

Family Influencing in the Best Interests of the Child

Rachel Caitlin Abrams*

Abstract

In the past decade, the social media influencer industry has grown into a viable career path for many. Family influencer and parent-facilitated child influencer content has gained popularity and many parents are making significant money by sharing content featuring their children. This type of content and the revenue it creates give rise to serious legal concerns regarding children's rights. Many family influencers share the intimate details of their children's lives on their social media accounts, leaving them vulnerable and their images easily taken by predators for nefarious purposes. These children are likely unable to give informed consent, and their parents profit from the content. This Comment assesses the potential dangers that arise from sharing a child's personal information on a public forum and how the Convention on the Rights of the Child (CRC) can be utilized to protect the children of family influencers from exploitation on social media. The Comment also suggests various regulatory approaches to better implement the CRC domestically or stand as localized solutions to protect children from exploitation on social media.

* B.A. 2020, University of Chicago; J.D. Candidate 2024, The University of Chicago Law School. I would like to thank the board and staff of the *Chicago Journal of International Law* for their constant guidance and support and Professor Emily Buss for her insightful feedback.

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I. INTRODUCTION

In March of 2019, police arrested Machel Hobson following reports of abuse and torture of her seven adopted children.¹ The abuse, including locking the children in a closet for multiple days and violent beatings, was Hobson's idea of punishment for what she perceived to be the children's subpar performance on their family's popular YouTube channel "Fantastic Adventures," which documented and monetized the family's day-to-day life, garnering nearly 800,000 subscribers and hundreds of millions of views on YouTube.² Unfortunately, this was not an isolated incident. In 2017, prosecutors filed criminal charges against Mike and Heather Martin, who ran the popular "DaddyOFive" YouTube channel over a series of "prank" videos that showed the parents mentally and physically abusing their children.³

Even when parents have no intention of endangering their children, the potential profit and fame that come from family influencers sharing their children on social media can still lead to exploitation, threatening the best interests of those children. For example, Jaquelyn Paul ran a popular TikTok account where she shared the day-to-day life of her toddler daughter.⁴ The account afforded her significant income through sponsorship deals and relationships with popular brands.⁵ came under public scrutiny after viewers began noticing an increase in videos featuring her toddler daughter in exploitive situations, such as eating a pickle and playing with tampons.⁶ These videos garnered significant attention and were saved tens of thousands of times by viewers.⁷ The videos also attracted inappropriate comments from adult men.⁸

A. The Rise of the Family Influencer

The past decade has seen the rise of the "family influencer" on social media. Families are documenting their daily life through video blogs and posts

¹ Katie Mettler, *This 'YouTube Mom' Was Accused of Torturing the Show's Stars—Her Own Kids. She Died Before Standing Trial*, WASH. POST (Nov. 13, 2019), <https://perma.cc/4DWV-6AVN>.

² *Id.*

³ Danya Hajjaji, *YouTube Lets Parents Exploit Their Kids for Clicks*, NEWSWEEK (Oct. 4, 2021), <https://perma.cc/9TFQ-QG6U>.

⁴ Christine Organ, *Why the Wren Eleanor Controversy Makes Parents so Uncomfortable*, MOTHERLY (Aug. 25, 2022), <https://perma.cc/2TWD-BDES>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

on other social media platforms like TikTok and Instagram.⁹ Their content includes prank videos, pregnancy and gender reveal announcements, product reviews, and family updates, as well as sponsored content earning thousands of dollars per month.¹⁰

Many of these families are generating significant revenue from various social media platforms and the associated income streams from branded merchandise and Patreon.¹¹ Many parents see social media as a lucrative primary or secondary source of income and set their sights on joining the influencer economy.¹² Some families make upwards of \$40,000 per sponsored Instagram post and have amassed enough wealth from social media to purchase expensive homes, take frequent luxurious vacations, and quit their conventional jobs to become full-time influencers.¹³

B. The Dangers of Family Influencer Culture

While there are many full-time influencers in many niches, family and child influencer culture gives rise to a unique set of concerns. These parents are building their brand, and in turn their wealth, off of their children.¹⁴ By featuring their children in their content, publicly sharing personal information about their children's emotional and physical health, and having their children participate in sponsored content, they are profiting from their children's work while violating their privacy and autonomy.

