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MOMAGER DEAREST: WHY THE KIDFLUENCER INDUSTRY REQUIRES STRONGER REGULATION

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MOMAGER DEAREST: WHY THE KIDFLUENCER INDUSTRY REQUIRES STRONGER REGULATION

Annabel Lewis[*]

In the last twenty years, social media has undergone a massive transformation. What began as a medium to connect with friends has evolved into a multi-billion-dollar industry where influencers reign supreme, profiting from their online personas. This opportunity is not limited to those old enough to operate their own accounts.

The recent rise of child influencers, known as "kidfluencers," enables parents to profit from sharing aspects of their children's lives on the internet. These accounts are not without benefit. Beyond their financial appeal, kidfluencer accounts can serve as a means for parents to bond with their children and may open doors to the unique opportunities that accompany fame. However, these benefits come with significant dangers. Sharing aspects of a child's life online can lead to bullying, harassment, and predatory interactions. Experts warn that kidfluencers may face the same struggles that plagued child stars of earlier decades— such as addiction, mental health challenges, and family conflict— compounded by the relentless and immediate scrutiny of online audiences.

Parents who manage these accounts often face conflicting incentives, torn between safeguarding their children's well-being and capitalizing on the accounts' financial success. Meanwhile, the lucrative nature of kidfluencer content, coupled with Section 230's immunity provisions, discourages social media platforms from taking meaningful action. Currently, federal laws that regulate social media and child labor do little to address the unique needs of kidfluencers. Kidfluencer-specific legislation exists only at the state level, and most of it focuses on protecting children's financial interests. These state laws do little to address the emotional, developmental, and physical harms that can

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result from growing up in the spotlight, underscoring the need for government intervention to protect kidfluencers.

After exploring the complex regulatory landscape surrounding child influencer accounts, including the challenges of regulating online speech, potential infringements on parental rights, the role of Section 230, and the fragmented patchwork of state labor laws; this paper outlines a three-part proposal designed to (1) protect child influencers without infringing constitutional rights, (2) hold social media platforms accountable, and (3) preserve state flexibility in the implementation of labor laws that apply to kidfluencers. This comprehensive framework is tailored to address the specific challenges of the kidfluencer industry, protecting children from the dangers of receiving so much attention at such a young age.

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I. INTRODUCTION

Most women remember their first menstruation as a strange moment in which they were suddenly considered a "woman." Some women remember their first menstruation as a strange moment in which the most intimate details of their experience were posted online by their parents. Cam Barrett, whose mother posted videos about every facet of her life, remembers her first period as the latter.[1] Now, Barrett is advocating for stricter laws to protect child influencers who are consistently featured on monetized family social media accounts.[2]

Child influencers, commonly dubbed "kidfluencers,"[3] are one of the latest social media phenomena.[4] A kidfluencer's ability to successfully market products to their followers has made these accounts an extremely valuable advertising tool for businesses, resulting in large profits for the parents who manage these accounts.[5] While the child is the primary focus of a kidfluencer account, this Note zeros in on the parents. Parents have a responsibility to act in the best interest of their child, but boundaries may be crossed when there are millions of dollars on the line.

Currently, there is very little regulation in the kidfluencer market.[6] Steps have been taken in California and a few other states to secure the financial interests of these children,[7] but more needs to be done to protect these kids from the emotional and physical harm attached to garnering excessive attention at a young age.[8] This Note will

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1. Erin Quinn-Kong, *Children of influencers are pushing back… and some lawmakers are on their side*, TODAY (Oct. 17, 2024, 5:14 PM), https://www.today.com/parents/family/influencer-children-rcna175057 [https://perma.cc/Y585-JCPE].

2. *Id.*

3. Elizabeth Martinez, *You're on Your Own, Kid Influencers*, REGUL. REV. (Aug. 13, 2024), https://www.theregreview.org/2024/08/13/martinez-youre-on-your-own-kid-influencers/ [https://perma.cc/AVV4-6JDU].

4. *See* Angela Yang, *The next generation of influencers are here. And they're less than 10 years old.*, NBC NEWS (Feb. 23, 2024, 6:00 AM), https://www.nbcnews.com/tech/social-media/gen-alpha-influencers-parents-face-backlash-rcna136650 [https://perma.cc/M33K-LDHC] (discussing the rise of child influencers in Generation Alpha).

5. Valeriya Safronova, *Child Influencers Make Big Money. Who Gets It?*, N.Y. TIMES (OCT. 13, 2023), https://www.nytimes.com/2023/10/10/style/children-influencers-money.html (last visited March 31, 2026).

6. *See* discussion *infra* Section II.D.

7. *See* Katie Kindelan, *Utah joins California, Illinois in establishing safeguards for child influencers*, ABC NEWS (Mar. 31, 2025, 11:43 AM), https://abcnews.go.com/GMA/Family/parenting-influencers-speak-new-law-designed-protect-kids/story?id=111580202 [https://perma.cc/5FRA-2PLL].

8. *See* Rachel E. Greenspan, *TikTok is breeding a new batch of child stars. Psychologists say what comes next won't be pretty.*, BUS. INSIDER (July 9, 2020, 10:42 AM), https://www.businessinsider.com/psychologists-say-social-media-fame-may-harm-child-

demonstrate that current laws are not strong enough to effectively safeguard children from the dangers of social media stardom and propose a solution that provides comprehensive regulation on both the federal and state levels.

First, this Note will provide background information about child influencers, the dangers of social media overexposure, and constitutional concerns that arise when discussing the regulation of kidfluencer accounts. The relevant federal laws, the basics of California's Coogan Law, and current state-level regulations will also be explained. Then, potential legislative solutions and the legal issues surrounding them will be analyzed. Finally, this paper will demonstrate that the most comprehensive way to protect children from being exploited on social media is to use a three-pronged approach involving federal and state legislation.[9]

II. BACKGROUND

Before delving into the legal issues regarding kidfluencer regulation, it is important to understand the basics of child influencer accounts, the dangers of these accounts, the constitutional protections for freedom of speech and parental rights, and current federal and state legislation that applies, or does not apply, to these accounts. Each of these will be addressed in turn.

A. The Rise of Kidfluencer Accounts

Societal "influencers" have been around for thousands of years.[10] Forms of influencing can be traced back to Ancient Rome, when famous gladiators endorsed products like olive oil.[11] In the following centuries, royalty and socialites operated as the influencers of their time, as brands used the approval of the well-known elites to market their products to the masses.[12] Television ushered in a new wave of

star-influencers-2020-5 [https://perma.cc/6FG4-5CJ2] (explaining the struggles that child social media stars are expected to encounter).

9. This Note focuses on regulatory measures that can be implemented to protect children online. Accordingly, it does not address parental responsibility. Rather than criticizing or attempting to control parental behavior, this Note examines the role of law and regulation in addressing the structural risks child influencers encounter.

10. Peter Suciu, *History Of Influencer Marketing Predates Social Media By Centuries – But Is There Enough Transparency In The 21st Century?*, FORBES (Dec. 10, 2021, 9:41 AM), https://www.forbes.com/sites/petersuciu/2020/12/07/history-of-influencer-marketing-predates-social-media-by-centuries—but-is-there-enough-transparency-in-the-21st-century/ [https://perma.cc/PC89-2G9Y].

11. *Id.*

12. *Id.*

influencers—actors and entertainers[13]—including child stars, like Shirley Temple[14] and the Olsen twins.[15] Now, in today's social media-riddled world, anyone can be an influencer.[16] Wealth and name recognition are not required to find success online; all one needs is access to the internet.[17] This opportunity is even available to those too young to create their own account.[18]

Parent-run accounts have opened the world of influencing to children.[19] Kidfluencers, by way of their parents, post content on social media to promote brands directly to their followers.[20] These accounts feature the child in most, if not all, of the content.[21] While the minimum age to create an account on most major platforms, including TikTok,[22]

13. *See* Valencia Jackson, *Selling Childhood: The Celebrity Family as a Modern Marketing Machine*, AMW (Aug. 19, 2025), https://www.amworldgroup.com/blog/the-rise-of-family-branding-in-celebrity-culture [https://perma.cc/4YF3-9Y9Q] ("Early celebrity marketing strategies focused on associating famous personalities with specific products through formal advertising campaigns. Stars appeared in print advertisements, television commercials, and public endorsements…").

14. Martha Sherrill, *Dimply the best: Shirley Temple charmed a depressed nation, and it wasn't just another song and dance*, WASH. POST (July 16, 1995), https://www.washingtonpost.com/lifestyle/style/dimply-the-best-shirley-temple-charmed-a-depressed-nation-and-it-wasnt-just-another-song-and-dance/2014/02/11/dc62e4f0-933b-11e3-83b9-1f024193bb84_story.html (noting that by the time Shirley Temple was twelve, her name was attached as an endorsement on countless items, including: jewelry, soap, toys, clothing, and drinking mugs).

15. Mary-Kate and Ashley Olsen turned their "Full-House" fame into a brand "that extended to albums, videos, books, movies, and a fashion line." Colleen Kane, *Child Star Successes*, CNBC (Sept. 12, 2011, 5:40 PM), https://www.cnbc.com/2011/09/12/Child-Star-Successes.html [https://perma.cc/A2LA-Q3MK].

16. Suciu, *supra* note 10.

17. *See* Jane Monreal, *Charlotte woman cashing in on booming influencer industry*, WCNC (Oct. 2, 2023, 12:43 AM), https://www.wcnc.com/article/money/social-media-influencer-industry-booming-since-the-pandemic-charlotte-north-carolina/275-b8eb847d-4625-4637-b07a-633ef8cff7ff (As influencer Meredith Dean explained, "I think anyone can be an influencer. It's based on how authentic [you are], and whether you are promoting something that really does resonate with your brand.").

18. Jennifer Valentino-DeVries & Michael H. Keller, *A Marketplace of Girl Influencers Managed by Moms and Stalked by Men*, N.Y. TIMES (Feb. 25, 2024), https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html (last visited March 31, 2026).

19. Safronova, *supra* note 5.

20. Martinez, *supra* note 3.

21. *See* Sapna Maheshwari, *Online and Earnings Thousands, at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html.

22. *Youth Safety and Well-Being*, TIKTOK, https://www.tiktok.com/community-guidelines/en/youth-safety [https://perma.cc/EFN4-JKQ9] (last visited Aug. 22, 2025).

Instagram,[23] and YouTube,[24] is thirteen, accounts managed by a child's parent sidestep these regulations.[25] Instagram's Director of International Communications and Internal Communications[26] explained that parents are allowed to create profiles for their children "as long as it is clear in the bio information that the account is run by the parent or representative."[27]

There are various reasons why parents are willing to use social media to launch their children into stardom. Some parents started making videos at the request of their children.[28] Others see social media as the way of the future and do not want their children left behind.[29] A few parents see these accounts as a way by which to build their children's "social media résumés" and secure their financial futures.[30] These accounts can be quite lucrative, as the most successful kidfluencers rake in millions of dollars a year.[31] According to the New York Times, large creators usually earn $10,000 to $20,000 per post.[32] Even smaller nano-influencers[33] can make around $600 per post.[34] These accounts are not

23. *About Instagram teen privacy and safety settings*, INSTAGRAM HELP CTR., https://help.instagram.com/3237561506542117 [https://perma.cc/225E-ALSG] (last visited Aug. 22, 2025).

24. *Terms of Service*, YOUTUBE, https://www.youtube.com/static?template=terms [https://perma.cc/2PC4-Z4XY] (last visited Aug. 22, 2025).

25. EJ Dickson, *A Toddler On TikTok Is Spawning a Massive Mom-Led Movement*, ROLLING STONE (July 20, 2022), https://www.rollingstone.com/culture/culture-news/tiktok-wren-eleanor-moms-controversy-1385182/ (last visited March 31, 2026).

