concerns surrounding the regulation of social
media companies are sprouting throughout the United States.170
These concerns can be analogized to concerns over the exploitation
of children that is actively occurring on these platforms.171 This
change will require Congress to reconsider the policy goals behind
passed Section 230 when it was first enacted and determine
whether the Section needs revision to account for changes in the
Internet that its drafters could not have foreseen.172

C. Responding to First Amendment Concerns: Protecting Child
Influencers by Reconsidering Section 230 in a Modern Era

One rationale for the lack of regulation surrounding social
media stems from First Amendment free speech protections and
passed Section 230 immunity. This Section explains the recent
attitudes towards passed Section 230 and how Congressional
reconsideration of this statute is necessary to protect child influ-
encers from exploitation.

A 2022 Washington Post article explains, “as tech-interest
groups fight regulations in court battles . . . they are advancing
arguments that cast their content moderation decisions . . . as a

167 Id.
168 See Coldewey, supra note 136.
170 See infra Section IV.C.
171 See discussion supra Section II.B.
172 See supra notes 150–59 and accompanying text.
form of expression in its own right.” 173 These groups claim First Amendment protections in an effort to deter initiatives by state legislatures attempting to regulate these social media platforms.174 In general, states are responding to concerns about censorship on social media platforms.175 These concerns stem mostly from “controversies over social media’s ever-growing role in shaping political discourse.”176 Indeed, some proposed bills even contain provisions to “remove the liability shield that platforms enjoy under Section 230 of the Communications Decency Act if their algorithms play a role in amplifying certain categories of speech.”177 These reactions reflect a growing desire to regulate social media companies and perhaps to narrow the breadth of Section 230’s immunity.178

*Gonzalez v. Google*, a case vacated and remanded by the Supreme Court in May 2023 in light of the Court’s decision in *Twitter, Inc. v. Taamneh*, will answer a very important question about Section 230 and the extent of its protections.179 This case arose following the death of several Americans at the hands of terrorist attacks in Paris, France, as well as in San Bernardino, California.180 Among these deaths was student Nohemi Gonzalez, who died in Paris after “ISIS assailants opened fire on the café where she and her friends were eating dinner.”181 Gonzalez’s

174 Baran, *supra* note 148 (“Lawmakers in states all over the country have introduced more than 100 bills aimed at regulating social media.”).
175 Id.
176 Oremus, *supra* note 145 (“As platforms such as Facebook, Twitter, YouTube, and even TikTok have become influential forums for politicians, activists and the media, they’ve been criticized . . . for fanning misinformation, bigotry, and division.”).
177 Id. Section 230 provides social media companies with immunity from speech posted on their platforms. See Baran, *supra* note 148 and accompanying text.
179 See Gonzalez v. Google, LLC, 2 F.4th 871, 880 (9th Cir. 2021), vacated, 143 S. Ct. 1191 (2023) (remanding decision in light of Supreme Court’s decision in *Twitter, Inc. v. Taamneh*, 143 S. Ct. 1206 (2023)).
180 See generally Gonzalez, 2 F.4th at 871.
181 Millhiser, *supra* note 178.
survivors filed suit (alongside others), arguing that Google-owned YouTube should be held legally responsible because “ISIS was able to post recruitment videos and other content on these websites that were not immediately taken down.”\textsuperscript{182} Google claimed protection under Section 230, arguing that it immunizes them from responsibility.\textsuperscript{183}

The Court of Appeals for the Ninth Circuit explained that the interpretation of Section 230 typically “protects websites from liability for material posted on the website by \textit{someone else}.”\textsuperscript{184} Notably, in this decision, the court stated the following:

\begin{quote}
We share the dissents’ concerns about the breadth of § 230. As the dissent observes, “there is a rising chorus of judicial voices cautioning against an overbroad reading of the scope of Section 230 immunity . . . in light of the demonstrated ability to detect and isolate at least some dangerous content, Congress may well decide that more regulation is needed.”\textsuperscript{185}
\end{quote}

