

A Star is Born: Lack of Income Rights for Entertainment’s Newest Stars, “KidTubers”

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I. INTRODUCTION

On July 2, 2021, a video—which has since garnered over 615,000 views¹—was posted to then-eight-year-old KidTuber (a shorthand term this Note will use to jointly discuss kidfluencers and the children of family vloggers) Everleigh Rose Smith-Soutas’s personal² YouTube channel.³ The 15-minute video, titled “Everleigh Spends 24 Hours at Her Dance Studio!!!” and filmed by Everleigh’s stepfather Cole LaBrant, documents the eight-year-old’s 24-hour stay at her dance studio.⁴ However, the video serves as an advertisement (ad) for the doll brand “Dream Seekers.”⁵

The video starts out with Everleigh introducing the three different Dream Seeker dolls and stating that the reason she decided to do this video is “because [her] dream is to be a professional dancer . . . and these dolls are called *dream* seekers,” which cuts to the start of the video long ad for the doll brand.⁶ Everleigh and Cole nestle ads for the dolls in between scenes of Everleigh practicing her dance routine and showing her dance studio to viewers.⁷ Cole suggests playing hide and seek with the dolls, Everleigh describes how the doll’s box has a place to write your dreams, and throughout the whole video, the doll is by her side.⁸ The video also has an ad that plays before the video starts and an ad placed in the middle of the video, indicating that this is a monetized video by YouTube.⁹

Everleigh appears in nearly every video posted on the LaBrant family YouTube channel while also starring in her own channel’s videos, and a channel dedicated to videos of her and Cole.¹⁰ However, because Everleigh, along with many other KidTubers, doesn’t live in Illinois (the only state that

1. Everleigh, *Everleigh Spends 24 Hours At Her Dance Studio!!!*, YOUTUBE (Jul. 2, 2021), <https://www.youtube.com/watch?v=qc4aJepfOo8> [<https://perma.cc/CU6A-38J3>] (view count 615,511 as of Oct. 5, 2023).

2. Everleigh’s personal channel is an offshoot of her parent’s main channel, “The LaBrant Fam,” which has 13.1 million followers as of January 23, 2023. *The LaBrant Fam*, YOUTUBE, <https://www.youtube.com/@ColeAndSav/videos> [<https://perma.cc/XL6Y-V9MB>] (last visited Apr. 9, 2023); Everleigh’s own channel has gained 3.92 million subscribers alone. See *Everleigh*, YOUTUBE, <https://www.youtube.com/@EverleighEverleigh> [<https://perma.cc/ZNS3-9JPG>] (last visited Aug. 30, 2023); *Everleigh Rose*, IMDB, <https://www.imdb.com/name/nm8957928/> [<https://perma.cc/582H-BZ4Q>] (last visited Oct. 13, 2023).

3. *Everleigh Spends 24 Hours At Her Dance Studio!!!*, *supra* note 1.

4. *Id.*

5. *Id.*

6. *Id.* (emphasis added).

7. *Id.*

8. *Id.*

9. *Everleigh Spends 24 Hours at Her Dance Studio!!!*, *supra* note 1.

10. *The LaBrant Fam*, *supra* note 2; *Everleigh*, *supra* note 2; *Cole and Ev*, YOUTUBE, <https://www.youtube.com/@ColeAndEV> [<https://perma.cc/5HAG-NGS3>] (last visited Oct. 12, 2023).

has enacted a labor law for KidTubers as of the writing of this Note), she is not entitled to any money that the videos generate.¹¹

This Note will focus on the lack of income rights for KidTubers and analyze potential legal pathways that would provide these children the right to their deserved income. Section II will discuss the current legal landscape for traditional child actors in the United States and the rise of YouTube and subsequently KidTuber content. Section II will also give a brief background on the right of family autonomy and the infancy law doctrine, two dilemmas that regulating KidTuber content faces, and ends with a discussion on the legal protections given to child social media stars in France. Section III will propose and analyze a three-component proposal for a federal Coogan Law that mirrors Section 5 of Pennsylvania’s 2012 Child Labor Act—as well as the issues this proposal might face.

II. BACKGROUND

A. *The Fair Labor Standards Act and Child Actors*

The Fair Labor Standards Act (FLSA) was passed in 1938, establishing minimum wage rights, overtime pay, recordkeeping, and child employment regulations.¹² Child labor provisions (also known as child labor laws) were put in place to ensure that young peoples’ health, well-being, and educational needs were being met while working and that the work they performed was safe.¹³ The FLSA’s child labor provision’s focus is mostly tailored toward protecting children from working in dangerous jobs (mills, factories, farms) because those employment sectors had become popular during the Second Industrial Revolution, soon before the FLSA was written.¹⁴ To prevent child labor issues, the FLSA “prohibits an employer from using ‘oppressive’ child labor and ‘applies to all aspects of employment such as working conditions and allowable hours of work per week.’”¹⁵

11. Jyssica Schwartz, *Family Vloggers are Monetizing Kids Without Consent*, MEDIUM (Mar. 19, 2021), <https://jyssicaschwartz.medium.com/family-vloggers-are-monetizing-kids-without-consent-2bd72a6523bd> [<https://perma.cc/4NCU-9JV3>]; Munirat Suleiman, *Is Kidfluencing Child Labor?: How the Youngest Influencers Remain Legally Unprotected*, COLUM. UNDERGRADUATE L. REV. (Jun. 16, 2022); Claire Savage, *Child Influencers in Illinois Will Be Able to Sue if Earnings Aren’t Set Aside*, TIME (Aug. 13, 2023, 12:56 PM), <https://time.com/6304457/child-influencers-illinois-earnings/> [<https://perma.cc/9Z3Q-PLYJ>].

12. *Fair Labor Standards Act Signed*, LIBR. OF CONG., <https://guides.loc.gov/this-month-in-business-history/june/fair-labor-standards-act-signed#:~:text=676%2C%2052%20Stat.,provisions%20related%20to%20child%20labor> [<https://perma.cc/GJ8P-L97B>] (last visited Oct. 10, 2023).

13. *Wages and the Fair Labor Standards Act*, U.S. DEPT. OF LAB. WAGE & HOUR DIV., [https://www.dol.gov/agencies/whd/flsa#:~:text=The%20Fair%20Labor%20Standards%20Act%20\(FLSA\)%20establishes%20minimum%20wage%2C,%2C%20State%2C%20and%20local%20governments](https://www.dol.gov/agencies/whd/flsa#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20establishes%20minimum%20wage%2C,%2C%20State%2C%20and%20local%20governments) [<https://perma.cc/R2KL-7TF3>] (last visited Jan. 26, 2023).

14. Amanda G. Riggio, *The Small-er Screen: YouTube Vlogging and the Unequipped Child Entertainment Labor Laws*, 44 SEATTLE UNIV. L. REV. 493, 499 (2021).

15. Courtney Glickman, *Jon & Kate Plus...Child Entertainment Labor Law Complaints*, 32 WHITTIER L. REV. 147, 151 (2010); Fair Labor Standards Act of 1938, 29 U.S.C. § 212(c).

The FLSA also includes exemptions in its coverage of those protected.¹⁶ Most notably, minor children employed by their parents have no minimum age requirement for work.¹⁷ Another famous exception to coverage within the FLSA is the “Shirley Temple Act.”¹⁸ The “Shirley Temple Act” refers to the FLSA exemption of children working as actors or performers in “motion pictures or theatrical productions, or in radio or television productions.”¹⁹ This work was not considered oppressive or particularly hazardous²⁰ like the work that the FLSA intended to protect children from at the time of its enactment.²¹ Furthermore, the FLSA was written during a time when child actors, such as Shirley Temple (for whom the exemption is nicknamed after), were becoming popular in entertainment.²² Therefore, the FLSA does not provide protection for children in these industries. Because of this, it has been up to individual states to decide whether they will establish regulations on child acting and performance work and how strict those provisions are.²³

B. Coogan Laws: Origins

Thanks to actor Jackie Coogan,²⁴ young child actors in California are (theoretically)²⁵ protected from financial exploitation due to the creation of Coogan Accounts.²⁶ Jackie Coogan was a child actor who became a star in the 1920s.²⁷ However, all of the earnings he made as an actor while he was a minor belonged to his mother.²⁸ In 1938, 23-year-old Coogan sued his mother and stepfather (who was also his former business manager) for “his life’s earnings of more than \$4 million” that he had earned over his childhood

16. Glickman, *supra* note 15, at 149; Kimberlianne Podlas, *Does Exploiting a Child Amount to Employing a Child? The FLSA’s Child Labor Provisions and Children on Reality Television*, 17 UCLA ENT. L. REV. 39, 57 (2010).

17. Riggio, *supra* note 14, at 500; 29 C.F.R. § 570.2.

18. Podlas, *supra* note 16, at 58.

19. Glickman, *supra* note 15; Podlas, *supra* note 16.

20. Examples of hazardous and oppressive work for children under sixteen could include working in factories, operating dangerous machinery, etc. Podlas, *supra* note 16, at 57 n.159.

21. See 29 U.S.C §212(c); Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PENN. L. REV., 577, 586-87 (2020).

22. Podlas, *supra* note 16, at 58.

23. Glickman, *supra* note 15, at 152.

24. Later in his career, Jackie Coogan played Uncle Fester in *The Addams Family* from 1964 to 1966. *The Addams Family*, IMDB, https://www.imdb.com/title/tt0057729/?ref_=nm_knf_t_3 [https://perma.cc/4GVP-UQL2] (last visited Apr. 8, 2023).

