

When Parents Decide That All the World's a Stage: Expanding Publicity Rights to Protect Children in Monetized Social Media Content

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Family content creation is a multibillion-dollar industry. Though most parents at some point share content of their children online, for many “influencer” parents and their children, putting in the hours to curate the perfect online image means legions of fans and an enviable income from advertising and sponsorship. The children of these families, though integral to this content’s success, have neither legal protection to assure compensation for their labor nor any control over the material in which they appear. Creating this content can have detrimental effects on children’s safety and well-being; additionally, because of the internet’s permanence, these negative effects often continue well into adulthood.

Several states have passed or proposed laws that would ensure some level of financial compensation for children involved in monetized content. A far less discussed—but perhaps equally important—potential form of protection is the “Right to Deletion,” whereupon turning 18 these children could command that their parents remove monetized media that includes their likeness. In the United States, parents enjoy a high degree of autonomy in making decisions for their children, meaning it is exceedingly difficult to explicitly control the type of content parents can create involving

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On numerous occasions, this Note refers to content featuring minor children created by influencer families. Consistent with this Note’s thesis, citations to this content will not include the link to the media in question, in order to avoid bringing more attention to the involved children.

their minor children. Accordingly, this Note advocates for a national expansion of publicity rights, which would give children included in monetized content a “Right to Deletion” upon reaching adulthood—respecting parental autonomy while curbing the long-term negative effects of “sharenting” on the involved children. Further, deletion rights may have the effect of persuading parents to consider more carefully the potentially harmful effects of the content they produce without encroaching on their parental rights.

Part I of this Note outlines the family content creation industry, its unique characteristics compared to traditional forms of media, and the harms that can befall children in its production. Part II evaluates the United States’ legal understanding of parental autonomy and how this view leaves these children at an especially high risk of exploitation. Part III addresses the state of publicity laws and where children involved in monetized content fit into the existing legal framework. Finally, Part IV advocates for the expansion of publicity rights to give these children the “Right to Deletion” upon entering adulthood.

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INTRODUCTION

“To photograph people is to violate them, by seeing them as they never see themselves, by having knowledge of them they can never have; it turns people into objects that can be symbolically possessed.”

Susan Sontag¹

May 2021 was a turbulent time for the now-infamous Phillippi family. Following backlash to one of the family’s YouTube videos, a 2018 video of theirs titled “We’re not adopting from Thailand anymore” gained public attention.² In the video, parents Nikki and Dan shared with their million-plus followers why they chose to abandon the Thai adoption process they pursued for several months.³ The Phillippis were not conflicted over a desire for another child, nor were they concerned about their ability to provide for a prospective adoptee.⁴ Rather, it was Thai law’s prohibition on “disclos[ing] the name, surname, photograph or any information regarding the child . . . in a manner which may be harmful to the reputation, prestige or any interest of a child”⁵ that ultimately dissuaded them.⁶ As Thailand puts each prospective adoptive family through a trial period of at least six months before finalizing the adoption, publishing the likeness of or any information about the would-be adoptee in a potentially damaging way could put the entire adoption at risk.⁷ This restriction

1. SUSAN SONTAG, ON PHOTOGRAPHY 10 (1973).

2. The 2021 video that incited the backlash showed the parents, Nikki and Dan, explaining their decision to euthanize their healthy dog after it bit their son. See Moises Mendez II, *After Viewers Criticized a YouTube Couple for Putting Down Their Dog, a 2018 Video About Canceling a Child Adoption Is Circulating*, BUS. INSIDER (May 17, 2021), <https://www.insider.com/nikki-dan-phillipi-adoption-controversial-youtube-video-resurfaced-2021-5> [<https://perma.cc/ZT34-66CV>] (summarizing the Phillippi family controversy).

3. See Nikki Phillippi (@NikkiPhillippi), *We’re not adopting from Thailand anymore.*, YOUTUBE (May 29, 2018), www.youtube.com/watch?v=wYUw3Hq8vNg [<https://perma.cc/TT9D-ZP44>].

4. See *id.*

5. Child Protection Act, B.E. 2546 § 50 (2003) (Vol. 120 Gov’t Gazette 2003) (Thai.), https://extranet.who.int/mindbank/external_link/5036/bb2fe36d83e8ebfd9e778a7e7722ab1dce07220c [<https://perma.cc/CSW7-PZE3>].

6. See Phillippi, *supra* note 3.

7. See Child Adoption Act, B.E. 2522 § 23 (1979) (Vol. 96 Gov’t Gazette 1979) (Thai.), <http://law.m-society.go.th/law2016/uploads/lawfile/591d56b95503c.pdf> [<https://perma.cc/Z2TU-6LQ2>] (“When the Director-General or the provincial governor orders for a probationary placement of the child, the applicant may then receive the child in his custody. The period of probationary placement shall be not less than six months.”).

presented an obstacle for Nikki and Dan far beyond what most prospective parents would experience.

The Phillippis are an influencer⁸ family, earning most of their income from a mix of social media advertising and sponsorships by publicly sharing the intimate details of their day-to-day life via platforms like YouTube and TikTok.⁹ Their channel is a family affair: their children are frequently featured in the content and are central to the “brand” their parents have created. Creating monetized social media content, though a relatively new way of making money, can be extremely profitable for those who amass a considerable following.¹⁰ Clicks and views directly translate to earnings and popularity, and for family influencers, content including young children and coverage of adoption journeys are especially profitable.¹¹ This means that, realistically, Thai

8. An influencer is “a person who is able to generate interest in something (such as a consumer product) by posting about it on social media.” *Influencer*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/influencer> [<https://perma.cc/UQ87-RXQT>]. The Phillippi family has detailed their specific social media-related business in various interviews. See Video Influencers (@videoinfluencers), *Nikki Phillippi on How to Start a Business on YouTube, Teamwork, and Networking*, YOUTUBE (Oct. 26, 2015), <https://youtu.be/RBbRBvgGizw> [<https://perma.cc/K8N8-JTS9>] (interview with Nikki discussing her various business ventures related to social media content creation); Video Influencers (@videoinfluencers), *How to Start a YouTube Career - Nikki Phillippi Interview*, YOUTUBE (June 9, 2015), <https://youtu.be/xSr6yHEP4rc> [<https://perma.cc/2VWF-2AUZ>] (describing Nikki’s job as “YouTube Personality and Lifestyle Video Creator”).

9. See Jessica Pacht-Friedman, Note, *The Monetization of Childhood: How Child Social Media Stars Are Unprotected from Exploitation in the United States*, 28 CARDOZO J. EQUAL RTS. & SOC. JUST. 361, 377 (2022) (describing how “families can make money full-time on YouTube, or on other blogging websites, by advertising or being provided with free products to help boost sales”); see also Nila McGinnis, Note, *“They’re Just Playing”: Why Child Social Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents*, 87 MO. L. REV. 247, 261–63 (2022) (detailing how families like the Phillippis make money).

10. Top creators can make millions of dollars annually. See Steven Bertoni, *Top Creators 2023*, FORBES (Sept. 26, 2023), <https://www.forbes.com/sites/stevenbertoni/2023/09/26/top-creators-2023/> [<https://perma.cc/8YFP-3AVD>] (listing 2023’s top 50 influencer earners). On YouTube, even without additional brand deals, creators can make up to \$30,000 per million views their channel receives. See Madeline Berg & Nathan McAlone, *How Much YouTube Pays for 1 Million Views, According to Creators*, BUS. INSIDER (May 5, 2023), <https://finance.yahoo.com/news/much-youtube-pays-1-million-123000722.html> [<https://perma.cc/2EAZ-GAAJ>]. This adds up quickly—for example, the popular LaBrant family channel regularly brings in tens of millions of views per video. See The LaBrant Fam (@ColeandSav), *Videos*, YOUTUBE (last visited Sept. 11, 2024).

11. See Patrick van Kessel et al., *A Week in the Life of Popular YouTube Channels*, PEW RSCH. CTR. (July 25, 2019) <https://www.pewresearch.org/internet/2019/07/25/a-week-in-the-life-of-popular-youtube-channels/> [<https://perma.cc/NG24-KKD4>] (family content with young children brings in far greater viewership than either family content with older children or family content without any children); Ellen Scott, *The Big Business of Sharing Adoption Videos on YouTube*, METRO UK (Oct. 31, 2020), <https://metro.co.uk/2020/10/31/the-big-business-of-sharing-adoption-videos-on-youtube-13386190/> [<https://perma.cc/>

adoption law threatened a lucrative financial opportunity for the Phillippi family by effectively preventing them from publishing the prospective adoptee's likeness. Still, so long as Nikki and Dan heeded the Thai government's rules and avoided posting the child for the probation period, they would have become free to include them in their monetized content once the Thai government finalized the adoption. Instead, they abandoned the process entirely, deciding that omitting a child in their content for several months would be incompatible with their lifestyle as influencers.¹²

The backlash to the Phillippis' adoption decision was twofold. First, people scrutinized the parents for this specific scenario in which they seemingly valued money over a potential addition to their family.¹³ Second, and more importantly, many recognized the Phillippis' actions as part of a greater phenomenon of influencer parents exploiting their children for clicks and cash.¹⁴ Over the past few years, psychologists, journalists, and children's rights activists have become increasingly concerned about the consequences that such constant sharing has on the children involved.¹⁵ For many of these families, little is sacred when it comes to social media, particularly when videos including intimate moments such as potty training¹⁶ or Christmas morning

EM3U-VCZ5] (explaining how lucrative videos covering the adoption process and journey can be for influencer families).

12. See Mendez II, *supra* note 2.

13. See, e.g., *id.* (discussing the adoption scandal); Kerry Breen, *YouTubers Who Euthanized Dog Criticized Over 2018 Video About Adoption Decision*, TODAY (May 25, 2021), <https://www.today.com/parents/nikki-dan-phillippi-criticized-over-2018-adoption-video-t219530> [<https://perma.cc/D4NC-F2HL>] ("Nikki and Dan Phillippi, the YouTubers who made waves earlier in May after announcing they put down their dog Bowser, are now being criticized for resurfaced comments they made in a series of videos while they were attempting to adopt a child in 2018.").

14. See, e.g., Charissa Cheong, *Footage of a YouTuber Saying She Canceled an Adoption Because She Wouldn't Be Able to Film the Child Has Resurfaced, Shocking Viewers*, BUS. INSIDER (June 5, 2023), <https://www.businessinsider.com/resurfaced-clip-influencer-cancels-adoption-film-child-2023-6> [<https://perma.cc/XB5F-6ZGT>].

15. See, e.g., Meghan McCarty Carino & Daniel Shin, *The Pitfalls of Being the Child of a Parenting Influencer*, MARKETPLACE TECH (Mar. 31, 2023), <https://www.marketplace.org/shows/marketplace-tech/the-pitfalls-of-being-the-child-of-a-parenting-influencer/> [<https://perma.cc/3XST-FV73>] (discussing the negative impact that a lifestyle of constant public sharing has on children); 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/KR4G-7Y3M>] (same); Maggie Harrison Dupré, *Their Parents Were Family Influencers, Now Their Kids Hate Them*, FUTURISM (Mar. 14, 2023), <https://futurism.com/parents-influencers-kids-hate-them> [<https://perma.cc/ZAR5-Q8KG>] (same).

16. See Madison Fisher & Kyler Fisher (@Fishfam), *Time to TRAIN! NO MORE DIAPERS*, YOUTUBE (Sept. 21, 2018) (last visited Sept. 14, 2024) (vlogging about their

meltdowns¹⁷ can garner millions of views and the thousands of dollars that come with them.

Despite increased scrutiny of child exploitation in familial content creation, the greater industry is very difficult to regulate because the United States has strict notions of parental autonomy.¹⁸ Under current law, so long as posts do not include illegal activity,¹⁹ parents can publicize and monetize their children's lives as freely and frequently as they choose. Some states have begun addressing the financial side of this exploitation by requiring parents to save a percentage of their income derived from content including their children for their children.²⁰ Instituting financial protections is a step in the right direction to offer these children some safeguards, but currently, only Minnesota gives children a right to force their parents to delete monetized content including their likeness.²¹ This means that in

experience potty training their toddlers, including showing their toddlers practicing sitting on the toilet).

17. In light of the backlash mom Angela received for posting the referenced TikTok, the video has since been deleted. For a description of the video, see Kate Lindsay, *The First Social-Media Babies Are Growing Up—And They're Horrified*, ATLANTIC (May 23, 2023), <https://www.theatlantic.com/technology/archive/2023/05/parents-posting-kids-online-tiktok-social-media/674137/> [<https://perma.cc/V8GS-YWW4>].

18. See Keltie Haley, Note, *Sharenting and the (Potential) Right to Be Forgotten*, 95 IND. L.J. 1005, 1011 (2020) (discussing the Supreme Court's "general restraint in limiting parental rights").

19. For example, parents, like anyone, are barred from posting the kind of material that would otherwise violate child pornography laws. See generally CHILD EXPLOITATION & OBSCENITY SECTION, U.S. DEP'T OF JUST., CITIZEN'S GUIDE TO U.S. FEDERAL LAW ON CHILD PORNOGRAPHY (2023), <https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-child-pornography> [<https://perma.cc/RVB2-FEMT>] (summarizing federal laws on child pornography).

20. See, e.g., 820 ILL. COMP. STAT. 205/0.5–205/12.6 (2023); see also Manuela López Restrepo, *A New Illinois Law Wants to Ensure Child Influencers Get a Share of Their Earnings*, NPR (Aug. 23, 2023), <https://www.npr.org/2023/08/23/1195508847/a-new-illinois-law-wants-to-ensure-child-influencers-get-a-share-of-their-earnin> [<https://perma.cc/E8NM-48P9>] ("The law, which is an amendment to the state's existing child labor laws, entitles child influencers to a percentage of the earnings made from the content they're featured in, and held in a trust until they turn 18."). In 2024, California and Minnesota both passed similar bills guaranteeing financial protection for child influencers. See MINN. STAT. 181A.13 subdv. 3 (2024); CAL. S.B. 764 (2024); see also Fortesa Latifi, *California Passes Legal and Financial Protections for Child Influencers*, TEEN VOGUE (Sept. 26, 2024), <https://www.teenvogue.com/story/california-legislation-for-kid-influencers> [perma.cc/53HD-FQ58] ("With the signing of this bill, California joins Illinois and Minnesota as the only states in the country to have protections for influencer children.").

21. See MINN. STAT. 181A.13, subd. 5 (2024) ("Content containing the likeness of a child must be deleted and removed from any online platform by the individual who posted the content, the account owner, or another person who has control over the account when the request is made by a minor age 13 or older whose likeness appears in the content, or by an adult who was under the age of 18 when their likeness was used in the content.")

nearly every case, these children's digital identities become, by default, permanently tied to the monetized content over which they never had any legal control.²² As the first children of influencer parents age into adulthood, studies are showing that this lifestyle can be detrimental to a child's sense of privacy, ability to form positive relationships with their parents, and means to forge their own identity in the future.²³ But it will likely be decades before researchers truly understand the full spectrum of long-term consequences of a life lived so publicly from such a young age.²⁴

One way to mitigate long-term consequences is by instituting a "Right to Deletion," which would allow children of these families, upon turning 18, to require their parents to remove any monetized content that includes their likeness.²⁵ This Note argues for the expansion and federal adoption of publicity rights²⁶ to curb the potentially lifelong harms to children who have been made to participate in this type of content while minimizing constitutional concerns related to parental autonomy. Part I of this Note outlines the family content creation industry, its unique characteristics compared to traditional forms of media, and the harms that can befall children in its production. Part II evaluates the United States' parental-autonomy legal framework. It explains how this approach to autonomy makes regulating family content extremely difficult, leaving these children at an especially high risk of exploitation. Part III addresses how children involved in monetized content fit into existing publicity law doctrines. Part IV

22. See Jessica Maddox, *When Sponsored Content Meets 'Sharenting,' Kids Are Powerless to Stop Their Influencer Parents Using Them as Props*, FORTUNE (Jan. 18, 2023), <https://fortune.com/2023/01/18/influencers-children-social-media-laws-sponsored-content-sharenting/> [<https://perma.cc/5YF5-E9LN>] ("Children, however, cannot consent to being the star of their parents' show."); Pacht-Friedman, *supra* note 9, at 377 (discussing how children in YouTube families are powerless to edit their online image).

23. See *infra* Part I.C.

24. See Danielle Keats Citron & Daniel J. Solove, *Privacy Harms*, 102 B.U. L. REV. 793, 817 (2022) ("In many cases, the harm is not fully knowable. . .").