The phenomenon of family influencers creates legal issues in a variety of areas. There are internet privacy issues, potential child labor law violations, and even the possibility of human rights violations, given the exploitative and intrusive nature of much of the content.

The regulation of family influencers is critical for the health and safety of the next generation of children but, unfortunately, there are few if any domestic laws that speak to the issue or set up a framework for directly addressing it.¹⁵

⁹ See Dylan Reid Miller, *YouTube Family Channels: The New Frontier of Child Labor*, PROJECTOR (2022), <https://perma.cc/DG8U-XUCM>.

¹⁰ See Belinda Luscombe, *The YouTube Parents Who Are Turning Family Moments into Big Bucks*, TIME (May 18, 2017), <https://perma.cc/TF2C-XTJD>.

¹¹ See *id.*

¹² Hajjaji, *supra* note 3.

¹³ See Jade Scipioni, *Here's How Many Social Media Followers You Need to Make \$100,000*, CNBC (Apr. 30, 2021), <https://perma.cc/2DHA-A7PS>; Chavie Lieber, *How and Why do Influencers Make so Much Money? The Head of an Influencer Agency Explains*, VOX (Nov. 28, 2018), <https://perma.cc/SC2A-KX35>; Sydney Bradley, *How Much Money Instagram Influencers Make*, BUS. INSIDER (June 28, 2022), <https://perma.cc/H65M-EWX9>.

¹⁴ See Hajjaji, *supra* note 3.

¹⁵ See Amanda Silberling, *There Are No Laws Protecting Kids from Being Exploited on YouTube—One Teen Wants to Change That*, TECHCRUNCH.COM (Apr. 12, 2022), <https://perma.cc/N44J-W9YW>.

C. The Convention on the Rights of the Child and Prevention of Child Exploitation on Social Media

Because of the risk of child exploitation in the family and child influencer industry, the United Nations (U.N.) Convention on the Rights of the Child (CRC) may provide a roadmap for developing and enforcing protections for children featured on monetized social media run by their parents.¹⁶ The CRC is an international human rights treaty that sets out the civil, political, economic, social, health, and cultural rights of children.¹⁷ Signed in 1989, the CRC has been ratified by every eligible country other than the U.S.¹⁸ Its language and structure have been used as the framework for similar regional conventions like the African Charter on the Rights and Welfare of the Minor¹⁹ and the European Convention on the Exercise of Children's Rights.²⁰

While the CRC was signed long before the creation of social media and the rise of the internet age, 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.²¹

D. Roadmap

This Comment analyzes how international law, specifically the CRC, obligates countries to develop a legal framework to protect the children of family influencers from exploitation on social media and mitigate the risks that arise from sharing a child's personal information publicly. Given the potential human rights violations and the risk of child exploitation that arises within the family influencer industry, the CRC provides an effective roadmap for developing protections for children featured on monetized social media run by their parents.²² Part II of this Comment examines the relevant provisions of the CRC and how they may be utilized to promote and obligate lawmaking in this area. Part III discusses one potential international law solution: an optional protocol on children on social media. Part IV discusses domestic solutions in development or possible in the near future. Part V concludes.

¹⁶ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁷ *25th Anniversary of the Convention on the Rights of the Child, Questions and Answers*, HUM. RTS. WATCH (Nov. 17, 2014), <https://perma.cc/MN2A-FHYX>.

¹⁸ *Id.*

¹⁹ African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49.

²⁰ European Convention on the Exercise of Children's Rights, Jan. 25, 1996, E.T.S. 160.

²¹ *See generally* CRC pmbl.

