

# KIDFLUENCERS: HOW THE LAW'S FAILURE TO KEEP UP LEAVES CHILDREN ACROSS THE COUNTRY AT RISK OF LABOR ABUSE AND FINANCIAL EXPLOITATION

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I.	INTRODUCTION.....	111
II.	BACKGROUND: THE COOGAN LAW .....	114
III.	KIDFLUENCERS: NEW WAVE OF CHILD STARS FINDING FAME AND FORTUNE THROUGH SOCIAL MEDIA .....	119
IV.	KIDFLUENCERS ARE FALLING THROUGH THE CRACKS .....	121
	A. Failed Attempt to Make a Change.....	123
	B. If the Kids Are Having Fun, Is It Work? .....	124
	C. High Reward, Higher Risk: Labor Abuse and Financial Exploitation .....	126
V.	PROPOSAL TO EXPAND LAWS TO REACH KIDFLUENCERS.....	128
	A. The Need for Nationwide Protection .....	129
	B. How Will It Work?.....	130
VI.	CONCLUSION .....	131

## I. INTRODUCTION

It is no secret that the media loves child stars. Whether it be movie stars like Daniel Radcliffe<sup>1</sup> of *Harry Potter*, television stars

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1. Daniel Radcliffe started acting at the age of six. He was twelve years old in the first *Harry Potter* film, *Harry Potter and the Sorcerer's Stone*. Daniel Radcliffe, BRITANNICA.COM, <https://www.britannica.com/biography/Daniel->

like Miley Cyrus<sup>2</sup> of *Hannah Montana*, or the newer phenomenon of social media stars like Charli D’Amelio<sup>3</sup> from TikTok and Ryan Kaji<sup>4</sup> from YouTube. These child stars are often making millions before they can get a driver’s license.

In California, the hub of the entertainment industry, child actors are protected from being overworked or forced to work by parents or employers under some of the most extensive child labor laws in the country.<sup>5</sup> These laws exist to protect a portion of their earnings from their parents in blocked trust accounts known as Coogan Accounts, named after one of the first child movie stars, Jackie Coogan, who sued his parents after they squandered his childhood fortune before he turned eighteen.<sup>6</sup>

In this new age of social media stars, children with large followings, popularly known as “kidfluencers,”<sup>7</sup> are making huge earnings through brand deals and advertising revenue on platforms like Instagram,<sup>8</sup> YouTube,<sup>9</sup> and TikTok.<sup>10</sup> However, the

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Radcliffe (last visited June 1, 2021).

2. Miley Cyrus started acting at the age of nine. She was thirteen years old when she first starred in the Disney Channel series, *Hannah Montana*. *Miley Cyrus*, BRITANNICA.COM, <https://www.britannica.com/biography/Miley-Cyrus> (last visited June 1, 2021).

3. Charli D’Amelio was fifteen when she created her TikTok account and is now the most followed personality on the app. *Charli D’Amelio*, INFLUENCER MARKETINGHUB, <https://influencermarketinghub.com/wiki/charli-damelio/>, (last visited June 1, 2021).

4. Ryan Kaji started his YouTube channel at the age of three, which now boasts over 41 million subscribers. Rupert Neate, *Ryan Kaji, 9, Earns \$29.5m as This Year’s Highest-Paid YouTuber*, THE GUARDIAN (Dec. 18, 2020, 1:38 PM), <https://www.theguardian.com/technology/2020/dec/18/ryan-kaji-9-earns-30m-as-this-years-highest-paid-youtuber>.

5. See *infra* text accompanying notes 18-31.

6. Deepa Pokharel, *The Story of Actor Jackie Coogan—A Millionaire Child, Who Was Beaten to the Ends by his Own Parents*, MEDIUM: THE DUSTBIN (Oct. 31, 2019), <https://medium.com/the-dustbin/the-story-of-actor-jackie-coogan-a-millionaire-child-who-was-beaten-to-the-ends-by-his-own-8d319ab9b02c>.

7. Vanessa C. Cordeiro, “Kidfluencers” and Social Media: The Evolution of Child Exploitation in the Digital Age, HUMANIUM (Feb. 23, 2021), <https://www.humanium.org/en/kidfluencers-and-social-media-the-evolution-of-child-exploitation-in-the-digital-age/> (defining “kidfluencers” as “children with large social media followings”); see also *infra* note 56 (explaining the concept of influencing).

8. “Instagram is a social media network like no other. Instead of words, the platform is built almost entirely around sharing images and videos. . . .

Coogan Law, and similar laws in states other than California<sup>11</sup>, do not consider social media advertising labor, thus, there is nothing stopping parents from forcing their children to sit in front of a camera to create content and then use the profits for their own enjoyment. A shocking example of this is the story of Mabelle Hobson, who severely abused her adopted children and forced them to comply with her demands to create videos for her YouTube channel. Some argue that just because the children are earning money does not necessarily mean creating content should be considered work because the children are apparently having fun while doing it. However, this argument is inconsistent with existing child labor laws and expectedly, many of its advocates are the parents of kidfluencers. Content creation on social media starring these young children that requires time and effort should be considered work and therefore should be protected under the law. There are a number of similarities

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With over a billion registered accounts, Instagram, which was bought by Facebook in 2012, has become a part of daily life. It seems like everyone is on Instagram nowadays, from small businesses to big ones, news organizations to cultural institutions, celebrities, photographers, and musicians, and not to mention the cottage industry of influencers that have come in its wake.” William Antonelli, *A Beginner’s Guide to Instagram, the Wildly Popular Photo-Sharing App with Over a Billion Users*, BUSINESS INSIDER (Dec. 14, 2020, 12:14 PM), <https://www.businessinsider.com/what-is-instagram-how-to-use-guide#getting-started>.