25. While the only American state thus far to institute a right to deletion is Minnesota, the concept does exist outside of the United States. For example, in 2020 France enacted a bill that created a multitude of rights for influencer children, including the right for children to request commercialized use of their image be deleted from social media sites. See Nicolas Boring, *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/98EF-BRQ2>].

26. Publicity rights describe individuals' rights to control the commercialization of many aspects of their personhood, such as their name, likeness, and voice. See *Right of Publicity*, INT'L TRADEMARK ASS'N (2023), <https://www.inta.org/topics/right-of-publicity/> [<https://perma.cc/3DNF-P6WV>].

advocates for expanding publicity rights to give these children the right to deletion upon entering adulthood. Ultimately, this Note will demonstrate that a right to deletion will not only help these children enjoy greater privacy upon turning 18,²⁷ but also act as a preventative measure by persuading influencer parents to better consider future harms when creating content.

I. MONETIZED CONTENT CREATION, FAMILY INFLUENCERS, AND HARMS TO CHILDREN

Over the past two decades, social media platforms like YouTube, Instagram, and TikTok have drastically altered how people consume entertainment.²⁸ Average citizens can, to an unprecedented extent, achieve wealth and “public-figure status”²⁹ through the “creator economy”;³⁰ estimates suggest there are now over 50 million content creators globally.³¹ Family influencers and the children whose wellbeing is the focus of this Note are part of this population. This Part first describes the world of monetized social media and contextualizes family influencers’ roles within the industry. It then lays out the multitude of harms impacting children with a considerable online presence and explains how children of content-producing families are at a substantially higher risk of harm than average children.

For most people who set out to create social media content for profit, their endeavor will never earn enough money to constitute

27. This Note will use the term “adult children” to describe the former children of influencer families who have since entered adulthood.

28. See David Craig, *Creator Management in the Social Media Entertainment Industry*, in *MAKING MEDIA: PRODUCTION, PRACTICES, AND PROFESSIONS* 363, 363 (Mark Deuze & Mirjam Prenger eds., 2019) (“Social media entertainment is a rapidly formalizing proto-industry in which creators—influencers, YouTubers, vloggers, gameplayers—play a central role.”).

29. Kate Hamming, Comment, *A Dangerous Inheritance: A Child’s Digital Identity*, 43 *SEATTLE U.L. REV.* 1033, 1038 (2020).

30. *The Creator Economy Explained: How Companies Are Transforming the Self-Monetization Boom*, CB INSIGHTS (June 15, 2021), <https://www.cbinsights.com/research/report/what-is-the-creator-economy/> [<https://perma.cc/BL56-VSH7>] (“The creator economy refers to the numerous businesses built by independent creators, from vloggers to influencers to writers, to monetize themselves, their skills, or their creations. It also encompasses the companies serving these creators, from content creation tools to analytics platforms.”).

31. See Andy Karuza, *Make the Most of the Creator Economy*, *FORBES* (July 18, 2022), <https://www.forbes.com/sites/theyec/2022/07/18/make-the-most-of-the-creator-economy/?sh=304b46ac16e9> [<https://perma.cc/A8MQ-6S8B>].

a viable career,³² but for those who do find success, the annual income can be well into the millions.³³ In addition to the advertising revenue that media platforms provide, these creators generate income through branded content deals, where brands pay creators directly to mention, use, or overtly advertise certain products, including sometimes via product lines produced as part of a “collaboration” with the family.³⁴ Successful family channels attract millions of followers³⁵ and can make tens of thousands of dollars per post.³⁶

This industry’s development has generated substantial economic value. In 2023, the wider creator economy was worth \$250 billion, and Goldman Sachs expects this value to nearly double within the next five years.³⁷ It is unsurprising, then, that brands have incorporated the power and reach of social media content creation into their marketing. As of 2024, nearly 66% of brands have some sort of social media budget, and 85% have a budget specifically for influencer marketing.³⁸ The influencer marketing industry, in which companies partner with influencers who in turn endorse the product to their “loyal following,”³⁹ has

32. Only approximately four percent of creators across the world make over \$100,000 per year. See GOLDMAN SACHS, *The Creator Economy Could Approach Half-a-Trillion Dollars by 2027* (Apr. 19, 2023), <https://www.goldmansachs.com/intelligence/pages/the-creator-economy-could-approach-half-a-trillion-dollars-by-2027.html> [https://perma.cc/5EFP-V5ZZ].

33. See Bertoni, *supra* note 10.

34. See Craig, *supra* note 28, at 371 (discussing the ways that influencers and creators make money).

35. For a list of some of the most popular family channels as of 2023, see *100 Family Youtubers in 2024*, FEEDSPOT (last visited Sept. 5, 2024) (listing some of the most popular channels, their various platforms, and their follower count on each platform).

36. See Caroline Sisson, Comment, *All Work and No Play Can Make a Kid a Millionaire: Child Labor Laws and the Role of the DOL to Protect Minors in the Growing Industry of Social Media Employment*, 7 ALR ACCORD 160, 166 (2022) (“[A] single Instagram post can return a profit of over \$20,000. . . . A YouTube creator can earn approximately \$45,000 for a sponsored video or up to \$25,000 for talking about a company for only [60] seconds in a longer video.”).

37. See GOLDMAN SACHS, *supra* note 32.

38. See *The State of Influencer Marketing 2024: Benchmark Report*, INFLUENCER MKTG. HUB (Sept. 16, 2024), <https://influencermarketinghub.com/influencer-marketing-benchmark-report/> [https://perma.cc/N8VL-RB59] (of the marketing agencies surveyed, “[n]early 2/3 (65.8%) admit to having a standalone budget for content marketing” and “85.8% . . . indicated that they would be dedicating a budget to influencer marketing in 2024”); see also Joan Reardon, Note, *New Kidfluencers on the Block: The Need to Update California’s Coogan Law to Ensure Adequate Protection for Child Influencers*, 73 CASE W. RESERVE L. REV. 165, 176 (2022) (discussing trends in social media marketing).

39. Joel Mathew, *Understanding Influencer Marketing and Why It Is So Effective*, FORBES (July 30, 2018), <https://www.forbes.com/sites/theyec/2018/07/30/understanding->

become a substantial portion of the wider creator economy and is now worth \$24 billion annually.⁴⁰ Of this total, over \$7 billion comes from the United States.⁴¹ To put the scale of this spending into perspective, one marketing company estimates that content creators and social media influencers rake in over ten percent of all money spent on online marketing.⁴² Consider that marketing income is only a portion of how influencers make money in the creator economy, and it is easy to understand why so many choose to pursue this expanding career path.

A. FAMILY CONTENT CREATION'S ROLE IN THIS INDUSTRY

One lucrative subset of creators are “family influencers.”⁴³ These families (or, more specifically, the parents of these families) share intimate details of their members’ daily lives on social media,⁴⁴ including, for example, sponsored and rehearsed dance videos,⁴⁵ public tantrums,⁴⁶ diaper changes,⁴⁷ carefully curated

influencer-marketing-and-why-it-is-so-effective/ [https://perma.cc/6N8S-QCJW] (defining influencer marketing and explaining why brands find it useful).

40. See INFLUENCER MKTG. HUB, *supra* note 38 (“The Influencer Marketing Industry is set to grow to approximately \$24 [b]illion by the end of 2024.”).

41. See GOLDMAN SACHS, *supra* note 32.

42. See McGinnis, *supra* note 9, at 248. In the context of this Note, the differences between content creators and influencers are not especially relevant, though minor differences do exist between the groups. For a better understanding of the definition of content creators, influencers, and their similarities and differences, see Chloe West, *Digital Creators vs. Influencers: What's the Difference?*, SPROUT SOCIAL (Jan. 6, 2022), <https://sproutsocial.com/insights/digital-creators-vs-influencers/> [https://perma.cc/2ULJ-D4GB].

43. Ingrida Behri, *The Use of Children as Influencers and the Harmful Effects on Their Health and Rights as Human Beings*, 11 INTERDISCIPLINARY J. RSCH. & DEV. 52, 53 (July 2024) (“[F]amily influencers have also begun to gain significant popularity and following. They usually upload content of their entire family—from singing videos to new things from their daily lives. From this, children have also started to become influencers from an early age. . . .”); see also Sisson, *supra* note 36, at 164–68 (discussing family influencers’ the social media platforms of choice, the large amount of money content creation can produce, and the crucial role of children in these markets).

44. See Rachel Caitlin Abrams, Comment, *Family Influencing in the Best Interests of the Child*, 2 U. CHI. J. INT’L. L. ONLINE 97 (Summer 2023), <https://cjl.uchicago.edu/online-archive/family-influencing-best-interests-child> [https://perma.cc/YPF8-ATD9] (“Many family influencers share the intimate details of their children’s lives on their social media accounts. . . .”).

45. See Savannah Rose LaBrant (@savv.labrantt), TIKTOK (Dec. 6, 2023) (last visited Sept. 11, 2024).

46. See Liana Loyal & Shane Loyal (@SHANELIANaloyal), *4 Yr Old Daughter Throw BAD Temper Tantrum After Not Getting a TOY *MOM FLIPS**, YOUTUBE (Nov. 9, 2022) (last visited Sept. 11, 2024).

47. See Barney Banks (@iammrbanks), TIKTOK (Apr. 11, 2022) (last visited Sept. 11, 2024).

seasonal photoshoots,⁴⁸ and even diaper advertisements including their children.⁴⁹ These families' children feature in the content in one of two ways: either their parents show them on the parents' accounts, or the children have their own accounts that, if they are under 13, their parents "manage."⁵⁰ While platforms like YouTube and Instagram require children to be 13 to use their sites, parents evade these requirements by maintaining the accounts themselves, regardless of whether the children's likenesses feature on the account.⁵¹

Digital anthropologist and professor Crystal Abidin writes that the bulk of family influencer content depends on its "contrived authenticity"⁵²—that is, to make even the most edited and staged videos leaving viewers feeling as though these families are bringing them into their genuine day-to-day lives.⁵³ The more authentic a channel is perceived to be, the more "latitude [viewers give] to creators trying to sell more products."⁵⁴ So, while much family content may come across as effortless depictions of children playing or families going about their lives, creating these online personas often requires an immense amount of labor. Children

48. See Madison Fisher (@madisonbontempo), INSTAGRAM (Oct. 14, 2023) (last visited Sept. 11, 2024).

49. See Fortesa Latifi, *What's the Price of a Childhood Turned into Content?*, COSMOPOLITAN (Mar. 12, 2024), <https://www.cosmopolitan.com/lifestyle/a60125272/sharenting-parenting-influencer-cost-children/> [<https://perma.cc/6XEK-BVW8>]. One teen described how she "helped create content for huge companies like Huggies and Hasbro when her mom landed endorsement deals." *Id.*

50. McGinnis, *supra* note 9, at 251.

51. See *id.* ("[M]any parents skirt around these rarely enforced requirements by placing a disclaimer in the bio of their child's account stating that the account has been created and maintained by the parents. Additionally, nothing prevents parents from featuring their children on their own social media pages. . . ."); see also *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?gl=ES&template=terms> [<https://perma.cc/ZD5X-RUJJ>] (Nov. 29, 2023) ("You must be at least 13 years old to use the Service"); *Terms of Use*, INSTAGRAM, <https://help.instagram.com/581066165581870> [<https://perma.cc/L4MB-KJ9G>] (July 26, 2022) (same); *Terms of Service*, TIKTOK, <https://www.tiktok.com/legal/page/us/terms-of-service/en> [<https://perma.cc/XXQ7-3V72>] (Nov. 2022) ("If you are under age 18, you may only use the Services with the consent of your parent or legal guardian.").

52. Crystal Abidin, *#familygoals: Family Influencers, Calibrated Amateurism, and Justifying Young Digital Labor*, SOC. MEDIA + SOC'Y, Apr.–June 2017, at 1.

53. See Pacht-Friedman, *supra* note 9, at 368 ("Authenticity can drive up viewership, and therefore ad revenue, by making the viewer feel 'part of the act,' and in on the little jokes of the creator.").

54. *Id.* This "authentic" personal connection is extremely important for marketing paid collaborations: "Recent studies have suggested that this personal connection may also help influencer marketing to overcome its key challenge: disclosing paid advertising collaborations." Elina Närvänen et al., *Parasocial Relationships of Generation Z Consumers with Social Media Influencers*, in INFLUENCER MARKETING: BUILDING BRAND, COMMUNITIES, AND ENGAGEMENT 118, 119 (Sevil Yesiloglu & Joyce Costello eds., 2020).

involved must often deal with long filming hours⁵⁵ and appear in hundreds of posts a year, either in scenarios of “contrived authenticity” or as part of sponsored production that “requires the child to use a specific product, perhaps even by a specific deadline, and be filmed doing it for monetary gain.”⁵⁶ The result is that influencer parents almost constantly post details of their children’s lives online, and these children have no control over the form of content or frequency of posts.

The daily lives of influencer families and how they produce content varies by family, but one 2019 episode of the British television show *Stacey Dooley Sleeps Over*, “The Family Who Live Online,” provides an example of what this lifestyle can look like.⁵⁷ In the episode, television presenter and journalist Stacey Dooley spends several days with the Saccone Jolys, an influencer family who run an extremely popular family YouTube channel.⁵⁸ The father, Jonathan, explains that he has filmed and posted about his and his family members’ lives every single day for nearly a decade, including content as intimate as the puddle on the floor where his wife’s water broke while in labor.⁵⁹ Throughout the episode’s three days of filming, hardly a single meal, drive, conversation, or family outing remained undocumented.⁶⁰ At one point, Dooley asks the mother, Anna, what she would say if her kids told her they no

55. See Emma Nottingham, *DAD! CUT THAT PART OUT!* *Children’s Rights to Privacy in the Age of ‘Generation Tagged’: Sharenting, Digital Kidnapping and the Child Micro-Celebrity*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF YOUNG CHILDREN’S RIGHTS 183, 188 (2020) (“YouTube families are entirely unregulated. Therefore, children who are part of a YouTube family may have to endure long hours of filming every day. The lack of regulation also means that there is no limit on the amount of footage uploaded.”).

56. Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of ‘Kidfluencers’*, 169 U. PA. L. REV. 577, 592 (2021); see also *Kid Influencers: Few Rules, Big Money* (NBC television broadcast Aug. 23, 2019), <https://www.cbsnews.com/video/kid-influencers-few-rules-big-money/> [<https://perma.cc/7MQ3-SFTL>] (explaining the process of content creation).

57. See *Stacey Dooley Sleeps Over: The Family Who Live Online* (Sky television broadcast Sept. 11, 2019) (last visited Sept. 11, 2024).

58. See *id.*

59. He later conceded that the toll of daily filming eventually became too much, and he now posts “only” every other day. *Id.* In 2022, the Saccone Joly family deleted almost all their content so that their children could “curate their own life story on the internet.” Rebecca Laffan, *Irish Vloggers Saccone Jolys Delete Thousands of Videos Amid Social Media Controversy*, IRISH EXAM’R (Apr. 25, 2022), <https://www.irishexaminer.com/news/munster/arid-40858289.html> [<https://perma.cc/4MAB-UU2M>]. They reuploaded everything soon after, however. See Jonathan Saccone Joly & Anna Saccone Joly (@sacconejolys), YOUTUBE (last visited Sept. 11, 2024).

60. See *Stacey Dooley Sleeps Over: The Family Who Live Online*, *supra* note 57.

longer wanted to film.⁶¹ Anna responds that she would ask her children, “Don’t you like going to private school? Don’t you like the things we’ve been able to afford for you . . . because of this lifestyle?”⁶²

With the amount of fame and money family influencers can garner, it is unsurprising that some parents choose this lifestyle for their families. Yet while this choice permanently alters the lives of their children, these children legally have no say in the decision.⁶³ When parents post content of their children, they “act as both gatekeepers of their children’s personal information and as narrators of their children’s personal stories,”⁶⁴ often in ways that can be detrimental to the children.⁶⁵ While the Saccone Jolys may be a more extreme example of life in an influencer family, it does not take such invasive content creation to cause children significant harm.⁶⁶

B. GENERAL STATE OF AND HARMS OF SHARENTING

Take away the mass dissemination, careful curation, and monetization of family influencer content, and you are left with a behavior that in itself is extremely common: parents posting photos and videos of their children online. While average parents’ and influencer parents’ experiences of content-sharing are markedly different in terms of scale and motivation, children of both kinds of parents may be at risk of similar harms. Accordingly, this section first explores the reasons behind this behavior, such as seeking social support and sharing family moments. It then highlights the notable risks involved, including identity theft, emotional harm, and exposure to predators.

