

FAMILY VLOGGING AND CHILD HARM: A NEED FOR NATIONWIDE PROTECTION

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ABSTRACT: Family vlogging has become an increasingly popular and influential genre of online content creation. While these channels offer an often entertaining, intimate glimpse into the lives of their creators, they also raise significant legal questions regarding the welfare and privacy rights of children featured in these videos. Until recently, there was little consideration of whether the children of family vloggers were due such fundamental protections as privacy, financial compensation for their contributions, or the right of consent to participate in vlogging activities. Several state legislatures are considering bills to protect these children, and one state has enacted legislation. The United States has addressed child labor issues, and some states have even addressed protecting child actors. Unlike traditional child actors, who are subject to federal and state regulations that limit their working hours, ensure their education, and protect their earnings, children who appear in family vlogs largely lack regulatory protection.

In August 2023, Illinois became the first and only state to enact legislation giving rights to children featured in for-profit family vlogs. Amending its Child Labor Law, Illinois now requires parents to put aside a percentage of earnings from content into a blocked trust fund for the child and keep records of their children's contributions in vlogs. The law will take effect in July 2024. Washington and California are likewise considering legislation that ensures children in family vlogs get a share of the profits. Washington's proposed bill also allows children, once they reach the age of majority, to petition for removing content involving them from the public sphere. While these legal developments emphasize the rights of the children, they necessarily involve a complex intersection of parental rights, child psychology, and the right to creative expression. As this type of social media content grows in popularity, there is a need for clearer regulations to safeguard the physical and psychological well-being of child vloggers while recognizing the rights of their parents. This Comment will draw upon the relevant legal and behavioral science literature to critique the approaches states are taking and to offer model legislation to encourage a balanced legal framework for regulating vlogging and protecting children's rights.

CITATION: Camille Laude, Comment, *Family Vlogging and Child Harm: A Need for Nationwide Protection*, 64 JURIMETRICS J. 285–308 (2024).

Family vlogs are a popular genre of online videos that document the daily lives of families, often featuring the family's children as main characters.¹ These vlogs offer a window into the lives of families, showcasing their routines, adventures, and milestones. Family vloggers do not just film home videos for their

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1. See, e.g., 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, 187 (2019).

family to reminisce over at the family reunion. They engage in “sharenting,” which is “derived from the words ‘share’ and ‘parenting,’ and refers to the practice of parents uploading images, videos and information about their children” for worldwide consumption.² Some family vloggers have made careers filming their daily lives, amassing millions of followers and subscribers.³ Child YouTubers themselves have become some of the most popular and successful influencers, or “kidfluencers,” on the platform.⁴ In 2019, a Pew Research Center study found that “[v]ideos that featured a young child” had on average three times as many views as videos that did not feature a young child.⁵ Ryan Kaji of Ryan’s World was the highest paid YouTube star in 2019 and 2020, at *ten years old*, with a revenue of about \$30 million in 2020.⁶ While Kaji’s parents have “set boundaries and realistic expectations” by “limit[ing] . . . filming time to a few hours a week,”⁷ similar standards have not always been employed by parents when creating social media content involving their children. Family vlogging can be entertaining and informative, but it has also raised complex ethical and legal questions, particularly concerning the rights and well-being of the children featured in these videos.

Child influencers and the children of family vloggers are not uniformly protected from parents who may exploit their children’s ability to generate income through social media. When the interests of parents and children conflict, there is great potential for abuse. Some children have written about their experiences as a “kidfluencer.”⁸ After Allie, a child YouTuber, set up her advertisement monetization account in her mother’s name, “her mother started pressuring her

2. *Id.* at 184.

3. See Belinda Luscombe, *The YouTube Parents Who Are Turning Family Moments into Big Bucks*, TIME (May 18, 2017, 6:00 AM), <https://time.com/4783215/growing-up-in-public/> [<https://perma.cc/4DQA-TUYV>]; Fortesa Latifi, *As Family Vloggers Rack Up Controversies, Some Followers Can’t Quit Them*, WASH. POST (Sept. 22, 2023, 6:00 AM), <https://www.washingtonpost.com/parenting/2023/09/22/family-vlogger-controversy-viewers/> [<https://web.archive.org/web/20240705181403/https://www.washingtonpost.com/parenting/2023/09/22/family-vlogger-controversy-viewers/>].

4. E.g., Jessica Pacht-Friedman, *The Monetization of Childhood: How Child Social Media Stars Are Unprotected from Exploitation in the United States*, 28 CARDOZO J. EQUAL RTS. & SOC. JUST. 361, 370 (2022).

5. Patrick Van Kessel et al., *Children’s Content, Content Featuring Children and Video Games Were Among the Most-Viewed Video Genres*, PEW RSCH. CTR. (July 25, 2019), <https://www.pewresearch.org/internet/2019/07/25/childrens-content-content-featuring-children-and-video-games-were-among-the-most-viewed-videos-genres/> [<https://perma.cc/3DZS-D6PT>].

6. Belinda Luscombe, *How Ryan Kaji Became the Most Popular 10-Year-Old in the World*, TIME (Nov. 12, 2021, 7:00 AM), <https://time.com/6116624/ryan-kaji-youtube/> [<https://perma.cc/NUV9-Y39B>].

7. Maressa Brown, *Mom from YouTube’s Ryan’s World Says Setting ‘Boundaries and Realistic Expectations’ Is Key to Success*, PARENTS (July 11, 2022), <https://www.parents.com/parenting/celebrity-parents/moms-dads/mom-from-youtubes-ryans-world-says-setting-boundaries-and-realistic-expectations-is-key-to-success/> [<https://perma.cc/6TA9-BHLP>].

8. Amelia Tait, *Their Lives Were Documented Online from Birth. Now, They’re Coming of Age*, ROLLING STONE UK (June–July 2022), <https://www.rollingstone.co.uk/culture/features/truman-babies-youtube-family-vlogging-generation-18995/> [<https://perma.cc/KR7T-M79B>]; see also Luscombe, *supra* note 6 (defining the term *kidfluencer*).

to work long hours filming and editing.”⁹ It is possible that Allie’s mother had good intentions. She knew that Allie was generating revenue by making content, but Allie’s mother went overboard in pressuring Allie to produce content against the YouTuber’s wishes.

Some families have faced backlash because of publicized mistreatment of their children, with one such example escalating to criminal charges.¹⁰ On August 30, 2023, Ruby Franke was arrested and charged with multiple counts of felony child abuse.¹¹ Ruby Franke ran a family vlogging channel based in Utah with 2.5 million viewers called “8Passengers.”¹² Her arrest has caused many to question how safe the children in family vlogging channels are behind the scenes. Subscribers to Franke’s family vlogging channel thought her family looked “perfect” and were shocked to hear that law enforcement had found her children malnourished, one with open wounds.¹³ Unfortunately, appearances can be deceiving.

The purpose of this Comment will be to describe the current legislation regulating family vlogging and argue more must be done to protect children’s rights. Part I will explain why parental rights have historically taken precedence over children’s rights and describe how the eventual promulgation of child labor laws showcases the legislative (and judicial) balancing between the two rights. Part II will highlight the psychological effects that may occur to children being featured in for-profit family vlogs. Part III will evaluate the current legal framework of international laws that address family vlogging, domestic child entertainment laws, and current domestic legal efforts addressing family vlogging. Finally, Part IV will propose model legislation to address many of the potential harms to children generated by family vlogging.

I. BALANCING PARENTAL AND CHILDREN’S RIGHTS

A. Child Labor Laws

In 1944, the United States Supreme Court upheld a conviction against Sarah Prince, guardian of Betty Simmons.¹⁴ Prince violated Massachusetts’ child labor laws that prohibited minors like Simmons from selling or offering to sell any

9. Rachel Dunphy, *The Dark Side of Youtube Family Vlogging*, INTELLIGENCER (Apr. 17, 2017), <https://nymag.com/intelligencer/2017/04/youtube-family-vloggings-dark-side.html> [<https://perma.cc/5XE7-5QHH>].