²² *See generally id.*

II. THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD

A. Background

The CRC is the defining international regime on the human rights of children.²³ Its central principles are “non-discrimination; devotion to the best interests of the child; the right to life, survival, and development; and respect for the views of the child.”²⁴ It is the most widely and rapidly ratified human rights treaty in history, having been ratified by every eligible country other than the U.S.²⁵ States Parties pledge to protect children from economic and sexual exploitation, violence, and other forms of abuse, and to advance the rights of children to education, health care, and a decent standard of living.²⁶ Every five years, countries must submit reports to the Committee on the Rights of the Child, a U.N. committee of independent experts.²⁷ This committee examines each country’s reports and information from nongovernmental organizations and U.N. sources to identify areas of progress and concern and to recommend steps that the country should take to improve the lives of children.²⁸

The CRC was signed long before the creation of social media and was therefore not constructed with this specific context in mind. But its major thesis—to protect the basic human rights and best interests of every child—can be applied to influencer culture.

B. Application of the CRC to the Protection of Children on Social Media

This section examines five provisions of the CRC that could be applied to instances where children are featured on parent-run social media accounts. First, Article 3 of the CRC encourages state lawmakers to develop stricter regulations to address the risks of child exploitation and inappropriate child labor practices in the child and family influencer industry.²⁹ It states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”³⁰ This provision

²³ HUM. RTS. WATCH, *supra* note 17.

²⁴ Marie A. Fallinger, *Moving Toward Human Rights Principles for Intercountry Adoption*, 39 N.C. J. INT’L L. & COM. REGUL. 523, 528 (2014).

²⁵ HUM. RTS. WATCH, *supra* note 17.

²⁶ *Id.*

²⁷ *See Introduction to the Committee*, OHCHR (Nov. 7, 2022), <https://perma.cc/2FJE-D95W>.

²⁸ *Id.*

²⁹ CRC art. 3.

³⁰ *Id.*

could be interpreted to require social media companies to better regulate content that includes children and to closely monitor content featuring children for signs of abuse or endangerment by parent influencers.

Second, Article 12 could be applied to the issue of children's consent to being featured on social media accounts. It requires that "[s]tates parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."³¹ Family and child influencer content is significantly criticized because children cannot consent to being featured or having their information shared online.³² When a child grows up in an influencer family, with a camera constantly on them and strangers knowing the intimate details of their life, the line between fiction and reality can become blurred. Even if the child says they want to be featured or share some piece of information, they may not truly understand what is being asked of them.³³

Many proponents of family influencing argue that parents have their child's best interests at heart and can consent for them.³⁴ But because there are often financial interests at stake, these children may feel pressure to perform. It is therefore critical that they are equipped with the necessary information to understand that what they share on the internet exists forever, that there are dangers to sharing personal information publicly, and that they do not have to participate in their parents' endeavors. Article 12 could motivate the creation of a legally enforceable requirement of informed consent from children featured on social media.

Third, Article 16 is applicable to the potentially embarrassing, sensitive, or personal information that parent influencers shared about their children online. This provision requires that "[n]o child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."³⁵ It further provides that "[t]he child has the right to the protection of the law against such interference or attacks."³⁶

Family influencer content often includes parents sharing embarrassing or unflattering stories about their children's health and medical challenges, such as

³¹ CRC art. 12.

³² Hajjaji, *supra* note 3.

³³ *Id.*

³⁴ *Id.*

³⁵ CRC art. 16(1).

³⁶ *Id.* art. 16(2).

a toddler's potty training or a teen's menstrual cycle.³⁷ In addition, there is an entire subgenre of family influencers whose social media is framed around their children's disabilities. These families publicly share their children's medical, emotional, and developmental challenges under the guise of disability awareness and advocacy.³⁸ While there are some excellent examples of parent-run social media pages that do effectively educate on caring and advocating for children with disabilities, there are also many that cross the line from advocacy to exploitation. A successful legal scheme applicable to family and child influencer content should clearly delineate between exploitative and educational content. One proxy for this distinction may be whether the message of the video can be effectively conveyed without featuring the child on screen. A parent can easily discuss the challenges of advocating for their child or their experience managing their health crises without their child being on camera.