26. At the time she provided a comment to The New York Times, Sravanthi Dev was Instagram's Director of International Communications and Internal Communications. Sravanthi Dev (@sravanthi-dev), LINKEDIN, https://www.linkedin.com/in/sravanthi-dev/ (last visited Oct. 25, 2025). She is credited in the article as a "spokeswoman." *See* Maheshwari, *supra* note 21.

27. Maheshwari, *supra* note 21.

28. Belinda Luscombe, *How Ryan Kaji Became the Most Popular 10-Year-Old in the World*, TIME (Nov. 12, 2021, 7:00 AM), https://time.com/6116624/ryan-kaji-youtube/ (last visited March 31, 2026).

29. *See* Valentino & DeVries, *supra* note 18 ("A mother in Alabama said parents couldn't ignore the reality of this new economy. 'Social media is the way of our future, and I feel like [the kids will] be behind if they don't know what is going on,' the mother said.").

30. *Id.* ("'It's like a little security blanket,' said a New Jersey mother whose mom-run account has led to paid modeling jobs for her daughter and invitations to work with sought-after choreographers. 'She can help pay for college if she does it right,' she said.").

31. Safronova, *supra* note 5.

32. *Id.*

33. Influencers who have between 1,000 and 5,000 followers are generally considered nano-influencers because they have social influence on a comparatively narrow market. *What Is a Nano-Influencer*, BRANDMENTIONS, https://brandmentions.com/wiki/What_Is_a_Nano-Influencer [https://perma.cc/U276-UTN7].

34. Safronova, *supra* note 5.

just lucrative for the creators, as kidfluencers can generate enormous profits for the platforms that host their content.[35]

As of late 2024, the influencing industry as a whole was estimated to be worth approximately $250 billion.[36] Goldman Sachs predicts that this number could nearly double by 2027, falling just short of $500 billion.[37] The first known study to estimate social media-specific advertising revenue from children in the United States determined that six social media platforms[38] collectively made about eleven billion dollars in advertising revenue from users under the age of eighteen in 2022.[39] While not all of this revenue can be solely attributed to the content created by kidfluencers, child advocate groups contend that companies spend billions of dollars in content-based marketing targeted towards children by way of influencer advertisements.[40]

Social media platforms make money from influencer accounts in a few different ways.[41] Some platforms take a cut of profits made from monetized content.[42] For example, YouTube allows influencers to monetize their content by selling ads on videos.[43] The company that wants to acquire an advertisement pays ten to thirty cents per thirty-second viewing or click.[44] The ad revenue is then split between YouTube

35. Taylor Mooney, *Companies make millions off kid influencers, and the law hasn't kept up*, CBS NEWS (Aug. 26, 2019, 6:19 AM), https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals/ [https://perma.cc/MDS6-J4FL] ("They're basically adopting a 'don't ask, don't tell' stance about all the children that are on their site. But at the same time, they're profiting enormously by hosting content that is deliberately designed to attract kids.").

36. Danielle Chemtob, *Forbes Daily: The $250 Billion Influencer Economy Is Booming*, FORBES: LEADERSHIP (Oct. 28, 2024, 8:10 AM), https://www.forbes.com/sites/daniellechemtob/2024/10/28/forbes-daily-the-250-billion-influencer-economy-is-booming/ [https://perma.cc/MB68-3NCB].

37. *Id.*

38. *See Kids' Ad Revenue for Social Media*, HARV. T.H. CHAN SCH. OF PUB. HEALTH: CTR. FOR HEALTH DECISION SCI. (Feb. 28, 2024), https://chds.hsph.harvard.edu/kids-ad-revenue-for-social-media/ [https://perma.cc/MZ3V-YFPE] (The six social media platforms evaluated were Facebook, Instagram, Snapchat, TikTok, X (Twitter), and YouTube).

39. *Id.*

40. Laura M. Moy & Chris Laughlin, *Complaint, Request for Investigation, and Request for Policy Guidance*, CAMPAIGN FOR A COM.-FREE CHILDHOOD, CTR. FOR DIGIT. DEMOCRACY& PUB. CITIZEN (Oct. 21, 2016), https://fairplayforkids.org/wp-content/uploads/archive/FTCInfluencerComplaint.pdf.

41. *See* Mooney, *supra* note 35; *see also* Daniel Pereira, *Instagram Business Model*, BUS. MODEL ANALYST (Jan. 19, 2026), https://businessmodelanalyst.com/instagram-business-model/ (last visited March 31, 2026).

42. *See* Mooney, *supra* note 35.

43. *Id.*

44. *Id.*

and the content creator.[45] As a result of this arrangement, YouTube receives forty-five percent of the ad revenue from the creator's video.[46]

Other platforms like Instagram rely on influencers to keep users engaged on the app.[47] High levels of engagement entice brands to purchase ads, which are then integrated into a user's feed.[48] Brands also partner directly with influencers to sell their products to specific audiences.[49] Captivating, branded content fosters additional engagement from followers.[50] This results in a win-win-win situation.[51] Instagram receives revenue from the brand that pays to advertise on the site; the brand receives revenue from products bought due to successful targeted marketing; and the influencer receives revenue from any sponsored content they post.[52]

The content posted by kidfluencers varies both in subject matter and propriety. For example, Ryan Kaji, one of the highest-paid YouTube stars, has built an empire by filming kid-friendly content.[53] In 2015, Kaji rose to fame after videos of him opening and reviewing toys were posted online when he was only three and a half years old.[54] By 2021, the then-ten-year-old boy operated nine YouTube channels, a handful of animated shows and streaming services, and had sponsored thousands of products.[55] His unboxing videos are created by a kid, with the help of an adult production team, for other kids to enjoy.[56]

In contrast, TikTok star Wren Eleanor's content seemingly appeals to a much older audience.[57] The pigtailed toddler became a TikTok sensation before she even started kindergarten.[58] Wren's account featured videos of her eating apple cider donuts and playing with water balloons for her roughly seventeen million followers to enjoy.[59] Her popularity led to brand sponsorships with large companies like Shein and Hippeas.[60]

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45. *Id.*
46. *Id.*
47. *See* Pereira, *supra* note 41.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. Luscombe, *supra* note 28.
54. *Id.*
55. *Id.*
56. *Id.*
57. Dickson, *supra* note 25.
58. *Id.*
59. *Id.* (Wren's account had roughly 17 million followers in 2022).
60. *Id.*

However, in 2022, Wren's mother, Jacquelyn, faced backlash online after she posted videos of Wren that many followers deemed inappropriate.[61] Commenters on Wren's TikTok thought two videos in particular—one in which Wren is playing with her mother's tampons and a second where she is taking a bath in a bathing suit—had seemingly sexually suggestive undertones.[62] While on its face, neither of these videos is clearly exploitative, these posts had more likes and saves than Wren's typical content.[63] TikTok users also noticed trending searches on the platform included phrases such as "Wren eating corndog" and "Wren scandalous outfits."[64] Viewers expressed fear that Jacquelyn was not adequately protecting Wren, especially considering the clear evidence of "disturbing internet behaviors."[65] Wren's account sparked a larger conversation about the dangers of posting children online and the need for parental responsibility.[66]

B. The Dangers of Sharenting

Excessive posting of a child online is not an activity exclusively reserved for the parents of social media stars.[67] A 2015 survey of parents found that seventy-four percent of parents who used social media knew another parent who participated in "sharenting."[68] "Sharenting" occurs when a parent engages in digital oversharing, or "excessively posting information, pictures, stories or updates about [their] child's life."[69] The survey further found that fifty-six percent of respondents believed that these parents shared embarrassing information about their children, while twenty-seven percent believed that the parents circulated inappropriate pictures of their children.[70] Psychologist Susan Albers suspects that these numbers have increased in recent years.[71]

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61. *Id.*

62. *Id.* (As of late 2024, all videos on Wren's TikTok account have been deleted.); *see* Wren Eleanor (@wren.eleanor), TIKTOK, https://www.tiktok.com/@wren.eleanor (last visited Dec. 27, 2025).

63. Dickson, *supra* note 25.

64. *Id.*

65. *Id.*

66. *Id.*

67. *See Sharing Isn't Always Caring: The Risks and Dangers of 'Sharenting'*, CLEVELAND CLINIC (May 29, 2024), https://health.clevelandclinic.org/sharenting [https://perma.cc/CKB8-TVHH].

68. *Id.*

69. *Id.*

70. Mott Poll Report, C.S. Mott Children's Hospital, *Parents on social media: Likes and dislikes of sharenting*, 23 NAT'L POLL ON CHILD.'S HEALTH (Mar. 16, 2015), https://mottpoll.org/reports-surveys/parents-social-media-likes-and-dislikes-sharenting [https://perma.cc/3H8Y-5XC5] (last visited March 31, 2026).

71. CLEVELAND CLINIC, *supra* note 67.

When parents engage in sharenting, they are often putting their child's personal information online without their child's consent.[72] A lack of privacy is almost a hazard of the kidfluencer profession, as followers often form parasocial relationships with influencer families.[73] Audiences feel as though they know these families because they have such constant access to their lives.[74] Over time, some people may even think they deserve this kind of access.[75] Furthermore, as Dr. Albers explains, child social media accounts "open[] a window directly into a child's life, which predators or those with ill intent can abuse."[76] For example, a 2020 internal study performed by Meta, Instagram's parent company, found that 500,000 child Instagram accounts had inappropriate interactions every day.[77] While children may find it fun to be in their parents' videos, experts warn that children do not "have the capacity to understand how far and wide social media content can go."[78]

The dangers related to social media are not solely associated with kidfluencer accounts.[79] Constantly posting a child online is linked to an increased risk of identity theft, stalking, bullying, and harassment.[80] Moreover, there is a strong link between social media and mental health issues.[81] While acting as United States Surgeon General, Dr. Vivek Murthy informed all parents about the evidence that social media poses a "profound risk of harm to the mental health and well-being of children and adolescents."[82]

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72. Fortesa Latifi, *Parenting influencers try something new: Giving their kids privacy*, WASH. POST (Aug. 1, 2023), https://www.washingtonpost.com/parenting/2023/08/01/parenting-influencers-children-privacy/.

73. Quinn-Kong, *supra* note 1.

74. *Id.*

75. *Id.*

76. *Sharing Isn't Always Caring: The Risks and Dangers of 'Sharenting'*, *supra* note 67.

77. Valentino-DeVries & Keller, *supra* note 18.

78. Faith Karimi, *The first social media babies are adults now. Some are pushing for laws to protect kids from their parents' oversharing*, CNN: CRIME + JUST. https://edition.cnn.com/2024/05/29/us/social-media-children-influencers-cec/index.html (quoting Jessia Maddox, an assistant professor at the University of Alabama who studies social media influencers) (March 31, 2026, 8:59 AM).

79. *See* Andrew Limbong, *Why you should think twice before posting that cute photo of your kid online*, NPR (May 20, 2024, 9:10 AM), https://www.npr.org/2024/05/20/1251819597/ [https://perma.cc/TB5C-M4JF].

80. *Id.*

81. Jean M. Twenge et al., *Specification curve analysis shows that social media use is linked to poor mental health, especially among girls*, 224 ACTA PSYCHOLOGICA 1 (2022), https://doi.org/10.1016/j.actpsy.2022.103512 [https://perma.cc/Z74H-HMTA].

82. Matt Richtel et al., *Surgeon General Warns That Social Media May Harm Children and Adolescents*, N.Y. TIMES, https://www.nytimes.com/2023/05/23/health/surgeon-general-social-media-mental-health.html (last visited March 31, 2026).