61. *See id.*

62. *Id.*

63. *See* Stacey B. Steinberg, *Sharenting: Children’s Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 839 (2017) [hereinafter *Sharenting: Children’s Privacy*] (“When parents share information about their children online, they do so without their children’s consent.”).

64. *Id.*

65. For a discussion of harms that family influencing has on children involved, see *infra* Part I.C.

66. For a comprehensive overview of how influencer children are at an increased risk of harm, see *infra* Part I.C; *see also* Masterson, *supra* note 56, at 595 (“The public nature of social media, as well as the industry’s reliance on peer approval, presents health risks to kidfluencers. . . . The extreme loss of privacy that social media influencers experience is a unique threat to these children’s mental health and physical safety.”).

1. *Sharenting: Definition and Motivations*

While most parents never attempt to become influencers, an overwhelming majority of them post photos, videos, stories, and general information about their children online.⁶⁷ “Sharenting,” a portmanteau of “sharing” and “parenting,” has become the word of choice to describe how parents post content of their children on various digital platforms.⁶⁸ Today, 90.6% of parents admit to having uploaded photos of their children to Facebook at some point in their child’s life.⁶⁹

Parents “sharent” for various reasons.⁷⁰ Beyond the desire to tell family and friends about their children, parents can find parenting advice and receive peer support through sharing this content.⁷¹ Platforms like Facebook provide “an important function in the acquisition of social capital and social support resources,”⁷² allowing parents to find help and encouragement from loved ones and “develop and maintain social ties.”⁷³ In a world where identity and self-perception are increasingly defined by online presence and

67. See Michael K. Bartholomew et al., *New Parents’ Facebook Use at the Transition to Parenthood*, 61 FAM. RELS. 455, 461 (2012). This study found that 98% of 154 surveyed mothers and 83% of 150 surveyed fathers said they had uploaded content involving their children to Facebook. On a per-parent basis, this averages to 90.6%. See *id.*; see also Haley, *supra* note 18, at 1008 (“A significant majority of parents of minor children indicate participation on at least one social media site, online forum, or blog.”). For sources educating parents about the pros and cons of social media on children and the consequences of sharenting, see generally STACEY STEINBERG, *GROWING UP SHARED: HOW PARENTS CAN SHARE SMARTER ON SOCIAL MEDIA—AND WHAT YOU CAN DO TO KEEP YOUR FAMILY SAFE IN A NO-PRIVACY WORLD* (2020); DEVORAH HEITNER, *GROWING UP IN PUBLIC: COMING OF AGE IN A DIGITAL WORLD* (2023); LEAH A. PLUNKETT, *SHARENTHOOD: WHY WE SHOULD THINK BEFORE WE TALK ABOUT OUR KIDS ONLINE* (2019).

68. Ayten Doğan Keskin et al., *Sharenting Syndrome: An Appropriate Use of Social Media?*, 11 HEALTHCARE 1359, 1359 (2023) (“Sharenting refers to the practice of parents, caregivers or relatives sharing information about their children (underage) online, typically on some online platforms. This can include photos, videos, personal stories, and other updates about the child’s life.”).

69. See Bartholomew et al., *supra* note 67, at 461 (finding that over 90% of parents share images of their children to social media sites).

70. See Joyce Lee, *Parenting & “Sharenting”: The Opportunities and Risks of Parenting in the Social Media Age*, U. MICH. INST. FOR HEALTHCARE POL’Y & INNOVATION (Mar. 17, 2015), <https://ihpi.umich.edu/news/parenting-%E2%80%9Csharenting%E2%80%9D-opportunities-risks-parenting-social-media-age> [https://perma.cc/93CK-RTZ7].

71. See *id.* (“The majority of parents (60–70%) who are online report that social media is providing real benefits to them, in the form of knowledge and emotional support. In terms of knowledge, parents report that they are receiving advice from more experienced parents, and they are learning what not to do with their young children.”).

72. Bartholomew et al., *supra* note 67, at 463.

73. Ferrara et al., *Online “Sharenting”: The Dangers of Posting Sensitive Information About Children on Social Media*, J. PEDIATRICS, June 2023, at 1.

persona, the desire to sharent is “consistent with the notion that social support from family and community” is vital for parents.⁷⁴ This is supported by findings that parents who sharent and receive positive feedback from their friends and family report overall “greater satisfaction in the parenting role.”⁷⁵

2. *How Sharenting and Over-Sharenting Can Harm Children*

While the desires that motivate sharenting predate the internet, meeting these desires through online platforms causes specific issues because online public spaces differ from traditional physical spaces in important ways.⁷⁶ Online content’s relative permanence and mass distribution potential can create problems rarely associated with traditional, pre-social media sharing. While parents may sharent simply to offer updates on their family lives with loved ones, find help for various issues, or seek approval from friends, they do not generally sharent with the overt intention of harming their children.⁷⁷ Still, sharenting exposes children to risks that parents are often unaware of.⁷⁸

Exposing the child to potential fraud and identity theft is perhaps the most straightforward of these risks. When parents post personally identifiable information about their children, such as videos from a birthday party, data brokers can extrapolate their children’s information—like their birth date—leaving them

74. Bartholomew et al., *supra* note 67, at 464.

75. Bahareh Ebadifar Keith & Stacey Steinberg, *Parental Sharing on the Internet: Child Privacy in the Age of Social Media and the Pediatrician’s Role*, 141 JAMA PEDIATRICS 413, 413 (2018).

76. See DANAH BOYD, *IT’S COMPLICATED: THE SOCIAL LIVES OF NETWORKED TEENS* 11 (2014). In this book, social media scholar Danah Boyd describes four primary differences between online and physical spaces: “[i] persistence[,] the durability of online expressions and content; [ii] visibility[,] the potential audience who can bear witness; [iii] spreadability[,] the ease with which content can be shared; [iv] searchability[,] the ability to find content.” *Id.* In essence, online content can create a sort of permanence and mass-distribution that leads to a lack of privacy not associated with traditional, non-digital sharing.

77. See Ferrara et al., *supra* note 73, at 1 (“In general, the motivations behind parents’ sharing behaviors are usually positive and not malicious. Parents often share pictures and stories of their children with the intention of showing affection and pride in their children’s achievements. In return, they receive support and encouragement from family members and friends in their family network. . .”).

78. See Keith & Steinberg, *supra* note 75, at 413 (“The disclosures parents share online will follow their children into adulthood, and although there are benefits to this, there are also potential harms that are unrecognized by many parents.”).

susceptible to exploitation and unwanted surveillance.⁷⁹ This exposure has real-world consequences. Barclays estimates that by 2030, sharenting will account for two-thirds of identity fraud targeted at young people and will cost over \$900 million annually.⁸⁰

Excessive sharenting can also lead to lasting emotional harm to children. When parents frequently post content of their children, they deny their children the opportunity to form their own sense of public identity. Studies have shown that this behavior can lead to psychological distress and hinder various aspects of emotional growth, as a teenager's ability to form their own unique identity is an important factor in developing a sense of independence.⁸¹ Further, by exposing personal, embarrassing, or just generally private information online, parents increase the risk of their children being bullied.⁸² In sum, over-sharenting and the privacy violations that come with it can cause serious damage to children and teens' mental wellbeing and ability to develop into healthy adults.⁸³

79. See *Sharenting: Children's Privacy*, *supra* note 63, at 849 ("By tracing a parent's social media data to voter registration materials, children's identity can be inferred, including name, location, age and birthday, and religion. This information often leads to . . . overexposure to acquaintances, data brokers, and unwanted surveillance.").

80. See Sean Coughlan, 'Sharenting' Puts Young at Risk of Online Fraud, BBC (May 20, 2018), <https://www.bbc.com/news/education-44153754> [<https://perma.cc/AJ8M-FKE2>] On the day this article was published, this amount would have been equal to USD \$902 million. *Currency Table: GBP—British Pound, May 20, 2018*, XE, <https://www.xe.com/currencytables/?from=GBP&date=2018-05-20#table-section> [<https://perma.cc/3FEU-C9M9>].

81. See Gaëlle Ouvrein & Karen Verswijvel, *Sharenting: Parental Adoration or Public Humiliation? A Focus Group Study on Adolescents' Experiences with Sharenting Against the Background of Their Own Impression Management*, 99 CHILD. & YOUTH SERVS. REV. 319, 321 (2019) ("Having enough freedom and autonomy for creating their own identity is important for adolescents, as it helps them to develop independence.").

82. See Michel Walrave et al., *Mindful Sharenting: How Millennial Parents Balance Between Sharing and Protecting*, FRONTIERS PSYCH., July 25, 2023, at 3 ("Because children are widely portrayed by their parents, they do not have the opportunity to create their own online identity. For some children, the content that parents think is appropriate to share on social media may be sensitive, or some content may lead to negative reactions. As a result, children may face cyberbullying."); Taylor Lorenz, *Instagram Has a Massive Harassment Problem*, THE ATLANTIC (Oct. 15, 2018), <https://www.theatlantic.com/technology/archive/2018/10/instagram-has-massive-harassment-problem/572890/> [perma.cc/A32B-CPZA] (describing how bullying proliferates on Instagram).

83. 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/945B-C7L4>] ("[Sharenting] can have unintended consequences for [parents'] kid's privacy, safety, mental health, social relationships and future prospects."); Amber Kolb, *Influencing a New Generation: Guardians' Duties to Protect the Interests and Safety of Children on Social Media*, 57 FAM. L.Q. 55, 71 (2024) ("Social media can be harmful

Additionally, parents can unintentionally expose their children's images to sexual predators when they share. For example, Australia's Children's eSafety Commissioner reported that nearly half of the photos on certain pedophilic image-sharing sites, including one with over 45 million images, had been taken directly from parents' social media accounts.⁸⁴ While predators sometimes Photoshop images "onto another child's naked body,"⁸⁵ they typically upload unedited images and categorize them using phrases such as "kids at beach" and "nice boys play in river."⁸⁶ As put by one advocate: "what you see as innocent, what a healthy, well person sees as innocent, someone with a sexual interest in children turns it into something incredibly perverse."⁸⁷

In raising the potential fraud-related, emotional, and predatory harms of sharenting, this Note does not intend to accuse average parents of endangering their children or acting recklessly by periodically posting family photos. Sharenting brings undeniable benefits for many parents, and there are of course ways parents can share content responsibly, such as by familiarizing themselves with social networking sites' privacy options and not posting photos with explicit information about their children.⁸⁸ Nonetheless, parents are necessarily tasked with balancing the risks against the rewards on behalf of their children.⁸⁹ Notably,

to a child in ways that are invisible to others but nevertheless detrimental to their psychological development and mental health. When a child is thrust into the limelight, whether by choice or by force, they have the potential to be overworked, sexualized, criticized, shamed, and bullied.").

84. See Lucy Battersby, *Millions of Social Media Photos Found on Child Exploitation Sharing Sites*, SYDNEY MORNING HERALD (Sept. 30, 2015), <https://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html> [<https://perma.cc/VW2X-UHFF>] ("Innocent photos of children originally posted on social media and family blogs account for up to half the material found on some paedophile [*sic*] image-sharing sites. . .").

85. Sharon Kirkey, *Do You Know Where Your Child's Image Is? Pedophiles Sharing Photos from Parents' Social Media Accounts*, NAT'L POST (Apr. 18, 2017), <https://nationalpost.com/news/canada/photos-shared-on-pedophile-sites-taken-from-parents-social-media-accounts> [<https://perma.cc/EDE8-V9XK>] ("In some cases, the images grabbed from Facebook, Instagram and other social media accounts are being manipulated and photo-shopped, so that the head of the child is pasted onto another child's naked body.").

86. Battersby, *supra* note 84 ("[I]nnocent images were presented in folders named thematically, such as 'kids at beach,' 'nice boys play in river,' 'gymnasts.'").

87. Kirkey, *supra* note 85 (quoting Signy Arnason, director of Winnipeg-based Cybertip.ca, operated by the Canadian Center for Child Protection).

88. See Keith & Steinberg, *supra* note 75, at 414 ("[P]arents should [f]amiliarize themselves with the privacy policies of the sites on which they share. . . . [P]arents should also [u]se caution before sharing their child's actual location or full name.").

89. For a better understanding of how understanding certain risks of sharenting impacts parents' sharenting habits, see generally Raluca A. Briazu et al., *Facebook*

problems arise when the benefits of sharenting are so great that a parent's willingness to tolerate risk to their children is compromised. This inability to self-regulate is often at the heart of the decisions family influencers make and the consequences that follow.

C. OVER-SHARENTING AND FAMILY INFLUENCING: HOW AND WHY CHILDREN INVOLVED IN MONETIZED CONTENT CREATION ARE AT A SUBSTANTIALLY INCREASED RISK OF HARM

*“Any money you get will be greatly overshadowed by years of suffering . . . your child will never be normal. . . . I never consented to being online.”*⁹⁰

Whatever risks everyday children experience from sharenting pale in comparison to the harms faced by influencer children. This section highlights not only what these harms are, but also why they are so much more severe for influencer children. It first considers how the scale of influencer content multiplies the existing harms of sharenting and why this sort of content creation dampens a parent's ability to meaningfully censor the content they upload, including content that can end up in the hands of predators on the internet. Ultimately, it shows that influencer children face especially formidable risks, and yet they have no real way to understand the implications of a life lived online or control their participation in their parents' content.

1. *The Increased Scale as a Multiplier of Harm*

As family influencing relies on mass-scale monetized sharenting, the scope of harm is particularly severe for the

Sharenting in Mothers of Young Children: The Risks Are Worth It but Only for Some, TECH., MIND, & BEHAV., Dec. 30, 2021, at 8 (“[K]nowledge of risks is associated with some protective behaviors. Mothers balanced those risks with the ability to share child development with family and friends living afar. . . . [I]nterventions should aim to provide parents with a better understanding of how sharing . . . can affect their child in the future. . . .”).

90. Caroline Easom (@caroline_easom), TIKTOK (Sept. 30, 2022), https://www.tiktok.com/@caroline_easom/video/7149213992307674410?lang=en&q=caroline%20family%20vlogger&t=1678293208780 [<https://perma.cc/QQE6-9QVC>]. This quote comes from a letter a child involved in family social media content sent to TikTok user Caroline Easom. The sender requested that Easom share this letter but keep their name anonymous. Easom described the sender as “a teen that has had their entire childhood monetized.” *Id.*

children involved in this industry. The invasiveness of the content and size of the audience are much greater than that of the average parent's sharenting. For most parents, any loss of privacy is an unintended consequence of sharenting, but for family influencers, it is a fundamental aspect of doing business.⁹¹ When family influencers share content of their children, they do so with the intention of reaching as many people as possible. Successfully building and maintaining a family influencer's audience inherently means encouraging millions of people to form parasocial relationships⁹² with their children by learning about, engaging with, and reacting to the intimate details of their children's lives. That is simply an audience size and level of attention that does not exist in traditional sharenting.

The scale of the audience is also problematic given that influencer parents can force their children to engage with social media in a way that non-influencer children do not have to. When average parents post photos of their children online, they generally do not require their children's direct participation in the sharenting activity. This differs from family influencer sharenting, where the children's lives become intimately "intertwined with social media"⁹³ from constant filming and intrusion in order to ensure the content's success.⁹⁴ This entwinement persuaded Grant Khanbalinov, a TikTok creator with 3.3 million followers, to stop sharing his children online despite their former starring roles in his content.⁹⁵ He described a trip to Disneyland with his children as a "breaking point": he realized that his children were not having fun because they

91. See Masterson, *supra* note 56, at 595–96 (discussing how the volume of content, the intimate nature of filming locations, and the heightened encouragement of audience interaction puts these children at risk).

92. Parasocial relationships are "one-sided relationships or bonds with people you don't know. The person in question is typically a celebrity, but it can also be a fictional individual. . . ." *Friend or Faux: Are Parasocial Relationships Healthy?*, CLEVELAND CLINIC (July 5, 2023), <https://health.clevelandclinic.org/parasocial-relationships> [<https://perma.cc/Z2QU-6HWH>]; see Bo-Chiuan Su et al., *Influencers on Social Media as References: Understanding the Importance of Parasocial Relationships*, SUSTAINABILITY, Sept. 2021, at 2 ("Several researchers found that a [parasocial relationship] is a critical antecedent of purchase intention on social media.").