9. “YouTube is a website designed for sharing video. Millions of users around the world have created accounts on the site that allow them to upload videos that anyone can watch. Every minute of every day, more than 35 hours of video is uploaded to YouTube. . . . When YouTube was created in 2005, it was intended for people to post and share original video content. But since then it’s also become both an archive for storing favourite clips, songs and jokes, as well as a marketing site for companies to promote their products.” Siobhan O’Neill, *What is YouTube?*, DIGITAL UNITE , <https://www.digitalunite.com/technology-guides/tv-video/youtube/what-youtube> (last visited June 1, 2021).

10. “TikTok is a short-form, video-sharing app that allows users to create and share 15-second videos, on any topic. . . . The new app is being promoted as a video-sharing social network. TikTok users can create a variety of videos ranging from challenges, dance videos, magic tricks, and funny videos.” *What is TikTok?*, INFLUENCER MARKETINGHUB, <https://influencermarketinghub.com/what-is-tiktok/> (last updated May 10, 2021).

11. New York, Louisiana and New Mexico currently have laws protecting minors working in entertainment. See LA. STAT. ANN. § 51:2133 (2006); N.M. STAT. ANN. § 50-6-19 (2007); N.Y. COMP. CODES R. & REGS. tit. 12, § 186 (2021).

between the work of a child actor on a movie set and that of a child social media star filming a YouTube video at home. Thus, kidfluencers need to be protected from their parents and the industry the same way child actors are.

This article will explore the history of the current laws protecting child actors, the Coogan Law; a discussion of the new phenomenon of influencer marketing and the role children play in the industry; how these pint-sized content creators, kidfluencers, are falling through the cracks, leaving them subject to labor abuse and financial exploitation by their parents and employers without legal recourse; and an analysis for why nationwide protection for kidfluencers needs to be implemented now to prevent such abuse and exploitation before it's too late.

## II. BACKGROUND: THE COOGAN LAW

Jackie Coogan was America's first child movie star, becoming one of the highest paid actors in Hollywood by the age of nine.<sup>12</sup> His career took off after he was discovered by Charlie Chaplin at the age of four and starred in Chaplin's film "Baby."<sup>13</sup> Over the course of his career, Jackie earned more than \$4 million.<sup>14</sup> However, Jackie's age left his earnings under the control of his parents until he reached twenty-one.<sup>15</sup> By the time Jackie was of age and expected to receive his entire childhood earnings, his parents had spent his fortune.<sup>16</sup> In 1938, Jackie sued his parents, but laws at the time sided with his parents, allowing every penny a child earns before the age of twenty-one to be spent however parents see fit.<sup>17</sup> Jackie was awarded a mere \$126,000—a fraction of the fortune he had built for himself.<sup>18</sup>

While Jackie Coogan was unable to prevail against his

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12. Pokharel, *supra* note 6.

13. *Id.*

14. *Id.*

15. *Id.*

16. Destiny Lopez, *7 Celebs Whose Parents Decimated Their Fortunes*, BUSINESS INSIDER (Apr. 2, 2014, 5:47 PM), <https://www.businessinsider.com/7-celebs-whose-parents-decimated-their-fortunes-2014-4>.

17. *Id.*

18. *Id.*

parents, his case caught the attention of California government and sparked a change in the law that child stars like himself so desperately needed. In 1939, the California Child Actor’s Bill, more popularly known as the Coogan Law, was born.<sup>19</sup> The original Coogan Law was flawed, leaving open various loopholes and only applying to employment contracts with minors that were court approved.<sup>20</sup> Further, before an overhaul of the original Coogan Law, effective January 1, 2000, there was no fixed percentage for how much must be kept in a blocked trust account, and the entirety of the minor’s earnings was the legal property of the parents.<sup>21</sup>

Currently, the California Family Code states that contracts entered into with a minor for “[a]rtistic or creative services’ includes, but is not limited to, services as an actor, actress, dancer, musician, comedian, singer, stuntperson, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer.”<sup>22</sup> The laws require that trustees establish a blocked trust account—known as a Coogan Trust Account—to preserve a portion of the minor’s gross earnings.<sup>23</sup> At least one parent or legal guardian must be appointed as trustee.<sup>24</sup> The minor’s gross earnings are defined as “the total compensation payable to the minor under the contract or, if the minor’s services are being rendered through a third-party individual . . . the total compensation payable to that third party for the services of the minor.”<sup>25</sup>

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19. Ana Saragoza, *The Kids are Alright? The Need for Kidfluencer Protections*, 28 AM. U. J. GENDER SOC. POL’Y & L. 575, 579 (2020).

20. Amanda Bronstad, *Coogan Law Loophole Leaves Child Actors at Financial Risk*, THE NAT’L L. J. (Apr. 8, 2011), <https://www.vrmlaw.com/sitecontent/media/news/Coogan-Law-Loophole-Leaves-Child-Actors-at-Financial-Risk.pdf> (interviewing Bruce Sires, a trust and estates partner at a Los Angeles law firm who advises production companies and studios about the legality of hiring child actors).