In addition to these dangers, kidfluencers may encounter difficulties that their non-famous classmates will not.[83] Experts warn that young influencers will face the "typical hurdles of childhood fame" with "the additional complication of real-time social media surveillance by millions and an algorithmically programmed addiction to the instant-gratification of a never-ending barrage of notifications."[84] In simpler terms, social media child stars are at risk of experiencing the same difficulties as their '90s Hollywood child star counterparts, including issues like addiction, mental illness, and familial struggles.[85]

However, while the child stars of the '90s could separate their performance from their personality, kidfluencers are not playing a role or following a script.[86] Social media enables kidfluencers to receive immediate online feedback about their personality or other defining qualities in the form of likes, comments, and shares.[87] The public is able to watch these struggles and give their input in real time.[88] Consequently, a child's online notoriety can become intertwined with their personality.[89] It can be extremely difficult for these children to find a sense of self-worth outside of their social media accounts.[90] This is also exacerbated by the addictive nature of social media, which makes it difficult to put the phone down and stop engaging with public feedback.[91] Experts in the field are calling for more accountability from parents, social media platforms, the government, and users to better safeguard children in the digital space.[92] Children have a legal interest in privacy, but this interest is often trumped by their parents' rights of free speech and parental control.[93]

C. Constitutional Concerns

Two key constitutional concerns arise when considering how to regulate child influencer accounts. First, there is the issue of how to regulate social media accounts without burdening the free speech rights of the children and parents involved in content creation. The second issue is the extent to which the government can infringe on a parent's

83. *See* Greenspan, *supra* note 8.
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. Greenspan, *supra* note 8.
90. *Id.*
91. *Id.*
92. Quinn-Kong, *supra* note 1.
93. Latifi, *supra* note 72; Michelle FormyDuval Lynch, *Privacy Rights of Children in the Digital Age*, NCBARBLOG.COM (Jan. 31, 2024), https://www.ncbarblog.com/jjcr-privacy-rights-of-children-in-the-digital-age/ [https://perma.cc/3NZD-4GNB].

right to control the upbringing of their child. This section provides the history and analytical foundation for these rights.

1. The Limits of Regulating Speech

The First Amendment's Free Speech Clause[94] constrains, but does not absolutely prohibit, the government from regulating private speech.[95] Since not all speech is of "equal First Amendment importance,"[96] the Supreme Court has established multiple tests and tiers of scrutiny under which speech regulations are reviewed.[97] While there is no one-size-fits-all test that can be used to determine whether a speech regulation complies with the First Amendment, free speech analysis often involves three main inquiries: (1) whether the government is regulating speech or non-expressive conduct; (2) whether the speech at issue is protected or unprotected; and (3) whether the speech regulation is content-neutral or content-based.[98]

a. Delineating Speech from Non-Expressive Conduct

Generally, the first step in a free speech analysis is determining whether the challenged action is in fact regulating speech.[99] Under the First Amendment, the concept of "speech" includes written and spoken words as well as other forms of expression.[100] For example, in *Texas v. Johnson*, the Supreme Court held that the burning of a flag in political protest is symbolic speech protected by the First Amendment.[101] In contrast, in *City of Dallas v. Stanglin*, the Court held that social dancing is not expressive conduct protected by the First Amendment.[102]

While the line between expressive and non-expressive conduct can be blurry, the Court's difference in treatment is stark.[103] Laws that primarily restrict non-expressive conduct are unlikely to trigger "First

94. U.S. CONST. amend. I. ("Congress shall make no law . . . abridging the freedom of speech.").

95. VICTORIA L. KILLION, CONG. RSCH. SERV., R47986, FREEDOM OF SPEECH: AN OVERVIEW 1 (2024), https://www.congress.gov/crs_external_products/R/PDF/R47986/R47986.2.pdf.

96. Snyder v. Phelps, 562 U.S. 443, 452 (2011) (quoting Hustler Magazine, Inc. v. Falwell, 485 U.S. 46, 56 (1988)).

97. KILLION, *supra* note 95, at 1.

98. *Id.* at Summary.

99. *Id.* at 2.

100. *Id.* Photographs, videos, editorial functions, and the dissemination of speech products are all considered forms of expression.

101. Texas v. Johnson, 491 U.S. 397, 420 (1989).

102. City of Dallas v. Stanglin, 490 U.S. 19, 25 (1989) (determining that the "kernel of expression" present in recreational dancing is insufficient to bring the activity under the protection of the First Amendment).

103. KILLION, *supra* note 95, at 3.

Amendment scrutiny"[104] and will only be evaluated under the lenient standard of rational basis review.[105] However, laws that regulate expressive conduct are almost certain to receive First Amendment scrutiny, meaning they will be evaluated under a higher standard of review.[106]

b. Defining Protected and Unprotected Speech

If the Court determines that the challenged action regulates expressive conduct, the next analytical step is determining whether this expressive conduct is protected or unprotected, and, if it is protected, to what extent?[107]

This step assists the Court in identifying which heightened standard of review applies.[108] As most private speech is protected in some way,[109] it is easier to define protected speech by outlining the categories of unprotected speech.[110] The general categories of unprotected speech are: obscenity, defamation, fraud, incitement, fighting words, true threats, "speech integral to criminal conduct," and child pornography.[111] Speech that falls within one of these categories likely will not receive First Amendment scrutiny,[112] reflecting the principle that "the right of free speech is not absolute at all times and under all circumstances."[113]

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104. In this Note, the term "First Amendment scrutiny" refers to all forms of heightened review that a court could apply when evaluating a law that potentially infringes on free speech.

105. KILLION, *supra* note 95, at 3. Under rational basis review, the burden is on the challenger of the law to demonstrate that the law is not rationally related to a legitimate government interest. Brett Snider, *Challenging Laws: 3 Levels of Scrutiny Explained*, FINDLAW: L. & DAILY LIFE, (https://www.findlaw.com/legalblogs/law-and-life/challenging-laws-3-levels-of-scrutiny-explained/ (last visited March 31, 2026).

106. KILLION, *supra* note 95, at 3. Under the First Amendment, the most common heightened standards of review are intermediate scrutiny and strict scrutiny. *Id.* at 4.

107. *Id.* at 3; *see id.* at 4 ("[A]fter deciding that a case involves protected speech, the next step in a First Amendment analysis is often to determine which level of scrutiny or legal standard applies. The answer to that question can depend on the kind of protected speech being regulated and additional factors, such as where the speech occurs and the way the law operates.").

108. *Id*. at 4.

109. *Id.* at 3.

110. VICTORIA L. KILLION, CONG. RSCH. SERV., IF11072, THE FIRST AMENDMENT: CATEGORIES OF SPEECH (2019),
https://www.congress.gov/crs_external_products/IF/PDF/IF11072/IF11072.3.pdf ("[S]peech is generally protected under the First Amendment unless it falls within one of the narrow categories of unprotected speech…").

111. The court has expressed reluctance to expand upon this list. *Id. See id* for a detailed explanation of the tests used to define each of these unprotected categories of speech.

112. *Id.* And if it does receive scrutiny, it would be under rational basis review.

113. Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942).

Even speech that does not fall into one of these historically recognized and narrowly confined exceptions is not absolutely protected.[114] Different levels of scrutiny apply depending on the type of protected speech at issue.[115] For example, commercial speech, a category of protected speech particularly relevant to this Note, typically receives a lower level of scrutiny than other forms of protected speech.[116] Commercial speech is defined as "speech which does 'no more than propose a commercial transaction.'"[117] The protection available for commercial expression depends on the nature of the expression and the nature of the governmental interests the regulation is intended to serve.[118] The government can ban commercial speech that is deceptive or related to illegal activity.[119] However, government restrictions directed at non-misleading, lawful commercial speech receive intermediate scrutiny.[120] Under this standard, the commercial speech restriction must "directly advance" a substantial governmental interest and cannot be "more extensive than is necessary to serve that interest."[121]

c. Differentiating Restrictions Based on Content

If the government action regulates protected, non-commercial speech, a final inquiry is required to determine the level of scrutiny applied upon judicial review.[122] During this third inquiry, the Court considers whether the law at issue is content-neutral or content-based.[123]

A regulation is content-neutral if it "'serves purposes unrelated to the content of expression' and does not, on its face, regulate speech on the basis of its subject matter, topic, or viewpoint."[124] Content-neutral regulations are subject to intermediate scrutiny.[125] To survive judicial

114. *See* KILLION, *supra* note 95, at 13 (charting the differences in treatment between different kinds of speech).

115. *Id.* at 4.

116. *Id.*

117. Bolger v. Youngs Drug Prods. Corp., 463 U.S. 60, 66 (1983) (quoting Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 762 (1976)). The Supreme Court has also defined commercial speech as "expression related solely to the economic interests of the speaker and its audience." Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557, 561 (1980).

118. *Cent. Hudson Gas & Elec. Corp.*, 447 U.S. at 563.

119. *Id.* at 563–64.

120. KILLION, *supra* note 110.

121. *Cent. Hudson Gas & Elec. Corp.*, 447 U.S. at 564, 566.

122. *See* KILLION, *supra* note 95, at Summary.

123. *Id.*

124. *Id.* at 6–7.

125. *See* ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 1065 (7th ed. 2023) ("In contrast, regulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny because in most cases they pose a less substantial risk of excising certain ideas or viewpoints from the public dialogue.").

review, content-neutral regulations must be "narrowly tailored to serve a significant government interest."[126]

On the other hand, a law is facially content-based when it "applies to particular speech because of the topic discussed or the idea or message expressed."[127] The Court has stated that content-based laws are "presumptively invalid,"[128] and will be evaluated under the stringent standard of strict scrutiny.[129] To survive strict scrutiny, restrictions imposed because of the subject matter or the speaker's viewpoint must be narrowly tailored to advance a compelling governmental interest and must be the least restrictive means of serving that interest.[130] To ensure the law is "narrowly tailored," the Court must ask whether the restriction is over-inclusive or under-inclusive.[131]

Statutes that impose financial burdens on speakers because of the content of their speech are an interesting vein of content-based regulations.[132] In *Simon & Schuster v. Members of the New York State Crime Victims Board*, the Court declared a state law unconstitutional that prevented accused or convicted criminals from profiting from their crimes by selling their story to the media.[133] It is important to note that this law did not prevent speech; it only prevented individuals from keeping profits made by selling the story of their crimes.[134] However, the Supreme Court found this to be an unconstitutional, content-based law.[135] While recognizing that the state had a compelling interest in depriving criminals of profiting off their crimes and using these funds to compensate victims, the law was not narrowly tailored to advance that interest.[136]

2. The Interest of Parents

The interest of parents "in the care, custody, and control of their children" is one of the oldest liberty interests recognized by the Supreme

126. City of Austin v. Reagan Nat'l Advert. of Austin, LLC, 596 U.S. 61, 76 (2022) (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).

127. *Id.* at 69.

128. CHEMERINSKY, *supra* note 125, at 1065.

129. KILLION, *supra* note 95, at 5.

130. *Id.* at 6.

131. *Id*. Laws are underinclusive when they do not regulate all who are similarly situated. CHEMERINSKY, *supra* note 125, at 622. Contrastingly, a law is overinclusive if it regulates individuals who are not similarly situated. CHEMERINSKY, *supra* note 125, at 624.

132. CHEMERINSKY, *supra* note 125, at 1129.

133. Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd., 502 U.S. 105, 123 (1991). This law, known as the "Son of Sam law" was passed by the New York legislature to prevent infamous serial killer David Berkowitz from profiting from his notoriety after being apprehended by police. *Id.* at 108.

134. CHEMERINSKY, *supra* note 125, at 1129.

135. *Simon & Schuster*, 502 U.S. at 116, 123.

136. *Id.* at 123.