Fourth, Article 31 provides for 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."³⁹ This obligates states to incorporate regulation of the family influencer industry into child labor laws. When families vlog for a living, the children must always be "on." Simply documenting their day-to-day activities can be a core income source for these families, and viewers tune in specifically to watch the children. Even leisure activities may not be enjoyed to their full capacity when the pressure to perform for the camera looms in the background.⁴⁰ In the television and film industries, there are already rules in place limiting the amount of time a child can be on set or in front of the camera.⁴¹ Under the CRC the same should be required for family influencers. These children are asked to perform for the camera to gain followers and earn income, often detracting from their play time and sometimes even schoolwork.⁴² While from an outsider's perspective the content may appear as organic as a home video or family photo that is merely being shared with a wider audience, these posts and videos are often planned and highly performative.⁴³ The children are performers who generate profit, so they should

³⁷ Kathy Caprino, *How Social Media Over-Sharing About Your Child Can Cause Irrevocable Harm*, FORBES (Apr. 19, 2019), <https://perma.cc/V7RY-S5SY>.

³⁸ David M. Perry, *Your Disabled Child Is Not a Prop*, PAC. STANDARD (Oct. 25, 2018), <https://perma.cc/M49C-MBUA>.

³⁹ CRC art. 31.

⁴⁰ See Caprino, *supra* note 37.

⁴¹ See generally U.S. Dep't of Lab., *Child Entertainment Laws as of January 1, 2022*, <https://perma.cc/576R-ADQG>.

⁴² See Amelia Tait, *Their Lives Were Documented Online from Birth. Now, They're Coming of Age*, ROLLING STONE UK (June 2022), <https://perma.cc/6UMJ-MH2A>.

⁴³ See Madeline Holcombe, *What Happens When Parents Abuse and Exploit Children for Internet Fame?*, CNN (Mar. 22, 2019), <https://perma.cc/ZXP7-4TTZ>.

be treated as child performers under the law. Article 32 directly addresses child labor and economic exploitation, requiring that:

States [P]arties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁴⁴

It is inherently economically exploitative when a parent shares images of their child with the intention of making money that will not go exclusively to the child. This is especially true when the content is sponsored. For these influencers, their children are a part of their brand that generates views. Additional views equate to additional revenue and can entice companies to sponsor their content.⁴⁵ Having a social media presence and public persona at such a young age is also likely to affect social development.⁴⁶ The internet is a nearly permanent record, and having the intimate details of one's life available to the masses will likely affect how these children are treated by their peers. Under the CRC, States Parties should do everything in their power to protect children from economic exploitation and performative work that interferes with their development.

Finally, Article 36 requires that "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."⁴⁷ This section has described how the child and family influencer industry is inherently exploitative in nature and may negatively impact children. More tangibly, there are recent examples of family influencers physically endangering their children in an effort to create content.⁴⁸ The welfare of children is put at risk when they are featured on social media pages. States should therefore take legislative action to protect children from this kind of exploitation by their parents.

The CRC obligates States Parties to take protective measures and issue regulations surrounding children and social media. In addition, even without any explicit reference to the internet or influencer culture, much of what occurs in the family and child influencer industry is likely prohibited by the text of the CRC. However, while the CRC may be helpful for thinking about how to address the issues surrounding family influencers in the abstract, effective applications of the CRC in this real-world context create their own set of challenges.

⁴⁴ CRC art. 32

⁴⁵ See Allie Volpe, *How Parents of Child Influencers Package Their Kids' Lives for Instagram*, ATLANTIC (Feb. 28, 2019), <https://perma.cc/4NRF-HMSQ>.

⁴⁶ See *id.*

⁴⁷ CRC art. 36.

⁴⁸ See Mettler, *supra* note 1; Hajjaji, *supra* note 3; Organ, *supra* note 4.

C. Challenges of Utilizing the CRC To Regulate Family Influencers and Protect Children from Exploitation

In regulating behavior surrounding children, there is always a key conceptual challenge that must be addressed: we must define what the best interests of the child are. The CRC is grounded in the idea that states and individuals have an obligation to protect “the best interest of the child.”⁴⁹ This amorphous and broad obligation is sometimes easy to pinpoint—we should obviously protect against child slavery and physical abuse. But in other contexts, such as the family influencer industry, it is more difficult to distinguish what behavior is and is not in the best interests of the child.