21. *Id.*

22. CAL. FAM. CODE § 6750 (West 2020).

23. CAL. FAM. CODE § 6753 (West 2020).

24. CAL. FAM. CODE § 6752 (West 2020).

25. FAM. § 6750.

Section 6752 of California's Family Code requires fifteen percent of the minor's gross earnings be deposited by minor's employer in the blocked trust account, however, a court may order more to be set aside.<sup>26</sup> Additionally, all earnings of an unemancipated minor related to a contract defined in Section 6750 of California's Family Code "shall remain the sole legal property of the minor child," not just the fifteen percent deposited in Coogan Trust Accounts.<sup>27</sup> However, "[s]ince a minor cannot legally control their own money, California Law governs their earnings and creates a fiduciary relationship between the parent and the child."<sup>28</sup> Funds from the trust account cannot be withdrawn at any point before the beneficiary turns eighteen without a court order.<sup>29</sup> Trustees are required to provide the minor's employer with a written statement that includes all information necessary for the employer to deposit earnings into the blocked trust account.<sup>30</sup> If trustees fail to provide such information, employers may forward fifteen percent of the minor's gross earnings to The Actors' Fund of America, which will thereafter become the trustee of those funds.<sup>31</sup> Once the employer has deposited the funds, the trustees are the only people with an obligation or duty to monitor the trust, and the trustees must do so in compliance with the California Probate Code.<sup>32</sup>

Even with the protection of the Coogan Law, eighty-five percent of child performers' income is still left unprotected.<sup>33</sup> "There's nobody to make sure that the money gets used in the best interest of the child. So, responsible parents aren't the issue. The problems are irresponsible parents."<sup>34</sup> If parents fail to comply with the fiduciary duties regarding their child actor's

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26. FAM. § 6752.

27. CAL. FAM. CODE § 771 (West 2020).

28. *Coogan Law*, SCREEN ACTORS GUILD – AM. FEDERATION OF TELE. AND RADIO ARTISTS, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> (last visited June 1, 2021).

29. CAL. FAM. CODE § 6753 (West 2020).

30. *Id.*

31. CAL. FAM. CODE § 6752 (West 2020).

32. *Id.*

33. Bronstad, *supra* note 20.

34. *Id.* (quoting Bruce Sires).

earnings, they may be found guilty of negligence and fined in damages.<sup>35</sup> Unfortunately, irresponsible parents will often get away with this kind of exploitation because “nine times out of 10 children don’t sue their parents for abusing them—whether it’s physical abuse or any kind of abuse, including financial abuse.”<sup>36</sup>

In *Watson v. Watson*, child actress Angela Watson sued her parents for mismanaging her trust account and misappropriating her income.<sup>37</sup> When Angela began working on the television show “Step by Step,” the court ordered twenty-five percent of her earnings be kept in a blocked trust account with her parents as trustees.<sup>38</sup> Her parents put the remainder of her earnings into an “in trust for” checking account and proceeded to use the funds for their own purposes.<sup>39</sup> The court found that Angela’s parents had a fiduciary duty with respect to the trust account and breached that duty by using her earnings for their own benefit, failing to maintain adequate financial records, mismanaging her career by hiring incompetent managers and agents, and failing to invest trust assets for her benefit.<sup>40</sup> While the Coogan Law is not perfect, it has given child actors legal recourse against parents that exploit their earnings.

Another well-known actress, Leighton Meester, sued her mother for misappropriating financial assistance funds in 2011.<sup>41</sup> Meester’s brother was ill, and her mother could not afford his medical expenses, so Meester voluntarily gave her mother monthly allowance to pay for the medical bills and her brother’s living expenses.<sup>42</sup> Meester soon discovered that her mother was using the funds for her personal needs, including cosmetic surgeries, Botox, and hair extensions.<sup>43</sup> Meester was ultimately

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35. Saragoza, *supra* note 19, at 581.

36. Bronstad, *supra* note 20.

37. *Watson v. Watson*, No. B158189, 2003 WL 21546062, at \*1 (Cal. Ct. App. July 10, 2003).

38. *Id.*

39. *Id.*

40. *Id.* at \*3.

41. Complaint for Declaratory Relief, *Meester v. Meester*, No. BC466072, 2011 WL 2941537 (Cal. Super. Ct. July 22, 2011).

42. *Id.* at ¶¶ 7-9.

43. *Id.* at ¶¶ 10-11.

able to secure a default judgment against her mother.<sup>44</sup> Unfortunately, Leighton Meester is only one of many child actors that fell victim to parental exploitation. Other household names, past and present, include Shirley Temple, Macaulay Culkin, Gary Coleman,<sup>45</sup> Arielle Winter, Mischa Barton, and Corey Feldman.<sup>46</sup>

In addition to protecting child actors' earnings, California laws provide strict regulations regarding working conditions and ensuring the work does not interfere with the child's education. Minors wishing to work in the entertainment industry<sup>47</sup> must acquire a work permit.<sup>48</sup> There are strict regulations limiting a minor's total working hours, that vary depending on age range.<sup>49</sup> Time for "rest and recreation" is required during working hours as well as time allotted for schooling and education.<sup>50</sup> It is also required that employers provide a studio teacher<sup>51</sup> on set that is responsible for "caring and attending to the health, safety and morals" of the minor.<sup>52</sup>

[T]he studio teacher shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the

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44. *Id.*

45. *See Lopez, supra* note 16 (explaining why Shirley Temple, Macaulay Culkin, Gary Coleman and others sued their parents for squandering their fortune).

46. Katherine Webb, *All the Child Stars Who Sued Their Parents*, SHOWBIZ CHEATSHEET (June 6, 2018), <https://www.cheatsheet.com/entertainment/child-stars-who-sued-their-parents.html/> (explaining why Arielle Winter, Mischa Barton, Corey Feldman and other child stars sued their parents).

47. "Motion pictures of any type (e.g. film, videotape, etc.), using any format (theatrical film, commercial, documentary, television program, etc.) by any medium (e.g. theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances where minors perform to entertain the public." CAL. CODE REGS. tit. 8, § 11751 (2021).