Court.[137] In *Meyer v. Nebraska*, one of the earliest parental rights cases, the Supreme Court found that the "liberty" guaranteed by the Constitution included the fundamental right to direct the education of one's own children.[138] A right is considered "fundamental" when it is found to be "deeply rooted in the Nation's history and tradition."[139] In 1925, just two years after *Meyer*, the Supreme Court affirmed a preliminary injunction preventing the enforcement of a law that required all parents to send their children to public school.[140] The Court determined that the law "unreasonably interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control."[141]

However, the right to make parenting decisions is not absolute.[142] The state can interfere if necessary to protect a child, [143] as exemplified in *Prince v. Massachusetts*. In this case, Sarah Prince was convicted of violating a Massachusetts child labor law because she allowed her niece, nine-year-old Betty Simmons, to solicit for the Jehovah's Witnesses religion on public streets.[144] The law at issue prohibited boys under twelve and girls under eighteen from selling "merchandise of any description… in any street or public place."[145] Prince, as the guardian of Simmons, appealed her conviction to the Supreme Court, arguing that the Massachusetts law unconstitutionally infringed on her parental right to raise Simmons the way she saw fit.[146]

The Court recognized that there is a "private realm of family life which the state cannot enter."[147] However, the "family itself is not beyond regulation in the public interest."[148] The state can act as a "parens patriae"[149] to guard a youth's general well-being.[150] This includes

137. Troxel v. Granville, 530 U.S. 57, 65 (2000) (plurality opinion).

138. Meyer v. Nebraska, 262 U.S. 390, 400 (1923).

139. Robert Farrell, *An Excess of Methods: Identifying Implied Fundamental Rights in the Supreme Court*, 26 ST. LOUIS U. PUB. L. REV. 203, 216 (2007). While this is one of many ways the Supreme Court has found an implied fundamental right, this test has been used in previous parental rights cases. *See id.* at 216, 228.

140. Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary, 268 U.S. 510, 534 (1925).

141. *Id.* at 534–35.

142. *See* Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

143. Troxel v. Granville, 530 U.S. 57, 97 (2000) (Kennedy, J., dissenting).

144. *Prince*, 321 U.S. at 160.

145. *Id.* at 160–61.

146. *Id.* at 164. Prince also brought a claim under religious freedom, but that is not evaluated in this Note. *See id.*

147. *Id.* at 166.

148. *Id.*

149. "Parens patriae" refers to the principle that the state has a paternal and protective role over its citizens. *parens patriae*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/parens_patriae.

150. *Prince*, 321 U.S. at 166.

regulating, or even prohibiting, a child's labor.[151] The state's authority to control the activities of children is broader than its authority to control the actions of adults.[152] "[C]hild employment, more especially in public places," is one of the "evils" most appropriate for state action.[153] The Court ultimately affirmed Massachusetts's conclusion that the law was necessary to accomplish its legitimate objectives.[154]

D. Relevant Federal and State Laws

Federal and state legislation regulate certain aspects of kidfluencer accounts. The federal laws overviewed in this section are notable because they do not directly apply to kidfluencer accounts. Instead, states are left to regulate kidfluencer accounts. Much of the recent state legislation has been modeled on the financially protective Coogan Law.[155] As a result, most of the current state legislation focuses on the financial aspects of kidfluencer accounts.

1. Relevant Federal Laws

Three federal statutes are particularly relevant to this Note. The first two are the federal laws most often applied to social media: The Communications Decency Act and The Children's Online Privacy Protection Act.[156] The Communications Decency Act broadly shields platforms from liability for user-generated content,[157] while the Children's Online Privacy Protection Act is narrowly focused on regulating the collection of children's personal information.[158] The third statute discussed is the Fair Labor Standards Act, which is relevant because it exempts child actors and performers from its child labor protections.[159]

The Communications Decency Act of 1996 ("CDA")[160] regulates "the distribution of obscene content on the internet" and provides "certain protections to website operators and other online

151. *Id.*
152. *Id.* at 168.
153. *Id.*
154. *Id.* at 170.
155. April Rubin, *Classic Hollywood laws inspire shields for kids in multibillion influencer industry*, AXIOS (July 27, 2024), https://www.axios.com/2024/07/27/child-influencer-protections-illinois-minnesota (last visited March 31, 2026).
156. Hannah Hilst, *Social Media Privacy Laws*, FINDLAW (Apr. 10, 2024), https://www.findlaw.com/consumer/online-scams/social-media-privacy-laws.html (last visited March 31, 2026).
157. 47 U.S.C. § 230.
158. Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506.
159. Fair Labor Standards Act, 29 U.S.C. §§ 201–219.
160. Communications Decency Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996).

service providers."[161] Section 230 of the CDA[162] generally precludes interactive computer services and service providers from being held legally responsible for their decisions to "transmit or takedown user-generated content."[163] Section 230 defines an interactive computer service as "any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions."[164] Courts have interpreted this term to include social networking websites, such as Facebook, because they are services that provide information to multiple users by giving them access to information stored on the social networking website's servers.[165] Company officials also receive protection under Section 230(c)(1) as the provider of the interactive computer service.[166] Lawsuits that seek to hold a service or its provider liable for engaging in "a publisher's traditional editorial functions" are prohibited.[167] As a result, social media platforms receive immunity from suit when treated as publishers.[168]

In contrast, information content providers receive no immunity under Section 230.[169] An information content provider is defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service."[170] Those who create content, like social media users, are information content providers and receive no immunity from suit.[171] An entity can be both an interactive computer

161. THOMSON REUTERS, COMMUNICATIONS DECENCY ACT OF 1996 (CDA), THOMSON REUTERS PRAC. L. GLOSSARY, https://content.next.westlaw.com/Glossary/PracticalLaw/I0f9fea42ef0811e28578f7ccc38dcbee (last visited Dec. 27, 2025).

162. 47 U.S.C. § 230.

163. VALERIE C. BRANNON & ERIC N. HOLMES, CONG. RSCH. SERV., R46751, SECTION 230: AN OVERVIEW at Summary (2024).

164. 47 U.S.C. § 230(f)(2).

165. *E.g.,* Klayman v. Zuckerberg, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (explaining that when users browse Facebook's site and review the pages of other users they are gaining access to the information stored on Facebook's servers); O'Kroley v. Fastcase, Inc., 831 F.3d 352, 355 (6th Cir. 2016) (explaining that Google is "an entity that provides 'access by multiple users to a computer server'" and cannot be held liable for displaying content that is created entirely by third parties) (quoting 47 U.S.C. § 230(f)(2)).

166. *E.g., Klayman,* 753 F.3d at 1357–58.

167. Zeran v. Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997) (explaining that traditional editorial functions include things "such as deciding whether to publish, withdraw, postpone, or alter content").

168. *Id.* at 330; *see* 47 U.S.C. § 230(c)(1).

169. BRANNON & HOLMES, *supra* note 163, at 16; *see* 47 U.S.C. § 230(f)(3).

170. 47 U.S.C. § 230(f)(3).

171. *See* BRANNON & HOLMES, *supra* note 163, at 4.

service and an information content provider.[172] The critical question in determining when Section 230's immunity applies is "whether the service provider developed the content that is the basis for liability."[173]

Section 230's legal protections were designed to encourage the innovation of the internet by preventing companies from being inundated by lawsuits based on user-generated content.[174] However, this immunity is not all-encompassing.[175] Section 230 does not apply to suits under federal criminal law, intellectual property law, state laws that are consistent with Section 230, certain electronic communications privacy laws, and a few federal and state sex trafficking laws.[176] Aside from these exceptions, Section 230's immunity has been construed quite broadly, as illustrated in *Force v. Facebook*, but *Anderson v. TikTok*, a recent decision from the Third Circuit Court of Appeals, indicates that the extent to which this immunity is applicable may be changing.[177]

The Children's Online Privacy Protection Act ("COPPA")[178] sets forth certain guidelines that website owners must follow when collecting personal information about children under the age of thirteen.[179] Specifically, COPPA mandates that social media companies must receive consent from a child's parent before collecting any personal information about the child.[180]

The third law relevant to the regulation of kidfluencers is the Fair Labor Standards Act ("FLSA").[181] Most forms of child labor are regulated by the federal government under the FLSA.[182] The FLSA

172. *Id.*

173. *Id.*

174. Danielle Draper, *Section 230 – Are Online Platforms Publishers, Distributors, or Neither?*, BIPARTISAN POL'Y CTR. (Mar. 13, 2023), https://bipartisanpolicy.org/blog/section-230-online-platforms/ (last visited Dec. 27, 2025); *see* 47 U.S.C. § 230(b) ("It is the policy of the United States– (1) to promote the continued development of the Internet and other interactive computer services and other interactive media…").

175. *See* 47 U.S.C. § 230(e).

176. *Id.*

177. *Compare* Force v. Facebook, Inc., 934 F.3d 53, 70 (2d Cir. 2019) (holding that Facebook could not be held liable for their algorithm's recommendation of content encouraging the commission of terrorist attacks to users that would be interested in that content), *with* Anderson v. TikTok, Inc., 116 F.4th 180, 184 (3d Cir. 2024) (holding that TikTok could be held liable for their algorithm's recommendation of videos that encouraged a child to engage in a dangerous internet challenge).

178. Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506.

179. 15 U.S.C. § 6501(1); *Complying with COPPA: Frequently Asked Questions*, FED. TRADE COMM'N, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions [https://perma.cc/95SA-L2SS].

180. *See* 16 C.F.R. § 312.4 (2013). COPPA authorizes the FTC to enforce its provisions. 15 U.S.C. § 6501(3), 6502(b).

181. Fair Labor Standards Act of 1938, 29 U.S.C. § 201.

182. 29 U.S.C. § 203(l) (defining oppressive child labor); *Id*. § 212(c) (prohibiting oppressive child labor).

outlines the type of work children under the age of eighteen can perform and sets limits on the number of hours a child can work in one day.[183]

However, when written in 1938, Congress specifically exempted child actors and performers from the FLSA's provisions.[184] At the time, the child acting and entertainment industry was not seen as harmful.[185] Child actress Shirley Temple was also an exceptional morale booster—distracting the public from the harsh realities of the Great Depression.[186] Including child actors in the FLSA would hinder Temple's acting career, so Congress included a provision stating that the FLSA "shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions or in radio or television productions."[187] This exception was dubbed the "Shirley Temple Act."[188] Due to the Shirley Temple Act, regulation of the child entertainment industry was left to the states.[189] As a result, current regulation of influencer accounts exists only at the state level,[190] most of which was modeled after the Coogan Law.[191]

2. The Coogan Law

Enacted in 1939, California's Coogan Law[192] was named after famous child actor Jackie Coogan.[193] Coogan rose to fame as a toddler in the 1920s after starring in Charlie Chaplin's silent film, THE KID (Charlie Chaplin Productions 1921).[194] At the time, all compensation

183. Child Labor Regulations, Orders and Statements of Interpretation, 29 C.F.R. § 570.

184. Fair Labor Standards Act of 1938, Pub. L. No. 75-718, § 13, 52 Stat. 1060, 1068 (1938) (codified at 29 U.S.C. § 213(c)(3) (2018).

185. Andrea Y. Lim, Note, *Child's Play…or Is It?: Why Child Influencers Need Financial Protection Laws*, 20 OHIO ST. TECH. L.J. 406, 416 (2024).

186. *Id.*

187. Fair Labor Standards Act of 1938, Pub. L. No. 75-718, § 13, 52 Stat. 1060, 1068 (1938) (codified at 29 U.S.C. § 213(c)(3) (2018)). In 1949, radio and television productions were added to the list of exemptions. *See* Fair Labor Standards Act of 1938, Pub. L. No. 75-718 § 13 1060, 1068 (1949) (codified at 29 U.S.C. § 213(c)(3) (2018). Section 213(c)(3) now reads, "The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions." 29 U.S.C. § 213(c)(3) (2018).

188. Lim, *supra* note 185.

189. Joe Guerra, *Child Actor Labor Laws, Explained*, BACKSTAGE (Nov. 25, 2024), https://www.backstage.com/magazine/article/child-actor-laws-76778/ (last visited Dec. 27, 2025).