As discussed in Part I, there are some family vlog channels where the parents’ desire for content, fame, and money leads them to abuse their children and place them in unsafe situations.⁵⁰ But is sharing information and images of your children on the internet, even for profit, always necessarily not in their best interests? Obviously, the goal is to protect children from malicious behavior like that of Machel Hobson and Mike Martin, but not every family influencer is a Hobson or Martin. To effectively utilize the CRC in regulating parent-run social media accounts, it is necessary to define what the best interests of children are in this context. Protections for the child’s best interest will then need to be balanced against parents’ rights to make choices for their children that they believe to be in their children’s best interests.

A major challenge to enforcement of the CRC generally is limited adherence oversight.⁵¹ If a state chooses not to follow the CRC in a particular scenario, there is little that can be done. As such, it would be difficult for a state to take action against another for failure to regulate in this area.⁵² However, the implementation problem is not unique to regulating family influencers, but rather a manifestation of the inherent limitations of any international treaty like the CRC.⁵³

Another major challenge to utilizing the CRC in the family and child influencer context is that the United States is not a party to the convention.⁵⁴ Family vlogging and parent managed social media focused on children are

⁴⁹ CRC art. 3.

⁵⁰ See *supra* Part I (discussing incidents where the parents’ running family accounts “DaddyOFive” and “Fantastic Adventures” were brought under legal investigation for child abuse related to their channels and content).

⁵¹ Eric Engle, *The Convention on the Rights of the Child*, 29 QUINNIPIAC L. REV. 793, 809–10 (2011).

⁵² See *id.* at 811.

⁵³ See *id.* at 812.

⁵⁴ *Id.* at 793–94.

incredibly popular in the U.S.⁵⁵ Many of the most popular families on social media are based out of the U.S., and because the U.S. is not a party to the CRC, its existence and application to the family influencer industry may do little to empower individuals and interest groups to take action against dangerous behavior within the industry, leaving Congress with less motivation to pass laws which respond to such advocacy. While there are popular family influencers in other countries, and as the prospects of social media as career grow that number is likely to increase, without buy-in from the U.S., grounding calls for regulation in the CRC may simply not have a broad enough effect.

III. PROPOSAL FOR AN OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON CHILDREN IN SOCIAL MEDIA

In 2000, the U.N. General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.⁵⁶ The Protocol was intended to achieve the purposes of certain articles in the CRC, where the rights are defined with the provision that parties should take “appropriate measures” to protect them in the context of child trafficking, prostitution, and pornography.⁵⁷ The Protocol outlines the standards for international law enforcement and obliges States Parties to pass laws against these practices “punishable by appropriate penalties that take into account their grave nature.”⁵⁸ The preamble to the Protocol states that:

[T]he Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.⁵⁹

Due to concern about “the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,” the adopting states agreed to this independent Protocol, which outlines specific obligations on the part of States Parties to prevent child sex trafficking, pornography, and prostitution.⁶⁰

⁵⁵ In 2020, nine of the ten family influencers with the most followers across all social media platforms were based out of the United States. Some of these families have upwards of 25 million followers. See *Top Family Vloggers*, NEOREACH (July 21, 2020), <https://perma.cc/HW2P-GQGV>; see also *Top Family Influencers*, NEOREACH (Nov. 11, 2022), <https://perma.cc/6GDM-KJ2J>.

⁵⁶ U.N. General Assembly, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, A/RES/54/263 (Mar. 16, 2001) [hereinafter *Optional Protocol*].

⁵⁷ *Id.* pmbl.

⁵⁸ *Id.* art. 3.

⁵⁹ *Id.* pmbl.

⁶⁰ See *id.*

While the dangers involved in the family influencer industry appear much less threatening than those of child sex trafficking, pornography, and prostitution, many of the concerns that necessitate an additional framework for protection and prevention are the same. In both areas there is a high risk of child exploitation.⁶¹ Child sex trafficking and prostitution create a more immediate and tangible threat to the child, but sharing a child's personal information and whereabouts on public internet forums makes them vulnerable to stalking and kidnapping.⁶² In addition, there have recently been a number of cases of parents sharing hyper-sexualized or suggestive photos of their children.⁶³ There are also many predatory individuals following and watching family influencer content, making up a significant portion of the viewership for these social media pages.⁶⁴

The Protocol was also written in part to “raise public awareness . . . to reduce consumer demand for the sale of children, child prostitution and child pornography.”⁶⁵ The preamble also notes that the accessibility of child pornography on the internet has made a specific protocol addressing the issue even more necessary.⁶⁶ There is a significant demand for and interest in family and child influencer content.⁶⁷ As that demand grows, the prospect of creating a stable source of income through influencing becomes more attainable for enterprising parents, bringing more people into the industry and increasing the amount of child centric and potentially exploitative social media content that is available. Therefore, raising awareness of the need to reduce consumer demand, and the potential dangers of family influencer content is a necessity in the effort to create more regulations and protections around children on social media.