48. CAL. CODE REGS. tit. 8, § 11753 (2021)

49. CAL. CODE REGS. tit. 8, § 11760 (2021).

50. CAL. CODE REGS. tit. 8, § 11761 (2021).

51. CAL. CODE REGS. tit. 8, § 11755.3 (2021).

52. *Id.*



engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor.<sup>53</sup>

While the exploitation of child actors still occurs despite these laws and regulations,<sup>54</sup> once they reach the age of eighteen or are successfully emancipated, these child stars have legal recourse against their parents and have a chance to claim the earnings that are rightfully and legally theirs. However, not all child stars have this chance for relief as the laws have failed to catch up to our rapidly evolving society and entertainment industry.

### III. KIDFLUENCERS: NEW WAVE OF CHILD STARS FINDING FAME AND FORTUNE THROUGH SOCIAL MEDIA

Social media has taken the world by storm over the last decade, changing life as we know it in many ways.<sup>55</sup> Adults and children alike have gained massive followings across platforms such as Instagram, TikTok, and YouTube. Commonly known as “influencers,”<sup>56</sup> these stars are finding more than just fame through social media; they are also making a living from the content they put online through advertising and brand deals.<sup>57</sup> In

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53. *Id.*

54. *See* *Watson v. Watson*, No. B158189, 2003 WL 21546062 (Cal. Ct. App. July 10, 2003); *supra* notes 37-46.

55. *What is an Influencer?*, INFLUENCER MARKETINGHUB, <https://influencermarketinghub.com/what-is-an-influencer/> (last updated Jan. 28, 2021) (explaining as of January 2019, 3.484 billion people actively use social media—forty-five percent of the world’s population).

56. “Influencers in social media are people who have built a reputation for their knowledge and expertise on a specific topic. They make regular posts about that topic on their preferred social media channels and generate large followings of enthusiastic, engaged people who pay close attention to their views.” *What is an Influencer?*, *supra* note 55.

57. Taylor Mooney, *Companies Make Millions Off Kid Influencers, and the Law Hasn’t Kept Up*, CBSN ORIGINALS (Aug. 26, 2019, 6:19 AM), <https://www.cbsnews.com/news/kid-influencers-companies-make-millions-law-hasnt-kept-up-cbsn-originals/> (explaining that Instagram does not allow posts to be monetized on the platform itself, so influencers negotiate brand deals directly with the brands. YouTube, however, allows influencers to monetize content by selling ads on their videos).

February 2021, Influencer Marketing Hub reported the influencer marketing industry is on track to grow to \$13.8 billion over the course of this year.<sup>58</sup> Just as child movie stars find themselves making the same amount, if not more, than their adult counterparts, child influencers—often referred to as kidfluencers<sup>59</sup>—are some of the highest paid social media stars in the industry.<sup>60</sup> Richard Conway, founder of Childcare.co.uk, recognized the true power these children have, stating, “Influencers are some of the most powerful people in modern society, and despite their young age, the children on this list [of the world’s highest-earning child influencers] prove they can make millions through their audiences.”<sup>61</sup>

A notable example of kidfluencer success is nine-year-old YouTube star Ryan Kaji. Ryan has been named the highest-paid YouTuber three years running.<sup>62</sup> Ryan started his YouTube channel, Ryan’s World, in March 2015 at the age of three.<sup>63</sup> His channel started out with videos where he unboxes and reviews toys.<sup>64</sup> Due to YouTube’s terms of service restricting use of the platform to those thirteen and older,<sup>65</sup> Ryan’s channel is run by his parents.<sup>66</sup> By the age of seven, Ryan accumulated 17 million subscribers and claimed the number one spot on Forbes’ Highest-Paid YouTube Stars 2018 list, raking in a staggering \$22 million,

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58. *The State of Influencer Marketing 2021: Benchmark Report*, INFLUENCER MARKETINGHUB, <https://influencermarketinghub.com/influencer-marketing-benchmark-report-2021/> (last updated Feb. 15, 2021).

59. Cordeiro, *supra* note 7.

60. Jessica Rach & Erica Tempesta, *Meet the World’s Highest-Earning Child Influencers - From a Viral Video Star-Turned-Teen Rapper to Seven-Year-Old Ryan Whose \$22M Fortune is Being Investigated by the FTC*, DAILYMAIL.COM (Sept. 26, 2019, 8:36 PM), <https://www.dailymail.co.uk/femail/article-7502395/Meet-worlds-highest-earning-child-influencers-2019.html>.

61. *Id.*

62. Neate, *supra* note 4.

63. *Id.*

64. *Id.*

65. *Terms of Service*, YOUTUBE (Mar. 17, 2021), <https://www.youtube.com/static?template=terms> (“You must be at least 13 years old to use the Service; however, children of all ages may use the Service and YouTube Kids (where available) if enabled by a parent or legal guardian.”).