190. *See* Kanita Tariq, *Family vlogging and "kidfluencers" are big business. Can these new laws protect children from exploitation?*, ANALYSTNEWS (Oct. 4, 2024), https://www.analystnews.org/posts/family-vlogging-and-kidfluencers-are-big-business-can-these-new-laws-protect-children-from-exploitation [https://perma.cc/7Q5V-2KMY].

191. Rubin, *supra* note 155.

192. CAL. FAM. CODE §§ 6750–6753.

193. *Coogan Law*, SAG AFTRA, https://www.sagaftra.org/membership-benefits/young-performers/coogan-law (last visited Dec. 27, 2025).

194. *Id.*

earned by minors belonged to the parents under California law.[195] When he was twenty-three, Coogan learned that his mother and stepfather had squandered his fortune.[196] Coogan sued the pair and won.[197] The Coogan Law went into effect shortly after to protect other child actors from the same fate.[198]

The initial version of the Coogan Law was flawed and had various loopholes.[199] However, in 1999, a revised version of the law was passed,[200] which requires that a minimum of fifteen percent of a child entertainer's earnings go into a trust for the child to access upon turning eighteen.[201] Protections under the Coogan Law extend to child performers under contract, exemplifying to the Nation how to best safeguard the economic futures of minors in the entertainment industry.[202]

3. Current State-Level Regulation

The Coogan Law served as a model for Illinois's recent child influencer legislation.[203] In August of 2023, Illinois became the first state to pass a law that required adults "who use 'the likeness, name or photograph' of a minor in paid online content" to reserve in trust a portion of the earnings for the child to access later.[204] The law, which went into effect in July 2024, specifically states that children under the age of sixteen who appear in "at least 30 percent of a parent or caregiver's social media content over the course of 30 days" are entitled to a share of the revenue.[205] Compensation is calculated as fifty percent of the earnings of a piece of content, based on the percentage of time the

195. *Id.*
196. *Coogan Law*, *supra* note 193.
197. Safronova, *supra* note 5.
198. *Coogan Law*, *supra* note 193.
199. *Id.*
200. 1999 Cal. Stat. ch. 940 (S.B. 1162) (codified at CAL. FAM. CODE §§ 6750–6753).
201. 1999 Cal. Stat. ch. 940, sec. 7 (S.B. 1162) (codified at CAL. FAM. CODE § 6753(b)(1) (2000)).
202. Steve Padilla, California State Senator 18th District, *California Governor Signs Senator Padilla Bill Updating Financial Protections For Youth Content Creators*, Press Release to *Newsroom*, STEVE PADILLA (Sept. 26, 2024), https://sd18.senate.ca.gov/news/california-governor-signs-senator-padilla-bill-updating-financial-protections-youth-content [https://perma.cc/2TPB-DTUU].
203. Samantha Murphy Kelly, *Illinois passes a law that requires parents to compensate child influencers*, CNN: BUS. (Aug. 16, 2023, 11:51 AM), https://www.cnn.com/2023/08/16/tech/kid-influencer-law/index.html (last visited March 31, 2026).
204. Pub. Act 103-556, 2023 Ill. Laws (codified as amended at 820 ILL. COMP. STAT. 205/0.5, /2.6, /9, /12.6) (repealed 2025).
205. 820 ILL. COMP. STAT. ANN. 206/95 (2024).

child is featured in the video.[206] This compensation must be put in a trust, which the minor can access when they turn eighteen.[207] The law provides a private right of action to child influencers whose parents fail to properly compensate them for their work.[208]

Soon after Illinois passed its law, Minnesota became the second state to enact legislation that protects child influencers and their earnings.[209] However, Minnesota's law takes a different approach. This law prohibits children under fourteen years old from working in content creation entirely.[210] If children under the age of fourteen are featured in content, they must receive 100% of the proceeds.[211] Once these children turn eighteen, they can request that content featuring them as a minor be deleted.[212]

California became the third state to enact a law requiring parents to save their children's earnings.[213] On September 26, 2024, California Governor Gavin Newsom signed two bills regarding child influencers' earnings into law.[214] AB 1880 expands the Coogan Law to include minors employed as content creators on online platforms.[215] Content creator is defined as an "individual who creates, posts, shares, or otherwise interacts with digital content on an online platform and engages in a direct contractual relationship with third parties."[216] This definition also explicitly includes vloggers, podcasters, social media influencers, and streamers.[217]

However, as the Coogan Law only applies when child performers are under contract, not all kidfluencers are guaranteed protection.[218] That is where SB 764, also known as the Content Creator Rights Act,[219] comes in. The Content Creator Rights Act mandates that minors who are engaged in the work of vlogging[220] must receive a

206. 820 ILL. COMP. STAT. ANN. 206/100(a)(1) (2024). For example, if a child is in fifty percent of a video, they should receive twenty-five percent of the funds from the video. Murphy Kelly, *supra* note 203.

207. 820 ILL. COMP. STAT. ANN. 206/100(b)(3) (2024).

208. 820 ILL. COMP. STAT. ANN. 206/100(c) (2024).

209. Act of May 15, 2024, ch. 103, 2024 Minn. Laws (codified at MINN. STAT. §§ 181A.03, 181A.13).

210. MINN. STAT. § 181A.13 subd.1 (b) (effective July 1, 2025).

211. *Id*.

212. *Id*. subd. 5.

213. Kindelan, *supra* note 7.

214. *Id.*

215. 2024 Cal. Stat. ch. 610 (A.B. 1880) (amending CAL. FAM. CODE § 6750).

216. CAL. FAM. CODE § 6750(c)(1).

217. *Id.*

218. *See* CAL. FAM. CODE §§ 6750, 6753.

219. 2024 Cal. Stat. ch. 611 (S.B. 764) (codified at CAL. FAM. CODE §§ 6650-6656).

220. A minor is considered engaged in the work of vlogging when, during a given month, (1) the minor's likeness, name, or photograph appears in at least thirty percent of the vlogger's

portion of the earnings from that content that is either proportional to their appearance if they are the only minor or split equally with other qualifying minors if more than one appears.[221] These earnings must be held in a trust account for the child to access upon turning eighteen.[222] Minors do not need to be under contract for the Act to apply.[223] Both the expansion of the Coogan Law and the Content Creator Rights Act went into effect on January 1, 2025.[224]

Most recently, in March of 2025, Utah passed its child influencer legislation.[225] This law requires parents who make at least $150,000 per calendar year from social media[226] and feature their children in monetized or sponsored social media content[227] to maintain records of the content[228] and set aside a certain percentage of the earnings for the children to access upon turning eighteen.[229] At the age of eighteen, the individual can also request that content featuring them as a minor be deleted.[230] At least five other states—Maryland, Georgia, Missouri, Ohio, and Arizona—have introduced similar legislation.[231]

III. IDENTIFICATION OF THE LEGAL PROBLEM

Kidfluencer accounts can be a great way for parents to connect with their children. They can unlock access to exciting opportunities. They can also be quite lucrative. All these potential benefits should not be entirely discounted. But not all kidfluencer accounts are created equally, and neither are all parents. As demonstrated by the parents of Ryan Kaji and Wren Eleanor, the nature of these accounts varies significantly based on the content posted.[232] Even the most innocent

compensated content, measured by the amount of time or narrative focus devoted to the minor; (2) the content either meets the platform's threshold for compensation or earns at least ten cents per view; and (3) the vlogger earns at least $1250 from image or video content that month. CAL. FAM. CODE § 6651.

221. CAL. FAM. CODE § 6653(a).

222. CAL. FAM. CODE § 6653.

223. *See* CAL. FAM. CODE §§ 6651, 6653.

224. *See* CAL. FAM. CODE § 6750 (effective January 1, 2025); CAL. FAM. CODE §§ 6650-6656 (effective January 1, 2025).

225. UTAH CODE ANN. §§ 34-23-501–504 (effective May 7, 2025) (Westlaw).

226. UTAH CODE ANN. § 34-23-501(14)(b).

227. *See id.*

228. UTAH CODE ANN. § 34-23-503(1)(Westlaw).

229. UTAH CODE ANN. §§ 34-23-503(3)(c), 34-23-503(5) (Westlaw).

230. UTAH CODE ANN. § 34-23-504 (Westlaw).

231. Fortesa Latifi, *These States Are Trying to Require Influencer Parents to Pay Their Kids*, TEEN VOGUE (Feb. 1, 2024), https://www.teenvogue.com/story/these-states-are-trying-to-require-influencer-parents-to-pay-their-kids; *see generally*, H.B. 1453, 2025 Reg. Sess. (Md. 2025); H.B. 968, 2023-24 Reg. Sess. (Ga. 2024); H.B. 1998, 102d Gen. Assemb., 2d Reg. Sess., (Mo. 2025); H.B. 376, 135th Gen. Assemb., Reg. Sess., (Ohio 2024); H.B. 2565, 2024 Reg. Sess. (Ariz. 2024).

232. *See supra* Section II.A.

forms of sharenting can lead to identity theft, bullying, and harassment.[233] More consistent and intentional sharenting can open children up to predatory interactions and severe mental health issues.[234]

Current legislation that attempts to regulate kidfluencer accounts is minimal and fragmented.[235] Regulating kidfluencer accounts inherently intersects with the delicate issues of free speech and parental rights.[236] Regulators must take caution so as not to impose unconstitutional burdens on the influencer's free speech rights. Additionally, the extent to which regulation can infringe on a parent's right to control the upbringing of her child is undefined.

At the federal level, laws that regulate social media and child labor do very little to oversee children employed as influencers.[237] In fact, it could be argued that Section 230 of the CDA disincentivizes social media platforms from interfering with child influencer accounts.[238] Whether social media platforms can be held accountable for their interactions with and promotion of content on their sites remains highly contested.

Finally, only a handful of states protect the earnings of kidfluencers.[239] More states are looking to enact kidfluencer legislation, but these protections are mainly financial.[240] While paying kidfluencers for their labor is an important step forward, working for these accounts is still labor. As the FLSA has left the regulation of child entertainment to the states,[241] it is unclear which labor laws apply to kidfluencers.

IV. ANALYSIS

Regulating child influencer accounts presents a complex legal challenge. Any potential solution must grapple with the risk of infringing upon free speech, the limits of parental authority, and the broad immunity granted to platforms under Section 230. Additionally, the gaps in existing child entertainment labor laws at the state level reveal how current protections fail to address the realities of social media fame, particularly in California.

233. *See* Limbong, *supra* note 79.
234. CLEVELAND CLINIC, *supra* note 67; *see also* Greenspan, *supra* note 8.
235. *See supra* Section II.D.
236. *See supra* Section II.C.
237. *See supra* Section II.D.1.
238. *Id.*
239. *See supra* Section II.D.3.
240. Latifi, *supra* note 231.
241. Guerra, *supra* note 189.

A. The Difficulties of Regulating Speech

Legislators hoping to regulate child influencer accounts must take care to avoid restricting speech.[242] Structuring kidfluencer regulation as a labor law is the strongest way to control these accounts without implicating the First Amendment. Minnesota's child influencer law, which bans children under the age of fourteen from being employed in content creation,[243] resembles a child labor law.[244] The law does not regulate speech; it regulates the employment and payment of child influencers.[245] As Dean William McGeveran,[246] an expert in the field, explained, kids under thirteen "can't work in the ice cream shop and they can't work in their parents' content creation either. That's the way the law looks at it."[247] By framing kidfluencer regulation as laws governing conduct rather than content, the government can likely avoid infringing on free speech altogether. Any challenge to the law would be reviewed to simply determine whether the law is rationally related to a legitimate government interest.[248]

In contrast, if governmental action addressing these accounts does limit expression protected under the First Amendment, the Court will have to determine whether the law operates as a restriction on commercial speech or if it extends beyond that.[249] If the regulation only applies when child influencers propose commercial transactions, like advertisements or sponsored posts, it could be considered a commercial speech regulation and be evaluated under intermediate scrutiny.[250]

However, the Supreme Court may take issue with a law that singles out the commercial speech of child influencer accounts specifically, rather than regulating the commercial speech of all social media influencers. As the Court explained in *Sorrell v. IMS Health, Inc.*, laws that disfavor specific speakers' commercial speech operate as

242. *See supra* Section II.C.1.