10. Angela Yang, *Why Family Vlogger Ruby Franke's Downfall Has Become Such a Spectacle*, NBC NEWS (Sept. 12, 2023, 3:25 PM), <https://www.nbcnews.com/news/ruby-frankes-case-online-fascination-rcna104444> [<https://web.archive.org/web/20230912234527/https://www.nbcnews.com/news/ruby-frankes-case-online-fascination-rcna104444>]; Fortesa Lafiti, *What's Next in the Lucrative World of Parent Influencers? Earnings for the Kids*, WASH. POST (Sept. 6, 2023, 8:07 AM) <https://www.washingtonpost.com/parenting/2023/09/06/parenting-influencers-child-earnings/> [<https://web.archive.org/web/20240207211531/https://www.washingtonpost.com/parenting/2023/09/06/parenting-influencers-child-earnings/>].

11. Yang, *supra* note 10.

12. *Id.*

13. See Latifi, *supra* note 3.

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

articles of merchandise on the streets.¹⁵ The Supreme Court stated, “The state’s authority over children’s activities is broader than over like actions of adults. This is peculiarly true of public activities and in matters of employment.”¹⁶ While this case is positioned as a religious freedom issue, the Court ruled that the state’s authority to protect the welfare of children outweighs the constitutional rights of parents—even in instances of religious activity.¹⁷ Child labor laws, like those at issue in *Prince v. Massachusetts*, provide a historical example of how parental rights and children’s rights have long been at odds with each other.

The government reluctantly stepped in to regulate through the federal Fair Labor Standards Act (FLSA) during the early twentieth century.¹⁸ At this time, some children were working in places with dangerous conditions like factories, mills, and farms.¹⁹ Child workers were more likely to be injured than adult workers, with “one book estimat[ing] boys under sixteen-years-old had twice as many workplace accidents as adult men and girls under sixteen had three times as many accidents as adult women.”²⁰ The public grew increasingly aware and unaccepting of the hazards and injuries child laborers faced and politicians had to act.²¹ Even with this growing pressure to protect working children, parents of child workers were resistant to legislation because they often depended on children’s labor to support their family.²² Currently, the United States imposes restrictions on child labor, including a general sixteen-year minimum age for most occupations under the FLSA.²³ The FLSA allows some exceptions in child labor laws to accommodate the special needs and circumstances of certain industries, such as agriculture, service (e.g., restaurant and retail), newspaper delivery, and entertainment, that have traditionally employed young workers.²⁴ The federal child labor provisions of the FLSA “were enacted to ensure that when young people work, the work is safe and does not jeopardize their health, well-being or educational opportunities.”²⁵

Further child labor laws may need to be enacted to ensure that children recorded in family vlogs work under conditions that are safe and do not jeopardize

15. *Id.*

16. *Id.* at 168.

17. *See id.* at 170.

18. Michael Schuman, *History of Child Labor in the United States—Part 2: The Reform Movement*, MONTHLY LAB. REV., Jan. 2017, at 1, 15.

19. *See id.*

20. Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”*, 169 U. PA. L. REV. 577, 585–86 (2021) (citing EDWIN MARKHAM ET AL., CHILDREN IN BONDAGE 158–59 (1914)).

21. Schuman, *supra* note 18, at 4.

22. Masterson, *supra* note 20, at 586.

23. 29 C.F.R. § 570.2(a) (2023).

24. U.S. DEP’T LAB., CHILD LAB. BULL. 101, WH1330, CHILD LABOR PROVISIONS FOR NONAGRICULTURAL OCCUPATIONS UNDER THE FAIR LABOR STANDARDS ACT 6–7 (2016), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/childlabor101.pdf> [<https://perma.cc/FKZ7-ELCR>]; *Child Labor*, U.S. DEP’T LAB., <https://www.dol.gov/agencies/whd/child-labor> [<https://perma.cc/JUL9-2AQQ>].

25. *Child Labor*, *supra* note 24.

their health, well-being, or educational opportunities. The balance between parental rights and children's rights is a point of contention in family vlogging, as it was during the child labor rights movement. Parents should be the best advocates for their children, but their role as advocates may be overshadowed by the draw of earning revenue from social media content that features their children. Current child labor laws are insufficient to address all the issues and challenges that family vlogging poses for children's rights and well-being.

B. Child Entertainment Laws

Child entertainment laws are legal provisions that regulate employment and protection of minors who work in the entertainment industry, such as actors, performers, or models.²⁶ Child entertainers, or "youth employed as actors or performers in motion pictures, theatrical, radio, or television productions," are not included in the FLSA, which means that they are completely dependent on state law for protections.²⁷ The Coogan Law of California²⁸ was enacted in 1939 after Jackie Coogan, a famous child actor, sued his mother and former manager for his earnings.²⁹ At the time, Coogan's earnings as a minor belonged solely to his parents.³⁰ Currently, California, New York, Illinois, Louisiana and New Mexico require the establishment of Coogan accounts (i.e., blocked trust accounts and trust accounts).³¹ These states ensure child actors or performers have some of the money they earn held for them in a trust.³² The establishment of Coogan accounts via the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA) provided child entertainers a measure of financial security and protection against potential exploitation, thereby acknowledging the unique vulnerability of minors in the entertainment industry.³³

Certain state laws further provide protections for child actors,³⁴ also commonly referred to as "young performers."³⁵ California has required "photographers, managers, acting coaches, and publicists who work with child performers . . . to register with the state Department of Industrial Relations and obtain a

26. *See Child Entertainment Laws as of January 1, 2023*, U.S. DEP'T LAB., <https://www.dol.gov/agencies/whd/state/child-labor/entertainment> [<https://perma.cc/S8YJ-TABC>].

27. *Exemptions from Child Labor Rules in Non-Agriculture*, U.S. DEP'T LAB., <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> [<https://perma.cc/YD63-75LV>]; Jennifer González, *More Than Pocket Money: A History of Child Actor Laws*, LIBR. CONG. BLOGS (June 1, 2022), <https://blogs.loc.gov/law/2022/06/more-than-pocket-money-a-history-of-child-actor-laws/> [<https://perma.cc/78CX-34BX>].

28. 1939 Cal. Stat. ch. 637, sec. 1, at 2064 (amending CAL. CIV. CODE § 36).

29. *Coogan Law*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/T5LM-JTK5>].

30. *Id.*

31. *Id.*

32. *See id.*

33. *See id.*

34. *Child Entertainment Laws as of January 1, 2023*, *supra* note 26.

35. *Protecting Young Performers*, SAG-AFTRA, <https://www.sagaftra.org/protecting-young-performers> [<https://perma.cc/8XMC-PUAV>].

Child Performer Services Permit.”³⁶ SAG-AGTRA notes that “[t]he law is designed to insure that industry people who work regularly with children are subjected to background checks.”³⁷ SAG-AFTRA, a union that advocates for protections in the child entertainment industry, has its own standards that police child safety and wellness.³⁸ Through its contracts with production companies, SAG-AFTRA imposes a maximum hour requirement on school age minors working on set and that the minors have “at least one hour of rest and recreation and one-half hour meal break.”³⁹

The difference between the needs being served between protecting child actors with child entertainment laws and protecting children in family vlogs through family vlogging laws is highlighted by this statement in Washington’s proposed bill: “Unlike in child acting, these children are not playing a part, and lack legal protections.”⁴⁰ Child actors may be subject to state regulations that limit their working hours, protect who they are working with through background checks and work permits, and ensure that they are financially compensated.⁴¹ Children’s contributions in family vlogs are unregulated and unprotected, meaning these children may be exposed to long hours of filming, invasive privacy violations, emotional manipulation, and potential exploitation by their parents or guardians who control the content and revenue of the vlogs.

II. NEGATIVE PSYCHOLOGICAL EFFECTS OF FAMILY VLOGGING ON CHILDREN

The growth of social media is unprecedented, and we have yet to see and understand its long-term effects on minors. Thirty-eight percent of eight to twelve-year-olds have used social media and ninety-seven percent of teens say they use the internet daily.⁴² Being featured on social media can have multifaceted effects on a child’s psychology. The U.S. Surgeon General recently made a public statement to “call[] attention to the growing concerns about the effects of social media on youth mental health.”⁴³ The American Psychological Association asserts that “young people’s biology” makes them more vulnerable to

36. *Id.*; A.B. 1660, 2011–2012 Reg. Sess. (Cal. 2012).

37. *Protecting Young Performers*, *supra* note 35.