93. Reardon, *supra* note 38, at 181. For an overview of how this invasive content creation becomes part of influencer children's lives, see *supra* Part I.A.

94. See van Kessel et al., *supra* note 11 (discussing how the inclusion of young children in content is especially profitable and popular for family channels).

95. See 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/> [<https://perma.cc/22JK-CYWA>].

constantly “seemed to be searching for a camera to look into and waiting for cues on what to say and do. The boundary between their online selves and their actual selves had become blurry.”⁹⁶

Social media use and exposure can come with benefits for children and teenagers,⁹⁷ but research has also repeatedly shown strong correlation to depression, anxiety, poor body image, loneliness, sleep problems, and behavioral issues.⁹⁸ When influencer parents coerce their children into engaging in social media on such a large scale, they expose their children to the risks associated with mass interaction. While younger children may not yet understand these consequences, they will inevitably have to reckon with the consequences of so much of their lives being exposed online to thousands—if not millions—of strangers as they grow up.

2. *Family Influencing Weakens Parents' Ability to Self-Censor*

Beyond issues relating to scale, the core of the harms these monetized children face arise from their parents' compromised ability to effectively self-censor. Studies have shown that while understanding the risks associated with sharenting does not entirely dissuade parents from engaging in potentially harmful sharenting, it does impact their social media behavior.⁹⁹ Influencer parents who must balance these risks against the

96. *Id.*

97. See Sandro Galea and Gillian J. Buckley, *Social Media and Adolescent Health: A Consensus Report of the National Academies of Sciences, Engineering, and Medicine*, 3 PNAS NEXUS 1, 73 (2024) (“By using [social media] platforms, adolescents can easily connect with friends, classmates, and acquaintances, allowing them to maintain relationships, expand their social networks, and stay connected even when physically apart.”).

98. See Elena Bozzola et al., *The Use of Social Media in Children and Adolescents: Scoping Review on the Potential Risks*, INT'L J. ENV'T. RSCH. PUB. HEALTH, Aug. 2022, at 5 (surveying issues associated with social media use in adolescents in a review from several dozen studies); see also Rachel Ehmke, *How Using Social Media Affects Teenagers*, CHILD MIND INST., <https://childmind.org/article/how-using-social-media-affects-teenagers> [<https://perma.cc/ZGC4-QGTE>] (May 24, 2024); see also OFF. SURGEON GEN., SOCIAL MEDIA AND YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL'S ADVISORY 1 (2023) (“[T]here are ample indicators that social media can also have a profound risk of harm to the mental health and well-being of children and adolescents.”).

99. For an overview of how understanding the risks of sharenting impacts parents' sharenting habits, see, e.g., Briazu et al., *supra* note 89, at 8 (“We also find that knowledge of risks is associated with some protective behaviors. Mothers balanced those risks with the ability to share child development with family and friends living afar.”); Walrave et al., *supra* note 82 (discussing how parents who have negative experiences with sharenting can effectively alter their behavior to minimize future risks).

money and fame at stake face a more acute dilemma than parents who have not chosen sharenting as their career.

Presumably, most influencer parents do not create content with the explicit intent of harming or upsetting their children. But when maintaining viewership that promises tens of thousands of dollars per post, a parent's capacity to self-censor for their children's benefit is potentially compromised.¹⁰⁰ To remain economically viable, content creators must not only generate followers, but also maintain consistent viewership.¹⁰¹ Parents and children alike are under immense pressure to continuously up the ante of their content in order to keep viewers engaged, which can lead to creating content that is either immediately distressing for children or that they are likely to regret as they age.¹⁰² For example, one teenager told *Teen Vogue* that her mother forced her to do sponsored posts for sanitary pads once she started menstruating.¹⁰³ "It was so mortifying. . . . I just felt like I wanted to crawl into a hole and never come out."¹⁰⁴

This unregulated industry also allows parents to intentionally distress their children in the name of content creation. Families who make such content often do so under the guise of merely "pranking" their children. These stunts include a family convincing their six-year-old daughter that they were going to give

100. Cf. Phoebe Maltz Bovy, *The Ethical Implications of Parents Writing About Their Kids*, THE ATLANTIC (Jan. 15, 2013), <https://www.theatlantic.com/sexes/archive/2013/01/the-ethical-implications-of-parents-writing-about-their-kids/267170/> [https://perma.cc/QL5P-AG4W] ("Parental overshar[ing]'s most obvious flaw is its potential to humiliate. . . . The reader assumes that the parent will do what's best for her child. While the parent may set out to do this, using their own children in the service of a larger argument clouds their ability to self-censor. And with confession can come vanity.").

101. See Valerie Verdoodt et al., *Child Labour and Online Protection in a World of Influencers*, in THE REGULATION OF SOCIAL MEDIA INFLUENCERS 98, 106 (Catalina Goanta & Sofia Ranchordás eds., 2020) ("However, if you want to remain a popular influencer, you will have to continuously publish vlogs, pictures and other content on social media platforms. Producing high-quality and entertaining content on a weekly or even daily basis takes a lot of time. The pressure to continue to perform will only increase.").

102. See *Kid Influencers: Few Rules, Big Money*, supra note 56 (interviewing Dr. Karen North, Director of the University of Southern California's Digital Social Media Program, about the pressures influencers face to maintain views); see also Sam Blum, *The Fatigue Hitting Influencers as Instagram Evolves*, BBC (Oct. 21, 2019), <https://www.bbc.com/worklife/article/20191022-the-fatigue-hitting-influencers-as-instagram-evolves> [https://perma.cc/YYK7-VSSU] (detailing the stress that continuously producing new content can have on influencers).

103. See Latifi, *What's the Price of a Childhood Turned into Content?*, supra note 49.

104. *Id.*

away her pet dog¹⁰⁵ and another destroying what their son thought was his Xbox with a hammer.¹⁰⁶ Another time, the same parents “pranked” their youngest son by convincing him that they were giving him up for adoption.¹⁰⁷ In each of these cases, the children cried, the parents laughed, and the views rolled in. Might these same parents have done similar things to their children if they were not influencers? Maybe. But when this sort of behavior turns into monetized content, influencer parents are incentivized to mistreat their children in the name of a financial payout.

This lack of self-censorship for the sake of views also leads to privacy violations greater than those a reasonable parent would accept. In one case, the father of the YouTube-famous “Shaytard” family¹⁰⁸ posted a video of himself chasing his preteen daughter around their house, trying to get additional footage of her talking about a school crush after he had already filmed a private conversation without telling her.¹⁰⁹ While she hides under her bed to avoid the camera, her dad says, “This is good footage.”¹¹⁰ Viewers have watched that video over 4.5 million times.¹¹¹ Even when the scenario is not so overtly negative, these children may still end up in content that they had no way of meaningfully consenting to, about which they will almost inevitably feel embarrassment one day. For example, in 2020, influencer Tiffany Nelson posted a vlog¹¹² in which she filmed herself giving her then-nine-year-old daughter “the talk.”¹¹³ Though the daughter made it clear that she was unaware of the type of conversation she was

105. See Julia Carrie Wong, *It's Not Play if You're Making Money: How Instagram and YouTube Disrupted Child Labor Laws*, GUARDIAN (Apr. 24, 2019), <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/3ELD-5J4V]. Following backlash, the LaBrant parents removed the video, though only after it had garnered significant viewership. See *id.*

106. See Madison Malone Kircher, *Sentence Reduced for Parents in Abusive YouTube 'Prank' Videos*, N.Y. MAG.: INTELLIGENCER (Jan. 10, 2019), <https://nymag.com/intelligencer/2019/01/daddyofive-abusive-youtube-parents-get-reduced-sentence.html> [https://perma.cc/ENJ4-QJQ6].

107. See *id.*

108. Shay Butler & Colette Butler (@SHAYTARDS), YOUTUBE (last visited Sept. 12, 2024).

109. See Shay Butler & Colette Butler (@SHAYTARDS), *DAD! CUT THAT PART OUT!*, YOUTUBE (Apr. 3, 2014) (last visited Sept. 12, 2024).

110. *Id.*

111. See *id.*

112. A vlog is “a blog that contains video material.” *Vlog*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/vlog> [https://perma.cc/CAZ9-RJ8U].

113. Tiffany Nelson (@NotEnoughNelsons), *The “TALK” | Parents Explain the Birds & the Bees to PaisLee! *Emotional**, YOUTUBE (Aug. 24, 2020) (last visited Sept. 12, 2024).

about to have with her mother, the intimate moment of her learning about puberty and sex is now permanently on the internet for anyone to see.¹¹⁴

3. *Influencer Children Are Disproportionately Exposed to Online Predators*

For children, the main consequences of “prank” or privacy-violation videos are embarrassment and temporary distress. But the harm caused by parents who expose their children’s likenesses can be far more insidious.¹¹⁵ Family influencers’ content is more likely to end up on websites that cater to pedophiles because influencers post more frequently and more intimate domestic moments, such as photos of their children in the bath, than non-influencer parents.¹¹⁶ This is true for even the most innocent family content.

In a months-long investigation of 2.1 million Instagram posts and thousands of accounts, the *New York Times* uncovered how parents’ attempts to create influencer content including children can, inadvertently or not, “descend into a dark underworld dominated by adult men, many of whom openly admit . . . to being sexually attracted to children.”¹¹⁷ Families with young girls are especially at risk of having their children sexualized by pedophiles, and many parents have reported that content of their children attracts attention from predatory adults: The *New York Times* report opens with Instagram comments about a nine-year-old’s “perfect bikini body.”¹¹⁸

For many parents, realizing that content they post has attracted predators is more than enough for them to either change their behavior or take their children offline completely. Maia Knight, an influencer who gained over eight million TikTok followers from posting content of her twin daughters, famously

114. *See id.*

115. *See* Hamming, *supra* note 29, at 1035 (discussing the risk of predators viewing family influencer content).

116. *See* Haley, *supra* note 18, at 1010 (“[P]ictures of children in any state of undress (such as images of potty training and bath time) are popular targets for use on predatory websites.”).

117. Jennifer Valentino-DeVries & Michael H. Keller, *A Marketplace of Girl Influencers Managed by Moms and Stalked by Men*, N.Y. TIMES (Feb. 22, 2024), <https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html> [<https://perma.cc/LZ2G-AL3B>].

118. *Id.*

stopped showing her children's faces online after receiving messages from an internet predator about her children.¹¹⁹ Too many others simply ignore the harm to their children. One mother quoted in the *Times*' investigation reported that she receives such an "astounding" quantity of sexual messages about her daughter that she has become "numb" to the comments entirely.¹²⁰ In the gravest instances, individual profiles become widely known not for family content, but as hotbeds of predatory activity. Take the case of Jacquelyn Eleanor, a mother who garnered over 17 million followers by posting videos of her child's daily life since her birth in 2019.¹²¹ For years, other social media influencers and regular viewers heavily criticized Eleanor for not taking down videos of her daughter that internet predators bombarded with sexual comments,¹²² such as a sponsored video of the child in the bath that viewers "liked" nearly a million times and saved to their devices tens of thousands of times.¹²³ Even worse are cases of parent-run accounts that are either almost exclusively viewed by pedophiles or even explicitly cater to them.¹²⁴ Many of these accounts, which tend to peak in viewership and engagement when parents post "suggestive" material of their children, offer services to anonymous followers that include on-request exclusive photos, one-on-one chat sessions, and even clothing worn by the featured girls, including leotards.¹²⁵

119. See Latifi, *Parenting Influencers Try Something New*, *supra* note 95 (describing Knight's and other influencer parents' decisions to respect their children's privacy).

120. Valentino-DeVries & Keller, *supra* note 117.

121. See Katie Kindelan, *Parents Remove Videos of their Kids from TikTok After 'Wren Eleanor' Warning*, ABC NEWS (July 27, 2022), <https://abcnews.go.com/GMA/Family/wren-eleanor-tiktok-trend-sees-parents-removing-photos/story?id=87486106> [<https://perma.cc/6UME-FGAQ>].

122. See *id.* ("Some users have pointed out, for example, that certain photos of Wren Eleanor have been saved tens of thousands of times. Other users have highlighted inappropriate comments on some posts using hashtags like #savewren.").

123. Lindsay Dodgson, *A Controversy Over Major Momfluencer Wren & Jacquelyn Sparks a Campaign Over Child Predators on TikTok*, BUS. INSIDER (July 25, 2022), <https://www.businessinsider.com/wren-jacquelyn-tiktok-online-predators-momfluencer-2022-7> [<https://perma.cc/2A5Y-PDMP>]. At the time of the article's publication in 2022, the video "was liked 880,000 times and saved 22,000 times." *Id.* Eleanor did not respond to a request for comment from Business Insider, *id.*, or ABC News, *supra* note 121.

124. For a detailed report and spanning overview of how predators use social media and influencer accounts to fulfill their illegal desires, see generally Valentino-DeVries & Keller, *supra* note 117.

125. *Id.*

4. *Children of These Families Lack Control over Their Participation and the Capacity to Meaningfully Consent*

The harms influencer children face are multifaceted, long-lasting, and unsettling. And yet, these children have little to no agency over whether they participate in the content of which they are the subject. This lack of agency does not necessarily manifest in the kind of content one might raise an eyebrow at—a public video of a child playing with their siblings does not immediately trigger concern for their well-being. This participation, however, is hardly consensual, especially at a young age. In the 2019 documentary, *Kid Influencers: Few Rules, Big Money*, filmmakers tried to show the extent (or lack thereof) to which children of influencer families understand the industry.¹²⁶ The twin girls of the featured Fischer family, then three years old, summarized it well: when asked if they knew what an influencer was, the twins responded with “we’re cats” while biting on a candy bracelet their mother gave them for the interview.¹²⁷ Parents Madison and Kyler, meanwhile, gained millions of followers by providing content of their influencer daughters.¹²⁸ These followers have generated an income that Madison and Kyler acknowledge they could not achieve in any other industry; they disclose that they made \$150,000 the prior month solely from sponsored posts of their children.¹²⁹ Young children involved in monetized content often do not understand what it means to have an online presence, and are far too young to understand the long-term consequences of their involvement.¹³⁰

As these children age, they may begin to understand the harms of the influencer lifestyle. But this does not mean that their participation is suddenly voluntary. When these children become teenagers, they may continue participating in these channels because of the high financial stakes.¹³¹ For example, when one teenager from an influencer family told her father that she did not want to produce videos anymore, he responded that doing so would force their family to move out of their house and require both

126. See *Kid Influencers: Few Rules, Big Money*, *supra* note 56.

127. *Id.*

128. See *id.*

129. See *id.*

130. See *id.*

131. See Latifi, *Influencer Parents and the Kids Who Had Their Childhood Made into Content*, *supra* note 15.

parents to return to work.¹³² Another teen similarly reflected on her childhood in the influencer spotlight and the pressures it brought:

There was this idea that you have to look perfect and pretty and like nothing is wrong all the time in front of the camera. . . . And if it seemed like I wasn't trying hard enough to maintain that image, like my smile wasn't as bright as it should be or I didn't say a line with enough enthusiasm . . . that would usually devolve into accusing me of not caring about our family. I was told by my mom, "Do you want us to starve? Do you want us to not be able to make our payment next month on the mortgage?"¹³³

In addition to the known harms of influencer life, the next several decades are likely to reveal an array of currently unknown harms as the children of these families grow into adulthood. For instance, the psychological implications of knowing that any person can so easily access hours of footage of one's most vulnerable childhood moments remain largely unstudied. Realistically, these children will be forced to reckon with the consequences of an influencer life that their parents chose on their behalf.

This is the first reason this Note advocates giving these children, once adults, the ability to delete content with their likenesses. The harm we already know about is significant, and the unknown consequences lasting into adulthood are daunting. Enabling former influencer children to delete content depicting them empowers them to exercise agency over the force behind some of the more enduring harms. The second reason for advocating for this specific right is that instituting protective controls is extremely difficult while these children are still minors because of the strength of parental autonomy in the United States, even in those cases where parents subject their children to long-term harm.

132. *See id.* ("Once, she told her dad she didn't want to do YouTube videos anymore and he told her 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.'"). For another example of parents coercing children into continuing to produce content, see Amber Edney, Note, "*I Don't Work for Free*": *The Unpaid Labor of Child Social Media Stars*, 32 U. FLA. J.L. & PUB. POL'Y 547, 560 (2022).