243. MINN. STAT. § 181A.13 subd.1(b) (effective July 1, 2025).

244. Caroline Cummings, *New Minnesota law gets guardrails for children of content creators featured in monetized videos*, CBS NEWS (July 2, 2025, 9:27 PM), https://www.cbsnews.com/minnesota/news/minnesota-law-children-content-creators-monetized-videos-guards/ [https://perma.cc/37FB-JALN].

245. *Id.*

246. Professor William McGeveran is the Associate Dean for Academic Affairs at the University of Minnesota Law School. William McGeveran, ELEC. PRIV. INFO. CTR., https://epic.org/people/william-mcgeveran/ (last visited Dec. 27, 2025). He specializes in communications and technology, free speech, and data privacy. *Id.*

247. Cummings, *supra* note 244.

248. This is the test used when a regulation is evaluated under rational basis review. *See* Snider, *supra* note 105.

249. *See supra* Section II.C.1.b.

250. *See supra* Section II.C.1.b.

content-based restrictions, warranting heightened judicial scrutiny.[251] It is unclear whether these regulations would be evaluated under strict scrutiny or some other form of scrutiny higher than the intermediate scrutiny traditionally applied to commercial speech regulations.[252] In either case, regulations that specifically address child influencers' commercial speech face a high barrier to constitutionality.

If child influencer legislation extends beyond commercial speech alone and restricts protected expression in a facially content-based manner, it would be subject to strict scrutiny. While the Supreme Court has recognized that the mental and physiological health of children is a compelling government interest,[253] the government would still need to demonstrate that the legislation is not over-inclusive, under-inclusive, and that there is no less restrictive alternative that could achieve the government's purpose.[254] It is likely that the government would not be able to meet this extremely high burden.

B. Potential Infringement on Parental Rights

Most parents want what is best for their child. However, the word "best" is subjective, and parents are faced with competing interests upon entering the influencing world. In many cases, the kidfluencer's parent is also their manager.[255] As advocates for more regulation have pointed out, there is "another layer of difficulty" when your parents are your boss.[256] Some parents of child influencers may take offense to the notion that they would ever intentionally act in a way that harms their

251. Sorrell v. IMS Health, Inc., 564 U.S. 552, 565–66 (2011); *see also* KILLION, *supra* note 95, at 9 ("The Supreme Court has suggested that a law that singles out particular commercial speech and speakers for disfavored treatment may warrant 'heighted judicial scrutiny' based on the broader principle that the government cannot restrict speech because of disagreement with the message it conveys.").

252. KILLION, *supra* note 95, at 6 n.85.

253. Sable Commc'ns of California, Inc. v. F.C.C., 492 U.S. 115, 118–19, 126 (1989) (recognizing that the government has a compelling interest in protecting children's mental and physiological health and agreeing with the state that shielding children from exposure to "dial-a-porn" (sexually oriented prerecorded telephone messages) serves this interest, but holding that an outright ban of dial-a-porn phone calls was not narrowly tailored to serve that interest).

254. KILLION, *supra* note 95, at 6.

255. Mooney, *supra* note 35.

256. Quinn-Kong, *supra* note 1.

child.[257] This is understandable. But even seemingly innocuous decisions can have unintended consequences.[258]

Some parents are unaware of the negative repercussions of kidfluencer accounts until they begin to experience them firsthand.[259] For example, a New York Times study indicates that kidfluencer accounts, especially those of young girls, have relatively high adult male followings.[260] After analyzing the Instagram accounts of 5,000 young girls, the Times found that, on average, men accounted for thirty-five percent of the girls' followers.[261] This percentage increased as the number of followers increased.[262] Many girls who had an account with more than 100,000 followers had a male audience of over seventy-five percent.[263] These followers are a double-edged sword for parents managing a child's account. While larger audiences may bring more brand sponsorships and increased visibility on Instagram's platform, they also heighten the risk of exposing children to predatory behavior.[264]

On the other hand, recent events demonstrate that some parents have no bounds when it comes to their accounts. Machelle Hobson's actions relating to her YouTube channel "Fantastic Adventures" are an extreme example of the lengths parents will go to in furtherance of content creation.[265] Hobson was charged with abusing five of her seven adopted children.[266] For years, the children, ages six to fifteen, had not been in school so their mom could keep filming content.[267] The children were beaten, pepper-sprayed, molested, and starved if they did not recall their lines or participate in the videos as directed.[268]

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257. Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), https://www.hollywoodreporter.com/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968/ ("Among influencers' parents who are aware of the Coogan Law, Henry says many feel it's fundamentally anti-parent."). Anne Henry is a co-founder of BizParentz, a nonprofit that advocates for children in entertainment. *Id.*

258. CLEVELAND CLINIC, *supra* note 67.

259. *See* Latifi, *supra* note 72 (describing one father's realization that constantly posting his children online blurred the boundary between "their online selves and their actual selves," opened his children up to criticism on social media, and resulted in digital footprints that will follow his children as they get older).

260. Valentino-DeVries & Keller, *supra* note 18.

261. *Id.*

262. *Id.*

263. *Id.*

264. *See id.*

265. Julia Carrie Wong, *'It's not play if you're making money': how Instagram and YouTube disrupted child labor laws*, GUARDIAN (Apr. 24, 2019, 1:00 PM) https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws [https://perma.cc/TL7M-ZPAA].

266. *Id.*

267. *Id.*

268. *Id.*

It goes without saying that the two situations described above are extremely different. A parent's decision to continue running an account for her young daughter, despite clear evidence that it attracts an inappropriate audience, should not be conflated with physically abusing a child to continue content creation. But these situations raise the question of when a parent's decision to post their child online allows state intervention. Can the state intervene only when parents engage in acts like those of Machelle Hobson? Or can the state take a more proactive role in regulating online content to prevent a parent from opening her child up to predatory viewership? The answer to this question is unclear.

While the Supreme Court has established specific rights relating to parents and their children as fundamental,[269] the contours of this right are not fully defined. *Prince v. Massachusetts* illustrates that the need to protect children from exploitation justifies upholding laws that prohibit child labor, even when the work is being directed by the child's parents.[270] However, there is very little guidance beyond this case that indicates when courts would find that a statute regulating kidfluencers unconstitutionally infringes on parental rights.

The threshold question for any judicial review of this kind would be whether the law infringed on a fundamental right.[271] This test is highly malleable because courts can determine the level of generality with which they define the right.[272]

If the right at issue is defined very specifically as *the right of parents to post their children in monetized social media content*, it is unlikely that the court would deem this interest to be a fundamental right.[273] After all, how can there be a history and tradition of posting children on social media when most platforms are inventions of the 21st

269. *See supra* Section II.C.2.

270. Prince v. Massachusetts, 321 U.S. 158, 169 (1944).

271. CHEMERINSKY, *supra* note 125, at 796. This is based on the assumption that the law was claimed to violate the Due Process Clause of the Fourteenth Amendment.

272. Cary Franklin, *History and Tradition's Equality Problem*, 133 YALE L.J. 946, 949 (2024). "At a sufficiently general level of abstraction, any liberty can be justified as consistent with the nation's traditions. At a very specific level of abstraction, few nontextual rights would be justified." CHEMERINSKY, *supra* note 125, at 798. For example, when describing the right to use contraception at a high level of generality, it could be framed as *the tradition of protecting bodily autonomy and decisions regarding parenthood*; however, if the same right is described narrowly, it could be framed very specifically as *the right to use birth control pills*. Franklin, *supra* at 949.

273. *See* CHEMERINSKY, *supra* note 125, at 798.

century? Subsequently, the law would be subject to rational basis review.[274] This test is satisfied quite easily.[275]

In contrast, if the court defined the right generally as *the right of a parent to raise her child in the way she saw fit*, then it likely would be deemed fundamental.[276] As a fundamental right, the law at issue would be subject to strict scrutiny.[277] Strict scrutiny is the highest level of scrutiny applied by courts and is not easily satisfied.[278]

Throughout this framework, there are two prominent themes. First, the tests used in constitutional challenges are highly fact-specific.[279] Second, the outcome of a challenge is influenced by the interpretive methodologies[280] of the judicial officers who review the challenge.[281] That is why it is unclear whether regulation would be found to infringe on parental rights. The answer would depend on what the law specifically prevents, whether the court uses a general or specific definition of the right at stake, and what interests the state wants to achieve.

C. The Effect of Section 230 on Social Media Platforms

Section 230 of the CDA partially immunizes social media platforms from liability based on the content posted by private users.[282] Section 230(c)(1) states that "[n]o 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."[283] Early interpretations of Section 230(c)(1) found that courts are precluded

274. *See* Michael H. v. Gerald D., 491 U.S. 110, 131 (1989) (applying rational basis review after determining that the interest at stake was not a fundamental right).

275. Snider, *supra* note 105 (rational basis is highly deferential to the government).

276. *See* Troxel v. Granville, 530 U.S. 57, 65–66 (2000).

277. Snider, *supra* note 105.

278. *Id.*

279. *See e.g., Michael H.*, 491 U.S. 141, 142 (Brennan, J., dissenting) (criticizing the majority's methodology in using historical traditions specifically relating to the rights of an adulterous biological father, rather than examining more broadly whether parenthood has traditionally been recognized and protected as a fundamental right).

280. Supreme Court Justices use a variety of methods to aid them in interpreting the text of the Constitution. BRANDON J. MURRILL, CONG. RSCH. SERV., R45129, MODES OF CONSTITUTIONAL INTERPRETATION 2 (2018), https://www.congress.gov/crs-product/R45129. These methods of interpretation help them figure out the particular meaning of a provision within the Constitution. *Id.* A few commonly used methods are textualism, original meaning, judicial precedent, pragmatism, moral reasoning, national identity, structuralism, and historical practices. *Id.* at 3.

281. MURRILL, *supra* note 280, at 3 (describing how the key methods of constitutional interpretation guide the Justices in their decision making and influence constitutional dialogue more generally).

282. 47 U.S.C. § 230.

283. 47 U.S.C. § 230(c)(1).