38. SAG-AFTRA, *YOUNG PERFORMERS HANDBOOK 22* (2022), https://www.sagaftra.org/files/sa_documents/young_performers_handbook.pdf [<https://perma.cc/6H77-L26J>].

39. *Id.*

40. H.R. 1627, 68th Leg., Reg. Sess. (Wash. 2023).

41. *See, e.g., Coogan Law*, *supra* note 29; *Protecting Young Performers*, *supra* note 35; *Child Entertainment Laws as of January 1, 2023*, *supra* note 26.

42. VICTORIA RIDEOUT ET AL., *THE COMMON SENSE CENSUS: MEDIA USE BY TWEENS AND TEENS 1, 5* (2021), https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf [<https://perma.cc/DZT2-32GV>]; Emily A. Vogels et al., *Teens, Social Media and Technology 2022*, PEW RSCH. CTR. (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/> [<https://perma.cc/LK22-PJXZ>].

43. OFF. OF THE SURGEON GEN., U.S. SURGEON GENERAL’S ADVISORY ON SOCIAL MEDIA AND YOUTH MENTAL HEALTH 3 (2023), <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf> [<https://perma.cc/74RK-J94V>].

social media.⁴⁴ Social media platforms are often designed to maximize user engagement, which has the potential to encourage excessive use and “can trigger pathways comparable to addiction.”⁴⁵ The risks of children using social media include cyberbullying, body image concerns, online harassment, and lack of privacy.⁴⁶ Children and adolescents with “their limited capacity for self-regulation and susceptibility to peer pressure,”⁴⁷ face a “greater risk of developing mental disorder.”⁴⁸ On one hand, the positive reinforcement and validation received through likes and comments can boost self-esteem, fostering a sense of social acceptance. However, the constant exposure to curated online personas may lead to unrealistic comparisons, triggering feelings of inadequacy or low self-worth.

Even more so, the long-term effects on children filmed from a young age for family channels remain unclear. Many factors make family vlogging unique. The children may be filmed and videos then subsequently posted online by a parent, family member, or legal guardian under their account. The adult oversees the remuneration that comes in through ad revenue or brand deals, when and how long the children are filmed for, where the children are filmed, and what content is worthy of permanent viewing to an unknown public. These children may face pressure to perform or conform to the expectations of their parents or the audience, which can affect their self-esteem and authenticity.

One of the main effects of being a child featured in family vlogs is the loss of control over one’s own image and identity.⁴⁹ Children who are constantly filmed and exposed to millions of strangers may not have a say in how they are portrayed or what aspects of their lives are shared.⁵⁰ Moreover, they may not be able to consent to or understand the implications of being a public figure, such as the risks of cyberbullying, harassment, or exploitation. The pressure to conform to societal, and even parental, standards of beauty or success at a young age can contribute to anxiety and body image issues.⁵¹

44. Zara Abrams, *Why Young Brains Are Especially Vulnerable to Social Media*, AM. PSYCH. ASS’N, (Feb. 3, 2022), <https://www.apa.org/news/apa/2022/social-media-children-teens> [https://perma.cc/3ZQA-TSEE].

45. OFF. OF THE SURGEON GEN., *supra* note 43, at 9.

46. *Id.* at 7, 9, 15.

47. Gwenn Schurgin O’Keeffe et al., *Clinical Report—The Impact of Social Media on Children, Adolescents, and Families*, 127 AM. ACAD. OF PEDIATRICS 800, 800 (2011).

48. Betül Keles et al., *A Systematic Review: The Influence of Social Media on Depression, Anxiety and Psychological Distress in Adolescents*, 25 INT’L J. ADOLESCENCE & YOUTH 79, 81 (2020).

49. *See, e.g.*, Tait, *supra* note 8.

50. *See, e.g., id.* (“There were times when I was a lot younger that I didn’t want to be filmed but I couldn’t verbalise that [wish],” noted Zoe (daughter in a family vlogging channel)).

51. *See* Mayo Clinic Staff, *Teens and Social Media Use: What’s the Impact?*, MAYO CLINIC (Jan. 18, 2024), <https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437> [https://perma.cc/2L88-UKN3].

Another effect of being a child featured in family vlogs is the disruption of normal development and socialization.⁵² The demands imposed by a social media presence may be overwhelming for anyone, children especially. Additionally, social media creators often have multiple accounts.⁵³ Famous social media stars often have accounts they keep up with on most major platforms, such as YouTube, Instagram, TikTok, and X (Twitter).⁵⁴ Child influencers or children featured on family vlogs, especially if more famous, will likely be featured on many accounts and must take part in many types of content—YouTube videos, Instagram posts, and TikToks. Family vloggers may film or document their children for multiple different social media platforms. Online multitasking can be indicative of symptoms of mental disorders, and one study found that the number of social media accounts correlated with one’s level of anxiety.⁵⁵ Children who are immersed in the online world may miss out on the opportunities and challenges of offline interactions, such as making friends, playing, learning, and exploring.

The constant exposure to the public eye and the pressure to perform for the camera can lead to issues such as a distorted sense of self, anxiety, and the blurring of boundaries between private and public life. Children may grapple with the addictive need for validation from online audiences and may experience stress if their personal lives become commodified.⁵⁶ Children may also grapple with the need for validation from their family. The impact on family dynamics, with a focus on creating content rather than genuine interactions, may affect the children’s understanding of relationships. Parents may take on more of a business management role, encouraging the creation of content for monetization,⁵⁷ rather than focusing on the traditional role of a parent. Children may experience a lack of trust in, attachment to, or respect for their parents, who may exploit them for financial or personal gain.

52. See, e.g., Press Release, American Psychological Association, APA Chief Scientist Outlines Potential Harms, Benefits of Social Media for Kids (Feb. 14, 2023), <https://www.apa.org/news/press/releases/2023/02/harms-benefits-social-media-kids> [<https://perma.cc/ZHB4-9MEG>].

53. See *Global Social Media Statistics*, Data Reportal (July 2024), <https://datareportal.com/social-media-users> [<https://perma.cc/DEU3-YDSA>] (fig. 279).

54. See Belle Wong, *Top Social Media Statistics and Trends of 2024*, FORBES ADVISOR (May 18, 2023, 2:09 PM), <https://www.forbes.com/advisor/business/social-media-statistics/> [<https://perma.cc/59PU-GJQT>].

55. Keles et al., *supra* note 48, at 80 (“Multitasking is common on social media, with users having accounts on multiple platforms. A study by Rosen, Whaling, Rab, Carrier, and Cheever (2013) showed that online multitasking predicts symptoms of mental disorders. Primack and Escobar-Viera (2017) found that the number of social media accounts correlated with the level of anxiety, due to overwhelming demand.”).

56. See OFF. OF THE SURGEON GEN., *supra* note 43, at 9; Valeriya Safronova, *Child Influencers Make Big Money. Who Gets It?*, N.Y. TIMES (Oct. 10, 2023), <https://www.nytimes.com/2023/10/10/style/children-influencers-money.html> [<https://web.archive.org/web/20240419204536/https://www.nytimes.com/2023/10/10/style/children-influencers-money.html>].

57. See discussion *supra* (manuscript pp. 2–3) about Allie whose mother wanted Allie to continue making content for social media against Allie’s wishes. Dunphy, *supra* note 9.

III. CURRENT LAWS GOVERNING FAMILY VLOGGING

Current international and domestic legislative efforts have taken on regulating family vlogging and child influencing.⁵⁸ International sources of law like the Convention on the Rights of the Child, Europe's right to be forgotten, and France's unique nationwide legislation protecting children in family vlogs provide insights on considerations and methods for similar protections for children in the United States.⁵⁹ Domestic efforts, like Illinois's recently passed law and proposed legislation in Washington and California, demonstrate that legislators are becoming more aware of the potential for exploitation that children face when featured in their family's for-profit vlogs.⁶⁰

A. International Laws Affecting Family Vlogging

The rise of the social media content creator as a career has occurred globally.⁶¹ International laws protecting children's rights may provide a framework that can be applied to protecting children in family vlogs. The United Nations Convention on the Rights of the Child (UNCRC) adopted in 1989 does not specifically address child influencing or family vlogging, but emphasizes the child's right to privacy, protection from exploitation, and the right to participate in decisions affecting their lives.⁶² Additionally, Europe has the right to be forgotten, which could be applied to a child's rights to remove content they realize they no longer want online.⁶³ In 2020, France was the first country to enact spe-

58. See, e.g., Rachel Caitlin Abrams, *Family Influencing in the Best Interests of the Child*, 2 CHI. J. INT'L L. ONLINE 97, 101–05, 109 (2023); Kalhan Rosenblatt, *Efforts to Protect Child Influencers Will Continue to Ramp Up in 2024*, NBC NEWS (Dec. 26, 2023, 5:20 AM), <https://www.nbcnews.com/tech/child-influencer-family-vlogger-protection-laws-rcna127674> [<https://perma.cc/3D38-V998>].