Much of the reasoning behind this optional protocol speaks to the regulation and protection of children featured on parent-run social media accounts. Because this is a fairly recent phenomenon and the dangers are not always evident to those who don't spend significant time on social media, it is yet another area where the term “appropriate measures” as used in the CRC will require elaboration and more specific instructions to encourage states to act aggressively in response to the dangers of these practices.

⁶¹ See Silberling, *supra* note 15.

⁶² Elaine Roth, *The Real Risk of Posting Your Kids' Pictures on Social Media*, SHEKNOWS (Aug. 2, 2022), <https://perma.cc/F8ZK-UQQK>.

⁶³ Alison Cutler, *Toddler Goes Viral in 'Wren Eleanor' TikTok Videos. Moms Are Scared of Who's Watching*, STAR (July 31, 2022), <https://perma.cc/7ZJZ-HLNN>.

⁶⁴ See *id.*

⁶⁵ Optional Protocol pmbl.

⁶⁶ *Id.*

⁶⁷ See Luscombe, *supra* note 10.

A distinct protocol would be useful to raise awareness of the risks and dangers to children that are present in the influencer industry, encourage concerned parties to invoke the CRC to protect the children of family influencers, and help nudge law makers towards developing national laws protecting children on social media.

While not as extreme as child trafficking, pornography, and prostitution, child and family influencer culture is far more widespread and often looks innocent on its face.⁶⁸ This makes it more difficult to distinguish dangerous and harmless behavior. In addition, many macro-level issues, like child labor, financial exploitation, and child endangerment, exist in both areas. A similar response could be effective in this context, and a new optional protocol may be an appropriate response.

This optional protocol should address the many legal areas in which problems can arise in the child and family influencer industry. Ideally, it would include provisions that speak to child labor concerns, maintaining child privacy, preventing exploitation, and informed consent. Most importantly, this protocol would be an excellent opportunity for elaborating on what the “best interests of the child” are in this context and to draw specific lines for what states are obligated to prevent from occurring on parent run social media accounts featuring children.

IV. DOMESTIC LEGAL REGIMES SURROUNDING CHILD AND FAMILY INFLUENCERS

One of the greatest challenges of using the CRC as a framework for protecting child and family influencers is common to many areas of international law—implementation and enforcement is often self-imposed and self-regulated.⁶⁹ Therefore, using the CRC to make the kinds of policy changes necessary requires a tremendous amount of buy-in from States Parties to the convention.⁷⁰

Currently, Only France has adopted specific labor laws relating to child influencers.⁷¹ . Additionally, no country has either addressed whether the practice should be allowed at all or created laws regulating the kind of (non-overtly pornographic) content featuring their children parents can share.⁷²

⁶⁸ See Hajjaji, *supra* note 3.

⁶⁹ Engle, *supra* note 51, at 809–11.

⁷⁰ See *id.* at 811.

⁷¹ See Mary-Anne Desai, *France’s New Child Labor Laws: Is Social Media Influencer a Real Job?*, FILM DAILY (Dec. 17, 2020), <https://perma.cc/67SD-78GW>.

⁷² France is the only country regulating at all in this area and their law only focuses on child labor protections. See Katie Collins, *TikTok Kids Are Being Exploited Online, but Change Is Coming*, CNET (Aug. 8, 2022), <https://perma.cc/4QPQ-4TQF>.

However, public perception of the family and child influencer industry is shifting.⁷³ Many advocates are taking a stand against the practice, and politicians are recognizing the potential dangers.⁷⁴ While formal legislation regulating children on social media is in its infancy, more domestic laws addressing these issues are likely on the horizon.