"from entertaining claims that would place a computer service provider in a publisher's role."[284] This is referred to as publisher immunity.[285]

Courts across the country are in general agreement that Section 230(c)(1) should be "construed broadly in favor of immunity."[286] This broad construction is exemplified in *Force v. Facebook, Inc.*, where the Second Circuit came to two major conclusions regarding Section 230(c)(1).[287] The court first concluded that a social media platform is still a publisher of third-party information even "when it uses tools such as algorithms that are designed to match that information with a consumer's interests."[288] As long as the third party "willingly provides the essential published content," the interactive computer service provider receives full immunity, regardless of any editorial or selection algorithms.[289] Second, the court held that "[m]erely arranging and displaying" content is not enough to hold a social media platform responsible as the creator of that content.[290] The platform's design of recommending content to users based on perceived interests did not describe "anything more than [the platform] vigorously fulfilling its role as a publisher."[291]

Force v. Facebook illustrates the insulative nature of Section 230 immunity. Platforms are not just relieved of any duty to take down harmful content; they are also protected from most lawsuits based on their interaction with or circulation of harmful content. This broad construction of immunity has allowed social media companies to profit from exploitative behavior on their platforms. There is no strong incentive to prevent potentially harmful content, like parent-run kidfluencer accounts, because these accounts have high revenue potential and low-risk liability. Platforms are not even motivated by their own economic self-interest to police content because, as it turns out, providing socially harmful content poses little harm to public image or brand name.[292]

This lack of accountability has started to receive pushback on both the legislative and judicial fronts. Former Congressman and co-author of Section 230, Christopher Cox, has called for Section 230 to be

284. Zeran v. Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997).
285. *See* BRANNON & HOLMES, *supra* note 163, at 12.
286. Force v. Facebook, Inc., 934 F. 3d 53, 64 (2d Cir. 2019).
287. *Id.* at 65–70.
288. *Id.* at 64.
289. *Id.* at 67.
290. *Id.* at 70.
291. *Id.*
292. Michael D. Smith & Marshall W. Van Alstyne, *It's Time to Update Section 230*, HARV. BUS. REV.: GOV'T POL'Y & REGUL. (Aug. 12, 2021), https://hbr.org/2021/08/its-time-to-update-section-230 (last visited March 31, 2026).

rewritten.[293] As he explained, "[T]he original purpose of this law was to help clean up the Internet, not to facilitate people doing bad things."[294] In the 116th, 117th, and 118th sessions of Congress, dozens of proposals to amend Section 230 were introduced.[295] Among these proposals were bills that aimed to incentivize sites to take down harmful content by limiting immunity for hosting third-party content.[296] But these proposals have yet to result in legislative amendments.[297]

There have been developments, however, on the judicial front. In 2024, the Supreme Court ruled in the case of *Moody v. NetChoice, LLC*.[298] The Supreme Court was confronted with the issue of whether the First Amendment protects the editorial decisions of large online platforms.[299] The Court held that entities that exercise "editorial discretion in the selection and presentation" of content are engaging in speech activity.[300] This applies even when the content comes from third parties.[301] As the court explained, "[d]eciding on the third-party speech that will be included in or excluded from a compilation—and then organizing and presenting the included items—is expressive activity of its own," which results in a "distinctive expressive product."[302]

Just a few months later, in the case *Anderson v. TikTok*, the Third Circuit Court of Appeals relied on *Moody*'s Free Speech precedent to conclude that TikTok was not entitled to Section 230 immunity based on its algorithm's recommendations of harmful content to a young girl.[303] Applying the Supreme Court's reasoning, the *Anderson* court found that TikTok's algorithm, which decides whether certain posts should be included or excluded from content presented on a user's unique feed, is

293. Alina Selyukh, *Section 230: A Key Legal Shield For Facebook, Google Is About To Change*, NPR (Mar. 21, 2018, 5:11 AM), https://www.npr.org/sections/alltechconsidered/2018/03/21/591622450/section-230-a-key-legal-shield-for-facebook-google-is-about-to-change (last visited March 31, 2026).

294. *Id.*

295. PETER J. BENSON & VALERIE C. BRANNON, CONG. RSCH. SERV., IF12584, SECTION 230: A BRIEF OVERVIEW (2024), https://crsreports.congress.gov/product/pdf/IF/IF12584.

296. *Id.*

297. *Id.*

298. *See* Moody v. NetChoice, LLC, 603 U.S. 707 (2024).

299. *Id.* at 717.

300. *Id.* at 731.

301. *Id.*

302. *Id.*

303. Anderson v. TikTok, Inc., 116 F.4th 180, 184 (3d Cir. 2024); Tom McBrien, *In Anderson v. TikTok, the Third Circuit Applies Questionable First Amendment Reasoning to Arrive at the Correct Section 230 Outcome*, ELEC. PRIV. INFO. CTR. (Oct. 10, 2024), https://epic.org/in-anderson-v-tiktok-the-third-circuit-applies-questionable-first-amendment-reasoning-to-arrive-at-the-correct-section-230-outcome/ (last visited March 31, 2026).

first-party speech.[304] As such, this algorithm falls outside of Section 230(c)(1) immunity.[305]

In this case, plaintiff Tawainna Anderson sued TikTok after her ten-year-old daughter, Nylah, accidentally hung herself when attempting to participate in the "Blackout Challenge," a viral trend that encouraged viewers to "record themselves engaging in acts of self-asphyxiation."[306] Nylah had seen the challenge on her TikTok "For You Page" ("FYP") and attempted to do the challenge by herself, resulting in tragedy.[307] Anderson sued TikTok, asserting claims of strict product liability and negligence, among other things.[308] She claimed that TikTok was aware of the Blackout Challenge and "recommended and promoted Blackout Challenge videos to minors' FYPs through its algorithm, including at least one such video to Nylah's FYP, which resulted in her death."[309] The district court dismissed the complaint, finding that Section 230 of the CDA immunized TikTok from liability.[310] However, the appellate court reversed, using *Moody*'s precedent to find that TikTok engaged in its own "expressive activity" when it recommended that video to Nylah.[311] As Section 230 only immunizes information provided by another, Anderson's claims were not barred.[312]

The holding in *Anderson v. TikTok* could have a massive impact on the future of Section 230 immunity. If other courts begin to recognize this argument, social media platforms may no longer experience the broad construction of immunity that they have been accustomed to. However, allowing courts to determine the applicability of Section 230 regarding novel forms of content, such as algorithms, results in inconsistencies. District courts in the Second Circuit are still bound by the decision in *Force*,[313] while courts within the Third Circuit can now rely on *Anderson* to limit the applicability of Section 230.[314] For those hoping to rein in the lawless world of social media, this inconsistent application of the law dilutes any benefits that can be gained from holding platforms accountable.

304. *See Anderson*, 116 F.4th at 184.
305. *Id.*
306. *Id.* at 181.
307. *Id.*
308. *Id.* at 182.
309. *Id.*
310. *Anderson*, 116 F.4th at 182.
311. *Id.* at 184.
312. *Id.*
313. *See* Force v. Facebook, Inc., 934 F.3d 53 (2d Cir. 2019).
314. *See Anderson*, 116 F.4th at 184.

D. The Lack of Labor Laws

Currently, only four states—Illinois, Minnesota, California, and Utah—have laws in place to protect child influencers and their earnings.[315] The specific protections and requirements of each law vary, demonstrating the spectrum of approaches that states are taking to protect child influencers.[316] However, most of these laws only address the financial issues that child influencers face.[317] Many important labor concerns are left unresolved.

Attempting to implement labor laws for kidfluencers is a unique challenge. Traditional forms of media, like film and television, must comply with strict schedules and studio oversight.[318] Digital content, on the other hand, can be filmed at any time and place.[319] The flexible nature of content creation makes it difficult to determine what counts as work and what counts as "fun." Some parents of child influencers maintain that there is no need for more regulation in the field, as these accounts are not labor.[320] Instead, those parents characterize kidfluencer accounts as a "family endeavor."[321] Other parents have stressed that their children only need to create content when they want to… "[u]nless it's paid work. Then they have to be there."[322] However, this is the problem. As former child star Sheila James Kuehl has explained, "It is not play if you're making money off it."[323]

Leaving states to regulate the labor of child entertainers has resulted in a hodgepodge of laws that range from completely nonexistent to extremely comprehensive. As of November 2024, seventeen states have no regulation for child entertainers at all.[324] This is starkly contrasted by California's stringent child entertainment laws, which prohibit minors employed in the entertainment industry from working more than eight hours in a twenty-four-hour day or more than forty-eight hours in one week.[325] Minors under the age of sixteen are also required to obtain a permit for employment in the entertainment industry in a variety of enumerated circumstances.[326] The Division of Labor

315. *See supra* Section II.D.3.
316. *See supra* Section II.D.3.
317. *See supra* Section II.D.3.
318. Lambert, *supra* note 257.
319. *Id.*
320. Mooney, *supra* note 35.
321. *Id.*
322. Wong, *supra* note 265 (quoting a mother of three Instagram-famous boys, who then added, "We always have lollipops on those days.").
323. *Id.*
324. *See* Guerra, *supra* note 189.
325. CAL. LAB. CODE § 1308.7.
326. *See id.* § 1308.5.

Standards Enforcement, also known as the Labor Commissioner's Office,[327] enforces these laws.[328] However, even these laws, the strongest in the country, are not regularly applied to kidfluencers,[329] but not for lack of trying.

In 2018, California lawmaker Kansen Chu introduced a bill that would add the "employment of a minor in social media advertising" to the types of employment that require a permit.[330] In effect, this bill would have required any child under the age of sixteen to obtain a work permit before engaging in any social media advertising.[331] However, the version of the bill that was signed into law contained an exception that exempted minors in digital exhibitions[332] whose performances were unpaid, shorter than an hour, and for which no admission fee to view the performance was charged.[333] This "digital exhibitions" exception rendered the law toothless, as most social media content is under an hour by platform design, and, at the time, no law required minors to be compensated for social media employment.[334]

Now that California requires that minors be paid for their part in content creation through AB 1880 and the Content Creator Rights Act, this exception may no longer apply.[335] As it appears that the statute was written in the conjunctive, there is a strong argument that the exception applies only when a minor is unpaid, performing for less than an hour, *and* not charging an admission fee for viewers.[336] By mandating that kidfluencers be compensated for their work, the California legislature may have eliminated the "digital exhibitions" exemption, since the first requirement is no longer met. For those who want to challenge the "digital exhibitions" exception, this argument could prove useful. However, it is too soon to tell.

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327. CALIFORNIA DIVISION OF LABOR STANDARDS ENFORCEMENT (DLSE), PRAC. L. GLOSSARY, https://next.westlaw.com/Glossary/PracticalLaw/I490f9d813ad711e9adfea82903531a62 (last visited March 31, 2026).

328. CAL. LAB. CODE § 1311.

329. Wong, *supra* note 265.

330. A.B. 2388, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (as introduced Feb. 14, 2018).

331. *Id.*

332. The statute does not define "digital exhibitions." *See* A.B. 2388, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (as enacted).

333. Lambert, *supra* note 257. *See* CAL. LAB. CODE § 1310(c).

334. *See* Lambert, *supra* note 257.

335. *See supra* Section II.D.3.

336. *See* CAL. LAB. CODE § 1310(c) ("This chapter . . . do[es] not prohibit or prevent any of the following: The appearance of any minor in any radio or television broadcasting or digital exhibition, if the minor does not receive compensation directly or indirectly therefor, the engagement of the minor is limited to a single appearance lasting not more than one hour, *and* an admission fee is not charged for the radio or television broadcasting or digital exhibition.") (emphasis added).

California's new child influencer protections went into effect on January 1, 2025.[337] Unless legislation is enacted that clarifies the applicability of the "digital exhibitions" exception, considering the new compensation laws, this argument would need to make its way through the court system. Over time, this may be seen as a loophole that requires kidfluencers who are paid for their work to obtain work permits—but only if they live in California.

V. PROPOSAL

The foregoing analysis makes one thing abundantly clear: there is not one singular solution that can address the dangers that face child influencers. Adequate regulation must cover everything from parental rights to platform immunity, plus all the moving parts in between. This section will propose a three-pronged approach to implement stronger protections for kidfluencers at both the federal and state levels. First, Congress should enact federal legislation that prevents adults from posting a child in monetized social media content until the child is thirteen years old. Second, Congress should amend Section 230 immunity to include a carve-out that imposes liability on platforms that knowingly host and promote content that violates the law proposed above. Finally, at the state level, California should implement stronger labor laws to protect minors aged thirteen and older who are employed as social media content creators.

A. Enact a Federal Ban on Posting Children Under Thirteen in Monetized Content

The unique nature of kidfluencer accounts requires a unique solution. The flexibility of content creation makes it difficult for government actors to implement and enforce regulations.[338] Moreover, leaving regulation of these accounts to the states would result in drastic differences, as seen with current state-level child entertainment laws.[339] The pervasive nature of the internet requires broader regulation that protects all children in America equally[340]—regardless of which state a child lives in when content is shared. To address these concerns, this Note proposes a federal labor law that prevents adults from employing

337. *See* CAL. FAM. CODE § 6750(c)(1); *id.* § 6653.