59. See, e.g., Convention on the Rights of the Child, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990); Council Regulation 2016/679, art. 17, 2016 O.J. (L 119) 1, 43–44, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679> [<https://perma.cc/3JNG-CDZW>] [hereinafter GDPR]; Ben Woford, *Everything You Need to Know About the "Right to Be Forgotten"*, GDPR.EU, <https://gdpr.eu/right-to-be-forgotten/> [<https://perma.cc/FM5U-5ZGY>]; Loi 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne (1) [Law No. 2020-1266 of October 19, 2020 Aimed at Regulating the Commercial Exploitation of the Image of Children Under the Age of Sixteen on Online Platforms (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 20, 2020; Laura Kayali, *France to Introduce Legal Protection for YouTube Child Stars*, POLITICO (Oct. 6, 2020, 8:57 PM), <https://www.politico.eu/article/france-to-introduce-legal-protection-for-youtube-child-stars/> [<https://perma.cc/F9XW-SKEL>].

60. See S.B. 1782, 103d Gen. Assemb., Reg. Sess. (Ill. 2023); H.R. 1627, 68th Leg., Reg. Sess. (Wash. 2023); S.B. 764, 2023–2024 Reg. Sess. (Cal. 2023).

61. See, e.g., Katie Bishop, *Influencing Can Be a High-Earning Career. Why Don't We Take It Seriously?*, BBC (Sept. 21, 2023), <https://www.bbc.com/worklife/article/20230919-influencing-can-be-a-high-earning-career-why-dont-we-take-it-seriously> [<https://perma.cc/75X3-88DP>].

62. Convention on the Rights of the Child, arts. 12, 16, 32, 36, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

63. Woford, *supra* note 59.

cific legislation that classifies child influencing as child labor and provides detailed recommendations for filming conditions for children featured in social media content.⁶⁴

The UNCRC was signed by the United States in 1995, but as a signatory, the United States's only obligation to the convention is not to defeat its purpose by acting contrary to the ideals outlined therein.⁶⁵ This treaty instrument was signed before family vlogging and child influencing rose to its current online prominence, but "its emphasis on protecting the best interests of children is as applicable to the problem of family influencer exploitation as it is to child sex trafficking, domestic abuse, or child labor regulation."⁶⁶ Many of the UNCRC Articles can be applied to address children's rights in family vlogging. Article 16 states, "No child shall be subjected to arbitrary or unlawful interference with his or her privacy"⁶⁷ Family vlogging can be a true invasion of privacy for children who may be filmed at any moment and engaging in activities that they would prefer not to be broadcast worldwide. As Article 31 states, "States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."⁶⁸ Parents of children in family vlogs may prioritize filming and creating social media content over allowing the child the opportunity to rest, leisure, or engage in hobbies. The UNCRC provides a useful framework for advocating for the rights of children filmed in family vlogs.

Europe has been a leader in enacting legislation regarding social media and data privacy.⁶⁹ Europe's General Data Protection Regulation (GDPR)⁷⁰ allows individuals to petition for deletion of their personal data under specific circumstances.⁷¹ Upon reaching the age of maturity, individuals can independently exercise their right to privacy by initiating requests for the removal of content that no longer aligns with their evolving preferences or values.⁷² This process involves contacting the relevant platforms or data controllers and presenting a compelling case for the deletion of specific content associated with their identity.⁷³ For children who grew up in the public eye because of family vlogging,

64. Law No. 2020-1266 of October 19, 2020; Kayali, *supra* note 59.

65. *Convention on the Rights of the Child*, U.N. Treaty Collection (Sept. 18, 2024, 9:15 AM) https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=_en [https://perma.cc/BE65-PXZ8].

66. Rachel Caitlin Abrams, Comment, *Family Influencing in the Best Interests of the Child*, 2 CHI. J. INT'L L. ONLINE 97, 101 (2023), <https://cjl.uchicago.edu/sites/default/files/2023-06/2ChiJIntlLOnline97.pdf> [https://perma.cc/6VSZ-26YN].

67. *Convention on the Rights of the Child*, art. 16, *adopted* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

68. *Id.* art. 31.

69. Adam Satariano, *G.D.P.R., a New Privacy Law, Makes Europe World's Leading Tech Watchdog*, N.Y. TIMES (May 24, 2018), <https://www.nytimes.com/2018/05/24/technology/europe-gdpr-privacy.html>; see, e.g., *Data Protection and Online Privacy*, YOUR EUR., https://europa.eu/youreurope/citizens/consumers/internet-telecoms/data-protection-online-privacy/index_en.htm [https://perma.cc/5UMV-J3GB].

70. GDPR, *supra* note 59.

71. Wolford, *supra* note 59.

72. *Id.*; GDPR, *supra* note 59, art. 8.

73. Wolford, *supra* note 59.

the GDPR can serve as an example of a system that can be employed in reclaiming control over their digital identity. It could allow the children to shape how they are perceived online and mitigate any potential negative consequences that may have arisen from content created during their youth.

France, in addition to having the protections from the right to be forgotten, has enacted laws directly addressing child influencers.⁷⁴ In early October 2020, France became the “first country to introduce protections for internet child stars” by amending its labor code to impose requirements on anyone recording videos that feature minors under sixteen years old for the purpose of monetization.⁷⁵ This law seeks to “regulat[e] the commercial exploitation of the image of children under the age of sixteen on online platforms.”⁷⁶ The law regulates “the dissemination of the image of a child under the age of sixteen on a video sharing platform service, when the child is the main subject” and is further conditioned upon the “cumulative duration or the number of these contents” and “when the dissemination of these contents . . . direct or indirect exceed[s] a threshold set by decree.”⁷⁷ This law also directly addresses certain “recommendations to the legal representatives of the child” relating to the filming conditions like recording “times, duration, hygiene and safety [] conditions.”⁷⁸ Another category of recommendations outlines “the risks, in particular psychological, associated with the dissemination of [the content].”⁷⁹ This law also mandates “provisions aimed at enabling normal school attendance.”⁸⁰ To prevent possible financial exploitation, it requires a trust be maintained “until the child reaches the age of majority or, where applicable, until the date of his or her emancipation.”⁸¹ Additionally, it places responsibilities on the “video sharing platform service[s]” to “adopt charters that . . . to promote the information of users on the legislative or regulatory provisions applicable to the dissemination of the image of children under the age of sixteen through their services and on the risks, in particular psychological, associated with the dissemination of this image.”⁸² France’s legislation can serve as an example of law that recognizes not just the financial

74. See, e.g., Loi 2020-1266 du 19 octobre 2020 visant à encadrer l’exploitation commerciale de l’image d’enfants de moins de seize ans sur les plateformes en ligne (1) [Law No. 2020-1266 of October 19, 2020 Aimed at Regulating the Commercial Exploitation of the Image of Children Under the Age of Sixteen on Online Platforms (1)], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 20, 2020; see also Kayali, *supra* note 59.

75. Kayali, *supra* note 59; Law No. 2020-1266 of October 19, 2020, art. 3. For a French translation of Article 3, see *Article 3—Law No. 2020-1266 of October 19, 2020*, LÉGIFRANCE, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000042439057 [<https://perma.cc/ZBT9-CU7F>] (select English translation from Google Translate) [hereinafter *Article 3—Law No. 2020-1266*].

76. *Article 3—Law No. 2020-1266*, *supra* note 75.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. Article 4 contains other provisions that include protections for children under the age of sixteen on the viewing side of social media content. For a French translation of Article 4, see *Article 4—Law No. 2020-1266 of October 19, 2020*, LÉGIFRANCE, https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000042439058 [<https://perma.cc/E437-Y6QG>].

protections children in this industry require, but the need for protections related to the inherent psychological risks associated with being filmed for for-profit family vlogs.