A. France's Social Media Child Labor Law

In October 2020, France passed the first domestic law regulating child labor in the influencer industry.⁷⁵ The law went into effect in April of 2021⁷⁶ and is an extension of French labor law.⁷⁷ It regulates child influencers under the age of sixteen, establishes a mandatory work authorization for child influencers, and sets up financial expectations for legal representation and marketing companies working with these children.⁷⁸ Importantly, the statute also develops a scheme for protecting income generated by the child's work on video-sharing platforms.⁷⁹ It further recommends the adoption of policies aimed at facilitating a minor's right to be forgotten, which is required by a French data privacy law.⁸⁰

France's law acknowledges the potential dangers that arise with child influencing. It addresses not only the child labor and exploitation concerns but also the reality that children may not understand that what is shared about them now could be on the internet forever.⁸¹ While the law is specifically aimed at child influencers—a category that generally includes child centric accounts starring children that parents manage and facilitate—it could easily be applied to family influencers who feature their children extensively in their posts. Because it is the first of its kind, this law will be an excellent model for other domestic laws on children and social media or as a basis for further international law on the

⁷³ See Hajjaji, *supra* note 3; Caprino, *supra* note 37; Cutler, *supra* note 63.

⁷⁴ See Silberling, *supra* note 15.

⁷⁵ 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 [Law 2020-1266 of October 19, 2020 on Regulating the Commercial Exploitation of the Image of Children Under the Age of Sixteen on Online Platforms], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 20, 2020.

⁷⁶ Marie-Andrée Wiess, *Pour les Enfants: A New French Law Regulates Influencers Who Are Under the Age of 16*, LAW OFF. OF MARIE-ANDRÉE WIESS (Feb. 1, 2021), <https://perma.cc/EB2X-KH2G>.

⁷⁷ Nicolas Boring, *France: Parliament Adopts Law to Protect Child 'Influencers' on Social Media*, LIBR. OF CONG. (Oct. 30, 2020), <https://perma.cc/ZQW6-7985>.

⁷⁸ *Id.*

⁷⁹ “[O]nly part of the child’s income will be paid to the parents, while the balance will have to be placed in a special savings account that the child will be able to access when he or she reaches adulthood or legal emancipation.” *Id.*

⁸⁰ *Id.*

⁸¹ See Luscombe, *supra* note 10.

issue. Its multi-faceted approach leaves available the option to amend labor, child welfare, or privacy laws to address the issues that the family influencer industry creates.

B. Expanding California's Coogan Law to Influencer Media

The Coogan Act is a California state law that protects the earnings of child performers in movies and television.⁸² Currently, the Coogan Act does not cover child influencers, but some politicians are pushing to either include these children under its umbrella or to incorporate it into social media specific child labor laws.⁸³ Under the Coogan Act or a similar law, parents would be forced to set aside the revenue their child earns from appearing in content. This is more straightforward in the case of child influencer content than with family influencers. With the latter, it is more difficult to discern what part of the revenue is created by the child's appearance and performance when the parents are also featured. However, a definitive scheme for partitioning earning based on screen-time, subject of the video or post, or other factors could be articulated in the law.

If child influencers and the children of family influencers are considered performers under the Coogan Act, it could address some financial exploitation and child labor concerns. However, this type of law fails to address other issues. If parents cannot profit as much from their children on the internet, they might be less inclined to force them to put on a show for a camera. But even when they are not performing, their parents can still be profiting.⁸⁴ Many viewers of family vlogging channels actively seek out updates and information about the families' children, including medical, schooling, and other personal information that can be shared without ever showing the child's face.⁸⁵ For example, in the international adoption context, videos outlining the adoption journey attract significant attention. They include details about the adopted child and updates on their adjustment after they are brought home.⁸⁶ To fully address the problem, the most effective legal regimes will need to incorporate child welfare and data protection laws in addition to labor laws. This can help curb the family influencer industry's exploitative and potentially dangerous behaviors.

⁸² CAL. FAM. CODE §§ 6750–6753 (West 2020).