133. Latifi, *What's the Price of a Childhood Turned into Content?*, *supra* note 49.

II. PARENTAL AUTONOMY IN THE UNITED STATES AND ITS IMPACT ON FAMILY INFLUENCING

The legal regime protecting parental autonomy in the United States enables parents to decide to post and monetize content of their children online.¹³⁴ This Part first provides an overview of parental rights in the United States, then explains why the children of influencer families are almost entirely at their parents' mercy when it comes to what is posted about them online.

A. THE STATE OF U.S. PARENTAL AUTONOMY AND THE ASSUMPTION OF BEST INTEREST

The United States' historical emphasis on parental autonomy makes it difficult to meaningfully protect the children of influencer families through regulation. The Supreme Court has traditionally held that parental rights, specifically parents' autonomy to "direct the upbringing"¹³⁵ of their children, are among the most well-established and fundamental constitutional rights.¹³⁶ In 1923, the Court first explicitly recognized that the Fourteenth Amendment's protection of personal liberty extends to the freedom to "bring up children."¹³⁷ Two years later, *Pierce v. Society of Sisters* affirmed that this liberty extends to the right to "direct the upbringing and education" of one's children.¹³⁸ Out of these two cases, the tradition of strong parental autonomy was born.¹³⁹

This is not to imply that other countries do not give parents a degree of autonomy over the rearing of their children; however, the degree of parental autonomy in the United States is notably far-

134. See John Bigelow et al., *Parental Autonomy*, 5 J. APPLIED PHIL. 183, 185 (1988) ("Within limits, parents are granted autonomy in their dealings with their children, they are free to set their own rules, without supervision or interference from others.").

135. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925).

136. See *Haley*, *supra* note 18, at 1014 (describing parental autonomy in America as "an almost impenetrable legal force").

137. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); see also ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 942 (6th ed. 2020) (describing *Meyer* as "the first Supreme Court cases recognizing family autonomy involved the right of parents to control the upbringing of their children").

138. See *Pierce*, 268 U.S. at 534.

139. See CHEMERINSKY, *supra* note 137, at 942 ("The first Supreme Court cases recognizing family autonomy involved the right of parents to control the upbringing of their children. It is notable that they were decided during the *Lochner* era and expressly use substantive due process to protect this right. . . . [T]he Supreme Court's decisions of that era protecting parental decision making are very much still followed.")

reaching.¹⁴⁰ So long as parents provide a minimum level of care (i.e., are generally fit and not found to be abusive or negligent), courts will typically find “no reason for the state to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing” of their children.¹⁴¹ For example, in *Troxel v. Granville*, the Supreme Court found a Washington statute unconstitutional because it allowed judges to grant visitation rights to non-parental figures in the child’s life.¹⁴² The Court held that the encroachment on parental autonomy would be too severe, regardless of the judge’s best-interest findings for the child.¹⁴³

Such a high degree of parental autonomy relies on the general assumption that parents will act—or, at least, intend to act—in the best interests of their children.¹⁴⁴ As Justice Burger wrote in *Parham v. J.R.*, a case ruling that children’s rights are not violated when their parents commit them to state mental hospitals without a formal adversary hearing:

The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience,

140. See, e.g., *Wisconsin v. Yoder*, 406 U.S. 205, 218 (1972) (finding that Amish children could not be forced to complete education past the eighth grade because of their belief that “secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values . . . substantially interfer[ed] with the religious development of the Amish child. . .”). Additionally, the United States is the only UN country that is not party to the UN Convention on the Rights of the Child, which includes a child’s right to privacy. Keith & Steinberg, *supra* note 75, at 413–14. One example where American parents have much greater control over their children than in other countries is in choosing to homeschool their children. See Liz Mineo, *A Warning on Homeschooling*, HARV. GAZETTE (May 15, 2020), <https://news.harvard.edu/gazette/story/2020/05/law-school-professor-says-there-may-be-a-dark-side-of-homeschooling/> [<https://perma.cc/YP3G-CB6X>] (“Some countries like Germany effectively ban homeschooling altogether. In the U.S. there is essentially no effective regulation.”).

141. *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000).

142. See *id.* at 60.

143. See *id.* at 67; see also *Best Interests (Of the Child)*, LEGAL INFO. INST. (last visited July 17, 2024), https://www.law.cornell.edu/wex/best_interests_%28of_the_child%29 [<https://perma.cc/7YZQ-T7L9>] (“Best interests of the child refers to the test courts use when they make decisions that affect a child such as child custody, visitation, etc. In disputes over child custody, the judge will make a decision based on the child’s best interests.”). Best interests is a subjective standard, but there are certain common considerations in these evaluations. For example, in New York, these considerations include “stability,” “child care arrangements,” “child’s preference,” and the “finances of each parent.” *Best Interests of the Child*, N.Y. CITY BAR, <https://www.nycbar.org/get-legal-help/article/family-law/child-custody-and-parenting-plans/best-interests-of-the-child/> [<https://perma.cc/HQD4-G2ZY>].

144. See Haley, *supra* note 18, at 1011 (“The Court’s general restraint in limiting parental rights arises from the U.S. societal assumption that parents have their children’s best interest in mind and will do what is in their children’s best interest.”).

and capacity for judgment required for making life's difficult decisions. More important, historically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.¹⁴⁵

This “best interest” assumption is a powerful shield for parents from state intervention. Justice Burger acknowledged in *Parham* that parents may sometimes act in a manner that is against their children's best interests, but occasionally doing so is insufficient reason to infringe on this autonomy.¹⁴⁶ In many ways, the justification for the best-interest assumption is compelling—if a court could negate any parental decision it determined to be against a child's best interest, the strong presumption of parental autonomy could not exist in the first place. In essence, for better or worse, children are legally at the mercy of their parents' decision-making.¹⁴⁷

Meyer and *Pierce* both upheld parental autonomy in part because of society's interest in promoting self-expression and diversity of viewpoints and lifestyles.¹⁴⁸ As a result, parents can choose what medical care their children may obtain,¹⁴⁹ what religious ideas they are exposed to,¹⁵⁰ and what activities they participate in.¹⁵¹ Importantly, parents may also control what

145. 442 U.S. 584, 602.

146. *See id.* at 602–03.

147. *See, e.g.,* *Custody of a Minor*, 379 N.E.2d 1053, 1062 (Mass. 1978) (parents “have the primary right to raise their children according to the dictates of their own consciences” (citing *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978))); *People ex rel. Sisson v. Sisson*, 2 N.E.2d 660, 661 (N.Y. 1936) (“The vast majority of matters concerning the upbringing of children must be left to the conscience, patience, and self-restraint of father and mother. No end of difficulties would arise should judges try to tell parents how to bring up their children. Only when moral, mental, and physical conditions are so bad as seriously to affect the health or morals of children should the courts be called upon to act.”).

148. *See Meyer*, 262 U.S. 390, 402 (1923) (acknowledging that even if the state might theoretically desire a homogeneous population, people retain the liberty to learn and practice what they desire); *Pierce*, 268 U.S. 510, 535 (1925) (denying a state the general power “to standardize its children”).

149. Denise Winiarski et al., *Risks and Legal Issues in Caring for Minor Jehovah's Witness Patients*, *ADVANCING HEALTH CARE RISK MGMT.* (Mar. 29, 2018), <https://forum.ashrm.org/2018/03/29/risks-and-legal-issues-in-caring-for-minor-jehovahs-witness-patients/> [https://perma.cc/5263-SJGM].

150. *See Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972) (asserting that the constitutional right to parental authority includes control over exposure to different “moral standards” and “religious beliefs”).

151. *See Pater v. Pater*, 588 N.E.2d 794, 799 (Ohio 1992) (maintaining a parent's right to raise their children under certain religious beliefs, even if these beliefs disallow a child from “participat[ing] in certain extracurricular activities, celebrat[ing] holidays, or salut[ing] the flag.”); *accord Troxel v. Granville*, 530 U.S. 57, 66 (2000) (“[I]t cannot now be

information and content about their children they disseminate online.¹⁵²

Still, though well-protected, a parent's right to control their children's upbringing is not absolute. One of the most prominent court cases restricting parental autonomy is *Prince v. Massachusetts*, wherein the Supreme Court decided whether parents could allow their children to work in violation of child labor laws.¹⁵³ Ultimately, the Court found that parental autonomy did not exempt parents from these laws, holding that "the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare. . . ."¹⁵⁴ So, despite the United States' far-reaching protection of parental autonomy, the law permits a certain degree of interest balancing, particularly when a child's safety is at risk.¹⁵⁵

doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.").

152. While the general right of parents to disseminate this information stems from general notions of parental autonomy, the right to do so online is protected by the First Amendment. See *Reno v. ACLU*, 521 US 844, 865 (1997) (holding that free speech protections extend equally to Internet speech).

153. See 321 U.S. 158, 160 (1944).

154. *Id.* at 167.

155. As with effectively every aspect of the United States' legal system, marginalized groups suffer from disparate treatment in family court's application of these standards. See, e.g., Mariela Olivares, *The Unpragmatic Family Law of Marginalized Families*, 136 HARV. L. REV. F. 363 (Apr. 2023), <https://harvardlawreview.org/forum/vol-136/the-unpragmatic-family-law-of-marginalized-families/> [<https://perma.cc/Q54N-AJRN>] ("[Many ignore] the deeply entrenched, inherent, and inextricable racism, classism, and xenophobia in the American legal system, which show up in family law courtrooms and family law systems around the country every day."); *Racism at Every Stage: Data Shows How NYC's Administration for Children's Services Discriminates Against Black and Brown Families*, NYCLU (June 20, 2023), <https://www.nyclu.org/report/racism-every-stage-data-shows-how-nycs-administration-childrens-services-discriminates> [<https://perma.cc/RC3Z-XLAF>] ("[T]he odds of having your life put under scrutiny from ACS [child protective services] largely depends on the color of your skin"); Vicki Lens, *Judging the 'Other': The Intersection of Race, Gender and Class in Family Court*, 57 FAM. CT. REV. 72, 72 (2019), (finding that race, gender, and class intersectionality work to "exponentially marginalize[] poor mothers of color in the courtroom"). While racial discrimination in family court is outside of the scope of this Note, this discrepancy in the treatment between white families and families of color does not exist in a vacuum; not only is family influencing a predominantly white industry, but one that has been hostile to non-white creators. See, e.g., Astrid Galvan, *Women of Color Growing Force as Mom Influencers*, NBC LOS ANGELES (Nov. 3, 2021), <https://www.nbclosangeles.com/the-scene/women-of-color-growing-force-as-mom-influencers/2746247/> [<https://perma.cc/899F-WXAU>] (discussing how the family influencing industry has historically neglected non-white creators); Anna North, *The Expensive, Unrealistic, and Extremely White World of "Momfluencers,"* VOX (Apr. 25, 2023), <https://www.vox.com/23690126/mothers-parenting-momfluenced-sara-petersen-tiktok-instagram> [<https://perma.cc/HN4V-AH57>] (interviewing author Sara Petersen on her

B. THE ENTERTAINMENT INDUSTRY'S EXCEPTIONS TO
PARENTAL AUTONOMY AND CURRENT INAPPLICABILITY TO
INFLUENCER FAMILIES

The traditional entertainment industry is one field in which parental rights are sometimes limited.¹⁵⁶ Though federal child labor laws broadly exempt “any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions,”¹⁵⁷ many states have instituted laws that protect children in the entertainment industry.¹⁵⁸ For example, California requires permits for every child working in the entertainment industry, dictates the hours they can work, and mandates that they meet state-instituted educational benchmarks.¹⁵⁹ Such regulations, of course, do not protect children from all potential labor abuses,¹⁶⁰ but they do, at a minimum, offer a wide range of safeguards often similar to the laws upheld as constitutional in *Pierce*.

Even where protections for child entertainers exist, such laws do not extend to the children of influencer families for two reasons. First, in states that have child labor laws applicable to entertainment, the children of influencer families do not fall under the scope of protections because influencers are not generally considered entertainers under those laws.¹⁶¹ Second, influencers’

research on how an idealized image of whiteness drives much of the family influencing industry and leaves families of color behind).

156. For an overview of the history of legal regulations for child entertainers, see Jessica Krieg, *There's No Business Like Show Business: Child Entertainers and the Law*, 6 CASE W. L. REV. U. PA. J. BUS. L. 429 (2004).

157. 29 U.S.C. § 213(c)(3).

158. For an overview of existing laws for child performers by state, see *Child Entertainment Laws as of January 1, 2023*, DEP'T OF LAB., <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/ETR6-ADXZ>] (Jan. 1, 2023).

159. See CAL. LAB. CODE § 1308.7 (West 1993) (limiting the hours and timeframes a child may work); CAL. FAM. CODE § 6752(b)(4) (West 1999).

160. Many former child actors have discussed the abuses they experienced as children working in entertainment. See, e.g., *All Quiet on Set: The Dark Side of Kids TV* (Investigative Discovery documentary miniseries Mar. 17–Apr. 7, 2024) (exposing the abuses that many child actors experienced during children’s shows in the late 1990s and early 2000s); see also Tabettha Bennett, Note, *Child Entertainers and Their Limited Protections: A Call for an Interstate Compact*, 9 BARRY U. CHILD & FAM. L.J. 131, 154–55 (2021) (discussing the frequent lack of legal protection for children in the entertainment industry and the issues that arise from inconsistencies between laws of different states).

161. See *Coogan Accounts: Protecting Your Child Star's Earnings*, MORGAN STANLEY: THE YELLOWSTONE GRP., <https://advisor.morganstanley.com/the-yellowstone-group/articles/global-sports-and-entertainment/protecting-your-child-star-s-earnings> [<https://perma.cc/5Z7E-6FEK>] (Oct. 1, 2023) (“Currently, social media stars, or ‘influencers,’

children are excluded from federal child labor law protections because they are considered to be working in family businesses, which are traditionally exempt from child labor laws.¹⁶² In addition, the nature of family content creation allows for far greater parental autonomy over children's lives. While traditional forms of entertainment are created in studios or theaters, monetized family content is created almost exclusively within the bounds of the home,¹⁶³ with parents acting as directors, producers, writers, consultants, and managers.¹⁶⁴ This near-total lack of regulation and company-specific industry standards allows parents to have sole control over when their children work, how many hours they work, and what type of content they participate in to an extent that does not exist in traditional entertainment.¹⁶⁵

Social media and family influencers may have significantly expanded the monetization of "authentic" family content, but they were not the first to create it.¹⁶⁶ Years before the rise of the modern influencer, network television found ways to profit from publicizing families' intimate lives.¹⁶⁷ Shows like *19 Kids and Counting*, *Jon and Kate Plus 8*, *Breaking Amish*, *Wife Swap*, and *Raising Asia* all gained significant viewership by showcasing the "unique lifestyles"¹⁶⁸ and daily lives of the families and children involved. While such shows' content resembles the media family influencers produce, there is one significant difference: the families involved in television shows do not have primary control over the

are not subject to child entertainer labor laws. . . ."). The three exceptions to this are in Illinois, Minnesota, and California. See *supra* note 20 and accompanying text (describing recent laws passed in Illinois, Minnesota, and California to give child influencers financial protections).

162. See 29 U.S.C. § 213(c)(3). For a more detailed explanation of this law, see *FLSA – Child Labor Rules Advisor*, DEP'T OF LAB., <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> [<https://perma.cc/5X4Q-85Z3>] ("The Fair Labor Standards Act provides for certain exemptions. Youth younger than 16 years of age working in nonagricultural employment in a business solely owned by their parents or by persons standing in place of their parents, may work any time of day and for any number of hours.").

163. See Masterson, *supra* note 56, at 591 ("Unlike traditional child acting, which typically occurs at a studio or theater with a production team, social media production often takes place at home with the family.").

164. See Reardon, *supra* note 38, at 177.

165. See *id.*

166. Bridie E. Hamilton, *Anything for Views Parenting: Framing Privacy, Ethics, and Norms for Children of Influencers on YouTube*, 11 (2023) (M.A. dissertation, Duke University) (ProQuest) ("Our societal obsession with watching others raise their children did not materialize overnight; a look into the history and context of public-facing parenting can shed light on the role it plays in modern sharing on social media.").

167. See *id.*

168. *Id.* at 12.

creation, filming, production, editing, airing, or distribution of the final product.¹⁶⁹ As such, families featured in television shows are still beholden to the rules and decisions of their respective networks in a way that influencer families are not.¹⁷⁰

For example, in 2015, TLC canceled and stopped airing *19 Kids and Counting* after it came to light that son Josh Duggar had sexually assaulted several of his sisters—a cancellation that the Duggar parents had no legal right to prevent.¹⁷¹ If the Duggar parents had created the show themselves—say as a YouTube channel—they may have faced social pressure to stop producing content, but they would be under no legal obligation to do so.