25. While the discussion of current financial exploitation of traditional child stars is an interesting and important issue to look into, the modern loopholes that parents of traditional child stars have used is beyond the scope of this Note.

26. *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [https://perma.cc/TVL7-28WS] (last visited Mar. 3, 2023).

27. *Id.*

28. *Id.*

career.²⁹ Unfortunately for Coogan, his mother had spent it all, insisting that she was “entitled to all his earnings up to the time he became of age.”³⁰ Coogan won his lawsuit, but out of the \$4 million he had earned, in the end he received only \$126,000.³¹

In response to the Coogan scandal, California passed the California Child Actor’s Bill (often known as the Coogan Act) the following year.³² The original law gave judges “discretionary power to require that a contract set aside some of a child actor’s income in a trust fund or savings account, only to be opened when the child reached the age of majority.”³³ However, this original version of the law was plagued with loopholes that were often exploited by parents.³⁴

In 2000, the California Coogan Law was updated with the hope that the revisions would help reduce the exploitation of loopholes.³⁵ This update to the California Coogan Law now requires that fifteen percent of the minor’s gross earnings (rather than the minor’s *net* earnings, like in the original 1939 Coogan Act), be deposited into the child’s Blocked Trust Account by the minor’s employer, removing judicial discretion.³⁶ This change to gross earnings was to try to avoid “management” or “secretarial” fees from being deducted by the minor’s parents.³⁷ The money deposited into the account is not permitted to be accessed by the beneficiary (the child) or “any other individual, individuals, entity, or entities” until the child turns eighteen or is declared an emancipated minor *unless* there is a written order from the superior court accepting a petition of the parent or legal guardian, the minor, or the trustee showing that the trust needs to be amended or terminated.³⁸

C. *The Expansion (or Lack Thereof) of State Coogan Laws*

Several other states have followed in California’s footsteps, creating their own versions of Coogan Account requirements, which often require child actors to have that state’s version of a Blocked Trust Account set up

29. *Mother is Sued by Jackie Coogan*, N.Y. TIMES, Apr. 12, 1938, at 3, <https://timesmachine.nytimes.com/timesmachine/1938/04/12/96813030.html?pageNumber=31> [<https://perma.cc/WG24-B5WE>]; *Jackie Coogan*, BRITANNICA (Feb. 25, 2023), <https://www.britannica.com/biography/Jackie-Coogan> [<https://perma.cc/N5EL-TZ7U>].

30. *Mother is Sued by Jackie Coogan*, *supra* note 29.

31. Jennifer González, *More Than Pocket Money: A History of Child Actor Laws*, LIBR. OF CONG. BLOGS (Jun. 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws/> [<https://perma.cc/5M7R-W6X9>]; Richard Corliss, *Shirley Temple: A Cute Cocktail of Talent and Charm*, TIME (Feb. 12, 2014, 11:13 AM), <https://time.com/6907/shirley-temple-remembrance/> [<https://perma.cc/8774-C2QV>].

32. *Coogan Law*, *supra* note 26.

33. González, *supra* note 31.

34. Child star Elizabeth Taylor’s mother, for example, took on the title of “manager,” which gave her access to ten percent of Elizabeth’s salary, and Macaulay Culkin’s parents used loopholes so they could use his income to fund their own custody battles. *Id.*

35. *Id.*

36. *Id.*; Cal. Fam. Code § 6752(b)(1).

37. González, *supra* note 31.

38. Cal. Fam. Code §§ 6752(b)(1), 6753(b), 6752(b)(7), 6752(c)(5).

before they start work in the entertainment industry.³⁹ However, the kind of account, how to open an account, and who qualifies for these protections differ between states.⁴⁰ Some states, such as Pennsylvania, hold that an “irrevocable child performer trust account or a qualified tuition program” must be established if the minor expects to earn more than \$2,500 in the production, expects to receive residuals, or if the child has already earned \$2,500 in previous employment.⁴¹ Pennsylvania also provides that the account can only be accessed when the minor reaches eighteen years of age unless for a legitimate health or educational reason.⁴²

In total, thirty-three states have some form of regulation on children participating in the entertainment industry, and twenty-six states require work permits for child entertainers.⁴³ Each state’s work permit requirements and conditions vary, but many states that do have regulations in place protect children under eighteen, and nearly all protect children under sixteen years of age.⁴⁴ However, only ten states currently require a trust account for child actors, which gives child stars some protection over their profits.⁴⁵ These states are California, New York, Louisiana, Illinois, Nevada, New Mexico, Kansas, North Carolina, Pennsylvania, and Tennessee.⁴⁶

D. Reality TV and Children

In the early 2010s, “reality television stars were the only ‘ordinary’ people to appear on screen,” and network reality television shows such as *Jon*

39. *Coogan Law*, *supra* note 26; N.Y. EST. POWERS & TRS. LAW § 7-7.1 (Consol. 2023); 820 ILCS 205/12.5 (Ill. 2020); 2005 La. SB 158 (La. 2005); NM Stat § 50-6-19 (2018).

40. *The Comprehensive Guide to Child Actor Laws by State*, ASSEMBLE MAG. (Oct. 27, 2021), <https://blog.assemble.tv/what-every-producer-should-know-about-child-actor-laws> [<https://perma.cc/P3MW-A2UL>].

41. 2011 Pa. HB 1548 §§ 5(e)(1), 5(e)(2)(xi).

42. *See id.* The proceeds may also remain in the trust after the minor turns eighteen if the parent or guardian thinks it will serve in the best interests of the minor. *Id.* at 151(e)(2)(xi).

43. *Child Entertainment Laws as of January 1, 2023*, U.S. DEPT. OF LAB. WAGE AND HOUR DIV. (Jan. 1, 2023), <https://www.dol.gov/agencies/whd/state/child-labor/entertainment#:~:text=Must%20have%20a%20certificate%20of%20age.&text=Yes-,Sec.,industry%20for%20a%20limited%20time> [<https://perma.cc/FRR2-6LPZ>].

44. *Id.*

45. *Id.*

46. *Coogan Accounts: Protecting Your Child Star’s Earnings*, MORGAN STANLEY (Jan 10, 2022), <https://www.morganstanley.com/articles/trust-account-for-child-performer#> [<https://perma.cc/9NVK-59ZR>].

& *Kate Plus 8* and *19 Kids and Counting* found immense viewership.⁴⁷ *Jon & Kate Plus 8* featured the highs and lows of the Gosselin family, with a prominent focus on the children.⁴⁸ With reality television, producers are often able to get around rules that govern traditional, scripted television because a star's involvement can be classified as "participation" rather than acting and because many reality stars are not represented by actor's unions such as the Screen Actors Guild (SAG) or the American Federation of Television and Radio Artists (AFTRA).⁴⁹

The television show *Kid Nation*, which observed children left alone, without adults, on a fake town set with the goal of building a working society,⁵⁰ brought forth "the question of how 'child participants' are handled" in reality television.⁵¹ The show's contract signed by the child and their parent or legal guardian directly stated that "participation in the show would not be employment and that the children would not be entitled to wages, salary, or other compensation," along with a laundry list of assumption of risk clauses.⁵² To bypass working condition complaints, the network had framed the show as a "summer camp" experience rather than work.⁵³ However, once it was exposed that the children were working fourteen-hour days without compensation, the show came under fire.⁵⁴

47. Alexandra Samuel, *With Social Media, Everyone's a Celebrity*, JSTOR DAILY (Jul. 16, 2019), <https://daily.jstor.org/with-social-media-everyones-a-celebrity/> [<https://perma.cc/7GCE-UCKN>]; Mariah Espada, *The 50 Most Influential Reality TV Seasons of all Time: Jon & Kate Plus 8 Season 5 (2009)*, TIME (Aug. 4, 2022, 8:30 AM), <https://time.com/collection/reality-tv-most-influential-seasons/6198506/jon-and-kate-plus-8/> [<https://perma.cc/XDT8-NJGV>]; Rick Kissell, *TLC's '19 Kids & Counting' Returns With Series-High Rating*, VARIETY (Sept. 4, 2014, 2:28 PM), <https://variety.com/2014/tv/news/tlc-19-kids-and-counting-series-high-rating-1201298033/> [<https://perma.cc/UV2X-XN6U>]; *Jon & Kate Plus 8* was a documentary-style television show that featured the Gosselin family, a family of ten—the parents, Jon and Kate, plus their eight children. *Jon & Kate Plus 8*, IMDB, <https://www.imdb.com/title/tt1124348/> [<https://perma.cc/4QMZ-C3VT>] (last visited Apr. 10, 2023); *19 Kids and Counting*, IMDB, https://www.imdb.com/title/tt1307083/?ref=tt_sims_tt_i_3 [<https://perma.cc/Q43W-FSBN>] (last visited Aug. 30, 2023).

48. Glickman, *supra* note 15, at 156; *Jon & Kate Plus 8*, *supra* note 47; *19 Kids and Counting*, *supra* note 47; Alan Duke, *State: 'Jon & Kate' Broke Child Labor Law, but no Charges*, CNN (Apr. 14, 2010, 3:16 PM), [https://www.cnn.com/2010/SHOWBIZ/TV/04/14/gosselin.kids.labor/index.html#:~:text=\(CNN\)%20%2D%2D%20%22Jon%20%26,it%20doesn't%20happen%20again](https://www.cnn.com/2010/SHOWBIZ/TV/04/14/gosselin.kids.labor/index.html#:~:text=(CNN)%20%2D%2D%20%22Jon%20%26,it%20doesn't%20happen%20again) [<https://perma.cc/G4LW-SNKK>].