338. Zoha Qamar, *Why 'Kidfluencers' Have So Few Protections – Even As Americans Support Regulating The Industry*, ABC NEWS: FIVETHIRTYEIGHT (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/72RZ-FGRY].

339. *See supra* Sections II.D.3, Section III.D.

340. *See* Tariq, *supra* note 190 (As Chris McCarty, founder of the advocacy group Quit Clicking Kids, explains, "Federal laws are essential to provide equal protections.").

children younger than thirteen as content creators and prohibits children under the age of thirteen from appearing in monetized content. This law aims to disincentivize parents from wanting to create kidfluencer accounts while minimizing any constitutional concerns.

As explained above, child influencer accounts can be extremely lucrative.[341] Parents are commonly the managers of their children and control the content posted.[342] The potential to create a successful account that could support the entire family for years provides an incentive for parents to push their children into unsafe circumstances. Concerns about exploitation and grooming issues related to content featuring young girls and their parents led the Minnesota legislature to conclude that children under fourteen should not be allowed to work as content creators.[343] Minnesota lawmakers believed that there was no more narrowly tailored approach that could still address the dark side of content creation.[344]

This Note's proposed federal law emulates Minnesota's ban, except that the prohibition on employing children in monetized content ends when the child turns thirteen, rather than when the child turns fourteen. Setting thirteen as the threshold for featuring children in monetized content aligns with the age at which online service providers no longer need parental consent before collecting children's information under COPPA.[345] This uniform age threshold simplifies the compliance process, especially given that most social media platforms already prevent children under thirteen from creating their own accounts.[346] This law should be enforced by the Wage and Hour Division of the U.S. Department of Labor[347] and provide minors a private right of action to recover earnings made from the use of their image in violation of its provisions.

Removing the financial incentive from kidfluencer accounts aims to reduce the number of children pursuing careers as kidfluencers and discourages parents from exploiting their children online. Under this

341. *See supra* Section II.A.

342. Mooney, *supra* note 35.

343. Peter Callaghan, *Minnesota lawmakers: No more making money from online videos of kids. Period.*, MINNPOST (Mar. 20, 2024), https://www.minnpost.com/state-government/2024/03/minnesota-lawmakers-no-more-making-money-off-family-vlogs-child-influencers/ [https://perma.cc/R4WS-A9PM].

344. *Id.* (quoting Rep. Zack Stephenson of the Minnesota House of Representatives).

345. *See* 16 C.F.R. § 312.2 (2013) (defining a child as an individual under the age of 13).

346. *See supra* Section II.A.

347. This is the same organization that enforces the FLSA. *See Fact Sheet #43: Child Labor Provisions of the Fair Labor Standards Act (FLSA) for Nonagricultural Occupations*, U.S. DEP'T OF LAB.: WAGE & HOUR DIV., https://www.dol.gov/agencies/whd/fact-sheets/43-child-labor-non-agriculture/ [https://perma.cc/6DJ7-HQNT] ("Investigators of the Wage and Hour Division who are stationed across the U.S. enforce the youth employment provisions of the FLSA.").

new law, kidfluencing is no longer a profession that children under thirteen, or their parents, can profit from. Parents may think twice before posting certain information online because they cannot profit from using their children's private lives as public entertainment. This results in many children having smaller digital footprints, decreasing the risk of exploitation and other privacy-related issues.

This proposed federal law balances the critical need to safeguard children from social media exploitation with the correspondingly important goals of preserving freedom of speech and parental control.[348] It is designed to avoid burdening the First Amendment by regulating labor, not speech. Additionally, it limits infringement on a parent's right to control the upbringing of their child by following the judicially recognized principle that the government can prohibit child labor to guard a youth's general well-being.[349] Any First Amendment challenge brought in court will likely be analyzed under rational basis review because this law does not regulate expressive conduct.[350] It is extremely likely to survive this lenient standard because it is rationally related to the legitimate government interest of protecting children's mental and physiological health from the adverse effects of social media overexposure at such a young age.

This law is also likely to survive any challenge alleging infringement on parental rights, even if analyzed under strict scrutiny. The need to protect children's mental and physiological health is more than a legitimate government interest. In fact, as the Supreme Court has previously held, protecting children's mental and physiological health is a compelling state interest.[351] This law is narrowly tailored to serve that interest because it prevents young children from the adverse effects of a career in social media, while still allowing parents to post their children online if they so desire.

This law empowers parents with full authority over their child's social media presence while ensuring that this authority is not exploited for financial gain. Parents may still determine that being posted on social media is an activity in which their child should participate; children simply cannot be employed as content creators before they turn thirteen.

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348. It should be noted, however, that the outcomes of First Amendment and Substantive Due Process challenges are difficult to predict because they primarily depend on the level of scrutiny applied.

349. Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

350. *See* KILLION, *supra* note 95, at 3. This is different than the law at issue in *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105 (1991) (mentioned in Section II.C.1.c.), because that was a content-based regulation preventing people from profiting from their speech, while this law is a labor law that prevents children under thirteen from working as content creators.

351. Sable Commc'ns of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989).

B. Amend Section 230 to Impose Liability on Platforms That Knowingly Host or Promote Content That Violates the Federal Ban

In addition to the federal ban, Congress should also amend Section 230 of the CDA to explicitly state that social media platforms can be held liable if they knowingly host monetized content that features children under the age of thirteen. Historically, courts have applied Section 230's liability protections broadly.[352] *Anderson v. TikTok* was a rare instance in which a social media company was not shielded from liability.[353] The determinative factor in this case was that TikTok engaged in its own expressive activity.[354] Case law indicates that Section 230, in its current form, would shield platforms from liability based on their interaction with or promotion of monetized content that features children under the age of thirteen.[355] Further, social media platforms receive higher levels of engagement and revenue due to the popularity of these accounts.[356] There is no incentive for social media platforms to ensure that users on their sites are complying with the federal labor law if they cannot be held liable for content posted in violation of this law, and the content benefits them financially.[357]

Implementing an exception to Section 230 that allows social media platforms to face liability for knowingly hosting monetized content that features children under thirteen would incentivize platforms to take down this content to avoid any potential liability from suits brought against violators of the law. Social media platforms would have a responsibility to ensure that they are not allowing themselves or their users to make money from content that violates the federal child labor law. Platforms would only be subject to liability if it could be demonstrated that they knowingly permitted banned content on the site.

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352. Force v. Facebook, Inc., 934 F.3d 53, 64 (2d Cir. 2019).

353. *See* BRANNON & HOLMES, *supra* note 163, at 1 ("Since its passage, federal courts have interpreted Section 230 as creating expansive immunity for claims based on third-party content that appears online. Consequently, internet companies and users frequently rely on Section 230's protections to avoid liability in federal and state litigation. But in recent years, commentators and jurists have expressed concern that the broad immunity courts have recognized under Section 230 is beyond the law's intended scope.").

354. Anderson v. TikTok, Inc., 116 F.4th 180, 184 (3d Cir. 2024).

355. *See e.g.,* Doe 1 v. Twitter, Inc., 148 F.4th 635, 640 (9th Cir. 2025). In *Doe 1*, the Ninth Circuit held that, under Section 230, Twitter was immune from liability with respect to two minors' products liability claims alleging that Twitter designed an unreasonably dangerous product that allowed search features and hashtags that were specifically for the purpose of finding child pornography. *Id.* at 639, 646. The court reasoned that requiring the platform to distinguish between innocent and illicit uses of hashtags and search functions would force it to act as a publisher. *Id.* at 646–47. As the hashtag and search function tools were content-neutral when designed, imposing liability would require the platform to monitor and act when users abuse these tools. *Id.* at 647.

356. *See supra* Section II.A.

357. *See supra* Section II.D.1.

This strikes a reasonable balance; it holds platforms accountable when they are aware of harmful material but avoids opening the door to lawsuits over content they never reviewed or interacted with. Amending Section 230 in this manner adds an extra layer of enforcement and helps ensure that content that violates the law is not left online for an extended period of time.

C. Expand California's Child Entertainment Labor Laws to Apply to Kidfluencers

The first two proposals focus on actions that would protect children under the age of thirteen. This section, however, focuses on minors who are thirteen and older. Since these children are allowed to operate kidfluencer accounts, stronger labor protections are required to ensure that they are not overworked or exploited. The FLSA left the regulation of child entertainment to the states.[358] Amending the FLSA would be very difficult, as states have grown accustomed to controlling the labor of child entertainers within their state. In line with this common practice, this section focuses on California's child entertainment labor laws.

Currently, California's child entertainment labor laws do not apply to kidfluencers.[359] Attempts to address this gap in the law were unsuccessful due to drafting revisions that resulted in an exception for digital exhibitions.[360] This is not uncommon, as the original language in a bill is almost always changed through amendments during the legislative process.[361]

Knowing this, the California Legislature should attempt to expand the existing child entertainment labor laws to include minors over the age of thirteen who are employed as content creators. "Content creator" should be defined as "an individual who creates, posts, shares, or otherwise interacts with digital content on an online platform."[362] Expanding these laws would require the parents of child influencers to

358. Guerra, *supra* note 189.

359. *See* Anezka Krobot, *When Play Becomes Work: How Child Influencers on TikTok Are Being Exploited and How We Can Protect Them*, 38 J. LAB. & EMP. L. § II.A.1 (2025) ("All the regulations surrounding child entertainers are specifically for minors involved in the traditional entertainment industry, with no updates to include underage social media influencers.").

360. *See supra* Section IV.D.

361. Ryan Sabalow, *California Legislature's unwritten rule: negotiate in secret with lobbyists, not in public*, CAL MATTERS (Sept. 18, 2024), https://calmatters.org/politics/2024/09/california-secret-negotiations-public-transparency/ (last visited March 31, 2026).

362. This definition is intended to mirror the Coogan Law's definition of content creator. *See* CAL. FAM. CODE § 6750(c)(1). However, it leaves out the language that requires a contractual relationship to exist before the law applies. *See id.*

obtain work permits for their children, as well as regulate the hours and environment in which work is performed.[363] For the sake of consistency, the standards that qualify a child to be employed as a content creator should be the same as those that qualify a child to be engaged in the work of vlogging under the Content Creator Rights Act.[364] While drafting this expansion, legislators must ensure that the law does not contain exceptions that result in most kidfluencers falling outside of the law's protection.[365] This process will take time, and compromises will likely need to be made, but regulating this industry beyond mere financial protections is critical.

In the meantime, the Labor Commissioner's Office should take advantage of the loophole in the "digital exhibitions" exception[366] and bring enforcement actions against people who are not obtaining work permits for children who get paid for their digital exhibitions. If these enforcement actions are successful, people who work with or employ kidfluencers will begin to obtain work permits and comply with laws that limit the hours children can work in the entertainment industry. This provides a provisional change while a statutory remedy is developed.

VI. CONCLUSION

The financial incentive of kidfluencer accounts encourages parents to excessively post their children's lives online, which can result in serious mental and physical harm. Current regulation is not nearly as comprehensive as it needs to be to adequately protect children. To properly address these concerns, Congress should first implement a federal child labor law that prohibits people from posting children in monetized content until the child is thirteen years old. Congress should also amend Section 230 of the CDA so that social media platforms can be held liable for knowingly allowing content in violation of this ban on their sites. Finally, the California Legislature should expand the current child entertainment labor laws so minors aged thirteen and older who are employed as kidfluencers are safeguarded against workplace exploitation. This three-pronged approach provides expansive protection that is tailored to the unique nature of the kidfluencer industry.

363. See Guerra, *supra* note 189, for an overview of other California labor laws that could apply to child influencers if existing law is expanded.

364. See CAL. FAM. CODE § 6651, for the detailed requirements that determine when a minor is engaged in the work of vlogging.

365. *See supra* Section IV.D.

366. *See supra* Section IV.D.