Consider also a now-pulled episode of *Dance Moms* entitled “Show Girls,” in which a group of young children performed a dance in costumes “designed for them to appear nude.”¹⁷² The Lifetime network removed the episode following backlash.¹⁷³ Conversely, when a TikTok creator with over four million followers releases a video of her son sitting on the toilet crying as he fails to go to the bathroom,¹⁷⁴ no external control measures exist. Indeed, representatives of social media platforms have repeatedly delegated responsibility to parents for monitoring and controlling morally questionable content involving children. For example, despite a 2020 finding that over 500,000 Instagram accounts had “inappropriate” interactions between minors and adult men every day, a Meta spokesperson affirmed that it was

169. This is not to imply that television families have zero control over the created content, but in working for a network, they do have significantly less control than family influencers. For an overview of what reality television contracts can look like and just how much control producers have over the final product, see generally Debora Halbert, *Who Owns Your Personality? Reality Television and Publicity Rights*, in *SURVIVOR LESSONS: ESSAYS ON COMMUNICATION AND REALITY TELEVISION* 37 (Matthew J. Smith & Andrew F. Wood eds., 2003).

170. Oversight of a network does not mean traditional reality television is without abuses. However, it is nonetheless significant that in traditional media there is still far stronger, if often inadequate, regulation. For some examples of regulation violations in reality television, see Claudia Rosenbaum, *Reality TV's Reckoning Is Coming*, *VULTURE* (Aug. 22, 2023), <https://www.vulture.com/article/bravo-lawsuit-allegations-what-to-know.html> [<https://perma.cc/DT6R-9CV9>] (describing lawsuits against television network Bravo for alleged mistreatment, misconduct, and exploitation of reality TV participants).

171. See Hamilton, *supra* note 166, at 14 (“TLC also stopped airing episodes of *19 Kids and Counting* after it was revealed that Josh Duggar had molested five underage girls. . . .”).

172. *Id.*

173. See *id.*

174. See Michelle Charlotte Kimball (@michellebellexo), *TIKTOK* (Dec. 30, 2023) (last visited Sept. 12, 2024).

ultimately a parent's responsibility to delete predatory comments and messages to their children.¹⁷⁵

In traditional media, there are rules that limit parental autonomy in order to promote children's best interests. On social media, however, parents have unchecked power to involve their children in content that can negatively affect them for the rest of their lives. Children have no right to remove it at any point.

III. THE CURRENT STATE OF PUBLICITY RIGHTS

When parents monetize their children's likeness on social media, they use their parental autonomy to engage with the legal system of publicity rights, freely commercializing their children's image with little to no regulation. After defining publicity rights and explaining their purpose, this Part argues that influencer children should (i) be protected under the publicity rights of their respective states and (ii) should not fall under any of the traditional exceptions that would exempt them from protection.

A. BASIC DEFINITION, MODERN SCOPE, AND PURPOSE

Publicity rights stem from an individual's inherent right to control the commercial use of their identity, including through aspects of their personhood, likeness, voice, and name.¹⁷⁶ They combine elements of privacy law and property rights. As a recent student Note explained: "On one hand, the enforcer of the right seeks to vindicate an invasion of his privacy, and on the other,

175. See Valentino-DeVries & Keller, *supra* note 117 ("In a statement to *The Times*, Andy Stone, a Meta spokesman, said that parents were responsible for the accounts and their content and could delete them anytime.").

176. See *Right of Publicity*, *supra* note 26 ("The right of publicity is an intellectual property right that protects against the misappropriation of a person's name, likeness, or other indicia of personal identity—such as nickname, pseudonym, voice, signature, likeness, or photograph—for commercial benefit."). For an additional overview of publicity rights, see generally Mark Roesler & Garrett Hutchinson, *What's in a Name, Likeness, and Image? The Case for a Federal Right of Publicity Law*, A.B.A.: LANDSLIDE (Sept. 16, 2020), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2020-21/september-october/what-s-in-a-name-likeness-image-case-for-federal-right-of-publicity-law [https://perma.cc/4VHW-ZAQ9]. For an overview of how publicity rights can be asserted in court, see generally Natalie Grano, Note, *Million Dollar Baby: Celebrity Baby Pictures and the Right of Publicity*, 20 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 609, 614 (2010).

seeks to maintain control over profits that arise from the use of his image.”¹⁷⁷

There is currently no federal right of publicity, but most states recognize this right in some way, either through statute or common law.¹⁷⁸ Celebrities and other traditional public figures most frequently enforce their publicity rights because they are more likely to have profitable images and likenesses.¹⁷⁹ Regardless, asserting this right is equally available to private citizens, except in a minority of states.¹⁸⁰

The primary justification for publicity rights is financial.¹⁸¹ Proponents argue that, if a person’s likeness is potentially

177. Grano, *supra* note 176, at 614.

178. As of July 2024, 37 states recognize the right of publicity. Of the states that do not have statutory protection, many have common law protection in some form. See Mark Roesler & Joey Roesler, *Patchwork Protections: The Growing Need for a Federal Right of Publicity Law*, 16 LANDSLIDE, June/July 2024, https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2023-24/june-july/patchwork-protections-growing-need-federal-right-publicity-law/ [<https://perma.cc/Q7M2-3NAY>].

179. See, e.g., JENNIFER E. ROTHMAN, *THE RIGHT OF PUBLICITY: PRIVACY REIMAGINED FOR A PUBLIC WORLD* 1–2 (2018) (“Basketball star Michael Jordan asserted his right of publicity and won more than [nine] million [dollars] against two supermarkets that used his name and jersey number along with their brand names to congratulate him in the pages of Sports Illustrated on his induction into the Basketball Hall of Fame. . . . Bette Midler used the right to win a \$400,000 verdict against a car company that used a song that she made famous in an advertisement, even though the company hired another singer to perform the song and licensed the music. . . . Professional hockey player Tony Twist won a \$15 million judgment on the basis of the right after the author of the comic book *Spawn* named a character Tony Twistelli. Game show hostess Vanna White won . . . more than \$400,000 by asserting her right of publicity against the electronics company Samsung when it used an image of a robot wearing a wig on the set of Wheel of Fortune in an advertisement, even though the robot looked nothing like White.”).

180. See Woods Drinkwater, Article, *Personality Beyond Borders: The Case for a Federal Right of Publicity*, 3 MISS. SPORTS L. REV. 115, 127 (2013) (“Most states recognize the right of publicity for all citizens, regardless of the commercial value of their likeness, personality of [sic] persona. A minority of states differentiates between the status of ‘celebrity’ and ‘non-celebrity’ of an individual. The rationale being that the right should only attach to those who have actively sought monetary gain ‘from the exploitation of the publicity value of their names and likenesses.’” (quoting Stephen J. Hoffman, *Limitations on the Right of Publicity*, 28 BULL. COPYRIGHT SOC’Y U.S.A. 111, 112 (1980))). That said, even this narrowed framework is not particularly limiting in practice, since bringing a publicity case forward in the first place relies on the fact that someone has already used an individual’s image to produce commercial value. See *id.* at 128 (“[A]s soon as a defendant misappropriates one’s personality, he or she has proven its commercial value.”).

181. See Keith D. Willis, Note, *Paparazzi, Tabloids, and the New Hollywood Press: Can Celebrities Claim a Defensible Publicity Right in Order to Prevent the Media from Following Their Every Move?*, 9 TEX. REV. ENT. & SPORTS L. 175, 181 (2007) (“This right is inherently proprietary in nature; courts have held that celebrities and private citizens alike retain a property interest in being able ‘to profit from the full commercial value of their identities.’” (quoting *Cardtoons, L.C. v. Major League Baseball Players Ass’n*, 95 F.3d 959, 968 (10th Cir. 1996))).

profitable, that person has a “legitimate proprietary interest” in controlling the use and value that can arise from their identity.¹⁸² Still, courts have held that emotional and other non-monetary factors can influence the validity of a publicity rights case. For example, in *Waits v. Frito-Lay, Inc.*, the Ninth Circuit held that remedies in successful publicity suits can account for emotional damages arising from “injury to peace, happiness, and feelings” because the violation of publicity rights “may induce humiliation, embarrassment, and mental distress.”¹⁸³ If a celebrity uses publicity rights to, say, sue a photographer selling photos of their children at school, they are likely doing so because they have a desire to protect their children’s privacy—not because they want to profit off of the images themselves.¹⁸⁴ Here, even though the grounds for enforcing publicity rights are not financial, the moral motivation is sufficient to make a claim.

B. PUBLICITY RIGHTS, PARENTAL CONTROL, AND APPLICABILITY TO INFLUENCER CHILDREN

Even in the few states that limit publicity protections for private citizens, children of influencer families would nonetheless fall within the scope of protection. This is because, in profiting off of their children’s likeness, parents have already demonstrated that their children have a “legitimate proprietary interest” in controlling its use.¹⁸⁵ The harms that can befall these children

182. *Uhlaender v. Henricksen*, 316 F. Supp. 1277, 1282 (D. Minn. 1970).

183. *Waits v. Frito-Lay, Inc.*, 978 F.2d 1093, 1103 (9th Cir. 1992). For publicity rights cases that considered emotional harm in evaluating the wrong, see, e.g., *Abdul-Jabbar v. Gen. Motors Corp.*, 85 F.3d 407, 416 (9th Cir. 1996) (evaluating professional basketball player Kareem Abdul-Jabbar’s publicity claim on the grounds that he was injured emotionally); *Olive v. General Nutrition Centers, Inc.*, 242 Cal. Rptr. 3d 15 (Cal. Ct. App. 2018) (awarding a California model \$910,000 in emotional distress damages after wellness company GNC used his likeness in an advertisement without his consent).

184. Many celebrities have expressed disdain for paparazzi publishing children’s likenesses. For example, actress Blake Lively publicly called for photographers to stop publishing photos of her children and implored her followers to “stop following and block any publications or handles who publish kid’s pictures.” Megan Stone, *Blake Lively Shames Those Who Post Paparazzi Photos of Her Children: ‘This Is so Disturbing’*, ABC NEWS (Oct. 21, 2021), <https://abcnews.go.com/GMA/Culture/blake-lively-shames-post-paparazzi-photos-children-disturbing/story?id=80705203> [<https://perma.cc/4VVD-PSZE>]. Model Gigi Hadid made a similar request in a 2021 Instagram story, in which she asked photographers to “PLEASE PLEASE PLEASE” blur her daughter’s face in any photos she appears in. Paulina Jayne Isaac, *Gigi Hadid Asks Paparazzi and Press to Not Show Daughter Khai’s Face in Photos*, GLAMOUR (July 6, 2021), <https://www.glamour.com/story/gigi-hadid-paparazzi-press-not-show-daughter-khai-face-photos> [<https://perma.cc/AFB5-86LP>].

185. *Uhlaender*, 316 F. Supp. at 1282.

bolster the argument for broad applicability of publicity rights, as much of the material that parents upload can cause “humiliation, embarrassment, and mental distress.”¹⁸⁶ Accordingly, publicity rights generally apply to children of influencer families.

Publicity rights may theoretically protect these children, but that does not mean parents take sufficient notice of these rights while their children are minors. When parents monetize a child’s likeness, it is their consent, not their child’s, that is relevant to any contractual agreement.¹⁸⁷

Parents who seek to monetize their children’s likenesses can consent in two ways. First, parents can consent on behalf of their children for third parties to take ownership of their child’s likeness. A common example is when a parent allows a company to photograph their child to use the photos in an advertisement. Once the parent transfers the rights, ownership of the likeness in these photos belongs to and remains with the third party rather than the parent or child.¹⁸⁸ Even when they reach adulthood, the child has no power to reclaim their likeness, and the third party can continue to monetize the likeness—potentially in perpetuity—without considering whether the adult child approves of the usage.¹⁸⁹ Once a third party has these transferred rights, they often also obtain the right to transfer ownership to whomever they choose, and the child involved has no say over who may one day control the material.¹⁹⁰

186. *Waits*, 978 F.2d at 1103; *see supra* Part I.C.

187. *See* RESTATEMENT (SECOND) OF CONTRACTS § 14 (A.L.I. 1981) (“Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person’s [18th] birthday.”). Since publicity rights are state-by-state, there is no federal rule for how contracts that commercialize a minor’s likeness operate. However, for an example of how parents have full control over their children in contracts in California, *see* Cal. Civ. Code § 3344(a) (West 1971) (“Any person who knowingly uses another’s name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person’s prior consent, or, in the case of a minor, the prior consent of his parent or legal guardian, shall be liable for any damages sustained by the person or persons injured as a result thereof.”).

188. *See* ROTHMAN, *supra* note 179, at 117 (“The profound and long-standing damage of assignments is perhaps most apparent when children are involved—parents can assign their children’s publicity rights to third parties and neither the children (once grown) nor the parents can reclaim them.”).

189. *See id.*

190. *Faloona by Fredrickson v. Hustler Magazine, Inc.*, demonstrates how courts uphold such transfers. There, the Fifth Circuit determined that a parent who had signed releases for nude photos of her child could not reclaim the rights to the photos nor prevent any

This is what happened to actress Brooke Shields.¹⁹¹ When Shields was only ten years old, her mother allowed a photographer to take nude photos of Shields for a *Playboy Press* publication.¹⁹² Years later, a 17-year-old Shields tried to void the contract to prevent the photographer from continuing to market and sell the nude photos.¹⁹³ Ultimately, the New York Court of Appeals decided that Brooke had no power to void the contract, and that the photographer was allowed to continue to market and sell the nude photos, so long as he did not sell them to pornographic publications.¹⁹⁴

Second, parents can demonstrate consent on behalf of their children without transferring the rights to a third party simply by posting content online. While influencer parents do sometimes sell their children's likenesses to a third party,¹⁹⁵ this second means of monetization without a subsequent transfer is far more common in family influencing, where parents upload content to sites via their own channels. YouTube, Instagram, and TikTok may be the vessels through which parents share content of their children, but they are merely platforms, meaning that posters do not forfeit any property rights to their content when they post.¹⁹⁶ This puts most family influencer content outside the limitations and signed-away rights of third-party publicity transfers. Critically, parents can keep monetized content up for as long as they see fit, including once the featured children have reached legal maturity, in absence of any law mandating that children have a say in the content's continued accessibility. So, in most instances of family influencing, parents not only utilize publicity rights to monetize

unanticipated future uses. 799 F.2d 1000, 1007 (5th Cir. 1986). Additionally, the court disallowed the now-adult child from voiding the contracts. *See id.* at 1005.

191. *See Shields v. Gross*, 448 N.E.2d 108 (N.Y. 1983).

192. *See id.* at 341–42.

193. *See id.* at 342.

194. *See id.* at 345–46 (“Inasmuch as the consents in this case complied with the statutory requirements, they were valid and may not be disaffirmed. . . . The trial court specifically found that the photographs were not pornographic and it enjoined use of them in pornographic publications.”). The court found that the specific subdivision of *Playboy* to which the photos were sold was not pornographic.

195. *See, e.g., Kid Influencers: Few Rules, Big Money*, *supra* note 56 (documenting how influencer families sell their children's likeness to brands so they can use the children in traditional advertisements).

196. *See Terms of Service*, YOUTUBE, *supra* note 51 (“You retain all of your ownership rights in your Content.”); *Terms of Use*, INSTAGRAM, *supra* note 51 (“We [Instagram] do not claim ownership of your content. . . .”); *Terms of Service*, TIKTOK, *supra* note 51 (“you [users] or your licensors will own any User Content. . . .”).

their children, but also keep sole control over these rights indefinitely.

C. NEWSWORTHINESS EXCEPTION AND INAPPLICABILITY TO INFLUENCER CHILDREN

While influencer children are arguably within the scope of publicity rights because content with their likenesses is monetized by their parents, such rights are far from absolute. This section explores the complex interplay between publicity rights and First Amendment protections, focusing on the newsworthiness exception. After defining the newsworthiness exception, this section argues that influencer children should be treated as private citizens rather than public figures for the purpose of this exception. Finally, this section argues that, even if courts considered influencer children public figures, additional considerations still render content including these children non-newsworthy.