66. Neate, *supra* note 4.

predominantly through advertising.<sup>67</sup> By 2020, Ryan’s World amassed 41.7 million subscribers, and his earning increased to \$29.5 million dollars.<sup>68</sup> In addition to his YouTube earnings, Ryan made an estimated \$200 million from Ryan’s World branded toys and clothing and has signed an undisclosed deal for his own television show on Nickelodeon.<sup>69</sup>

Taytum and Oakley Fisher, four-year-old twin kidfluencers, have over 3 million followers on Instagram.<sup>70</sup> The twins’ parents, YouTube stars Kyler and Madison Fisher, created their Instagram account just two days after they were born.<sup>71</sup> The twins are frequently featured on the family YouTube channel, The FishFam, which boasts 4.37 million subscribers.<sup>72</sup> The twins can earn up to \$200,000 a month and “stand to make \$2.4 million a year, totaling a potential \$36 million by the time they turn eighteen.”<sup>73</sup> Similar to YouTube, Instagram’s terms of use require users be thirteen or older to use the site.<sup>74</sup> Kyle and Madison run the twins’ Instagram account, the family YouTube channel, negotiate their brand deals, and organize photo shoots.<sup>75</sup>

#### IV. KIDFLUENCERS ARE FALLING THROUGH THE CRACKS

Despite the rapid growth of influencer marketing on social media, the law has failed to keep up. As California’s Coogan Law

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67. Madeline Berg & Natalie Robehmed, *Highest-Paid YouTube Stars 2018: Markiplier, Jake Paul, PewDiePie and More*, FORBES (Dec. 3, 2018, 5:40 AM), <https://www.forbes.com/sites/natalierobehmed/2018/12/03/highest-paid-youtube-stars-2018-markiplier-jake-paul-pewdiepie-and-more/?sh=18998e63909a>.

68. Neate, *supra* note 4.

69. *Id.*

70. Taytum and Oakley Fisher (@taytumandoakley), INSTAGRAM, <http://instagram.com/taytumandoakley> (last visited June 1, 2021).

71. Rach & Tempesta, *supra* note 60.

72. The FishFam, YOUTUBE, <https://www.youtube.com/channel/UCJTyunmsBLj20wyguh6uMig> (last visited June 1, 2021).

73. Saragoza, *supra* note 19, at 588.

74. *Terms of Use*, INSTAGRAM (Dec. 20, 2020), <https://help.instagram.com/581066165581870>.

75. Mooney, *supra* note 57.

currently stands, child influencers are not considered child laborers; therefore, they are not afforded the protection of Coogan Trust Accounts or regulated working conditions.<sup>76</sup> Without these protections, kidfluencers do not have any legal rights to their earnings and are subject to exploitation by their parents and employers without any legal recourse.<sup>77</sup> “[L]abor abuse and financial exploitation go hand in hand: ‘If [parents] are using [the child’s earnings] for personal reasons, that amplifies the risk of them planning 10-hour workdays, rather than structured, comfortable workdays.’”<sup>78</sup> Just as child actors are required to work pursuant to employment contracts—in compliance with regulated working conditions—kidfluencers cannot decide they do not want to produce content when a brand deal is on the line. “If there’re days they’re totally not into it, they don’t have to be . . . [u]nless it’s paid work. Then they have to be there. We always have lollipops on those days.”<sup>79</sup>

The purpose of the Coogan Law is to preserve a portion of the minor’s gross earnings from work rendering artistic or creative services.<sup>80</sup> While artistic or creative services encompasses work behind a camera for television, movies, and modeling, legislatures refuse to recognize the work kidfluencers are doing when creating content for social media platforms. As Ryan Kaji’s fame rapidly grew, his family started their own production company to make content creation more efficient.<sup>81</sup> The team

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76. Saragoza, *supra* note 19, at 589–90.  
<https://www.youtube.com/channel/UCJTyunmsBLj20wyguh6uMig>

77. Cordeiro, *supra* note 7.

78. Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, THE HOLLYWOOD REPORTER (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/news/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968> (quoting Byron Austen Ashley of Settebello Entertainment, a manager that requires parents to save their kids earnings).

79. Julia C. Wong, *It’s Not Play if You’re Making Money: How Instagram and YouTube Disrupted Child Labor Laws*, THE GUARDIAN (Apr. 24, 2019, 1:00 AM), <https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws> (quoting Bee Fisher, mother of three Instagram famous boys).

80. *Phillips v. Bank of Am., N.A.*, 236 Cal. App. 4th 217, 226, 186 Cal. Rptr. 3d 434, 438 (2015).

81. Amanda Perelli, *8-Year-Old Ryan Kaji is the World’s Top-Earning*

helps with filming, editing, animation, and voice overs to consistently post content across nine multilingual YouTube channels – all starring Ryan.<sup>82</sup> Despite the obvious similarities of effort exuded and profits earned between traditional entertainment work and social media work, the law has yet to grant the same protection to kids like Ryan Kaji. Attempts have been made to amend these laws to reach child social media stars, with no avail.<sup>83</sup>

#### A. Failed Attempt to Make a Change

In 2018, California Assemblyman Kansen Chu attempted to amend child labor laws to include “social media advertising” to the definition of employment and “expand the existing requirement of applying for work permits on behalf of minors to minors that participate in social media advertisements.”<sup>84</sup> The proposed bill defined “social media advertising” as the “use, demonstration, or placement of a product through a social media communication.”<sup>85</sup> The proposal sought to require kidfluencers to obtain work permits and be subject to regulations and protections similar to those under the Coogan Law.<sup>86</sup> Unfortunately, the bill signed into law was a far cry from what the original proposal was attempting to accomplish.<sup>87</sup> Instead, the bill amended Section 1310 of the California Labor Code<sup>88</sup> to exempt minors appearing

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*YouTube Star. His Parents Took Us Inside His Business, Which Had Over \$200 Million in Retail Sales Last Year and Employs a 30-Person Production Team.*, BUSINESS INSIDER (Oct. 21, 2020, 1:17 PM), <https://www.businessinsider.com/inside-ryans-world-business-interview-youtube-tv-toys-2020-9>.

82. *Id.* (listing the nine multilingual YouTube channels: Ryan’s World, Ryan’s World Español, Ryan’s World in Japanese, EK Doodles, Ryan’s Family Review, VTubers, Combo Panda, Gus the Gummy Gator and The Studio Space).