B. Current U.S. Legislation Governing Family Vlogging

The United States currently has no federal regulation that protects children who are part of family vlogs. Family vloggers can make a living from their social media careers, but these careers necessarily raise ethical and legal concerns about the rights and welfare of the children involved. However, Illinois became the first U.S. state to enact legislation specifically protecting the rights of children featured in family vlogs.⁸³ A growing number of states have begun considering legislation to protect children's rights in for-profit social media content because of high-profile cases like Ruby Franke's and the growing use of social media as a career.⁸⁴

1. Illinois Enacted Bill S.B. 1782

In August 2023, Illinois passed a bill amending its Child Labor Law⁸⁵ to include new definitions, provisions for a mandatory trust fund, and more.⁸⁶ The legislation added definitions for "online platform," "vlog," and "vlogger."⁸⁷ Online platform is defined as "any public-facing website, web application or digital application, including a mobile application," further including "a social [media] network, advertising network, mobile operating system, search engine, email service, or internet access service."⁸⁸ A vlog is defined as "content shared on an online platform in exchange for compensation."⁸⁹ A vlogger is defined as "an individual or family that creates video content . . . in exchange for compensation, and includes any proprietorship, partnership, company, or other corporate entity assuming the name or identity of a particular individual or family for the purposes of that content creation."⁹⁰ The legislation further clarifies that a vlogger "does not include any person under the age of 16 who produces his or her own vlogs."⁹¹ These definitions provide clarity about how the legislature intends to protect the children of vloggers. Further, this law likely limits the scope of protections by applying the law solely to "vlogs" on "online platforms." In Illinois's bill, vloggers are specified as being those that create "video content"; however, social media posts that feature children may take the forms of podcasts, photographs, or text posts.⁹² This is because the Illinois legislature

83. Samantha Murphy Kelly, *Illinois Passes a Law That Requires Parents to Compensate Child Influencers*, CNN (Aug. 16, 2023, 11:51 AM), <https://www.cnn.com/2023/08/16/tech/kid-influencer-law/index.html> [<https://perma.cc/M74P-MHXC>].

84. Rosenblatt, *supra* note 58.

85. Kelly, *supra* note 83.

86. S.B. 1782, 103d Gen. Assemb., Reg. Sess., §§ 0.5, 9, 2.6, 12.6 (Ill. 2023).

87. *Id.* § 0.5.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *See id.*

may view the video content produced by family vloggers as the most concerning, requiring legislative interference.

Parents are required to put aside the gross earnings from a piece of video content into a blocked trust fund for the child, based on the percentage of time the child is featured in the video.⁹³ The funds in the trust will become available to the minor when that minor reaches the age of eighteen or “is declared emancipated.”⁹⁴ If children are in fifty percent of a video, they should receive twenty-five percent of the funds; if they are in one-hundred percent, they are required to get fifty percent of the earnings.⁹⁵ This requirement only applies in scenarios where, in the previous twelve months, the child appears on the screen for at least thirty percent of the vlogging content produced within a thirty-day period.⁹⁶ If a vlogger “knowingly or recklessly” violates this section regarding a trust, “[t]he court may award, to a minor who prevails in any action brought . . . actual damages; . . . punitive damages; and . . . the costs of the action.”⁹⁷

Additionally, Illinois imposes a recordkeeping requirement on family vloggers.⁹⁸ The vlogger must keep records regarding, “the name and . . . age of the minor engaged in the work of vlogging,” “the number of vlogs that generated compensation,” “the total number of minutes of the vlogs that the vlogger received compensation for during the reporting period,” “the total number of minutes each minor was featured in vlogs,” “the total compensation generated from vlogs,” and “the amount deposited into the trust account for the benefit of the minor engaged in the working of vlogging.”⁹⁹ The vloggers must provide these records “to the minor on an ongoing basis.”¹⁰⁰ If the family vlogger “fails to maintain” these records, the child may seek relief by “commenc[ing] a civil action to enforce” the recordkeeping.¹⁰¹

2. Washington Proposed Bill H.R. 1627

Washington proposed a bill in January 2023 to protect children from being exploited in for-profit family vlogs.¹⁰² Similar to Illinois’s enacted bill, Washington’s legislation requires “[a] vlogger . . . compensate the vlogger’s minor child whose likeness, name, or photograph constitutes the video content meeting [certain] criteria” provided by the bill.¹⁰³ Washington’s proposed bill grants the minor the right to petition for deletion of content.¹⁰⁴ Section 4(1) states, “Upon

93. *Id.* § 12.6(a).

94. *Id.* § 12.6(b)(3).

95. *See id.* § 12.6(a)(1)–(2).

96. *Id.* § 2.6(a).

97. *Id.* § 12.6(c).

98. *Id.* § 2.6(c).

99. *Id.*

100. *Id.*

101. *Id.* § 2.6(d).

102. 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, 6:57 PM), <https://www.nbcnews.com/tech/social-media/child-influencers-exploitation-bill-hearing-washington-state-hb1627-rcna70479>; H.R. 1627, 68th Leg., Reg. Sess. (Wash. 2023).

103. Wash. H.R. 1627 § 3(1).

104. *See id.* § 4(1).

the age of majority, 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 in exchange for that video content."¹⁰⁵ The bill further imposes responsibility on the internet platform or network by requiring it to "take all reasonable steps to permanently delete the video segment for which a request . . . has been made."¹⁰⁶ Furthermore, the proposed bill states:

Any contract with an internet platform or network for the exchange or use of video content that would reasonably be anticipated to include greater than a de minimis use of a vlogger's minor child must include notification to the internet platform or network of the minor child's future rights as provided in this section.¹⁰⁷

3. California Proposed Bill S.B. 764

Since Illinois's enactment of their bill protecting the rights of child influencers, more states have added the pressing issue to their docket.¹⁰⁸ On December 18, 2023, California's Senator Steve Padilla introduced legislation titled "Child Content Creator Rights Act."¹⁰⁹ This proposed amendment would "require content creators that feature minors in at least 30% of their content, to set aside a proportionate percentage of their earnings in a trust for the minor to access when they reach adulthood."¹¹⁰ The bill defines "vlogger" as "a parent, legal guardian, or family residing in California that creates image or video content that is performed in California in exchange for compensation."¹¹¹ The definition further elaborates that a "[v]logger" does not include any person under 18 years of age who produces their own content."¹¹² As the Legislative Counsel's Digest of the bill states, "This bill would require a vlogger . . . to compensate a minor under 18 years of age if the minor is engaged in the work of vlogging . . . [through] a trust account," and that compensation would be made up of a percentage of the gross earnings on the image or video content.¹¹³ Similar to the aforementioned bill in Illinois, if a vlogger violates this bill, the minor involved in the vlogging "may commence an action to enforce the provisions of [the bill]" and may be awarded damages.¹¹⁴ California's bill also contains the same provisions as Illinois maintains regarding recordkeeping requirements.¹¹⁵

105. *Id.*

106. *Id.* § 4(2).

107. *Id.* § 4(3)

108. Rosenblatt, *supra* note 58.

109. See Press Release, Senator Steve Padilla, 18th Senate District, Senator Padilla Introduced Child Content Creator Rights Act—Legislation Preventing Financial Exploitation of Child Influencers (Dec. 18, 2023), <https://sd18.senate.ca.gov/news/senator-padilla-introduces-child-content-creator-rights-act-legislation-preventing-financial> [<https://perma.cc/E6VR-L98P>].