1. *Definition and Scope*

Since publicity cases almost always deal with some form of published material, there is an “inherent tension between the right of publicity and the right of freedom of expression under the First Amendment.”¹⁹⁷ Determining when to enforce a person’s publicity rights comes down to balancing the right to be “protected from undesired publicity” and “the public interest in the dissemination of news and information consistent” with First Amendment protections.¹⁹⁸ In practice, when the scales tip towards the latter consideration, the “newsworthiness exception” kicks in,¹⁹⁹ which exempts newsworthy communications or publications from publicity *and* privacy claims.²⁰⁰

In *Virgil v. Time, Inc.*, the Ninth Circuit established that public disclosure of private facts had to be “newsworthy” to receive First

197. *ETW Corp. v. Jireh Publ'g, Inc.*, 332 F.3d 915, 931 (6th Cir. 2003).

198. *Gill v. Hearst Pub. Co.*, 253 P.2d 441, 443 (Cal. 1953).

199. Jennifer E. Rothman, *The First Amendment and the Right(s) of Publicity*, 130 *YALE L.J.* 86, 168 n.355 (2020) (describing what the newsworthiness exception looks like in different states).

200. *See id.* at 168 (“[N]ewsworthy communications are typically immune from both privacy and publicity claims.”).

Amendment speech protection.²⁰¹ Here, the court adopted the Restatement (Second) of Torts' definition of newsworthiness:

The line is to be drawn when the publicity ceases to be the giving of information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake, with which a reasonable member of the public, with decent standards, would say that he had no concern.²⁰²

Application of this standard varies because of public figures' comparatively lesser right to privacy. For celebrities, this standard renders many would-be publicity rights dead on arrival; matters such as divorce proceedings, child custody agreements, addiction, arrests, and marital spats are all on the table for publication and monetization.²⁰³ But while the public may feel entitled to learn about these aspects of a celebrity's personal life, for private citizens, the bar for newsworthiness is higher: it is only enforceable when the private citizen has experienced something of genuine interest to the public at large.²⁰⁴ Consequently, determining if child influencer content is subject to the First Amendment newsworthiness exception is in part dependent on whether child influencers are public figures. This Note argues that they are not.

201. See 527 F.2d 1122, 1128 (9th Cir. 1975).

202. *Id.* at 1129 (quoting RESTATEMENT (SECOND) OF TORTS § 652D cmt. h (A.L.I. 1977)).

203. See Willis, *supra* note 181, at 186 (“[C]ourts have nonetheless held that publications concerning divorce proceedings, marriages and child custody disputes are protected by the First Amendment. In addition, the misfortunes and frailties of celebrities are newsworthy; the press does not need permission to publish stories about addictions, arrests or other misbehavior.”).

204. See *id.* at 184–85 (discussing how celebrities are “constantly making news” in a way in which non-celebrities do not, thus making their newsworthiness considerations different); see also Carlisle v. Fawcett Publ'ns., Inc., 20 Cal. Rptr. 405, 414–15 (Dist. Ct. App. 1962) (explaining that celebrities forfeit their right to privacy, and by extension publicity, to an extent far greater than private citizens); Hall v. Time Warner, 153 Cal. App. 4th 1337, 1347 (Cal. Ct. App. 2007) (determining that statements about Marlon Brando's housekeeper were newsworthy because “fascination with Brando and widespread public interest in his personal life made Brando's decisions concerning the distribution of his assets a public issue or an issue of public interest.”); Chapa v. Foell, No. CV 13-04536-BRO, 2014 WL 12966284, at *4 (C.D. Cal. July 10, 2014) (finding that actor and director Damian Chapa was “sufficiently in the public eye to transform statements about him to the press into a matter of public interest.”).

2. *Influencer Children Should Not Be Considered Public Figures and Thus Their Lives Should Not Be Newsworthy*

The Supreme Court defines public figures as those who have “assumed roles of especial prominence in the affairs of a society,” have “thrust themselves to the forefront of particular public controversies,” or otherwise have achieved “pervasive fame or notoriety.”²⁰⁵ While the first two designations imply some level of intention, fame can be entirely unintentional, and courts have held that those who are public figures involuntarily are still subject to these standards.²⁰⁶ For example, in *Time v. Hill*, the Supreme Court held that the First Amendment protected a journalist’s report that a play was based on a family’s experience being taken hostage, because the event was a legitimate news story.²⁰⁷ *Time* was decided decades before *Virgil* defined the “newsworthiness” exception, but the logic is similar—information about the hostage situation fell within the scope of what a reasonable member of society would consider news to which they were entitled.

Because of the Court’s determination that involuntary public figures are still newsworthy, it may seem like child influencers—whose fame is so often involuntary—are indeed public figures. There is, however, a very notable difference between traditional public figures and influencer children. For traditional public figures, their status is based on a legitimately newsworthy event or identity, which then makes subsequent life events worthy of the newsworthy label. For the family in *Time*, the family’s widely publicized hostage experience made them public figures; though they did not choose to be taken hostage, it was a newsworthy event. In the pop culture context, consider Brad Pitt’s and Angelina Jolie’s 2016 divorce filing.²⁰⁸ The public was only interested because the two parties were celebrities; a story about two otherwise non-notable people divorcing would not receive such

205. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 351 (1974).

206. *See, e.g., Sidis v. F-R Publ’g. Corp.*, 113 F.2d 806, 809 (7th Cir. 1940) (holding that a child chess prodigy remained a public figure into adulthood, even though fame was not his initial intention and he was long past the activity which made him famous).

207. *See* 385 U.S. 374 394–95 (1967).

208. *See* Antoinette Bueno & Zach Seemayer, *Angelina Jolie and Brad Pitt: A Timeline of Their Divorce and High-Profile Legal Battles*, ENT. TONIGHT (June 17, 2024), <https://www.etonline.com/angelina-jolie-and-brad-pitt-a-timeline-of-their-divorce-and-high-profile-legal-battles-109957> [<https://perma.cc/LD4M-PYXP>] (“Angelina Jolie, 49, and Brad Pitt, 60, shocked fans around the world when news broke on Sept. 20, 2016, that Jolie filed for divorce from Pitt after two years of marriage.”).

attention. For true public figures, widespread interest in the mundane is only possible because of a pre-existing identity, whereas any public status that influencer children have exists only because their parents forcibly framed the mundane elements of their lives as entertainment.

Under the standard established by *Virgil*—that newsworthiness is determined by what a “reasonable member of the public” might be concerned with—influencer children arguably have no such legitimately newsworthy event or association that elevates them to public figure status.²⁰⁹ With the mounting concern for the harms that influencing has on children,²¹⁰ it is likely that if a reasonable member of society became aware of what the specifics of family influencing entail, they would not have an interest in the daily lives of these otherwise regular children. Yes, child influencers often are famous, but this fame depends on their parents’ publicizing events that most people would not find newsworthy, like back-to-school shopping²¹¹ or trips to the zoo²¹²—a far cry from, for example, the hostage situation in *Time*. For these reasons, child influencers should not have public figure status under *Virgil*. If they do not have public figure status, the day-to-day activities shown in their family’s monetized content are not conceivably newsworthy. Thus, their publicity rights should be enforceable for the content in which they have been included as private citizens.

3. *Even If Influencer Children Are Public Figures, the Newsworthiness Exception Should Not Be Applied*

Some may argue that influencer children are indeed public figures despite the content being mundane and the fame involuntary. With millions of followers, influencer children are frequently recognized in public, and some parents have gone so far as to host public meet-and-greets with their children.²¹³ Despite

209. *Virgil v. Time, Inc.*, 527 F.2d 1122, 1129 (9th Cir. 1975).

210. See *supra* note 15 and accompanying text (discussing concern for the wellbeing of children involved in monetized content).

211. See Sarah Tanner & Johnny Tanner (@Tannerites), *Back to HomeSchool Supply Shopping HAUL In MY COLOR!*, YOUTUBE (Aug. 13, 2020) (last visited Sept. 13, 2024).

212. See Sergey Vashketov & Victoria Vashketova (@VladandNiki), *Vlad and Nikita Family Trip to Safari Park*, YOUTUBE (Apr. 28, 2019) (last visited Sept. 13, 2024).

213. See, e.g., Katie Mather, *Mommy Influencer Announces ‘Bizarre’ Multicity ‘Meet-and-Greet Tour’ for [Three]-year-old Daughter: ‘What Are You Thinking?’*, YAHOO!: IN THE KNOW

the arguments that these children are private citizens, if courts were to take a broad understanding of what it means to be a public figure, there is still reason to believe that the content should not be considered newsworthy.

In 1973, the Second Circuit famously evaluated whether the newsworthiness exception applied to the daily activities of public figures.²¹⁴ Donald Galella, a freelance photographer who made money selling photos of Jackie Kennedy Onassis and her two children, was arrested by several Secret Service agents in response to his constantly following her.²¹⁵ Galella sued Onassis for “false arrest, malicious prosecution and interference with trade” on the grounds that the First Amendment protected his activity.²¹⁶ In response, Onassis sought injunctive relief against Galella’s continuing to photograph her and her family.²¹⁷

The court was unambiguous in categorizing Onassis and her children as public figures.²¹⁸ Nonetheless, the court affirmed the lower court’s ruling that the harassment Galella subjected Onassis to outweighed First Amendment considerations:

In this case, photographs of defendant walking in Central Park, riding in automobiles, eating in restaurants, picnicking with her children . . . and his photograph captions indicating what magazines she has bought and what she has put in her coffee are of minuscule importance to the public. The torment inflicted upon her in the course of Galella’s obtaining these photographs and bits of information clearly outweighs any interest in his obtaining such information.²¹⁹

The crux of this consideration—what it means for something to be minimally important—creates a balancing test between the

(Mar. 2, 2023), <https://yahoo.com/lifestyle/mommy-influencer-announces-bizarre-multicity-meet-and-greet-tour-for-3-year-old-daughter-what-are-you-thinking-165552923.html>.

214. See *Galella v. Onassis*, 487 F.2d 986 (2d Cir. 1973).

215. See *id.* at 991.

216. *Id.* at 992.

217. See *id.* Onassis “counterclaimed for damages and injunctive relief, charging that Galella had invaded her privacy, assaulted and battered her, intentionally inflicted emotional distress and engaged in a campaign of harassment.” *Id.* For more details of the case, see Willis, *supra* note 181, at 189 n.117.

218. *Galella*, 487 F.2d at 995.

219. *Galella v. Onassis*, 353 F. Supp. 196, 224 (S.D.N.Y. 1972), *aff’d in part, rev’d in part*, 487 F.2d 986 (2d Cir. 1973). The Second Circuit only reversed the District Court’s decision to assign certain litigation costs to Galella. See *Galella v. Onassis*, 487 F.2d 986 (2d Cir. 1973).

harm inflicted by gathering information and the news value of that information. In the context of influencer families, this balancing test should be interpreted to suggest that the type of content featuring influencer children is similarly of minimal importance. Freedom of speech and parental autonomy rights allow parents to post the kind of content that influencer families post of their children. Nevertheless, these freedoms do not grant parents additional protections against publicity laws outside of the newsworthiness exception. The events exempted from First Amendment protections in *Onassis* are the same sort of day-to-day activities that most monetized family content covers. Such events—a kindergartner's first day of school, a toddler's bathtub tantrum—are minimally important to the public, but can cause significant harm to the subjects in the process of capturing them. If the day-to-day activities of a figure as consequential and publicly important as a former first lady are protected from this sort of constant bombardment, then it should follow that a child—particularly one whose public figure status rests on their parents' decision to become influencers—should receive similar protection. Ultimately, even if influencer children have public figure status, the content their parents make of them should not rise beyond the same minimally important information that did not protect Galella's First Amendment rights.

IV. EXPANDING PUBLICITY RIGHTS TO ESTABLISH A “RIGHT TO DELETION” FOR ADULT CHILDREN OF INFLUENCER FAMILIES

This Part proposes the establishment of federal publicity rights that would give children of influencer families a right to deletion. It seems unlikely that the United States will ever institute some of the more far-reaching protections for influencer children available in the European Union due to its constitutional protection of parental autonomy. Consequently, this Part argues that, despite some limitations to the framework, it is both possible and beneficial to implement at least the right to deletion. Additionally, this Part outlines why a federal framework would provide a greater likelihood of widespread success than state-by-state legislation. Moreover, this Part argues that the right to deletion could help influencer children even before they reach adulthood without unduly encroaching on parental rights.

A. THE RIGHT TO DELETION ABROAD: HOW THE UNITED STATES
CAN (AND CANNOT) LEARN FROM OTHER REGIMES

Two elements of the Constitution substantively preclude certain protections for influencer children that are possible in other countries.²²⁰ First, Fourteenth Amendment protection for parental autonomy burdens the creation of protections for children involved in the family content industry. Second, digital information enjoys the same safeguarding as non-digital information under the First Amendment and, as such, enjoys a high level of protection.²²¹ In the European Union, by contrast, parental autonomy is not so revered as in the United States, and information can be removed from digital spaces when its subject no longer consents to its publication or feels the information is “no longer necessary.”²²²

Internationally, the most far-reaching framework allowing data deletion is the European Union’s “Right to be Forgotten,” codified in 2016’s General Data Protection Regulation (G.D.P.R.),²²³ which ensures an individual may “erase, limit, or alter past records that can be misleading, redundant, anachronistic, embarrassing, or contain irrelevant data associated with the person . . . so that those past records do not continue to impede present perceptions of that individual.”²²⁴ In practice, this means that a child influencer may request that an adjudicative body delete the data surrounding their digital footprint to prevent people from finding their content through search engines, but makes large-scale content deletion difficult to approve simply because of the mass of material.²²⁵

In 2020, France became the first country to establish rules specifically protecting child influencers from exploitation and long-

220. CHEMERINSKY, *supra* note 137, at 942.

221. See *Reno v. ACLU*, 521 U.S. 844, 868–70 (1997) (discussing how the internet is home to “vast democratic forums” and that there is “no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.”); *Packingham v. North Carolina*, 582 U.S. 98, 98 (2017) (“Today, one of the most important places to exchange views is cyberspace, particularly social media. . .”).

222. Ben Wolford, *Everything You Need to Know About the “Right to Be Forgotten,”* GEN. DATA PROT. REGUL., <https://gdpr.eu/right-to-be-forgotten> [<https://perma.cc/KAL5-P2CD>] (listing reasons someone may want to remove their data).

223. Commission Regulation 2016/679, art. 17, 2016 O.J. (119). This right is also called the Right of Erasure. For a more detailed overview of scope of the G.D.P.R., see Wolford, *supra* note 222.

224. Michael J. Kelly & David Satola, *The Right to Be Forgotten*, 1 U. ILL. L. REV. 1, 3 (2017).

225. See Wolford, *supra* note 222.

term harm.²²⁶ These protections: (i) explicitly extend all child labor laws to children involved in monetized content, including those who are under their parent's management; (ii) ensure fair compensation to them; and (iii) expand the right to be forgotten to allow these children, once adults, to force the permanent deletion of any of this monetized content, even if their parent does not want the content deleted.²²⁷

While France's law is a strong measure, passing an equivalent in the United States would require an extensive overhaul of the country's understanding of constitutionally protected free speech and parental autonomy. For example, to expand federal child labor laws to encompass child influencers managed by their parents, Congress would first have to subvert both the exception for performers and children working in family businesses, which have each existed since Congress passed the Fair Labor Standards Act in 1938.²²⁸ They would need to explicitly recognize the creation of influencer content as "work."²²⁹ While the United States is unlikely to institute such substantial protections any time soon because of its understanding of parental autonomy, this Note argues that the United States' legal system can and should institute a right to deletion applicable to influencer children.

B. PROPOSED RESET OF CONSENT: CREATING A RIGHT TO DELETION UPON REACHING ADULTHOOD

When influencer parents monetize their children's likenesses, they can do so either because their state has no publicity laws or, more often, because their state's publicity laws allow parents to consent to this commercialization on their child's behalf.²³⁰ As Part III of this Note discussed, monetized content distributed by a third

226. See Laura Kayali, *France to Introduce Legal Protection for YouTube Child Stars*, POLITICO (Oct. 6, 2020), <https://www.politico.eu/article/france-to-introduce-legal-protection-for-youtube-child-stars/> [https://perma.cc/TGC7-E5GA] ("France is the first country to introduce protections for internet child stars.").

227. See Nicolas Boring, *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/VR3D-FXKV].

228. See *supra* Part II.B.

229. Given that work in traditional entertainment has always been exempted from child labor laws, it seems far-fetched that Congress would agree to acknowledge child influencing as work. See 29 U.S.C. § 213(c)(3).