49. Glickman, *supra* note 15, at 148-49.

50. The premise of the television show *Kid Nation* was to see if young kids could build a working society without adults by placing forty kids aged eight to fifteen in a ghost town set. The children were woken up at seven a.m. and were recorded until late at night, recording the kids talking, eating, doing assigned chores, fighting, or crying. Other assumption of risk clauses discussed the risk of their child getting pregnant, contracting a sexually transmitted disease, and being exposed to hazards and conditions that may result in serious bodily injury, illness, or death. Christopher C. Cianci, *Entertainment or Exploitation: Reality Television and the Inadequate Protection of Child Participants under the Law*, 18 S. CAL. INDERDISC. L.J. 363, 366, 368-70 (2009).

51. Glickman, *supra* note 15, at 149.

52. Cianci, *supra* note 50, at 368-69.

53. *Id.* at 371-72.

54. *Id.*

Kid Nation, at the time, seemed like an outlier of how reality television provided inadequate protections for its child stars,⁵⁵ due to the show being filmed in New Mexico, a state “where child labor laws are lax.”⁵⁶ However, a 2010 probe into *Jon & Kate Plus 8*, which was set Pennsylvania, re-opened the door to the issue of inadequate protections for child reality television stars.⁵⁷ For each episode of *Jon & Kate Plus 8*, the Gosselin’s made “\$22,500 [] with none of the money specifically designated for the eight children.”⁵⁸ Under Pennsylvania’s⁵⁹ child labor laws at the time (which were repealed in 2012 and replaced with their current 2012 Child Labor Act),⁶⁰ children seven years old and above were permitted to work as long as they had the proper and necessary permits, which prohibited children from working past eleven thirty at night.⁶¹ For children under seven years old, permits could be issued that allowed a child to work for up to eight hours a day as long as “their education, instruction, supervision, health and welfare needs [were] being met.”⁶²

In 2010, Pennsylvania did not have a provision in place that explicitly discussed any protections for *reality* television child stars, so when an investigation was launched into TLC for possible child labor law violations, the main question was whether the Gosselin’s house was a “TV set . . . or a home where the kids aren’t really working but are simply living their lives in front of cameras.”⁶³ If the children were considered to be actors and performers rather than just subjects being followed passively by cameras, then the children would be seen as employees of the show.⁶⁴

The investigation found that their participation in the television show did, in fact, add up to work, therefore requiring work permits and for “[a]t least [fifteen] percent of the money paid to the children must be put into an irrevocable trust account that can be spent only when the children turn [eighteen].”⁶⁵ Pennsylvania’s Bureau of Labor Law Compliance stated that while the activity filmed was spontaneous, “children introduced episodes of the television show and transitions, DVDs and other merchandise were sold involving the children’s appearance, [and] lighting was placed in the home for the show and there was product placement in some episodes,” which ultimately led the Bureau to conclude that their participation was more than

55. “One member of the National Association to Protect Children claimed that “[i]n California or New York [the *Kid Nation*] show producers would never have gotten away with this.” Glickman, *supra* note 15, at 167.

56. *Id.*

57. *Id.* at 149; *Jon & Kate Plus 8*, *supra* note 47.

58. Glickman, *supra* note 15, at 167.

59. The show was filmed in, and took place in Pennsylvania. *See* Duke, *supra* note 48.

60. The state’s former child labor law was repealed in 2012 and completely replaced by Pennsylvania’s current Child Labor Act, 2011 Pa. HB 1548, which became effective on Jan. 22, 2013. *See* 43 Pa. Stat. § 41 (repealed 2012); *see also* 2011 Pa. HB 1548 (Lexis 2012).

61. Glickman, *supra* note 15, at 157.

62. *Id.* (quotations omitted).

63. Glickman, *supra* note 15, at 158.

64. *Id.*

65. Duke, *supra* note 48.

just filming of spontaneous activity.⁶⁶ This investigation led to a change in Pennsylvania’s laws regarding child reality stars.⁶⁷

E. In Comes YouTube . . . and YouTube Income

Eventually, with the rise of YouTube, aspiring stars realized that they did not need to be scouted or discovered to become famous—ordinary people could launch themselves into stardom if they were lucky enough to go viral.⁶⁸ Nowadays, there is a viewer base for nearly every kind of content that could be posted to YouTube, including (among others)—gaming, makeup, comedy, drama, short films, skits, cooking—and all someone has to do to start gaining a fanbase is to upload videos that they film at home by themselves.⁶⁹

Beginning in 2006, YouTube saw a surge in views and video content being posted each day.⁷⁰ By 2008, YouTube stars were making six-figure incomes through YouTube ads, sponsorships, and product placements.⁷¹ TikTok, another social media platform focused exclusively on video content, has seen the same rise in popularity in recent years, with “1 billion global daily users” in 2022.⁷²

A YouTuber’s income primarily comes from monetizing videos through the YouTube Partner Program (YPP) and through a channel’s independent sponsorships with companies, among other income streams.⁷³ Monetization occurs when a channel turns on advertisements (“in-stream

66. *Id.* (punctuation edited).

67. Masterson, *supra* note 21, at 602. This law has since been repealed and replaced with Pennsylvania’s current law, which will be covered in Section III. See 43 Pa. Stat. § 41 (repealed 2012).

68. Joshua Gamson, *The Unwatched Life is Not Worth Living: The Elevation of the Ordinary in Celebrity Culture*, 126 MOD. LANGUAGE ASS’N, 1061, 1065-67 (Oct. 2011).

69. See Samuel, *supra* note 47; TikTok’s rise in popularity in 2018 has also created a second, shorter-form content platform that allows people to experience the same sort of fame that YouTube has created for people. See Werner Geysler, *The Incredible Rise of TikTok*, INFLUENCER MKTG. HUB (Jul. 14, 2022), <https://influencermarketinghub.com/tiktok-growth/> [<https://perma.cc/BG9X-JD64>].

70. William Hosch, *YouTube*, BRITANNICA (Aug. 6, 2009), <https://www.britannica.com/topic/YouTube> [<https://perma.cc/LQ4Y-NPRL>].

71. Brian Stelter, *YouTube Videos Pull in Real Money*, N.Y. TIMES (Dec. 10, 2008), <https://www.nytimes.com/2008/12/11/business/media/11youtube.html> [<https://perma.cc/Y3A9-EXAB>].

72. Deborah D’Souza, *TikTok: What It is, How it Works, and Why It’s Popular*, INVESTOPEDIA (Aug. 14, 2023), <https://www.investopedia.com/what-is-tiktok-4588933> [<https://perma.cc/6268-4TS9>].

73. Mary Hall, *How do People Make Money on YouTube?*, INVESTOPEDIA (Nov. 6, 2022), <https://www.investopedia.com/ask/answers/012015/how-do-people-make-money-videos-they-upload-youtube.asp> [<https://perma.cc/78V9-JCMC>]; *Choose How You Want to Monetize, YOUTUBE HELP*, <https://support.google.com/youtube/answer/94522#ads> [<https://perma.cc/4SM6-XQYE>] (last visited Jan. 23, 2023).

ads”)⁷⁴ to be played either before and/or during the video as well as through smaller pop-up ads at the bottom of the video.⁷⁵

A YouTube channel becomes eligible for monetization through the YPP through two pathways. The first is for the channel to gain over 1,000 subscribers and reach 4,000 valid public watch hours⁷⁶ over twelve months.⁷⁷ The second pathway is by gaining 1,000 subscribers on the channel and reaching 10 million paid public Shorts⁷⁸ views in the last ninety days.⁷⁹ Once a channel (1) meets the subscriber and public watch hour threshold for videos or Shorts, (2) accepts the YPP terms, (3) links an AdSense⁸⁰ account to their channel, and (4) has had their application reviewed, the channel’s owners are eligible to monetize their videos.⁸¹

When a video is monetized, the channel receives a portion of the ad revenue.⁸² Ad revenue can vary depending on the length of the video, the quality of the ad, how much interaction the ad receives, and the number of views the video gets.⁸³ While YouTube does not reveal how much YouTube channels make per view on a monetized video, it is reported that a channel makes an average of \$0.018 per view.⁸⁴ Therefore, if a popular YouTube

74. Katrina Wu, *YouTube Marketing: Legality of Sponsorship and Endorsements in Advertising*, 22 J.L. BUS. & ETHICS 59, 61 (2016).

75. *Choose How You Want to Monetize*, *supra* note 73; As of January 2023, accounts can get monetization income through advertisements “viewed between videos in the Shorts Feed.” *YouTube Shorts Monetization Policies*, YOUTUBE HELP, <https://support.google.com/youtube/answer/12504220> [<https://perma.cc/QF7D-K9YS>] (last visited Jan. 23, 2023).

76. *YouTube Partner Program Overview & Eligibility*, YOUTUBE HELP, <https://support.google.com/youtube/answer/72851> [<https://perma.cc/M3NS-6RXW>] (last visited Jan. 23, 2023).

77. *Id.* “Valid public watch hours” and “valid public Shorts hours” are just hours of views that are gained through eligible YouTube videos or Shorts that are set to public. *Id.*

78. “Shorts” are “short-form videos” that are up to a minute long that are posted from the YouTube app to the “Shorts” section of YouTube for viewers to watch, like, and comment like a regular YouTube video. *Get Started Creating YouTube Shorts*, YOUTUBE HELP, <https://support.google.com/youtube/answer/10059070?hl=en#zippy=%2Ccan-i-earn-money-from-my-shorts%2Chow-will-viewers-find-my-shorts%2Chow-do-i-create-shorts> [<https://perma.cc/57VW-AA3X>] (last visited Sept. 1, 2023). Shorts generate income from ad revenue after the channel has accepted the Shorts Monetization Module. *See YouTube Shorts Monetization Policies*, *supra* note 75.