110. *Id.*

111. S.B. 764, 2023–2024 Reg. Sess., § 6650(h) (Cal. 2023).

112. *Id.*

113. S.B. 764, Legislative Counsel's Digest 2023–2024 Reg. Sess. (Cal. 2023).

114. S.B. 764 § 6654.

115. See *id.* § 6652.

However, California requires the vlogger maintain those records and “make available to the minor upon request,”¹¹⁶ which is more specific than Illinois’s “ongoing basis” standard.¹¹⁷

IV. MODEL LEGISLATION TO ADDRESS FAMILY VLOGGING HARMS

Federal legislation is required to adequately address a child’s rights when part of social media content creation. When states enact varying laws, children may not be adequately protected depending on where they are located. Parents may even domicile shop for a state with laws that they find most advantageous for social media content creation. This legal fragmentation emphasizes the urgent need for a comprehensive federal framework that uniformly safeguards the rights of child content creators across all states. Such legislation should encompass clear guidelines on working hours, fair compensation, education requirements, and provisions for the establishment of trust accounts to secure the financial interests of child social media influencers. By establishing consistent federal standards, lawmakers can ensure that no child is left without proper protection, regardless of their geographic location or the preferences of their parents. This not only streamlines legal obligations but also reinforces the commitment to safeguarding the well-being of children in the evolving landscape of digital media. A potential federal law would serve as a rights floor, leaving states the freedom to enact policies that are more protective of children’s rights.

Family vlogging has become a multibillion-dollar source of entertainment. However, many aspects of family vlogging differ from more traditional forms of entertainment such as television or movies. In television and movies, there is a degree of separation between reality and the character that the child is portraying. By contrast, child influencers in family vlogs are often having real parts of their lives filmed in their own homes. Potential laws seeking to address this content may be difficult to enforce and monitor because the boundaries between work and play, and between public and private, are blurred in family vlogging. When considering possible legislation to regulate content that involves children, the federal government or states must consider (1) whether their definitions unambiguously illustrate the industry they are attempting to regulate, (2) whether consent can feasibly be given from a child involved in family vlogging and how these children can advocate for their own privacy, (3) the duration and manner in which the children are being filmed, (4) the division of finances, and (5) the methods in which a child or government can enforce these laws.

A. Definitions

Definitions are essential components of any legislative bill, as they provide clarity, precision, and consistency to the meaning and interpretation of the terms used in the bill. When bills lack clear definitions for what the legislature intends

¹¹⁶ *Id.*

¹¹⁷ S.B. 1782, 103d Gen. Assemb., Reg. Sess., § 2.6(c) (Ill. 2023).

to regulate, this could result in unnecessary litigation in which parties are trying to discern whether they are properly adhering to the law.¹¹⁸ Illinois's bill defines vloggers as being those that create "video content."¹¹⁹ However, social media posts that feature children may come in forms like podcasts, photographs, or text posts. This bill's lack of coverage for content other than video "vlogs" ignores the reality that content types evolve with new types of social media and that children may be exploited on "online platforms" in many different ways or types of content.

In a House Amendment of the bill before its passage, Illinois added that a "vlogger" does not include any person under the age of sixteen who produces his or her own vlogs.¹²⁰ California's proposed bill expressly excludes from its definition of "vlogger" any person under eighteen years of age who produces their own content and states in Section 6655(b) that the bill does not have any effect on a minor who produces their own content.¹²¹ By declining to apply this bill's requirements to minors who produce their own content, state legislatures are opening the floodgates of litigation. Family vloggers may evade liability by claiming that their child was creating the content independently. There is no definition for a minor "producing their own content." Would the parent have to wholly separate themselves from filming? What if the parents held the camera for the child as the child "produced their own content"? What if the parents provided the filming equipment? YouTube's terms of service require that a person be at least thirteen years old to create an account.¹²² What if the child posts on a parent-made account? What if the parents edited the content?

B. Consent and Privacy

Consent is given when "a person voluntarily and willfully agrees in response to another person's proposition."¹²³ The person who consents must possess sufficient mental capacity.¹²⁴ Children of family vloggers face two significant barriers to providing genuine consent. The first obstacle is ensuring that children have an age-appropriate understanding of what participating in family vlogging entails, which is a key element of informed consent. Second, the children may not have a real choice to say no.

Children of family vloggers may be unable to give consent to participate in a form of content because they may not fully understand what they are agreeing

118. Sanford Schane, *Ambiguity and Misunderstanding in the Law*, 25 T. JEFFERSON L.R. 167, 167 (2002).

119. S.B. 1782, 103d Gen. Assemb., Reg. Sess., § 0.5 (Ill. 2023).

120. *Bill Status of SB1782*, ILL. GEN. ASSEMBLY, <https://www.ilga.gov/legislation/BillStatus.asp?DocNum=1782&GAID=17&DocTypeID=SB&LegId=146603&SessionID=112&GA=103> [<https://perma.cc/V2BD-8U2C>].

121. S.B. 764, 2023–2024 Reg. Sess., § 6655(b) (Cal. 2023).

122. *Terms of Service*, YOUTUBE, <https://kids.youtube.com/t/terms> [<https://perma.cc/FG6F-T4BN>].

123. *Consent*, CORNELL L. SCH. LEGAL INFO. INST., <https://www.law.cornell.edu/wex/consent> [<https://perma.cc/5BR8-ZNXS>].

124. *Id.*

to. Some children are filmed from the day they are born¹²⁵ and parents share intimate details about their children's lives.¹²⁶ Younger children may be unaware that a family member is vlogging them or sharing their lives online but may feel psychological or emotional harm when they become old enough to understand that the internet is oftentimes permanent.¹²⁷ They may wish that aspects of their lives had not been shared online.¹²⁸ These children may not realize that their personal information, images, or videos can be accessed, copied, or manipulated by anyone on the internet, or that they may face negative feedback, harassment, or exploitation from strangers or peers.

Even when children are old enough to understand that they are being filmed and shared online, they may feel uncomfortable yet unable to confront their parents about not wanting to be exposed on the internet. With knowledge that their families' livelihoods may be on the line, as well as possible addiction to views and likes, children and teens may face an internal battle about whether they can say no to being featured in content. As seen above, parents may pressure or coerce their children to participate in their vlogs to further their careers online.

Requiring informed consent may ensure that children have a voice in the decision-making process and that their best interests are at the forefront of these activities. This means that they should be able to comprehend the potential consequences, privacy implications, and the nature of the vlogging process. Whoever is doing the vlogging, whether that be a parent or a legal guardian, would be responsible for obtaining informed consent from the children involved. Laws may also need to specify that informed consent is not a one-time event. Parents or guardians may be required to periodically revisit the consent process, especially as the child's maturity, understanding, or desires change over time. This factor ensures that children's evolving autonomy is respected.

Protecting children's privacy, even retroactively, gives children of family vloggers more control over their personal narrative. Washington's proposed bill has considered this by allowing recorded children the ability to petition for content removal when they reach the age of majority.¹²⁹ The child of a family vlogger can petition to have content that includes the child's "likeness, name, or

125. Family vlogging channel "KKAndBabyJ" posted "BABY BOY'S BIRTH VLOG! | LANDON HAS LANDED" on Feb. 1, 2017, and have posted birth "vlogs" of all five of their children. KKandbabyJ, YOUTUBE, <https://www.youtube.com/@kkandbabyj> (last visited Feb. 18, 2024).

126. Myka Stauffer filmed her entire adoption process of a baby boy including when he arrived at their home. She shared intimate details regarding his medical needs before placing him with another family. Gwen Aviles, *Youtuber Myka Stauffer Under Fire for Relinquishing Custody of Son with Autism*, NBC NEWS (May 28, 2020, 1:53 PM), <https://www.nbcnews.com/pop-culture/pop-culture-news/youtuber-myka-stauffer-under-fire-rehoming-autistic-son-n1216636> [https://perma.cc/9N42-KR8B].

127. See, e.g., Amy Packham, *A Quarter of Kids Regret Live Video They Post on Apps: Here's How Parents Can Help*, HUFFINGTON POST UK, https://www.huffingtonpost.co.uk/entry/kids-regret-live-content-social-media_uk_5b054654e4b05f0fc8435648 [https://perma.cc/88HM-UMKG] (May 24, 2018).

