



ESSAY

Influencing the Future: Compensating Children in the Age of Social- Media Influencer Marketing

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Introduction

In the age of smartphones, parents frequently take photos and videos of their children—even mundane moments are easy to share with friends and family. But what happens when these photos and videos are made public for any social-media user to see? Children in today's technocentric world may find themselves with an Internet identity before they can speak. What happens when they realize that their upbringings have been framed online in a manner over which they had no control? The phenomenon is more complex when parents profit from the child-centric content they post, turning digital content into real-world income at the expense of their children's privacy.

States generally entrust parents with caring for their children, but states will intervene in parent-child relationships in certain situations, such as by regulating child labor and child performers. Such state regulation generally does not apply when parents post child-centric content on social media for money.¹ The Constitution and federal law both recognize children's privacy interests, sometimes even when balanced against their parents' right to raise their children.² Lawmakers regulating families thus face tension between protecting

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1. *See, e.g.*, MONT. CODE ANN. § 41-2-104 (West 2019) (exempting minors employed by their parents or employed as an "actor, model, or performer" from child-labor laws); *see also* Julia Carrie Wong, "It's Not Play If You're Making Money": How Instagram and YouTube Disrupted Child Labor Laws, *GUARDIAN* (Apr. 24, 2019, 1:00 AM EDT), <https://perma.cc/Q76X-EG86>.

2. *See* *Carey v. Population Servs. Int'l*, 431 U.S. 678, 693 (1977) (plurality opinion) (quoting *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976)) (explaining that children have a right to privacy in deciding whether to procreate and that states cannot give parents "an absolute . . . veto" over the decision); *see also* Children's Online Privacy

children's interests and honoring their parents' interests in directing their upbringing. This tension is particularly apparent when parents post about their children online for profit.

Consider social-media influencer Katie Stauffer, a former escrow officer.³ Her Instagram account gained popularity after she began posting photos and videos of her twin daughters, Mila and Emma.⁴ Stauffer has been posting about the girls, now five years old, since before their birth; her ultrasound photos appear on her page, which at the time of this Essay has almost four million followers.⁵ Stauffer often posts about Mila and Emma being normal preschoolers,⁶ but her posts occasionally include them reciting scripted, comedic messages.⁷ Sometimes she uses photos and videos of Mila and Emma to market products or movies; the companies behind these advertisements pay her for the posts.⁸ The endeavor became so lucrative that Stauffer quit her job and earns income solely from Mila and Emma's content, which sometimes accrues up to 200,000 "likes" from Instagram users.⁹

Stauffer, although unusually successful, is not alone. Nearly half of digital marketers in the country spend "at least 10% of their marketing communication budget on influencer marketing."¹⁰ It is easy to find other social-media accounts like Stauffer's that convert parenting- and childhood-related content into profit.¹¹ In the business of advertising through social-media influencer

Protection Act of 1998, 15 U.S.C. §§ 6501-06 (2018) (setting requirements for website operators' privacy policies regarding children under the age of thirteen).

3. On social media, influencers are people who use their platforms to deliver a particular message to a wide audience. See Gerardo A. Dada, *What Is Influencer Marketing and How Can Marketers Use it Effectively?*, FORBES (Nov. 14, 2017, 8:00 AM), <https://perma.cc/62JC-BKAF>.
4. See Katherine Rosman, *Why Isn't Your Toddler Paying the Mortgage?*, N.Y. TIMES (Sept. 27, 2017), <https://perma.cc/THM8-B8AQ>; see generally Katie Stauffer (@kcestauffer), INSTAGRAM, <https://perma.cc/B52N-BATZ> (last visited May 6, 2019) (showing Katie Stauffer's Instagram account page).
5. See Stauffer, *supra* note 4 (Aug. 21, 2014), <https://perma.cc/UG9Z-PDS9> (showing a photo of an ultrasound captioned "Well Baby A is definitely ready for [Instagram]!!").
6. See, e.g., *id.* (Jan. 20, 2019), <https://perma.cc/M8ZF-ZF4A> (showing a photo of Mila and Emma asleep with a teddy bear and an iPad).
7. See, e.g., *id.* (Mar. 20, 2019), <https://perma.cc/T92X-AGS5> (showing a video of Mila discussing her disdain for "swimsuit season").
8. See, e.g., *id.* (May 1, 2019), <https://perma.cc/U3U6-P9ZN> (showing multiple photos of Mila and Emma eating cheese as an advertisement for Babybel); *id.* (Apr. 26, 2019), <https://perma.cc/NKN8-U7VN> (showing photos of Mila and Emma at a hotel pool as an ad for the resort).
9. See Rosman, *supra* note 4 (quoting Katie explaining that her Instagram account "is really lucrative" but she "wish[es] people knew that this is [her] job now").
10. Christina Newberry, *Influencer Marketing in 2019: How to Work with Social Media Influencers*, HOOTSUITE (May 2, 2019), <https://perma.cc/NTX4-QDDM>.
11. See Bianca Bosker, *Instamom: The Envidable, Highly Profitable Life of Amber Fillerup Clark, Perfect Mother and Social-Media Influencer*, ATLANTIC (March 2017),

promotions, a successful marketing campaign from a mom-influencer¹² like Stauffer can be like gold.