79. *YouTube Partner Program Overview & Eligibility*, *supra* note 76.

80. AdSense is the name for the program Google uses that lets people and websites run ads and receive payment from advertisers and is mainly the payment tool for creators. *YouTube Creators, AdSense for YouTube Creators*, YOUTUBE (Apr. 21, 2022), https://www.youtube.com/watch?v=A3kgDi_IyAo&t=56s [<https://perma.cc/5LDK-FKHL>].

81. *YouTube Partner Program Overview & Eligibility*, *supra* note 76.

82. *Choose How You Want to Monetize*, *supra* note 73; *YouTube Partner Program Overview & Eligibility*, *supra* note 76.

83. *How Much Do YouTubers Make? Facts and Figures for 2022*, INTUIT MINTLIFE (Aug. 24, 2022), <https://mint.intuit.com/blog/relationships/how-much-do-youtubers-make/> [<https://perma.cc/R3W2-R4NM>].

84. *Id.*

channel posts a video that gets 2.5 million views, the income from the YPP alone would be approximately \$45,000.⁸⁵

Another major source of income for YouTubers is through brand partnerships and sponsored content.⁸⁶ The concept of sponsored content is relatively simple. A brand (the “sponsor”) partners with a YouTuber, and the YouTuber promotes their content, either through explicit sponsorship (typically by providing affiliated links) or by discussing their product through a demonstration of them sampling the product.⁸⁷ In turn, the brand pays the YouTuber either a “flat fee, a percentage of sales resulting from the video, or a specified amount per number of views on the video.”⁸⁸

F. *KidTubers: Children of Family Vloggers and Kidfluencers*

One form of video content, which is popular on social media, is “vlogging.”⁸⁹ “Vlogging”—a portmanteau of “video blogging,” where someone records their “thoughts, opinions, or experiences” to post on the Internet⁹⁰—has grown into a huge Internet media industry.⁹¹ The family vlogging channel, where parents film their family’s daily lives, has emerged as one of the most popular vlogging genres on YouTube, piggybacking off the success of shows like *Jon & Kate Plus 8* and *19 Kids and Counting*.⁹² The number of views for general-audience videos featuring children under the age of thirteen averaged 416,986 views in 2019; however, on popular channels,

85. This is just a hypothetical, and the income amount is just an estimate calculated based on what has been reported regarding income based on monetized video views. YouTube and most YouTubers are not transparent regarding how much they make from the YouTube Partner Project, so all incomes are just estimates. See *How Much Do YouTubers Make? Facts and Figures for 2022*, *supra* note 83.

86. Wu, *supra* note 74, at 64.

87. See *id.*

88. *Id.*

89. L. Ceci, *Share of Internet Users Worldwide Watching Vlogs Weekly as of 1st Quarter 2023, by Age and Gender*, STATISTA, <https://www.statista.com/statistics/1254829/age-gender-reach-worldwide-watching-vlogs/> [<https://perma.cc/E2NQ-6ZHT>] (last visited Oct. 4, 2023).

90. *Vlog*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/vlog> [<https://perma.cc/V8J5-GYHW>] (last visited Jan. 15, 2023).

91. L. Ceci, *supra* note 89 (“[A]lmost 35 percent of female internet users aged between 16 and 24 years watched vlogs . . . with this type of video content reporting a global usage reach of approximately 23.4 percent in the fourth quarter of 2022.”); See Kyra Johnson, *The Dangers of Family Vlogging & Children on YouTube*, THE GAVEL (Dec. 4, 2021), <https://bcgavel.com/2021/12/09/the-dangers-of-family-vlogging-children-on-youtube/> [<https://perma.cc/9QPH-QMYT>].

92. Kessel et al., 2. *Children’s Content, content featuring children and video games were among the most-viewed video genres*, PEW RSCH. CTR. (Jul. 25, 2019), <https://www.pewresearch.org/Internet/2019/07/25/childrens-content-content-featuring-children-and-video-games-were-among-the-most-viewed-videos-genres/> [<https://perma.cc/73YG-Y9KN>] (explaining statistics on what kinds of videos are popular on YouTube); see *The Labrant Fam*, *supra* note 2; see also *SmellyBellyTV*, YOUTUBE, <https://www.youtube.com/@smellybellytv/videos> [<https://perma.cc/Z5M2-42DY>] (last visited Oct. 14, 2023).

those numbers can reach millions.⁹³ The children are usually the stars of family vlogging channels, and the videos are filmed to feel very casual, letting viewers see both the day-to-day lives of the family and big milestones.⁹⁴ This ranges from morning routines, birthdays, tantrums, and the child's birth.⁹⁵

A similar and often overlapping video genre to family vlogging is the \$8-billion industry of child influencers, aka "kidfluencers."⁹⁶ Kidfluencers are children, often those under thirteen (and sometimes as young as toddlers), who have large social media followings.⁹⁷ Kidfluencer content varies significantly. Whereas some channels may switch between vlogging and kidfluencer content,⁹⁸ other channels focus on educational content,⁹⁹ and others may focus on brand-sponsored videos.¹⁰⁰

KidTubers—kidfluencers specifically on YouTube—amass huge followings, becoming micro-celebrities.¹⁰¹ Due to the children's large followings, the children and their parents often enter into endorsement deals with major advertisers and brands like Mattel, Amazon Fresh, and L.O.L. Surprise.¹⁰² The amount that a brand pays can vary depending on the size and

93. Kessel et al., *supra* note 92; *The Labrant Fam*, *supra* note 2 (showing numerous videos uploaded to the family's channel that have reached over a million views).

94. Monica Reilly, *Family Vlogging: Blurring the Line Between Parent and Employer*, THE SCIENCE SURV. (Jan. 18, 2023), <https://thesciencesurvey.com/editorial/2023/01/18/family-vlogging-blurring-the-line-between-parent-and-employer/#:~:text=This%20phenomenon%20is%20known%20as,about%20their%20children's%20lives%20online> [<https://perma.cc/6FJQ-64BK>]

95. *Id.*; The LaBrant Fam, *Our Baby's Official NAME REVEAL!!!*, YOUTUBE (Jan. 5, 2019), https://www.youtube.com/watch?v=T_RLOrML8Ds [<https://perma.cc/PD9N-UUBE>] (a ten minute monetized video of the LaBrant family at the hospital right after the birth of their child, amassing over 9.5 million views as of October 5, 2023).

96. Masterson, *supra* note 21, at 579.

97. *Id.* at 583 ("Kids are the new social influencer . . . Kids grow up and become less relevant. The sweet spot is between 2 and 4, [after which] they're not that cute."); see Sapna Maheshwari, *Online and Making 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> [<https://perma.cc/GDU2-PD8P>].

98. See *The Fishfam*, YOUTUBE, <https://www.youtube.com/@Fishfam/videos> [<https://perma.cc/U8NF-RC8M>] (last visited Apr. 9, 2023).

99. *Ryan's World*, YOUTUBE, <https://www.youtube.com/@RyansWorld> [<https://perma.cc/4Z6S-HUHH>] (last visited Mar. 4, 2023).

100. *Samia's Life*, YOUTUBE, <https://www.youtube.com/@SamiasLife/videos> [<https://perma.cc/88VV-HHKP>] (last visited Mar. 4, 2023).

101. Maheshwari, *supra* note 97; *Ryan's World*, *supra* note 99 (subscriber count of 34.2 million as of January 28, 2023).

102. *I Want to Monetize My Videos, But I Was Disapproved for Being Under 18*, GOOGLE ADSENSE HELP, <https://support.google.com/adsense/answer/2533300?hl=en> [<https://perma.cc/5JQK-9AA3>] (last visited Sept. 2, 2023); Maheshwari, *supra* note 97; *The Fishfam, Taytum and Oakley Give Little Sister the Best Dream Makeover Ever!*, YOUTUBE (Sept. 2, 2022), https://www.youtube.com/watch?v=NI_J8EBnUVw [<https://perma.cc/ULN9-YHLZ>]; *Samia's Life, Mommy and Me Fashion Show*, YOUTUBE (Jul. 7, 2021), <https://www.youtube.com/watch?v=qA61lweZmO8> [<https://perma.cc/W8D5-CCH5>]; *Samia's Life, SKIING FOR THE FIRST TIME, OMG!*, YOUTUBE (Jan. 29, 2022), <https://www.youtube.com/watch?v=pkXsQle1QBk> [<https://perma.cc/U3HW-7YYH>]; *The FishFam, TIME for FIRST GRADE! (Back to School Shopping Haul)*, YOUTUBE (Aug. 11, 2022), <https://www.youtube.com/watch?v=CagSgyMI0fs&t=368s> [<https://perma.cc/PR5E-3YWS>].

popularity of a brand, but one KidTuber’s parent anonymously (for fear that exposing themselves would harm future brand deals) shared that “brands might pay \$10,000 to \$15,000 for a promotional Instagram post, while a sponsored YouTube video might earn \$45,000 [and] a 30- to 90-second shout-out in a longer video can cost advertisers between \$15,000 and \$25,000.”¹⁰³

Being a successful and popular KidTuber can be extremely lucrative, and parents can leave their child with no choice but to participate in videos and brand deals, regardless of what the child wants.¹⁰⁴ Even Kyler Fisher—the father of family vlogging channel “The Fishfam,” whose twins Taytum and Oakley have become prominent KidTubers—has admitted that the “kids complete the package . . . [i]f [they] didn’t have the girls, [he couldn’t] imagine being as far as [they] are.”¹⁰⁵ One KidTuber (who used a fake name—Claire—for her interview) told *Teen Vogue* that once her family’s channel got popular, both of her parents quit their jobs since the income from YouTube:

. . . [W]as enough to support the family and to land them a nicer house and new car, so when she told her father she wanted to stop doing YouTube, he told her that ending YouTube would mean that they would have to move out of their house, and her parents would have to go back to work, leaving no money for “nice things.”¹⁰⁶

G. *The Right of Family Autonomy*

The Supreme Court has recognized that parents in the United States have the right to establish a home and raise their children as they see fit as a constitutionally protected interest.¹⁰⁷ *Meyer v. Nebraska* and *Pierce v. Society of Sisters*, both decided by the Court in the 1920s, established that legislation, even “under the guise of protecting the public interest,”¹⁰⁸ may not interfere with a parent or guardian’s decisions on their child’s upbringing and

103. Maheshwari, *supra* note 97.

104. Melody Burke, *New Child Labor Laws Needed to Protect Child Influencers*, ONLABOR (Apr. 27, 2022), <https://onlabor.org/new-child-labor-laws-needed-to-protect-child-influencers/> [https://perma.cc/32FU-EKGC].