The court goes on to elaborate: “in sum, though we agree the Internet has grown into a sophisticated and powerful global engine the drafters of § 230 could not have foreseen, the decision we reach is dictated by the fact that we are not writing on a blank slate.”\textsuperscript{186} Essentially, the Ninth Circuit agrees that Section 230 as it stands is overly broad but that a change in this breadth would need to come from Congress: “Congress affirmatively immunized interactive computer service providers that publish the speech or content of others.”\textsuperscript{187}

Also notable is the court’s assessment of the theory that “because it shared advertising revenue with ISIS, Google should be held directly liable for providing material support to ISIS.”\textsuperscript{188} The court stated that the question “whether § 230 immunizes an interactive computer service provider’s revenue-sharing payments”

\begin{footnotes}
\item \textsuperscript{182} \textit{Id.}
\item \textsuperscript{183} \textit{Id.}
\item \textsuperscript{184} Gonzalez, 2 F.4th at 886 (quoting Doe v. Internet Brands, Inc., 824 F.3d 846, 850 (9th Cir., 2016)) (emphasis added).
\item \textsuperscript{185} \textit{Id.} at 896.
\item \textsuperscript{186} \textit{Id.} at 898.
\item \textsuperscript{187} \textit{Id.}
\item \textsuperscript{188} \textit{Id.}
\end{footnotes}
was one of first impression for the Ninth Circuit. 189 It held that Section 230 does not immunize Google from the claims premised on revenue sharing. 190 The court explained that Section 230 grants immunity “from claims seeking to hold providers of interactive services liable as publishers or speakers of third-party content.” 191 Here, the revenue sharing theory does not depend on the content ISIS places on YouTube but rather is “solely directed to Google’s unlawful payments of money to ISIS.” 192 Because these claims were not directed at “third-party content,” the court concluded that Section 230 does not bar them. 193

Though the above case involves terrorism and not the exploitation of child influencers, there are takeaways from the circuit court’s opinion that counter the idea that Section 230 could immunize companies from the type of regulation this Note proposes. 194 First, one could use the same argument as the plaintiffs in Gonzales and contend that Section 230 does not immunize social media platforms that share profits with parents of child influencers who are not in compliance with child labor laws. The argument expressed in Gonzales stated that the “allegations are premised on Google providing ISIS with material support by giving ISIS money.” 195 In the same way, one could circumvent Section 230 immunity by demonstrating that the social media platform’s profit sharing with videos or advertisements involves the exploitation of child influencers.

A second takeaway from this opinion is the Ninth Circuit’s express recommendation for Congress to reconsider Section 230 and the breadth of its immunity. 196 The court is acutely aware of the problems with the current breadth of Section 230 immunity, stating that “there is no indication the drafters of § 230 imagined

189 Gonzales, 2 F.4th at 898.
190 Id.
191 Id.
192 Id.
193 Id. at 899.
194 See id. at 898–99.
195 Id. at 898 (emphasis added).
196 Id. at 913 (“Section 230’s sweeping immunity is likely premised on an antiquated understanding of the extent to which it is possible to screen content posted by third parties. There is no question §230(c) shelters more activity than Congress envisioned it would.”).
the level of sophistication algorithms have achieved. Nor did they foresee the circumstance we now face, in which the use of powerful algorithms by social media websites can encourage, support, and expand terrorist networks.” 197 Similarly, there is no indication that the drafters of Section 230 imagined the monetization of social media that would lead to the exploitation of child influencers to the degree that it is occurring today. 198 The court concludes by stating that “whether social media companies should continue to enjoy immunity for the third-party content they publish . . . [is a pressing question] that Congress should address.” 199 This solution is precisely what this Note suggests: Congressional reconsideration of Section 230 to properly account for changes in the modern era—specifically to account for the ever-present exploitation of child influencers.

As it stands, child social media stars have no protection from exploitative work hours and no means to set aside the money they earn working on social media. An amendment to Section 230 could take various forms, but one suggestion is a list of exclusions. Among several suggested changes, one such exclusion could be the required compliance with child labor laws. This change would deny companies Section 230 immunity when they allow third parties to share monetized content of children in violation of child labor laws.