83. Saragoza, *supra* note 19, at 589–90.

84. *Id.*

85. Assemb. 2388, 2017-2018 Reg. Sess. (Cal. 2018).

86. Lambert, *supra* note 78.

87. *Id.*

88. Section 1310 originally applied to “the appearance of any minor in any radio or television broadcasting.” Assemb. 2388, 2017-2018 Reg. Sess. (Cal. 2018). The bill amended Section 1310 to include the appearance of a minor in any “digital exhibition.” *Id.*

in any “digital exhibition” from obtaining work permits “if the minor does not receive compensation directly or indirectly therefor, the engagement of the minor is limited to a single appearance lasting not more than one hour.”<sup>89</sup>

Critics of regulations proposed in the original bill argued that the enforcement of such regulations would be nearly impossible.<sup>90</sup> “Unlike traditional media, which is subject to strict schedules and studio oversight, digital content can be filmed whenever and wherever a creator wants.”<sup>91</sup> One specific reservation was that requiring studio teachers to come into child influencers’ homes to monitor working conditions is not feasible the way it is required for children on set for movies, television, or modeling.<sup>92</sup> Opponents of these regulations further argue that it would be difficult to oversee kidfluencers because they can create content at any time, from any place and typically work outside school hours.<sup>93</sup>

#### B. If the Kids Are Having Fun, Is It Work?

Aside from the concerns about implementing regulations to child social media stars, many parents<sup>94</sup> argue that what their kids are doing is not labor because they have fun while doing it.<sup>95</sup> Because parents often act as managers and handle all or most of the behind-the-scenes work, many believe they are entitled to spend the money earned through the likeness of their child as they see fit.<sup>96</sup> “[S]ome parents do not see their children as the primary beneficiaries of the kidfluencing earnings. The general

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89. CAL. LAB. CODE § 1310 (West 2020).

90. Lambert, *supra* note 78.

91. *Id.*

92. *Id.*

93. *Id.*

94. See Mooney, *supra* note 57 (explaining parents of twin kidfluencers Taytum and Oakley claim that the twins posing for pictures does not qualify as work, and because they do much of the work, they should have sole discretion on how to spend the income); Wong, *supra* note 78 (“The thing I always stress is that we work, the girls do not,” quoting Ami McClure, the mother of twin kidfluencers Alexis and Ava. Ami and her husband quit their jobs to manage the twins’ careers full time).

95. Lambert, *supra* note 78.

96. Mooney, *supra* note 57.

basis for entitling parents to their child's earnings was the perceived reciprocal obligations of parents to support their children."<sup>97</sup> Taytum and Oakley Fisher's parents are among those that believe the parents are performing all the labor for the content behind the scenes, while the kids "merely appear in the picture."<sup>98</sup> "Who gets to decide who does the work? You know, my girls are in a picture—they're in a picture and that qualifies as work?"<sup>99</sup> Anne Henry, a major player behind the 2018 bill to extend protections to child influencers and the co-founder of BizParentz, a nonprofit that advocates for children in entertainment, adamantly disagrees with this stance.<sup>100</sup> "If you're lending your image and you're doing something to sell a product, it's work. . . If it's work, then your money should be protected."<sup>101</sup> Sheila James Kuehl, a former child star and co-author of the 1999 law<sup>102</sup> amending child labor protections for child performers, is of the same opinion as Anne Henry. "I don't care if it's simply unboxing presents, that's work . . . . It is not play if you're making money off it."<sup>103</sup>

Some parents,<sup>104</sup> including Ryan Kaji's, are aware of the potential for exploitation of their children working in social media and make a conscious effort to do right by their kids.<sup>105</sup> Ryan's parents want him to have as normal a childhood as possible and prioritize his education over any of his work.<sup>106</sup> Ryan's father, Shion Kaji, stated that during a typical week, Ryan will film for about one hour on weekdays and three hours

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97. Saragoza, *supra* note 19, at 588.

98. *Id.* at 588.

99. Mooney, *supra* note 57 (quoting Kyler Fisher).

100. Lambert, *supra* note 78.

101. *Id.* (quoting Anne Henry).

102. *See supra* text accompanying notes 20-21.

103. Wong, *supra* note 79 (quoting Shelia James Kuehl).

104. Pavithra Mohan, *My kid is an Instagram Influencer. Here's what I do with her money*, FAST COMPANY (May 8, 2019), <https://www.fastcompany.com/90343690/my-kid-is-an-instagram-influencer-heres-what-i-do-with-her-money> (providing examples of parents who allocate their kidfluencer's earnings to trust accounts, college funds, compensation for their work as managers, and charitable donations).

105. Perelli, *supra* note 81.

106. *Id.*

on the weekends.<sup>107</sup> Ryan's parents also put one hundred percent of his earning from his Nickelodeon series into a blocked trust account, even though the law only requires fifteen percent.<sup>108</sup> Shion recognizes that all of Ryan's other sources of revenue are not subject to the Coogan Law requirement, but distributes Ryan's earnings into "college savings, Coogan accounts, minor accounts and trust accounts" for Ryan and his sisters, who are often featured in content.<sup>109</sup>

### C. High Reward, Higher Risk: Labor Abuse and Financial Exploitation

Unfortunately, not all parents follow the "honor system,"<sup>110</sup> and without laws regulating working conditions and protecting earnings, it is difficult to really know what is happening behind closed doors. The mother of six-year-old kidfluencer Summer Gittens, also known as Sparkle, considers her daughter's social media fame a business and pays herself fifteen to twenty percent out of Sparkle's earnings for her role as a manager.<sup>111</sup> Luckily for Sparkle, her mother distributes the rest of her earnings to an external manager, charity, business and travel expenses, and a checking account.<sup>112</sup> However, without the protection of the Coogan law, there is nothing stopping Sparkle's mother from paying herself one hundred percent of her daughter's income and leaving nothing behind.