105. Maheshwari, *supra* note 97.

106. Fortesa Latifi, *Influencer Parents and the Kids Who Had Their Childhood Made Into Content*, TEEN VOGUE (Mar. 10, 2023), <https://www.teenvogue.com/story/influencer-parents-children-social-media-impact> [https://perma.cc/6CV7-WEZK].

107. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding that the Fourteenth Amendment’s protection of liberties applies to a parent or guardian’s right to raise a child and establish a home however they please); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925) (“The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *Wisconsin v. Yoder*, 306 U.S. 205, 232 (1972) (“The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate.”).

108. *Meyer*, 262 U.S. at 400.

education because parents have the liberty to raise a child at their discretion.¹⁰⁹ The Court held that “liberties” under the Fourteenth Amendment included the liberty to establish a family and bring up children under the presumption that “the natural bonds of affection lead parents to act in the best interests of their children.”¹¹⁰

This liberty is not, however, without limits.¹¹¹ The Supreme Court recognizes that the right to raise a child, as a parent or guardian sees fit, is not absolute.¹¹² In *Prince v. Massachusetts*, the guardian of a nine-year-old girl was charged with violating Massachusetts child labor laws and unsuccessfully appealed to the Supreme Court.¹¹³ She argued that the Fourteenth Amendment guarantees a guardian the fundamental right to bring up a child how she pleases.¹¹⁴ The Supreme Court disagreed, holding that “the family itself is not beyond regulation” and that in certain conditions, the state can indeed step in as *parens patriae* to restrict the parent’s control when it relates to a child’s welfare.¹¹⁵

KidTuber children and even some parents are coming out and discussing the negative impact that being posted online for millions to see and having the parents also acting as the child’s manager has on a child’s welfare.¹¹⁶ In an article with Teen Vogue mentioned previously, a daughter of a family vlogging channel who used the name Claire in the article (her real name is not used) discussed the impact that engaging in family vlogging had on her life.¹¹⁷ Claire’s family’s channel went viral when she was only a toddler and the family’s channel is still ongoing.¹¹⁸ Pressure on her to continue being in videos, being the one supporting the family financially, and having her father as her boss has led Claire to wish that “her childhood was [not] overshadowed by social media stardom that she didn’t choose.”¹¹⁹ A similar story was told on the popular TikTok account @caroline_easom, after the TikToker was sent a letter from a KidTuber (who Caroline kept anonymous)

109. *Soc’y of Sisters*, 268 U.S. at 534-35.

110. *Meyer*, 262 U.S. at 399-400; Kristin Henning, *The Fourth Amendment Rights of Children at Home: When Parental Authority Goes Too Far*, 53 WM. & MARY L. REV. 55, 74 (2011).

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

112. *Id.* at 166 (“[T]he family itself is not beyond regulation in the public interest . . . that the state has a wide range of power for limiting parental freedom and authority in things affecting the child’s welfare.”); *Troxel v. Granville*, 530 U.S. 57, 68 (2000) (“so long as a parent adequately cares for his or her children . . . there will normally be no reason for the State to inject itself.”) (emphasis added).

113. *Prince*, 321 U.S. at 164.

114. *Id.* The appellant in this case primarily argued that her decisions were protected under the First Amendment’s freedom of religion through the Fourteenth Amendment, and “buttress[ed] this foundation [] with a claim of parental right as secured by the due process clause of the [Fourteenth] Amendment.” *Id.* at 164.

115. *Id.* at 166.

116. Latifi, *supra* note 106; Morgan Sung, *Their Children Went Viral. Now They Wish They Could Wipe Them From The Internet*, NBC NEWS (Nov. 3, 2022, 8:30 AM), <https://www.nbcnews.com/pop-culture/influencers-parents-posting-kids-online-privacy-security-concerns-rcna55318> [https://perma.cc/Y7MP-FEPB].

117. Latifi, *supra* note 106.

118. Still ongoing at the time of the writing of the Teen Vogue article at least. *Id.*

119. *Id.*

who had reached out to the account, hoping that Caroline would share their story.¹²⁰ In the video, the letter tells any family considering starting a family vlog channel to not do it.¹²¹ The letter goes on to say that a boss-employee relationship between a parent and child is damaging; the trauma of a child being an employee for their parents from a young age and never consenting to being online is not worth any money that might come from the fame.¹²² Furthermore, a child who is posted online will not only be watched by fans; by being posted online, the child is exposed to everyone, including Internet trolls and pedophiles who will bully, harass, or sexualize KidTubers in the video's own comment sections and elsewhere online.¹²³

When the state steps in to protect the welfare of the child, the state “may restrict the parent’s control by . . . *regulating or prohibiting the child’s labor*, and other means.”¹²⁴ However, the bar for what is considered adequate parental care is low. The only guidance given by the Court for what is considered “adequate” comes from *Troxel v. Granville*, where the Court stated that a state has no reason to interfere “so long as a parent adequately cares for his or her children (i.e., is fit)[.]”¹²⁵

H. *Disconnect Between the Children, the Brands, and the Platforms*

To monetize a video through the YouTube Partnership Program, YouTube requires that channels featuring individuals who are under eighteen link their account to an approved AdSense account of a parent or guardian who is over eighteen.¹²⁶ From there, the income goes directly to the approved account with no requirements that the child receive any of the profits.¹²⁷ The same issue arises with sponsored posts and brand partnerships as contract law has long held that in order to create a valid, enforceable contract, the parties to the contract must be at the age of majority (eighteen).¹²⁸ Known as the infancy law doctrine, it holds that a minor does not have the capability to enter into a contractual relationship.¹²⁹

120. @caroline_easom, TIKTOK (Sept. 30, 2022), https://www.tiktok.com/@caroline_easom/video/7149213992307674410?lang=en [<https://perma.cc/CK8U-Z2Q2>].

121. *Id.*

122. *Id.*

123. Galvin Feller & Benjamin Burroughs, *Branding Kidfluencers: Regulating Content and Advertising on YouTube*, 23 TEL. & NEW MEDIA 555, 579 (2022); Latifi, *supra* note 106.

124. *Prince*, 321 U.S. at 166 (emphasis added).

125. *Granville*, 530 U.S. at 68.

126. YouTube suggests that accounts with owners under 18 “link the [minor’s] YouTube account to an approved AdSense account (of a parent or guardian who is over 18).” *I Want to Monetize My Videos, But I Was Disapproved for Being Under 18*, *supra* note 102.

127. *Id.*; Margaret Arabpour, *Lights, Camera, (Legal) Action: Expanding Child Entertainment Laws to Protect Children on Social Media*, AM. U. J. OF GENDER, SOC. POL’Y & THE L. BLOG (Apr. 20, 2022) <https://jgspl.org/lights-camera-legal-action-expanding-child-entertainment-laws-to-protect-children-on-social-media/> [<https://perma.cc/UN34-W4CP>].

128. Jessica Krieg, *There’s No Business Like Show Business: Child Entertainers and the Law*, 6 U. PA. J. OF LAB. AND EMP. L. 429, 430 (2004).

129. *Id.*

Because of the KidTuber's age, the parents are the ones entering into the contract deals with companies rather than the child; therefore the parent, rather than the child doing the work in front of the camera, is the party who has control of the money.¹³⁰ These parents are not always looking out for the best interests of the child, which is evidenced by the numerous celebrity scandals of parents stealing money that should ethically (and in some cases, legally) belong to their child.¹³¹

I. France's New Laws to Protect Child Influencers

In 2020, French President Emmanuel Macron approved a new law to protect child influencers that regulates the “commercial use of images of children under 16 years old on online platforms.”¹³² The French law fills a gap in France's labor laws regarding the unregulated industry of child influencers—a gap that still exists in the United States.¹³³

To fill the French gap, the first part of the law establishes rules that will apply when the child is in a “labor relation.”¹³⁴ When the child receives orders or directions on how to act for a video, that is considered a labor relation.¹³⁵ Once a labor relation is established, parents will need to seek government authorization “before a child can engage in online video activities.”¹³⁶ Even if a child is not in an explicit labor relation, once certain factors—including the length of the video, income generated, and the time the child spent being a part of a video—surpass a certain threshold,¹³⁷ the child's parents will need to submit a declaration to government authorities.¹³⁸ Failure to comply with

130. Masterson, *supra* note 21, at 579, 592 (“parents often claim *they* are the ones completing the work by negotiating contracts”).