230. See *generally supra* Part III.B.

party, such as a photographer or a brand, often involves the transfer of these publicity rights to that party.²³¹ This rights transfer, however, does not apply to most family influencer content because parents maintain ownership of their family's YouTube videos, Instagram posts, TikToks, etc., even if third-party brands have sponsored the content.²³² Additionally and importantly, because social media platforms pay creators a certain amount of money per set number of views, these families can continue to profit from their children's likenesses even after their children enter adulthood.²³³

Consequently, this Note argues that Congress should adopt a form of publicity rights that allows children, once involved in monetized social media content, the right to revoke the consent their parents impliedly gave when they created the original content. This would create a right to deletion for social media content that includes the child's likeness that was at any point monetized.²³⁴ When influencer parents monetize content featuring their children, they consent to their children's appearance in this content on their children's behalf. Once these children turn 18, the parents' continued monetization of the content relies on the assumption that the parents' consent is still valid because they own the content according to the social media platforms' rules. Therefore, a right to be deleted would empower children to reclaim autonomy over their likeness, granting them the ability to revoke their parents' prior consent and protect their digital identity from continued exploitation into adulthood.

It is common industry practice that parents retain control over works where they consented on their children's behalf. For example, photographer parents retain the rights over their children's likeness in images they have sold, even once the children

231. *See id.*

232. *See supra* note 196 and accompanying text (social media platforms' terms of service).

233. For example, as of 2023, YouTube pays monetized channels between \$1.61 and \$29.30 per thousand views, depending on factors such as the popularity of the creator and the length of the video. *See* Amanda Perelli et al., *How Much YouTube Pays Per View and What You Can Expect to Earn for Every 1,000 Views*, BUS. INSIDER (Sept. 13, 2023), <https://www.businessinsider.com/how-much-money-youtube-pays-for-1000-views-creator-rpm> [<https://perma.cc/K2Z3-GHJ9>]. Even though very old videos might not be a large source of income, the fact that they can still produce income means they continue to be monetized.

234. This law should apply to content that has been monetized at any point, rather than content monetized at the time the child turns 18. Otherwise, parents could avoid the law by demonetizing content right before their child's 18th birthday.

turn 18. Photographer Sally Mann suffered backlash for including photos of her nude children in her infamous 1992 book *Immediate Family*, but continued to maintain the rights to these photos decades later; she reproduced many of them in her 2015 photographic memoir *Hold Still*.²³⁵ That said, simply because continued ownership tends to be the default, and courts tend to privilege parental autonomy over children's rights, does not mean that this legal regime must continue. Property law makes it entirely possible to create contractual future interests that would mandate restoring likeness rights to influencer children upon turning 18.²³⁶

The state of Washington is trying to do just this with House Bill 1627.²³⁷ In 2023, Washington became the first state to propose a bill that would give child influencers a right to deletion.²³⁸ Since then, eight other states have either passed or proposed bills that would give influencer children financial protections.²³⁹ Though the right to deletion has only been enacted in one state thus far, the fact that both this right and other protections have been proposed

235. See Nora Krug, *My Critics "Were in Some Measures Correct," Sally Mann Admits in Memoir*, WASH. POST (May 8, 2015), https://www.washingtonpost.com/entertainment/books/my-critics-were-in-some-measure-correct-sally-mann-admits-in-memoir/2015/05/08/0b3738f2-f584-11e4-bcc4-e8141e5eb0c9_story.html [<https://perma.cc/XPS2-EWW6>] ("Her 1992 book 'Immediate Family,' which featured unsettling photographs of her young kids . . . put Mann at the center of a debate over the nature of art and the obligations of parenthood. Her memoir, 'Hold Still,' offers still more in the shock category. . .").

236. See *Future Interest*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/future_interest [<https://perma.cc/5CEE-EJ25>] (Dec. 2022) ("In property law, future interest is the right to possess property in the future."). For more information on future interests, see generally Joseph William Singer et al., *Chapter 10: Present Estates and Future Interests*, in PROPERTY LAW: RULES, POLICIES, AND PRACTICES 938 (7th ed. 2019).

237. See H.B. 1627, 68th Leg., Reg. Sess. (Wash. 2023) ("Upon the age of majority [18], any individual to whom as a minor child section 3 of this act previously applied may request the permanent deletion of any video segment including the likeness, name, or photograph of the individual from any internet platform or network that provided compensation to the individual's parent or parents. . .").

238. See *id.* The Bill also gives financial protections, but Washington was not the first state to do this. For more information on the bill's history, see Morgan Sung, *How One Teen Is Urging Legislators in Washington State to Help Protect Kids from Being Exploited on Vlogs*, NBC NEWS (Feb. 14, 2023), <https://www.nbcnews.com/tech/social-media/child-influencers-exploitation-bill-hearing-washington-state-hb1627-rcna70479c> [<https://perma.cc/C5YS-UTTZ>].

239. See *Social Media and Children 2024 Legislation*, NAT'L CONFERENCE OF STATE LEGISLATURES (June 14, 2024), <https://www.ncsl.org/technology-and-communication/social-media-and-children-2024-legislation> [perma.cc/TT2X-ZPBK] (Minnesota, Maryland, California, Georgia, Missouri, Ohio, Arizona, Washington and Pennsylvania have all either passed or proposed bills to give financial protections to child influencers); Latifi, *"Right to Be Forgotten" Bill to Be Introduced in Maryland to Protect Children of Influencers*, *supra* note 21.

in an increasing number of states shows that (i) a right to deletion is by no means inconceivable in the United States and (ii) there is a growing interest in legislation protecting these children.

The right to deletion does not alone address the myriad issues that influencer children face. For one, the consequences of some harmful behavior that parent influencers engage in—like selling clothing to likely predators²⁴⁰ or publicizing the identity of a daughter's school crush—are not suddenly fixed by deleting the public material years later. Moreover, if any content is downloaded, reposted, or written about (as in the case of the Phillippi family), a right of deletion does not protect against these third-party actions.²⁴¹

The historical balance between upholding parental autonomy and protecting children has generally erred on the side of parental autonomy, meaning that it is difficult to control what parents post and monetize of their children.²⁴² While giving more consent rights to minor children of influencers could help further limit influencer children's exposure to harm, such strong measures have yet to be proposed in the United States. As the right to deletion this Note proposes does not impede any parental rights while a child is a minor, it likely evades any parental autonomy concerns in the first place. Additionally, by using the framework of publicity rights rather than privacy rights, parents who post their children but do not monetize the content would remain entirely unaffected. In limiting any interference with parental autonomy to a consent reset after a child turns 18, available only to children whose families monetized their identity through social media, the right to deletion only minimally encroaches on traditional notions of parental control, and therefore less likely to be an unconstitutional infringement. Given the extent and seriousness of the harms that follow influencer children into adulthood, a right to deletion using a publicity rights framework protects parental autonomy while effectively reducing the long-term negative consequences for the children involved.

240. See Valentino-DeVries & Keller, *supra* note 117 (“Some parents are the driving force behind the sale of photos, exclusive chat sessions and even the girls’ worn leotards and cheer outfits to mostly unknown followers.”).

241. The inability to take down content downloaded by third parties would also extend to the pedophilic websites that family influencer content is so often uploaded to. See *supra* Part 1.C.3.

242. See *supra* Part II.

In an ideal world, the United States would institute more far-reaching measures to protect children's online presence, similar to France's 2020 law. As more influencer children come of age and share their experiences, they will likely bring to public attention the harms they have been put through and the ways in which these online personas follow them into adulthood. With that shift, there is hope for more regulation that can work within the limitations of United States law. But, until that point, the right to deletion this Note proposes would be a significant improvement from the status quo in which monetized material stays up indefinitely. It is a realistic suggestion grounded in existing publicity law that could even curb some of the negative impacts of child influencing by giving a level of agency back to these children and deterring parents from publishing damaging footage in the first place.

C. BENEFITS OF FEDERAL FRAMEWORK

Congress could implement the right to deletion in one of two ways. Using the Commerce Clause,²⁴³ Congress could either create a narrow federal law that gives influencer children this right under a publicity-rights framework, or it could institute a general federal right to publicity, within which it could include influencer children's right to deletion. Attempts to establish a federal publicity right are not unheard of, as the Bar Association has drafted proposals and advocated for this right as early as 1998.²⁴⁴ Regardless of how Congress institutes the right to deletion, a federal framework for such a right is more beneficial than leaving legislation up to individual states.

While most states have the right of publicity in some form, several states do not, and there is a "patchwork" of inconsistency" among the states with publicity rights²⁴⁵ that leads to irregularity

243. Since American companies spend billions of dollars annually on influencer marketing and social media platforms are used across all states, regulating publicity rights can be defended as within Congress' Commerce Clause powers. See Kevin L. Vick & Jean-Paul Jassy, *Why a Federal Right of Publicity Statute Is Necessary*, 28 COMM'NS. LAW. 14, 17 (2011) ("The right of publicity is exploited and potentially infringed via channels of interstate commerce such as the Internet, television, and radio. The right of publicity also affects interstate commercial activities such as multistate advertising campaigns and the distribution and sale of products and works that are the subject of right of publicity law and disputes.").

244. See Roesler & Hutchinson, *supra* note 176.

245. *Id.*

in enforcement.²⁴⁶ Further, though some states have proposed bills that grant protections for child influencers,²⁴⁷ the number of states attempting to enact such bills is insufficient to warrant abandoning a federal framework, especially as many states attempt to cut back child labor protections across the board.²⁴⁸

Beyond the above jurisdictional issues, influencer families bring up an additional forum-related consideration: content created by influencers is not connected to a specific location the same way that traditional child entertainers are. When California became the first state to pass financial protections for child actors in 1939,²⁴⁹ disgruntled stage parents could not avoid these regulations without consequence by relocating to another state because nearly every major studio was in southern California.²⁵⁰ Unlike traditional entertainment, influencers can create, release, and distribute their content from anywhere in the country. Without protections at the federal level, influencer parents can relatively easily relocate their families to a state that does not grant their children a right to deletion.

246. See Grano, *supra* note 176, at 660 (“[A] federal right of publicity would allow for more uniform results among and within states and would allow a celebrity to assert his or her rights in any jurisdiction. The current differences between states are particularly notable in the newsworthiness exception.”).

247. See NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 239 (listing states).

248. See, e.g., 1A, *New State Laws Are Rolling Back Regulations on Child Labor*, NPR (Apr. 27, 2023), <https://www.npr.org/2023/04/27/1172544561/new-state-laws-are-rolling-back-regulations-on-child-labor> [<https://perma.cc/3D4G-YQ2N>] (“In states like Iowa, Missouri, Ohio, and Arkansas, newly passed or pending laws allow companies to hire children without work permits and allow children to work longer hours under more dangerous conditions. . . .”); William Finnegan, *Child Labor Is on the Rise*, NEW YORKER (June 4, 2023), <https://www.newyorker.com/magazine/2023/06/12/child-labor-is-on-the-rise> [<https://perma.cc/H6KS-N3XY>] (“State legislatures across the country are making it easier to hire minors in low-paid and dangerous jobs.”); Chris Gilligan, *Child Labor Violations on the Rise as States Look to Roll Back Laws*, U.S. NEWS (July 11, 2023), <https://www.usnews.com/news/best-states/articles/2023-07-11/child-labor-violations-on-the-rise-amid-state-efforts-to-ease-laws> [<https://perma.cc/6DRQ-TV82>] (“As states seek to ease requirements for employing teens, data shows the number of minors involved in child labor violations rose by nearly 300% over seven years.”).

249. See *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [perma.cc/PLV4-WYH3] (“[I]n 1939, the Coogan Law was put into effect. . . .”).

250. In 1939, there were eight major film studios: Columbia, Fox, MGM, Paramount, RKO, United Artists, Universal, and Warner Bros. See JOEL W. FINLER, *THE HOLLYWOOD STORY* 364–65 (2003). In 1930, these Hollywood studios oversaw 95% of all American film production. See Robert Sklar & David A. Cook, *The Hollywood Studio System*, BRITANNICA, <https://www.britannica.com/art/history-of-the-motion-picture/The-Hollywood-studio-system> [perma.cc/3RBA-D87N] (Aug. 29, 2024).

D. POSITIVE PREEMPTIVE IMPACT

A federal right to deletion would give children a form of redress against influencer parents. The prospect of consequences might make those parents more mindful of posting monetized content of their children to start. At the same time, this right respects traditional notions of parental autonomy by leaving content-creation decision-making to the parents while the children are still minors.

Continued success in family influencing is predicated, at least in part, on creating a consistent, pleasant narrative. To remain financially viable, influencers must maintain, and ideally grow, their audience.²⁵¹ For family influencers, regularly posting moments of “contrived authenticity,” alongside sponsored material, help them create this positive narrative by ensuring their viewers feel a personal and intimate relationship with them.²⁵² If a child in one of these families grows up and enforces their right to deletion, particularly over a substantial amount of content, not only does the parent lose future revenue from that content, but the act of deletion potentially threatens the family’s entire online narrative. Some children are featured in hundreds of posts per year²⁵³—Jonathan Saccone Joly filmed and posted his family every single day for a decade.²⁵⁴ Delete a large amount of content, and the years of cohesive storytelling the parents have concocted is compromised.

Further, if the adult child who ordered the deletion publicly reveals they did so because they did not like being in the content to begin with, viewers will likely become disillusioned with the authentic familial narrative of the channel (or even with the wider industry of family influencers in general), impeding their influencer parents’ ability to profit from any new content of any younger siblings.²⁵⁵ Given the risk that older children could threaten the profitability of their parents’ channels once they turn

251. See Edney, *supra* note 132, at 559–60 (“To get paid, social media stars have to show they have, and can keep, a large number of followers.”).

252. Abidin, *supra* note 52, at 1.

253. See Masterson, *supra* note 56, at 592.

254. See *Stacey Dooley Sleeps Over: The Family Who Live Online*, *supra* note 57.

255. Successful family influencers overwhelmingly tend to have multiple children. In 2023, of the 24 most followed accounts on TikTok, only one family did not have multiple children. Mariana Zapata, *Most Popular TikTok Influencer Families*, FAMILY MINDED (Apr. 21, 2023) (last visited Sept. 14, 2024).

18, a right to deletion might discourage family influencers from posting exploitative or emotionally harmful content that their children could one day regret, without the Right of Deletion explicitly encroaching on their parental autonomy.

CONCLUSION

Parents' child-rearing choices deeply impact their children.²⁵⁶ There may be no such thing as a perfect parent, and the assertion that influencer families can cause serious harm to their children is not to deny the myriad means through which parents can negatively impact their children's lives, both during childhood and into adulthood.²⁵⁷ That said, more severe consequences come into play when the fruit of a parent's decisions is not only permanently online, but also commercialized and streamed to millions of strangers across the world. The potential long-term harms to influencer children, while not currently understood in their entirety, are nonetheless alarming.

United States courts have repeatedly interpreted the Constitution as bestowing parents with a high level of autonomy when making decisions for their children, and this power makes finding ways to protect children without encroaching on these rights a formidable task. In the family influencing industry, a federal right to deletion would relieve some of the potential lifelong damage to children involved with only minimal interference on a parent's right to post. Parental autonomy gives influencer parents the freedom to create and monetize intimate online personas of their children. That does not, however, mean parents should be able to force their children to publicly reckon with these legacies for the rest of their lives.

256. See, e.g., Purva D. Lanjekar et al., *The Effect of Parenting and the Parent-Child Relationship on a Child's Cognitive Development: A Literature Review*, 14 CUREUS e30574 (2022) (evaluating how different parenting styles impact early cognitive development in children); NAT'L ACADS. SCIS., ENG'G, & MED., PARENTING MATTERS: SUPPORTING PARENTS OF CHILDREN AGES 0–8, 1 (Vivian L. Gadsden et al., eds. 2016) ("Decades of research have demonstrated that the parent-child dyad and the environment of the family—which includes all primary caregivers—are at the foundation of children's well-being and healthy development."); Agueda Parra et al., *Perceived Parenting Styles and Adjustment during Emerging Adulthood: A Cross-National Perspective*, 15 INT'L J. ENV'T. RSCH. & PUB. HEALTH 2757 (2019) (showing how young adults remain impacted by childhood parenting styles).

257. See Chantel L. Daines et al., *Effects of Positive and Negative Childhood Experiences on Adult Family Health*, 21 BMC PUB. HEALTH 651, 656 (2021) ("Children that experience more emotional support from family or social networks may have better long-term mental health outcomes and less chronic health issues as they age. . . .").