In the *CBSN Originals* documentary, *Kid Influencers: Few Rules, Big Money*,<sup>113</sup> Kyler and Madison Fisher are both sporting Gucci sneakers worth more than \$500 per pair.<sup>114</sup> They also posted a video to the family YouTube channel in January 2020

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107. *Id.*

108. Lambert, *supra* note 78.

109. *Id.* (quoting Ryan Kaji's father, Shion Kaji).

110. *Id.*

111. Mohan, *supra* note 104.

112. *Id.* (Sparkle is also signed with a modeling agency, and fifteen percent of that income is in a Coogan Trust Account, as required by law).

113. CBSN Originals Documentary, *Kid Influencers: Few Rules, Big Money*, CBS NEWS, (Aug. 23, 2019), <https://www.cbsnews.com/video/kid-influencers-few-rules-big-money/#x> (exploring the day to day life of the Fisher family).

114. Saragoza, *supra* note 19, at 588.



titled “WE BOUGHT A MANSION!!” showing off their newly purchased six bedroom, two-car garage home.<sup>115</sup> “This image shares a likeness with Leighton Meester’s mother’s misappropriated use of Leighton’s funds for superfluous expenditures like Botox injections and hair extensions.”<sup>116</sup> The issue is, without laws protecting the Fisher twins’ earnings, there is no guarantee they will be able to prevail against their parents if Kyler and Madison squander the twins’ potential \$36 million fortune they are set to make by eighteen.<sup>117</sup> The discretion left to the parents of kidfluencers to manage their children’s income is a “voluntary decision-making process” that creates the risk of labor abuse and financial exploitation.<sup>118</sup>

A notable example of labor abuse and parents exploiting their children to make money through social media content is the horrific story of Machel Hobson, a woman who was charged with abusing five of her adopted children ages six to fifteen in 2019.<sup>119</sup> Hobson had a YouTube channel called Fantastic Adventures with over 700,000 subscribers where the adopted children starred in different scenarios.<sup>120</sup> The police report stated that all the children mentioned being forced to participate in the YouTube channel.<sup>121</sup> Hobson inflicted cruel punishments if the children forgot their lines or did not participate as directed.<sup>122</sup> The gruesome disciplinary tactics included beating, pepper spraying, molesting, starving, and drowning the young children.<sup>123</sup> Hobson reportedly made nearly \$300,000 from the channel in 2018 alone.<sup>124</sup> After the arrest caught the attention of

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115. The Fishfam, *WE BOUGHT A MANSION!!*, YOUTUBE (Jan. 25, 2020), <https://www.youtube.com/watch?v=hAF7RnQqO20>.

116. Saragoza, *supra* note 19, at 588.

117. *Id.*

118. *Id.* at 587.

119. Wong, *supra* note 79.

120. *Id.*

121. *Id.* (quoting the Hobson police report).

122. *Id.*

123. *Id.* (explaining the police report also stated the children were locked in a room with a bare tile floor for days at a time, forced to stand in a corner with their arms raised above their heads for hours, and not allowing them to use the bathroom).

124. *Id.*

the media, YouTube proceeded to demonetize the account and later terminated it.<sup>125</sup>

While the story of Machelles Hobson is an extreme and tragic example of this issue, it should be such a shock to the conscience that the need for protections for children working in social media is glaring, if it was not already. Without any laws regulating the working conditions of these tiny content creators, or laws protecting their earnings and savings for their benefit once they reach eighteen, how can we prevent more children from experiencing such traumatic abuse like the Hobson children, or a repeat of parents squandering a child's hard-earned money like Jackie Coogan? In the time before the Coogan Law, if parents were willing and able to exploit their child actors who were working on sets among large teams of people, how can we feel confident that parents aren't doing the same—or worse—when the money-making content is being produced in the privacy of homes? As the age of social media and influencer culture continues to grow rapidly, an effort to keep the laws up to date needs to be made immediately—not in five, ten, or fifteen years when today's kidfluencers reach eighteen, just to realize that their parents blew through their earnings and leaving them with no legal recourse.

#### V. PROPOSAL TO EXPAND LAWS TO REACH KIDFLUENCERS

Even with the Coogan Law in place for child actors, it is inevitable that some parents may still take advantage of their kid's earnings. However, these laws provide these children with legal recourse against their parents to get back the money they rightfully earned throughout their young careers. Knowing the current and growing impact of social media, influencer culture and marketing, and the role minors play in the big picture, now is the time to give kidfluencers the protection they need and deserve.

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125. *Id.*

### A. The Need for Nationwide Protection

Unlike traditional media, which is centered in California, the nature of social media allows content creators to work from anywhere at any time.<sup>126</sup> “[W]hile today’s child stars can achieve incredible fame and fortune without ever setting foot in a Hollywood studio, they may be missing out on one of the less glitzy features of working in the southern California-based entertainment industry: the strongest child labor laws for performers in the country.”<sup>127</sup> Amanda Schreyer, a lawyer who specializes in influencer marketing, recognizes the danger in the gray area of the inapplicability of the Coogan Law to kidfluencers.<sup>128</sup> In an interview with *Fast Company*, Schreyer stated,

If [a] kid is performing in typical ad, we know what laws apply. That’s because that kid is going to a set, missing school, and that’s where the child’s welfare comes in . . . . But when we’re talking about kid influencers, they’re not on a set, they’re probably at home, it might be after school, or on the weekends. It’s not even clear that these kid influencers are performers.<sup>129</sup>

We cannot allow children in one state to be protected while others are not. Thus, the most encompassing solution would be a federal act that will protect child social media stars from exploitation nationwide. The Children’s Online Privacy Protection Act (“COPPA”),<sup>130</sup> passed in 1998 amidst the ever-evolving age of the internet and social media, shows that federal

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126. Ryan Kaji and his family live and produce Ryan’s social media content in Texas. Perelli, *supra* note 81. Mabelle Hobson abused her children to create YouTube videos in the privacy of her home in Arizona. Wong, *supra* note 79. The Fisher family recently posted to Instagram that they are moving from California to Utah. Madison Fisher (@madisonbontempo), INSTAGRAM (Mar. 14, 2021), <https://www.instagram.com/p/CMZ9UO1rFzD/>.