⁸³ Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them from Parents*, HOLLYWOOD REP. (Aug. 20, 2019), <https://perma.cc/LL8N-DKB9>.

⁸⁴ Miller, *supra* note 9.

⁸⁵ *Id.*

⁸⁶ See, e.g., Ellen Scott, *The Big Business of Sharing Adoption Videos on YouTube*, METRO.CO.UK (Oct. 31, 2020), <https://metro.co.uk/2020/10/31/the-big-business-of-sharing-adoption-videos-on-youtube-13386190/>.

C. United Kingdom House of Commons Report on Social Media and the Future of Laws Surrounding Children and Social Media in the U.K.

In 2022, the U.K. House of Commons Digital, Culture, Media, and Sports Committee released a report⁸⁷ that discussed at length the particular legal issues raised by children on public and monetized social media accounts.⁸⁸ While not a law, the report indicates that the U.K. government recognizes the challenges implicated here. It describes privacy concerns, the potential for psychological harm, the dangers of child influencers as advertisers, and, most importantly, the current legislative gap.⁸⁹ The report highlights the new French law and states that some Parliament members are similarly interested in regulating child influencers.⁹⁰ If these regulations come to fruition, it would be a huge win for the children at risk of exploitation on parent-run social media.

The House of Commons appears to have a solid grasp of the multifaceted issues at play, which could produce a comprehensive and effective set of laws on the issue. But the major concern is that, like the other domestic initiatives, the report focused on child influencers rather than family influencers who share details of their children's lives. This scenario is more legally complicated because parents and guardians can give consent for their minor children and generally have power over their children.⁹¹

V. CONCLUSION

In the last decade, many people have found their role as a social media influencer to be a viable career path.⁹² And while for some this means making silly skits or sharing creative pursuits, for others it means sharing the intimate details of their children's lives.⁹³ Family influencers profit from the trauma and drama of their everyday lives and create an environment where receiving informed consent from the featured children is nearly impossible.⁹⁴ These children are supporting their families and are being exploited for profit without

⁸⁷ HOUSE OF COMMONS DIGITAL, CULTURE, MEDIA AND SPORT COMMITTEE, INFLUENCER CULTURE: LIGHTS, CAMERA, INACTION? 258 (May 9, 2022), <https://perma.cc/BDN8-7UCQ>.

⁸⁸ *See id.* at 41–48.

⁸⁹ *See generally id.*

⁹⁰ *Id.* at 48.

⁹¹ Hajjaji, *supra* note 3; Marina A. Masterson, *When Play Becomes Work: Child Labor Laws in the Era of 'Kidfluencers'*, 169 U. PA. L. REV. 577, 597 (2021).

⁹² Joe Gagliese, *The Rise of the Influencer: Predictions for Ways They'll Change the World*, FORBES (July 8, 2022), <https://perma.cc/5URE-AV3E>.

⁹³ *See* Luscombe, *supra* note 10.

⁹⁴ *See* Hajjaji, *supra* note 3.

any guarantee they receive a cut of the income created or compensation for their work.⁹⁵

Currently, there is limited domestic law regulating or restricting family influencer content, and there is no international legal regime that speaks directly to these issues.⁹⁶ Still, the challenges that arise from the family influencer industry are issues of great international concern. The CRC can act as an effective motivation for policies that can address these concerns. Under the treaty, states have an obligation to curb influencers' use of their children in their content and ensure that when they are present, they are being appropriately compensated and protected. But, while the CRC theoretically protects children from this form of exploitation of the internet, implementation presents another hurdle. A robust and direct optional protocol could spur additional regulation of the family influencer industry and stricter enforcement of existing obligations.

Getting states to apply the plain text of the CRC to family influencers and create rules and regulations that target this industry will require a significant cultural shift that will involve both education on the topic and a broad acknowledgement of the dangers of family vlogging and family influencer culture. The key to success lies in individual states' acknowledgement of the potential dangers and exploitive nature of family and child influencer content and motivating them to regulate in these areas. We are now seeing the beginnings of this public awareness and legal trend in a few countries, and it is important to maintain this momentum.

⁹⁵ See Miller, *supra* note 9.

⁹⁶ See Collins, *supra* note 72.