128. Nottingham, *supra* note 1, at 186.

129. H.R. 1627, 68th Leg., Reg. Sess., § 4(1) (Wash. 2023).

photograph . . . [removed] from any internet platform . . . that provided compensation to the individual's parent or parents in exchange for that video content."¹³⁰ This is an impactful feature of current legislation because it empowers the children to have a say in what they want to be available for public consumption, even though they may only be able to make this decision once they become adults. Washington's proposed bill places liability on the online or internet platform, stating it "must take all reasonable steps to permanently delete the video segment" after it receives the request from the minor involved.¹³¹ Unlike the other sections on recordkeeping and the trust fund, which allow for the minor to commence an action for enforcement and damages, this section does not describe the method of enforcement against the platform.¹³²

Unless an entity or data controller is constantly monitoring reposts or screen recordings, content can live on the internet forever.¹³³ Data removal may be a more time-consuming and costly task than immediately assumed.¹³⁴ A particularly viral video can be screen recorded and reposted millions of times, requiring constant vigilance and data deletion for each iteration. This does not even account for screen recordings that people take for private use and may keep on a hard drive.¹³⁵ Children may request that content be removed, but if it has been screen recorded and stored on someone's private drive, there is no way to access and delete it. The most problematic aspect of these bills is that the children may only be able to make the choice to pursue removal of internet content when they reach the age of majority. This may be years after they realize they want videos of their intimate and personal moments, such as birth, illness, injury, or emotional breakdown, taken down from the internet. If children are given a timelier option for petition for removal, this may mitigate the problem of downloads on personal computers and allow them to make decisions for themselves that reflect their more current privacy needs.

C. Filming Factors

When considering legislation regarding family vlogging, many factors inherent to the video making process could impact a child's physical and mental

130. *Id.*

131. *Id.* § 4(2).

132. *Id.* § 4.

133. Catherine Thorbecke, *Why Deleting Something from the Internet Is 'Almost Impossible'*, CNN (Sept. 18, 2022, 8:44 AM), <https://www.cnn.com/2022/09/18/tech/deleting-data/index.html> [<https://perma.cc/DWC4-UN87>].

134. Ellen Friedman, *How to Discard Data: Solving the Hidden Challenge of Large-scale Data Deletion*, CIO (Apr. 1, 2021), <https://www.cio.com/article/191554/how-to-discard-data-solving-the-hidden-challenge-of-large-scale-data-deletion.html> [<https://perma.cc/K2C2-F33Y>].

135. See John C. Tang et al., *Unobtrusive but Invasive: Using Screen Recording to Collect Field Data on Computer-Mediated Interaction*, in CSCW '06: PROCEEDINGS OF THE 2006 20TH ANNIVERSARY CONFERENCE ON COMPUTER SUPPORTED COOPERATIVE WORK 479, 480 (2006); Fox News, *'Wren Eleanor' TikTok Movement Inspires Moms on Social Media to Remove Photos of Kids: 'Sick People'*, N.Y. POST, <https://nypost.com/2022/07/26/wren-eleanor-tiktok-movement-inspires-moms-on-social-media-to-remove-photos-of-kids-sick-people/> [<https://perma.cc/R7FU-KQ5D>] (July 26, 2022, 4:54 PM).

wellbeing. Current legislation in the United States fails to address working hours for children in family vlogging. Working hours and conditions should take into account the age of the child. Younger children may require shorter working hours and more frequent breaks, while older children may be able to handle longer working hours with appropriate breaks. By addressing not only the duration but also the timing and conditions of video recording, lawmakers can better acknowledge the multifaceted impact of family vlogging on a child's overall well-being.

Another factor that has not been considered in current legislation is the purpose of the video or type of content. Videos or types of content may have varying purposes, which may necessitate varying legal standards. For example, a video made for educational purposes where the child is featured to teach a concept may be subject to less restrictions than a video made for entertainment purposes. One such example of content that is popular in the entertainment realm is pranks. "DaddyOFive" was a YouTube channel that alarmed viewers by filming "pranks" targeting at the family's youngest son: accusing him of bad behavior, cursing at him, smashing his electronics, encouraging his siblings to tackle, punch, and kick him.¹³⁶ This channel made several hundred thousand dollars a year without repercussions, until YouTube demonetized the channel's videos by removing ads from their videos.¹³⁷ Although this example is extreme, channels that make videos for "entertainment" purposes, like pranks, may need greater observation to make sure children featured are being adequately protected.

Recognizing these diverse purposes is critical in crafting nuanced regulations. Educational content involving children may align more closely with traditional pedagogical practices, allowing for certain exemptions to accommodate the educational objectives. Conversely, content created primarily for entertainment might warrant stricter guidelines to mitigate potential risks associated with the commodification of a child's image for commercial purposes. As legislation is developed, it is imperative to account for the intent behind the content, ensuring that regulations strike a balance between protecting the rights and welfare of child participants and acknowledging the varied objectives that drive content creation.

Furthermore, it is important to consider the distinction between public and private matters within family vlogging content. Regulations should explicitly specify that family vlogging content must be age appropriate, ensuring that recorded children are not exposed to content unsuitable for their age or maturity level. This necessitates a comprehensive evaluation of the themes, discussions,

136. Rachel Dunphy, *The Abusive 'Pranks' of YouTube Family Vloggers*, INTELLIGENCER (Apr. 28, 2017), <https://nymag.com/intelligencer/2017/04/daddyofive-youtube-abuse-controversy-explained.html> [https://perma.cc/UHP3-GS43].

137. *Id.*; see also Abby Ohlheiser, *The Saga of a YouTube Family Who Pulled Disturbing Pranks on Their Kids*, WASH. POST (Apr. 26, 2017, 12:15 PM), <https://www.washingtonpost.com/news/the-intersect/wp/2017/04/25/the-saga-of-a-youtube-family-who-pulled-disturbing-pranks-on-their-own-kids/> [https://web.archive.org/web/20230522073736/https://www.washingtonpost.com/news/the-intersect/wp/2017/04/25/the-saga-of-a-youtube-family-who-pulled-disturbing-pranks-on-their-own-kids/].

and activities presented in the vlogs to prevent any inadvertent invasion of a child's privacy.

D. Financial Factors

Beginning with child entertainment laws like Coogan accounts, states legislatures have recognized a need to protect the financial contributions of children in the form of a trust.¹³⁸ As recognized by recent legislative efforts to address family vlogging and child influencing, these accounts or trust funds can protect the financial profits of children featured in online content. Legislators must consider who must be in charge of the trust, where the trust is to be held, what percentage of earnings go into the trust, the age at which the child can access earnings from the trust, and if there are exceptions for emergencies. The intricacies of these considerations underscore the delicate balance legislators must strike between safeguarding the financial interests of the child and respecting the autonomy of the parents or guardians. Determining a responsible and impartial trustee, establishing transparent guidelines for trust management, and allowing for flexibility in exceptional circumstances are vital components of legislation aimed at securing the financial well-being of child participants in family vlogs or social media content. Full consideration of these points not only ensures that children receive their fair share of earnings but also cultivates a framework that recognizes the evolving financial needs of children as they progress through various stages of their development.

For instance, Illinois's bill requires parents to set aside a portion of the earnings from videos featuring their children into a trust fund for them to access when they turn eighteen.¹³⁹ The percentage is based on how much screen time the child has in the video.¹⁴⁰ Washington and California's proposed bills require parents to deposit a percentage of the child's gross earnings, proportional to the amount of content featuring the child, into a trust account for the benefit of the child.¹⁴¹ All three states' bills impose a threshold requirement, meaning a minimum percentage of video content featuring a child, for the purpose of determining whether a vlogger's content is subject to its provisions.¹⁴² These states' acknowledge that children often play main characters of their family's vlogs and are vulnerable to financial exploitation by mandating financial protections for these children.

E. Enforcement Mechanisms

Enforcement mechanisms play a pivotal role in upholding the rule of law and ensuring that individuals abide by legal frameworks within a society. Effective enforcement instills a sense of accountability, promoting a culture where individuals understand the consequences of violating laws and regulations.

138. See *Coogan Law*, *supra* note 29.

139. S.B. 1782, 103d Gen. Assemb., Reg. Sess., § 12.6(a)–(b) (Ill. 2023).

140. *Id.* § 12.6(a)(1)–(2).

141. H.R. 1627, 68th Leg., Reg. Sess., § 3(3)(a)–(b) (Wash. 2023); S.B. 764, 2023–2024 Reg. Sess., § 6653(a)(1)–(2) (Cal. 2023).