131. González, *supra* note 31; despite the investigation's conclusion that the *Jon & Kate Plus 8* children were required to have trust accounts, Kate Gosselin accessed two of her children's trust accounts and stole \$50,000 from each of their accounts. *Jon Gosselin Claims 'Morally Wrong' Ex Kate 'Stole' Money from Their Kids' Bank Account*, INTOUCH (Aug. 18, 2022, 1:26 PM), <https://www.intouchweekly.com/posts/jon-gosselin-claims-kate-stole-money-from-kids-bank-accounts/> [<https://perma.cc/8LJ8-WYML>]; Krieg, *supra* note 128, at 432.

132. *France: Parliament Adopts Law to Protect Child “Influencers” on Social Media*, LIBR. OF CONG. (Oct. 30, 2020), <https://www.loc.gov/item/global-legal-monitor/2020-10-30/france-parliament-adopts-law-to-protect-child-influencers-on-social-media/> [<https://perma.cc/92HL-B3XU>].

133. *Id.*; Cécile Sixou, *Child Influencers: “There is a Legal Void, That's the Reason for This Law,”* PUB. SENATE (Jun. 17, 2020), <https://www.publicsenat.fr/article/parlementaire/enfants-influenceurs-il-y-a-un-vide-juridique-c-est-la-raison-de-cette-loi> [<https://perma.cc/S9JK-FLXT>].

134. *See France, supra* note 132.

135. *Id.*

136. *Id.*

137. *Id.* These thresholds were “to be fixed by decree of the Council of State;” however, it does not seem that these thresholds have been determined yet. *See LAW n° 2020-1266 of October 19, 2020 aiming to regulate the commercial exploitation of the image of children under the age of sixteen on online platforms (1)*, RÉPUBLIQUE FRANÇOISE, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042439054> [<https://perma.cc/RLH8-K92C>] (last viewed Mar. 3, 2023).

138. *See France, supra* note 132.

the new authorization requirements can cause parents to “face fines of up to €75,000 and five years in prison.”¹³⁹ The French law also imposes responsibilities on advertisers who want to work with a KidTuber.¹⁴⁰ The advertiser must check to see if the income must go into the child’s blocked account or face the possibility of a €3,750 fine.¹⁴¹

KidTubers in France making significant sums of money from the videos in which they star will also now have their income protected, with a portion of the income from the videos being placed in a savings account that is not accessible until the child reaches adulthood.¹⁴² By passing these laws, France established protections for social media child stars “in a manner similar to child models or child actors.”¹⁴³

III. ANALYSIS

Starting July 1, 2024, Illinois will be the first state to “entitle [KidTubers] to a percentage of earnings” received from online content—if that content was made in Illinois.¹⁴⁴ However, outside of Illinois, there are no laws in the United States that grant a child social media star a legal right to any income generated by videos in which they participate.¹⁴⁵ This section will go through this Note’s proposed solution to fill that gap outside of Illinois and the roadblocks that this proposal might face.

A. Proposal Part 1.A: Create a Federal Coogan Law That Follows Section 5 of Pennsylvania’s Child Labor Act

Previously suggested proposals sought to implement a federal Coogan Law that is updated to include the new class of child entertainers (children featured in monetized social media content) or to require each state to have

139. Laura Kayali, *France to Introduce Legal Protection for YouTube Child Stars*, POLITICO (Oct. 6, 2020, 8:57 PM), <https://www.politico.eu/article/france-to-introduce-legal-protection-for-youtube-child-stars/#:~:text=Under%20the%20new%20rules%2C%20anyone,and%20five%20years%20in%20prison> [https://perma.cc/KN8T-34US].

140. *Id.*

141. *Id.*

142. *See France*, *supra* note 132.

143. *Id.*

144. *See Savage*, *supra* note 11.

145. Neyza Guzman, *The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Laws*, 8 CHILD & FAM. L.J. 85, 109 (2020); Jessica Pacht-Friedman, *The Monetization of Childhood: How Child Social Media Stars Are Unprotected from Exploitation in the United States*, 28 CARDOZO J. EQUAL RTS. & SOC. JUST. 361, 262 (2022); Amanda Silberling, *There Are No Laws Protecting Kids from Being Exploited on YouTube – One Teen Wants to Change That*, TECHCRUNCH (Apr. 12, 2022, 11:57 a.m.), <https://techcrunch.com/2022/04/12/family-vlogs-child-influencers-exploitation-youtube-laws/#:~:text=There%20are%20no%20laws%20protecting,wants%20to%20change%20that%20%7C%20TechCrunch> [https://perma.cc/G2NP-YE7Z].

their own Coogan Laws that also cover KidTubers.¹⁴⁶ The latter is what Illinois has done since the state had already required a trust account for child performers.¹⁴⁷

Federal Coogan Law proposals could seek to federalize the California model (in which at least fifteen percent of a child's earnings must be put into a trust account that cannot be accessed until the child reaches eighteen years of age) and expand it to cover children who are featured in monetized social media content.¹⁴⁸ This proposal is strong because having a national Coogan Law would offer uniform protection to all children in performance and acting.¹⁴⁹ A federal Coogan Law can be rationalized as equivalent to the Fair Labor Standards Act as both pieces of legislation protect children from employer exploitation and would set federal standards to ensure uniformity. A federal Coogan Law would prevent families from "[r]elocate[ing] to [another state] that would provide a child less protection."¹⁵⁰ With the new Illinois Child Labor Law amendments, however, the Illinois model could become the new focus of federal law proposals to protect KidTubers.

However, instead of the traditional California model, this Note proposes that a federal protection for KidTuber's income should follow the lead of Pennsylvania's child labor laws for child performers. In 2012, Pennsylvania's Child Labor Act (the Act) was enacted, replacing Pennsylvania's prior child labor law.¹⁵¹ Section 5 of the Act serves to explicitly discuss the "employment of minors in a performance."¹⁵² In defining performance, section 5(a) of the Act holds that:

[A] minor is engaged in a performance if . . . the minor models or renders artistic or creative expression . . . in a publication or via any other broadcast medium that may be transmitted to an audience and any person receives remuneration for the performance . . . [or if] [t]he minor participates in a reality or documentary program that *expressly depends upon the minor's participation, the minor's participation is substantial and any person receives remuneration for the minor's participation.*¹⁵³

The Act then continues on to include requirements for permits, categories of work the minor is not permitted to be involved in, the working

146. Amber Edney, "*I Don't Work for Free*": *The Unpaid Labor of Child Social Media Stars*, 32 U. FLA. J.L. & POL'Y 547, 568 (2022); see Guzman, *supra* note 145; see also France, *supra* note 132.

147. Savage, *supra* note 11; Coogan Law, *supra* note 26.

148. Edney, *supra* note 146.

149. Guzman, *supra* note 145, at 109.

150. *Id.*

151. Child Labor Act 2011, Pa. H.B. 1548 (Lexis 2012); See 43 Pa. Stat. § 41 (repealed 2012).

152. Pa. H.B. 1548 (Lexis 2012).

153. *Id.* § 5(a) (Lexis 2012) (emphasis added).

hours for the performer, and the requirement of a child performer trust account.¹⁵⁴

Section 5 of the Act, with minor tweaks, could provide a solid framework for a federal Coogan Law that protects minors appearing in monetized content online. This is because Pennsylvania’s definitions of “performer” and “reality programing” already describe the work that KidTubers (either in the subcategory of kidfluencer or children of family vloggers) are engaged in.¹⁵⁵

B. Proposal Part 1.B: Tweaking Section 5(a)(1) of Pennsylvania’s Child Labor Act to protect Kidfluencers

Section 5(a)(1) of the Act holds that a minor is “engaged in a performance” when the “minor models or covers artistic or creative expression” that is transmitted to an audience.¹⁵⁶ Section 5(a)(1) specifically states one form of performance is “live performances on the radio, on television, in a movie, over the Internet, in a publication, or via any other broadcast medium that may be transmitted to an audience and any person receives remuneration for that performance.”¹⁵⁷ With a minor adjustment to Section 5(a)(1), changing “live performance” into merely “performance” or striking “broadcast” from the section, kidfluencer channels focused on educational or brand deal content, as long as that content remained artistic and/or creative would have a strong argument that their content falls under Section 5(a)(1).

Because kidfluencer channel content often advertises different toys and brands to children, these channels’ videos easily draw children’s attention and make the toys seem entertaining.¹⁵⁸ For example, in a sponsored video promoting Moose Toy’s *Magic Mixies Mixlings* (a magic toy cauldron and wand that simulates enchanted potions), a *Samia’s Life* video includes a skit where she is “transported” to a magical world where she must use the toy cauldron to get back home.¹⁵⁹ While the video could arguably be considered an extended ad, the content itself is still artistic and creative, and because the video is a sponsored ad, there is payment for the performance.¹⁶⁰ As stated above, under Section 5(a)(1), a performance just needs to be an artistic or creative expression that is disseminated to an audience where someone is getting paid.¹⁶¹ Therefore, with the slight tweaks in Section 5(a)(1)’s language, kidfluencer content could be considered performance through

154. *Id.*

155. Kidfluencers and children of family vloggers will be discussed separately in this section rather than jointly as “KidTubers” because of the differences in the content and structure of the videos that they star in.

156. Child Labor Act 2011, Pa. H.B. 1548 § 5(a)(1) (Lexis 2012).

157. *Id.*

158. See Maheshwari, *supra* note 97.

159. Samia’s Life, *Samia Goes to A Magical World*, YOUTUBE (Jun. 1, 2022), https://www.youtube.com/watch?v=EV4q2Uc_YvE&t=15s [https://perma.cc/Y2SN-DCUR].