As previously mentioned, one of the biggest concerns surrounding state-level Coogan protections for child influencers is potential oversight. 200 Holding social media companies directly liable for third-party content in violation of child labor laws will help curtail concerns about oversight and enforceability. Enforcing liability on social media companies will shift the onus from parental compliance with state law and, instead, force companies to share in the responsibility of preventing child exploitation. 201

Hence, a two-pronged approach—implementing Coogan laws at the state-law level and creating an avenue for federal regulation—will help put an end to exploitative practices. That

---

197 Id. at 912.
198 Id. at 913.
199 Id.
200 See Saragoza, supra note 103 and accompanying text.
201 Id.
said, a third prong is necessary to ensure compliance from third-party users of the social media platform: a change in community guidelines to reflect new child labor laws and further oversight of content by the companies themselves. This system will hold parents liable at the state level for violations of child labor laws, and violations of community guidelines can result in the removal of their content on a platform (ultimately meaning removal of the income stream). The following section will discuss ways in which social media companies can regulate within the platforms themselves to ensure compliance with child labor laws.

D. A Final Step: Requiring Regulation by and of Social Media Companies

This Note suggests that after creating the proper state-level legislation, the FCC should require compliance with such provisions by using Section 230 to hold companies such as TikTok, Instagram, and YouTube liable for exploitative content posted by third parties. A practical way that companies can ensure compliance with child labor laws is by making amendments to their terms of service or community guidelines. These changes should require third parties to ensure their content complies with child labor laws. Because child labor laws will vary from state to state, companies can provide specific community guidelines regarding children on their platforms and also defer to state law.

As it stands, many social media platforms have terms of service that include some reference to the safety and protection of minors on their platform.202 For example, in their extensive community guidelines, TikTok has a lengthy section regarding its parameters surrounding minor safety.203 In that section, TikTok writes:

We are deeply committed to ensuring that TikTok is a safe and positive experience for people under the age of 18 (we refer to them as “youth” or “young people”). This starts by being

---


203 Id.
old enough to use TikTok. You must be 13 years and older to have an account. There are additional age limitations based on local law in some regions.204

While these protections are a good starting point, they lack any requirements to protect children from exploitation of the profits they earn as a direct result of posting on these platforms.205

In addition to existing community guidelines, companies should be required to include compliance with child labor laws in their terms of service, thus creating proper incentives for both parties. For example, if a user violates such laws, the social media platform can elect to remove the user from the platform.206 This is an incentive for parents or guardians of child influencers, who may lose a source of income if they cannot continue content creation. They will be more inclined to comply with such laws if they suffer actual loss from noncompliance. Further, if the FCC can regulate these social media companies, potential disciplinary action from a federal agency may incentivize the companies to affirmatively screen for such violations.207

CONCLUSION

Across the board, it is clear that the lack of protection for child influencers is a serious and difficult issue. As Part I explained, the use of influencer marketing is growing and likely to persist. Without any protections under the law, child influencers face various dangers while working as influencers. Namely, these social media stars may not see any of their earnings. Further, no regulation establishes the number of hours these child stars may work, and they could be forced to be “on set” anywhere at any time.

Together, the combination of updated child labor laws, regulation of social media companies, and enforcement through

204 Id.; see also YOUTUBE, YouTube Child Safety Policy, https://support.google.com/youtube/answer/2801999?hl=en&ref_topic=9282679 [https://perma.cc/7DZH-LR74] (“YouTube doesn’t allow content that endangers the emotional and physical well-being of minors.”).

205 See id.

206 See TikTok, Terms of Service, supra note 50 (“We reserve the right to disable your user account at any time, including if you . . . violate any applicable laws or regulations.”).

207 See discussion supra Section IV.C.
community guidelines create a practical solution to the problems faced by child influencers. These three suggestions will help adequately address concerns about oversight and the inability to regulate while also ensuring that these children do not face the same exploitation Coogan laws are aimed to prevent. Social media companies may push back at such regulation by claiming immunity under Section 230 of the Communications Act. In response to this pushback and calls for revision of Section 230 on other grounds, Congress needs to reconsider the Section in light of changes in the modern era. Holding social media platforms liable for content posted by third parties involving the exploitation of minors could help give these children the protection they deserve.