142. S.B. 1782 § 12.6(a)(1)–(2); H.R. 1627 §3(3)(a)–(b); S.B. 764 § 6653(a)(1)–(2).

Many aspects of family vlogging may require the vlogger be held accountable to the government to maintain accountability to the children. Regulation of vlogging must also impose penalties for noncompliance to hold those responsible, parents, family, or legal guardians, accountable. One such penalty, included in Illinois's law and California's proposed bill, allows a child involved in family vlogging to bring a civil action to enforce its regulations.¹⁴³ Illinois and California also maintain a section on recordkeeping, requiring content creators keep records of the number and duration of videos that feature children.¹⁴⁴ Washington's proposed bill also allows for a petition for removal where, upon reaching the age of majority, children can petition to remove content they were a part of.¹⁴⁵ State tort claims may also be a source of relief for here children who feel their privacy has been invaded as a result of internet exposure without consent or that their name, image, or likeness was profited on without their consent.¹⁴⁶

1. *Minor Commencing an Action*

As part of Illinois's recent amendment to its child labor laws, the state has enacted recordkeeping and trust requirements.¹⁴⁷ A minor may commence an action to enforce the provisions of the recordkeeping if the vlogger fails to keep the required records (section 2.6)¹⁴⁸ and (2) enforce the trust fund provisions if the vlogger "knowingly or recklessly" violates the requirements in the trust fund section (section 12.6).¹⁴⁹ Illinois's bill and California and Washington's proposed bills lack explanations about how children will be able to know that their vloggers have violated the provisions unless they know to check if their earnings are being properly being allocated into a trust or that detailed records are being kept about the content they are being included in. There may be a statute of limitations issue here, as children may not be aware of their rights until they become of age and gain access to their trust fund. Legislation should address this concern, as a child's claims should not become stale before they are aware of their rights.

Included in the sections allowing for content deletion upon the age of majority, Illinois and Washington place the onus on the online platform to "include notification . . . of the minor child's future rights as provided in this section."¹⁵⁰ Again, parents or third parties are not required to notify the children that they

143. S.B. 1782 § 2.6(d); S.B. 764 § 6654.

144. S.B. 1782 § 2.6(c); S.B. 764 § 6652.

145. H.R. 1627 § 4.

146. Within a general invasion of privacy cause of action, a child can allege a public disclosure of private facts based on if a parent vlogger publicly shares private, embarrassing, or confidential information about the child on social media without the child's consent. RESTATEMENT (SECOND) OF TORTS § 652A (AM. L. INST. 1977). A child may sue invoking their right of publicity by suing to protect "the very identity or persona of the plaintiff as a human being." *Toney v. L'Oreal USA, Inc.*, 406 F.3d 905, 908 (7th Cir. 2005).

147. *See supra* Section III.B.1.

148. S.B. 1782 § 2.6.

149. *Id.* § 12.6(c).

150. H.R. 1627 § 4(3); *see* S.B. 1782 § 2.6(c).

feature in content about enforcement of trust fund and recordkeeping sections. Moreover, this attempt at ensuring that child influencers are aware of their rights may not be as effective as hoped for. It would be up to the parent or legal guardian, who is signing up for the account or allowing the child to sign up for an account, to show the child the notification of the minor child's future rights. Additionally, section 4(3) of the Washington bill details that the notification must be included "for the exchange or use of video content that would reasonably be anticipated to include greater than a de minimis use of a vlogger's minor child."¹⁵¹ Parents might not *reasonably anticipate* that they would be including their child in content for profit when initially signing up for an online platform. As a result, they probably would not have taken note of this notification section and may not even remember what rights to notify their child about. Before the issuance of a work permit, as described below, or as part of recordkeeping, a potential law may mandate that a parent or guardian show proof that they have continuously notified the child of their rights on at least a yearly basis, even after filming for the channel has ended. Requiring proof of notification on a yearly basis allows for the child to be reminded of their rights and that they have these rights even if they are no longer being featured in family vlogging content.

2. Recordkeeping and Work Permits

Work permit and recordkeeping requirements help keep family vlogging parents or legal guardians accountable. These requirements may help state labor departments or other agencies oversee and monitor employment practices. This may help detect and prevent cases of exploitation by family vloggers who overwork or underpay children for their participation in online activities. Both requirements together can be beneficial in protecting children's well-being when featured in family vlogs.

Recordkeeping documentation can serve as evidence of compliance with the law. Even beyond that, recordkeeping can be used to keep track of the children's working conditions. Washington's draft legislation lacks a requirement for recordkeeping.¹⁵² This section, found in Illinois's law and in California's proposed bill, facilitates accountability for the parents or guardians creating content of their children.¹⁵³ Legislators could consider requiring that parents maintain records of working hours and conditions, including any breaks and educational activities.

A work permit requirement may be based on existing laws—like those endorsed by SAG-AFTRA—which protect child.¹⁵⁴ The work permit requirement is intended to ensure that the employers of minors comply with the labor standards and regulations, such as the minimum wage, hours of work, and prohibited duties. "Most states require a letter from [the] child's school indicating that the

151. H.R. 1627 § 4(3).

152. *Id.*

153. See S.B. 1782 § 2.6(c); S.B. 764 § 6652.

154. *State Statutes*, SAG-AFTRA, <https://www.sagaftra.org/membership-benefits/young-performers/state-statutes> [https://perma.cc/9SUD-DJ6H].

child is in a good academic standing before they will issue a permit.”¹⁵⁵ This requirement helps to ensure that children are in good academic standing before they engage in work that may hinder their education. Legislation of family vlogging should consider these requirements to keep vloggers accountable to their children—both for the amount of time the children are being filmed and by providing children access to the education they deserve.

3. Ongoing Testing and Evaluation

Another way in which school performance, and even child development and psychology, could be tracked is through ongoing testing and evaluation. If a child is being filmed for the purposes of influencing or as part of family vlogging, school may become secondary to a potential social media career. Instances where a child’s daily life is extensively documented without regard for their schoolwork or learning, may lead to a tangible decline in academic performance. Recognizing this, regulations can play a pivotal role in ensuring that family vlogging activities are conducted responsibly, with due consideration for the child’s education. States can require that children in family vlogs have regular attendance in public or private school or meet specific criteria for homeschooling. Local school districts can track attendance and academic performance, intervening when students consistently miss school due to vlogging commitments.

Consideration of the child’s psychological well-being is essential, as discussed above. Family vlogging poses many risks for the children involved because they may feel pressure to perform for their parents. Children should not be subjected to stressful, emotionally challenging, or exploitative situations during the filming process. Children who may have been filmed during “a prank,” while having a tantrum, or during a difficult time in their lives may need psychological help for the possible trauma incurred while being filmed for their family’s vlogging channel. A potential law could require that child psychologists or counselors be involved in assessing and supporting the child’s emotional health. Even short monthly check-ins with a psychologist or counselor could make a difference in ensuring that children are comfortable being filmed for family vlogs.



Legislators must recognize that children of family vloggers and child influencers lack protections that are necessary for the interest of their labor rights and psychological well-being. The intricate intersection of family vlogging and a child’s well-being necessitates a careful and comprehensive regulatory approach. The multifaceted considerations spanning education, psychological impact, financial protection, and accountability to the government underscore the urgency for clear guidelines in the realm of family vlogging. Children are uniquely vulnerable in family vlogging situations—when the roles of parent and child, content creator and subject, employer and employee intersect. Children

¹⁵⁵. *Id.*

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may feel pressured to perform and be a part of content that provides for their family; but once that content is posted it can exist on the internet forever.

The psychological impacts of family vlogging or child influencing on children may vary depending on the individual circumstances and characteristics of each family and child. While parents or guardians have the primary responsibility to protect and supervise their children's online presence and image, they may not always be aware, capable, or willing to do so. Therefore, the state may have to step in and regulate how parents involve their children in social media to protect children from harm, and to ensure their best interests and well-being.

Legislatures must recognize the vulnerability of children who live as main characters for their family's vlogs. The examples set by legislation in the few jurisdictions that have addressed the issue serve as critical benchmarks for identifying and addressing specific concerns, including filming times and financial safeguards. Moving forward, it is imperative that legislators consider requiring ethical and responsible practices that prioritize the holistic development of children participating in family vlogging. It is unclear how effective or enforceable these laws may be in the long-term. To adapt to evolving standards, research, and technological advancements, these laws may need regular reviews and adjustments. Only through thoughtful regulation, ongoing dialogue, and a steadfast commitment to protecting children can we navigate the evolving landscape of family vlogging with the necessary care and consideration it deserves.