160. *Id.*; Wu, *supra* note 74, at 64.

161. See Child Labor Act 2011, *supra* note 156.

artistic or creative expression, and therefore would be covered by Section 5(a)(1).

C. Proposal Part 1.C: Family Vlogging as a Reality Program Under Section 5(a)(2)

Children of family vloggers, on the other hand, may run into an issue being covered by Section 5(a)(1). The concept of family vlogging is to provide viewers a glimpse into families' real daily lives—the good and the bad—without being particularly artistic or creative which doesn't fit under the Act's definition of "performance."¹⁶² However, family vlogging is filmed in, and portrays content in, a way that falls under another umbrella of the Act—Section 2's description of a reality program, and Section 5(a)(2) regarding minors in reality programs.¹⁶³

Section 5(a)(2) of the Act protects minors in reality or documentary programs whose engagement in performance and participation is substantial.¹⁶⁴ The Act defines a reality program as: "[a] genre of program that principally presents actual events and generally features ordinary people and not professional actors."¹⁶⁵ Family vloggers are not professional actors and are just ordinary people who gain a large following over time if they advertise themselves well.¹⁶⁶ The whole premise of family vlogging videos—to share the daily lives of an "ordinary" family—is how the Act defines a reality program.¹⁶⁷

For a minor to be participating in a reality program, Section 5(a)(2) requires that the minor's participation is (1) "substantial;" (2) that an individual is receiving "remuneration for the minor's performance;" and (3) that the reality program "expressly depends on the minor's participation," i.e., the program would not happen but for the child's participation.¹⁶⁸ Section 5(a)(2)(ii) defines substantial participation in two ways,¹⁶⁹ with one definition of being when "the minor is a *principal subject* of the reality or documentary program."¹⁷⁰ Similarly, the new Illinois Child Labor Law amendment considers a minor under sixteen to be "engaged in the work of vlogging" when the child's "likeness, name, or photograph . . . visually appears or is the

162. The bill defines "perform" or "performance" as "[t]he providing of artistic or creative services to a live audience or recorded for exhibition or broadcast to an audience. This term shall include modeling." *Id.* § 2(2).

163. *See id.* § 5(a)(2) (Lexis 2012).

164. *See id.*

165. *Id.* § 2 (Lexis 2012).

166. *See Gamson, supra* note 68, at 1065.

167. Ordinary in that these are regular families; Child Labor Act 2011 Pa. HB 1548 § 2(2) (Lexis 2012); The LaBrant Fam, *Update on our sons [sic] seizure*, YOUTUBE (Jun. 5, 2022), https://www.youtube.com/watch?v=gJmd_f2h-14&t=482s [<https://perma.cc/3G4Z-J5NW>] ("I just wanted to remind you guys so much that we are just a totally normal family like you guys going through totally normal things.")

168. Child Labor Act 2011, Pa. H.B. 1548 § 5(a)(2) (Lexis 2012).

169. *Id.* § 5(a)(2)(ii) (Lexis 2012).

170. *Id.* (emphasis added).

subject of an oral narrative in the video segment” for at least thirty percent of the video which might be an even better metric than “principal subject.”¹⁷¹

Regardless of how “substantial” is ultimately defined, having the children be the focus of the video’s content is how family vlogging channels operate.¹⁷² Many of their videos expressly depend on the child’s participation, and the children are often the principal subject of the content—the stars of the show and who people tune in to see.¹⁷³ The structure of family vlogging videos is similar to the structure of a family reality television show—clips of the kids with the parents interjecting discussing what is going on and giving general comments.¹⁷⁴ For some channels, the families also partake in pranks, challenges, sit-down videos, or scripted skits.¹⁷⁵

One reason that the *Jon & Kate Plus 8* investigation (also notably in Pennsylvania) held that the children were working was because of how the kids helped introduce episodes, the product placement in episodes, lighting set ups, and the production of merchandise featuring the children.¹⁷⁶ Family vlogging channels do the same,¹⁷⁷ strengthening the argument that children are the principal subject of the videos.

Just one example of a channel that shows the similarities between family vlogging and reality television is the Yeager family¹⁷⁸ where the children are the focus of their videos.¹⁷⁹ As Kyler Fisher admitted to Sapna Maheshwari in her New York Times article on kidfluencers, “the kids complete the package,” and for the Yeagers, their kids complete the package.¹⁸⁰ The kids are the thumbnail photo, often help introduce videos, and are the ones mainly in front of the camera participating in product placement

171. 2023 Bill Text IL, S.B. 1782 § 2.6 (Lexis 2023).

172. Johnson, *supra* note 91.

173. Maheshwari, *supra* note 97.

174. See The LaBrant Fam, *Saying Goodbye to Our New House*, YOUTUBE (Mar. 11, 2023), <https://www.youtube.com/watch?v=Dtw44O2TN4M> [<https://perma.cc/XL4H-PY6M>].

175. *Shot of the Yeagers*, YOUTUBE, <https://www.youtube.com/@soty/videos> [<https://perma.cc/PH6N-F8NA>] (last visited Mar. 3, 2023); *The Norris Nuts*, YOUTUBE, <https://www.youtube.com/@norrisnuts/videos> [<https://perma.cc/V8LN-HADJ>] (last visited Mar. 3, 2023).

176. Duke, *supra* note 48.

177. See *Shot of the Yeagers*, *supra* note 175; Family vlogging channel, the FishFam, released bracelet sets based on their two twin daughters. The Fishfam, *Our Big Announcement!!*, YOUTUBE (Feb. 2, 2023), <https://www.youtube.com/watch?v=6XqTUhnM7go> [<https://perma.cc/JYS2-U2RB>]; *Love T and O*, LOVE T AND O, <https://lovetando.com/> [<https://perma.cc/VE22-JSY4>] (last visited Sept. 2, 2023) (“Taytum and Oakley have curated fun, bright designs for their second collection.”).

178. See *Shot of the Yeagers*, *supra* note 175.

179. See *id.*

180. Maheshwari, *supra* note 97; *Shot of the Yeagers*, *supra* note 175.

and sponsorships, doing challenges, and performing skits.¹⁸¹ The channel offers merchandise with “SOTY” (Shot of the Yeagers) on it and even sells a jigsaw puzzle of the family.¹⁸² The kids’ participation is a key component of the content that “principally presents actual events and generally features ordinary people,” making family vlogger content fall squarely within Pennsylvania’s definition of reality program and the Act’s authority to regulate.¹⁸³

By framing family vlogging as an online, independent version of reality programming, policymakers could find that KidTubers are protected under the law just like the Gosselin kids were. By considering family vlogging as reality programming, a field of entertainment that Pennsylvania law already regulates, lawmakers would not have to find additional legal bases to regulate a whole new area of entertainment.

D. Issues and Solutions

There are three main issues to implementing a Coogan Law trust account requirement on KidTuber content. These issues are (1) developing a threshold that dictates what content being posted online is regulated, (2) the dilemma that there is no obvious direct employer of the child, and (3) the United States’ emphasis on parental sovereignty.¹⁸⁴ However, with the passing of the Illinois Child Labor Law amendment to include vlogging,¹⁸⁵ these last two arguments may be weakened.

It is important to note that many people post their kids online for non-commercial reasons. The aim of a federal Coogan Law is not to regulate parents posting their child online but to ensure kids have a right to any money made from their active participation and likeness. Therefore, a federal Coogan Law would only reach children on accounts that are monetized, similar to the French law.¹⁸⁶ Limiting these protections to only monetized content gives the law a narrower scope and makes enforcing income protections easier—legally and logistically. Federal policymakers could look to France’s new law and threshold criteria¹⁸⁷ (possibly mirroring the criteria used by the YPP)¹⁸⁸ and

181. *Shot of the Yeagers*, *supra* note 175; Shot of the Yeagers, *Don’t tell Anyone Our Secrets!*, YOUTUBE (Nov. 15, 2022), <https://www.youtube.com/watch?v=9CSD-eXTY4Y> [<https://perma.cc/E745-NXCQ>]; Shot of the Yeagers, *LAVA MONSTER at a PARK! *Best Reaction**, YOUTUBE (Mar. 24, 2023), <https://www.youtube.com/watch?v=vh6noAjldtA> [<https://perma.cc/QCV5-EQXX>]; Shot of the Yeagers, *We Become WWE Superstars!*, YOUTUBE (Dec. 16, 2022), <https://www.youtube.com/watch?v=ICrsrUHao8Y> [<https://perma.cc/G9MC-3E8F>]; Shot of the Yeagers, *The Dollhouse!*, YOUTUBE (Feb. 3, 2023), <https://www.youtube.com/watch?v=6JWGw13lqDM> [<https://perma.cc/BVE3-CN5A>].

182. Store Tab of Shot of the Yeagers YouTube Channel Page, YOUTUBE, <https://www.youtube.com/@soty/store> [<https://perma.cc/6A6T-T4XK>] (last visited Mar. 4, 2023).

183. Child Labor Act 2011, Pa. H.B. 1548 §§ 2, 5(a)(2) (Lexis 2012).

184. Guzman, *supra* note 145, at 108.

185. Savage, *supra* note 11.

186. *See France*, *supra* note 132.

187. *Id.*

188. *YouTube Partner Program Overview & Eligibility*, *supra* note 76.

Section 5 of the Pennsylvania Child Labor Act¹⁸⁹ to determine what threshold triggers the trust account requirement.