Perhaps the mom-influencer trend is like gold for children, too. Stauffer describes how her “kids weren’t getting what they needed” when she worked outside of her home.¹³ Other mom-influencers tell a similar story.¹⁴ The mom-influencer gig, though, is not without drawbacks. Criticism is easy on social media. Users can write comments on public posts instantly, and seemingly without consequences.¹⁵ The Department of Homeland Security explains that “[t]he relative anonymity of the internet is appealing for bullies because it enhances the intimidation and makes tracing the activity more difficult.”¹⁶ Children’s privacy is also a concern. Internet users have taken public content about children and used it for malicious purposes.¹⁷ Children old enough to

<https://perma.cc/WY4N-32D9> (reporting that the most successful mom-influencers “earn between \$1 million and \$6 million a year”); *Top 30 US Mom Youtubers to Follow in 2019*, FEEDSPOT, <https://perma.cc/8D5A-YWC4> (last updated Dec. 14, 2019).

12. This Essay uses the term “mom-influencer” to indicate a social-media user who earns money posting content about her children. An “influencer” is not necessarily female. However, women throughout history have been particularly entrepreneurial in finding ways to work from or close to home. Women in the twentieth century sold knitting, worked in real estate, and more. See George Guilder, *Women in the Work Force*, ATLANTIC (Sept. 1986), <https://perma.cc/DCB8-CXWS>.

In the digital age, becoming a social-media influencer and even using child-centric content for influencer marketing may be a natural extension of this entrepreneurial spirit. There is little data about who works as a social-media influencer, but the trend appears to be female-driven. This Essay thus uses the term “mom-influencer” to describe the phenomenon: A mom-influencer is a mother with creative talent and entrepreneurial spirit who creates a child-centric or partially child-centric social-media account that gains a significant following such that brands are willing to pay her to promote something on her page.

13. See Rosman, *supra* note 4.
14. See, e.g., Elna Cain, *How to Start a Mom Blog in 2020*, TWINS MOMMY, <https://perma.cc/77VK-U9J5> (last updated Dec. 11, 2019) (“I can stay home, make an online income and take care of my twins. Do you want that mama? I know you do.”).
15. See Rosman, *supra* note 4 (“Ms. Stauffer often gets criticized in the comments of her Instagram feed, where people frequently remark on the food she lets her children eat and the brands she takes money from.”). Social-media users can “ban” or “block” individual accounts, but that is often the only recourse for a bullying comment. See *Blocking People*, INSTAGRAM, <https://perma.cc/FK6H-KNEQ> (last visited Nov. 18, 2019).
16. See *Security Tip (ST06-005): Dealing with Cyberbullies*, U.S. DEP’T OF HOMELAND SECURITY, CYBERSECURITY & INFRASTRUCTURE SECURITY AGENCY, <https://perma.cc/UW8M-BGU5> (last updated Nov. 20, 2019).
17. See, e.g., Jennifer O’Neill, *The Disturbing Facebook Trend of Stolen Kids Photos*, YAHOO! (Mar. 3, 2015), <https://perma.cc/7JEK-5MM8> (explaining the trend of “digital kidnapping” in which someone “role play[s] with photos of other people’s children stolen from social media accounts”); see also *Kids for Privacy Campaign*, CHILD RESCUE COALITION, <https://perma.cc/56WK-ZSPA> (last visited Nov. 8, 2019) (“[C]hild predators not only use the Internet to distribute pornography, but also to stalk children, share info, and trade tips and techniques on how to seduce and lure them into sexual encounters.”).

understand the implications of a permanent Internet identity may be less than thrilled to learn that their online presences have been shaped for them.¹⁸ Best practices exist for parents sharing content about their children on social media.¹⁹ However, there is a dearth of resources and regulation regarding the trend of parents posting child-centric content for income.

This Essay proposes ways in which states can regulate online child-centric content by mom-influencers. States should stay out of the parent-child relationship when parents post child-centric content purely to share it, but some regulation is necessary when mom-influencers use their children's likenesses for profit. In these cases, the child is essentially a child performer. Current laws about child performers provide guidance for how mom-influencing might be regulated, but the existing laws do not fully fit the needs of this new phenomenon. States should consider how they can protect the well-being of child performers on social media and compensate social-media child performers for their lost privacy. Part I of this Essay describes current federal and state laws regulating child labor and child performers. Part II then recommends that states adopt work-permit requirements and blocked trusts called Coogan Accounts for social-media child performers. These recommendations recognize that both some regulation of children's income-driving presence online and some compensation for child performers' lost privacy are necessary.