127. Wong, *supra* note 79.

128. Katharine Schwab, *The 2-year-old Instagram influencers who make more than you*, FAST COMPANY (Dec. 17, 2018), <https://www.fastcompany.com/90278778/the-2-year-old-instagram-influencers-who-make-more-than-you-do>.

129. *Id.*

130. Children’s Online Privacy Protection Act, 15 U.S.C.A. §§ 6501-6506 (West).

lawmakers have already recognized the need to protect children online.<sup>131</sup> COPPA serves to “regulate unfair and deceptive acts and practices in connection with the collection and use of personal information from and about children on the Internet.”<sup>132</sup> “The Rule was designed to protect children under age [thirteen], while accounting for the dynamic nature of the Internet.”<sup>133</sup> The Federal Trade Commission (“FTC”) has jurisdiction over COPPA violations because “the FTC regulates acts or practices that are unfair or deceptive and affect commerce.”<sup>134</sup> The FTC plays a further role in the influencer marketing industry by regulating collaborations, partnerships and affiliate links on social media.<sup>135</sup>

### B. How Will It Work?

“We’re going to have to move from ogling the novelty of the situation to recognizing this is work and re-regulate these arenas that have been regulated for a century.”<sup>136</sup> But, how will it work? In terms of protecting a child social media star’s earnings, the law should mirror the Coogan Law. The money earned through a contract with an employer—whether that be brands, advertising agencies, social media platforms—should be the sole property of the minor. A fixed percentage should be set aside in a blocked trust account to ensure at least some of the minor’s earnings are untouched. To avoid relying on parents to use the remaining portion of earnings in a responsible and fair manner, specific provisions for how the money can be spent would help mitigate this loophole. For example, it may be permissible to allocate the remaining amount for paying managers, both parents acting as managers and external managers, and business, travel and living

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131. Saragoza, *supra* note 19, at 579.

132. *Id.* at 585.

133. *Complying with COPPA: Frequently Asked Questions*, FEDERAL TRADE COMMISSION (July 2020), <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0> (providing explanations and how to properly comply with COPPA regulations).

134. Saragoza, *supra* note 19, at 585.

135. The FTC requires influencers to conspicuously disclose that a post is a paid advertisement. *Id.*

136. Wong, *supra* note 79 (quoting Veena Dubal, a law professor who specializes in employment law and the gig economy).

expenses. While child actors have legal recourse under the Coogan Law against their parents who choose to misappropriate the remaining eighty-five percent of their earnings, we have the benefit of hindsight in structuring laws to protect kidfluencers to prevent future legal battles between parents and their children.

In light of the Machel Hobson story, the need for working conditions for minors in social media is palpable. There should be a set number of hours that children can work each day, as there is under the Coogan Law. Just as the nature of social media allows kidfluencers to live and create content from anywhere across the country, there are no set studio hours or call times preventing child stars from being forced to work at any and all hours of the day. Such scheduling freedom leaves room for labor abuse by parents and employers alike. Thus, a studio teacher<sup>137</sup> figure should be provided by the employer to come to the homes, or wherever content is being made, to monitor the health, safety, and wellbeing of the children while they work. Although it is fair to say this is a slight invasion of privacy to have someone come into the children's homes, a consequence of working in social media is your life and often the lives of those close to you being subject to the public eye. Parents that have a problem with this kind of requirement have a choice to take content creation outside of their family homes, just like Ryan Kaji.<sup>138</sup> So, if a child is working and making a living by sharing their life on social media, then the safety of the child outweighs this minor invasion of privacy.

## VI. CONCLUSION

This article should serve as a comprehensive picture of how social media and the internet impacts children and exposes them to financial exploitation and labor abuse by those they trust the most. Social media and the influencer industry have forever changed the way the world communicates, markets products and shares ideas by providing a seemingly endless platform for creative freedom. The advantages of this new way of life are not

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137. See *supra* text accompanying notes 51-53.

138. See Perelli, *supra* notes 81, 82 and accompanying text.

to be dismissed. Children of all ages are given the chance to create, learn, and build careers for themselves from the comfort of their own homes. However, this freedom does not come without risks, especially when children are involved. Children are wise, creative and undoubtably cute. While the work these children put in and the fortune they stand to make is comparable to some of the most famous adults in the world, they are still in fact children. The world has accepted and admired the emergence of kidfluencers and it is time for the law follow suit by giving them protection now instead of waiting for the consequences to unfold.

When the Coogan Law was created, it was done so with the intention of preventing future child actors from suffering the same fate as Jackie Coogan. Given the foregoing discussion of the history of the Coogan Law and the similarities between the work, earnings, and risk of exploitation of child actors and child social media stars, there is no compelling argument for waiting any longer to expand protection to encompass kidfluencers. Our society is well aware that history often repeats itself and taking a preventative approach to this issue is the first and more important step to giving children across the country the protection they need and deserve.