Pennsylvania's Child Labor Act Section 5(e) requires that "[a]n irrevocable child performer trust account . . . shall be established for a minor if the minor is entitled to receive residuals . . . or earnings are anticipated to exceed \$2,500 for the production . . ." ¹⁹⁰ This account must be established for the minor, and the parent or guardian must provide the employer the account information so that the funds payable to the minor can be deposited by the employer.¹⁹¹ By following the French and Pennsylvania models, a trust account requirement would only come into play if (1) the minor's participation was substantial to the content of the uploaded video, and (2) the channel's subscriber and average viewer count surpasses a certain number and/or earning threshold indicative of an entertainment purpose.¹⁹² While this solution would not reach smaller vlogging channels that are trying but failing to make money by posting their children online, it does combat parents who have succeeded at making income off of their children's online persona.

While there is no direct third-party employer of a KidTuber, implementation of a Coogan Law on the platform and brand side would be straightforward. For channels making money off children based on views, the video platform would need to require two accounts to be linked to the channel—the parent or guardian's account and the child's trust account. The AdSense account would then be linked to both the primary bank account (likely the parent's) and the minor's trust, and when income is generated from monetized videos, the money is split between both accounts in accordance with the proper percentages of proceeds.

Proof of a trust account would also be required when creators enter brand deals that the children participate in. The brand would require the parents to provide proof of the child's trust account before entering into a brand deal or risk facing penalties—penalties that would deter noncompliance. In both instances, the money would be sent to the adult's account and the child's trust account consistent with the required percentages of proceeds.

Parents and children are often *both* included in videos, so a question could be raised on what the appropriate split of proceeds between parent and child (or children) would be. While the question of appropriate percentages is outside the scope of this Note, a baseline of fifteen percent would bring social media into parity with traditional Coogan Laws.¹⁹³

Lastly, there will undoubtedly be objections that this constitutes interfering with family autonomy and a guardian's choices on how to raise a child. However, regulating KidTuber income should not be seen as being within the protected confines of domestic autonomy. The Supreme Court in *Prince* held that government intervention in the family unit is justified when

189. Child Labor Act 2011, Pa. H.B. 1548 § 5(e) (Lexis 2012).

190. *Id.* § 5(e)(1) (Lexis 2012).

191. *Id.* § 5(e)(2) (Lexis 2012).

192. *See France, supra* note 132; Child Labor Act 2011, Pa. H.B. 1548 § 5 (Lexis 2012).

193. *Coogan Law, supra* note 26; Child Labor Act 2011. Pa. H.B. 1548 § 5(e)(2)(iii) (Lexis 2012).

it needs to *regulate or prohibit the child's labor* or step in to ensure a child's welfare.¹⁹⁴ This regulation of KidTubers would not force parents to open a Coogan trust account every time they wanted to post a video online for their friends and family to see; it would just trigger when the content is clearly meant for income-generating reasons.¹⁹⁵ If parents did not want to conform to the trust account requirement, they would still be free to post videos starring their children, but they just would not get any income from it.

Introducing your children into the KidTuber industry exposes them to possible exploitation and harm by their own parents.¹⁹⁶ Once the door is opened to expose a family and child's private life online for monetary gain, that should be seen as a transfer into the workforce, just like entering a child into traditional entertainment. Moreover, expanding Coogan Laws to cover KidTubers would not concern how the child is being raised. It would not limit what a parent could do or not do. The expansion merely allows a working child to have a right to a portion of the income derived from their online presence.

Congress also has the "broad power to regulate interstate commerce," and¹⁹⁷ Internet advertising has already been recognized as being interstate.¹⁹⁸ Therefore, the already enacted child labor laws,¹⁹⁹ regulations for children in traditional entertainment,²⁰⁰ the Commerce clause,²⁰¹ and the *Prince* opinion²⁰² demonstrate that when it comes to the rights of child entertainers, the government has the right to regulate.

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

195. YouTube has the ability to moderate what content features children. In 2019, YouTube disabled comments on nearly all videos and channels that featured children in response to predatory comments being left in the comments section of videos of children. Therefore, it is clearly possible for YouTube's algorithm to find and differentiate between content featuring children and content that does not. Julia Alexander, *YouTube is Disabling Comments on Almost All Videos Featuring Children*, THE VERGE (Feb. 28, 2019), <https://www.theverge.com/2019/2/28/18244954/youtube-comments-minor-children-exploitation-monetization-creators> [<https://perma.cc/H8J6-YLQZ>].

196. Feller & Burroughs, *supra* note 123.

197. *Artl.S8.C3.1 Overview of Commerce Clause*, CONST. ANNOTATED, https://constitution.congress.gov/browse/essay/artl-S8-C3-1/ALDE_00013403/ [<https://perma.cc/W6XQ-T3RR>] (last visited Sept. 1, 2023).

198. Masterson, *supra* note 21, at 588.

199. Child Labor Act 2011, Pa. H.B. 1548 § 5 (Lexis 2012).

200. *The Comprehensive Guide to Child Actor Laws by State*, *supra* note 40.

201. *Artl.S8.C3.1 Overview of Commerce Clause*, *supra* note 197.

202. *Prince*, 321 U.S. at 166-67.

IV. CONCLUSION

Despite the increased scrutiny of KidTuber channels and an influx of negative attention,²⁰³ the continued popularity of KidTuber accounts makes it clear that the pop culture obsession with the domestic inner workings of a family has remained strong.²⁰⁴ This negativity often revolves around stealth advertising to children (with nonprofits focused on protecting kids from marketing have called for the Federal Trade Commission to ban “influencer marketing” towards kids),²⁰⁵ clickbait titles regarding children’s wellbeing,²⁰⁶ playing extreme pranks on kids,²⁰⁷ or filming very upset children rather than providing them comfort.²⁰⁸ However, these channels still garner hundreds of thousands (if not millions) of views on each video, launching these children

203. On August 30, 2023, former family vlogger Ruby Franke from the YouTube channel “8 Passengers” was arrested in Utah and is facing six felony counts of aggravated child abuse. The channel had long been criticized online for Franke’s strict and abusive parenting that she allegedly displayed in her videos. Amy Beth Hanson, *Parenting Advice YouTuber Ruby Franke Charged with Aggravated Child Abuse of 2 of her 6 Children*, ASSOCIATED PRESS (Sept. 1, 2023, 6:19 PM), <https://apnews.com/article/youtube-mom-parenting-advice-child-abuse-arrest-d011c50c6da8f3535d8dfda46654a50a> [<https://perma.cc/H5GB-ULS7>].

204. See Kessel et al., *supra* note 92 (explaining statistics on what kinds of videos are popular on YouTube).

205. Jeff Chester, *Protecting Children and Teens from Unfair and Deceptive Marketing, Including Stealth Advertising*, CTR. FOR DIGIT. DEMOCRACY (Jul. 19, 2022), <https://democraticmedia.org/publishings/protecting-children-and-teens-from-unfair-and-deceptive-marketing-including-stealth-advertising> [<https://perma.cc/4FZL-8UBS>]; *We’re Telling the FTC: Ban Influencer Marketing to Kids!*, FAIRPLAY, <https://fairplayforkids.org/ban-influencer-marketing/> [<https://perma.cc/LK5N-72U5>] (last visited Sept. 2, 2023).

206. The LaBrant family uploaded a YouTube video titled *She Got Diagnosed with Cancer* in August 2021. The original thumbnail was a photograph of the whole family, and the thumbnail looked like their middle daughter was sick (it has since changed to a photo of the father, Cole, praying next to a child whose face is not in frame). Only after six minutes of runtime (which includes the daughter being sick and getting tests done) do viewers learn that the daughter does not have cancer and that the family was just visiting sick children. The LaBrant parents came under fire when this was posted because many people saw it as “clickbait” and that the parents were using cancer as a way to get more views. The LaBrant Fam, *She got diagnosed with cancer. (documentary)*, YOUTUBE (Aug. 28, 2021), <https://www.youtube.com/watch?v=5mV7r75sil8> [<https://perma.cc/8JYB-W3SW>]; Sarah Templeton, *Influencer Couple Slammed After YouTube Video Implies 2yo Daughter has Cancer as a Way To ‘Raise Awareness,’* NEWSHUB (Sept. 20, 2021), <https://www.newshub.co.nz/home/lifestyle/2021/09/influencer-couple-slammed-after-youtube-video-implies-2yo-daughter-has-cancer-as-a-way-to-raise-awareness.html> [<https://perma.cc/FS2F-3G4C>].

207. Good Morning America, *YouTube stars lose custody of 2 children after prank videos*, YOUTUBE (May 3, 2017), <https://www.youtube.com/watch?v=Qv96khZHacU&t=1s> [<https://perma.cc/GX8F-QTM>].

208. Former “mommy-vlogger” Jordan Cheyenne came under controversy and deleted her YouTube account after she accidentally released the unedited version of a video discussing the family’s sick dog. The unedited video showed Cheyenne’s young son crying and distraught, with Cheyenne instructing him to “act like you’re crying,” to which he responds, “I am crying.” She continues to instruct him on how to rest his head and where to put his hand so that his face can be seen in the thumbnail. Rachel Paula Abrahamson, *Family YouTuber Deletes Account After Criticism Over Video Coaching Son to Cry*, TODAY (Sept. 14, 2021, 7:09PM), <https://www.today.com/parents/jordan-cheyenne-speaks-out-about-youtube-video-son-crying-t231055> [<https://perma.cc/6GJP-MZPZ>].

into the spotlight to become micro-celebrities and generating significant income while doing so.²⁰⁹ However, without updating the already tenuous legal protections surrounding child stars to include KidTubers, and expanding these protections to be federally applicable, this new generation of child stars will remain unable to assert a legal right to any of the money that they worked to generate.

209. See Maheshwari, *supra* note 97.