I. Federal and State Child-Labor and Child-Performer Laws

Although federal and state laws limit children's ability to work, parents have a right to raise their children. As such, parents are usually exempted from child-labor laws and entrusted with their children's online privacy. The Supreme Court has recognized that the right to raise one's children is "essential"²⁰ and has only stepped in to prohibit children working for a parent or guardian when the potential for harm is significant.²¹ Society generally accepts that the parent-child relationship is sacred, and the law of parenthood refuses to "enforce certain economic transactions" within that relationship.²²

18. See, e.g., Sonia Bokhari, *I'm 14, and I Quit Social Media After Discovering What Was Posted About Me*, FAST COMPANY (Mar. 18, 2019), <https://perma.cc/9CG7-WDJY>; Taylor Lorenz, *When Kids Realize Their Whole Life Is Already Online*, ATLANTIC (Feb. 20, 2019), <https://perma.cc/UH9U-KHZG>.

19. Stacey B. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 EMORY L.J. 839, 877-83 (2017).

20. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

21. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by . . . regulating or prohibiting the child's labor . . .").

22. Jill Elaine Hasday, *Intimacy and Economic Exchange*, 119 HARV. L. REV. 491, 511, 516-17 (2005).

Congress recognized this in the Fair Labor Standards Act (FLSA), which governs child labor but does not apply to children employed by a parent.²³ This exemption derives from the statutory definition of “oppressive child labor,” implying that working for one’s parent is not oppressive.²⁴ Congress also recognized that parents should be in control of their children’s data online with the Childhood Online Privacy Protection Act (COPPA), which gives parents authority over the information websites collect from their children.²⁵ The statute defines “child” as an individual under thirteen years old.²⁶ Beyond children working for their parents, actors and performers—including child actors and performers—are also exempt from federal child labor law regardless of their employers.²⁷ This exemption exists because actors and performers earn high salaries and do not need the same minimum-wage and overtime protections as other workers, and because they qualify for the “creative professional” exemption.²⁸

States also regulate child labor, and some states explicitly regulate child performers. Like the FLSA, state statutes often exempt children employed by their parents from child-labor laws.²⁹ This means that child performers of mom-influencers are not covered under state or federal law as it currently stands. For example, Kentucky and Montana both follow the FLSA: Minors employed by their parents or employed as performers are exempt from the state’s child-labor laws.³⁰ Nevada exempts children working on “a motion picture” from child-labor laws, but the statutory definition of “motion picture” does not seem to include minors performing on social media.³¹ Other states exempt children working on “motion pictures or theatrical productions,” which also seems to exclude social-media performances.³²

23. See 29 U.S.C. § 212 (2018); 29 C.F.R. § 570.126 (2019).

24. See 29 U.S.C. § 203(l).

25. See *Complying with COPPA: Frequently Asked Questions*, FED. TRADE. COMM’N, <https://perma.cc/NW95-BXXM> (last updated Mar. 20, 2015).

26. 15 U.S.C. § 6501(1) (2012).

27. See, e.g., 29 U.S.C. § 213(c)(3); Entertainment Industry Employment, U.S. DEP’T OF LABOR, <https://perma.cc/G344-3ZBX> (last visited Dec. 1, 2019) (“Minors employed as actors . . . are exempt from [FLSA] coverage”).

28. See 80 Fed. Reg. 38,516, 38,517, 38,521 (proposed July 6, 2015) (codified at 29 C.F.R. §§ 541.302, 541.601); U.S. DEP’T OF LABOR, WAGE & HOUR DIV., FACT SHEET #17D: EXEMPTION FOR PROFESSIONAL EMPLOYEES UNDER THE FAIR LABOR STANDARDS ACT (FLSA) 3 (2019).

29. See, e.g., OR. REV. STAT. ANN. § 653.355 (West 2019) (adopting the FLSA child-labor exemptions).

30. KY. REV. STAT. ANN. § 339.210(1) (West 2019); MONT. CODE ANN. § 41-2-104 (2019).

31. NEV. REV. STAT. § 609.250 (2019). Nevada defines “motion picture” as “a film to be shown in a theater or on television, a film to be placed on a videodisc or videotape, an industrial, training or educational film and a commercial for television.” *Id.* § 609.185.

32. See, e.g., GA. CODE ANN. § 39-2-18 (West 2019); KY. REV. STAT. ANN. § 339.210(1); see also N.C. GEN. STAT. ANN. § 95-25.5 (West 2019) (exempting child performers working

Some states regulate child entertainment work specifically—this sometimes includes a work-permit requirement. Virginia has a permit requirement for children between fourteen and sixteen,³³ but the state exempts children working for their parents.³⁴ The Illinois child-performer law generally exempts children working as performers from child-labor laws.³⁵ However, Illinois does require employers of children under age sixteen to obtain an exemption waiver from the state’s restriction on children working in the evening or early morning hours; the waiver requires a determination by the State Director of Labor that the work will not be “be detrimental to the [child’s] health or welfare,” the child will be “supervised adequately,” and the child’s education will not be “neglected.”³⁶

The most restrictive states are more specific about child-performer protections. In New Mexico, employers hiring child performers to work during school days must provide appropriately credentialed teachers.³⁷ The range of state statutes demonstrates how child performers and their employers are treated quite differently across the states. When a state’s child-labor law differs from federal law, the most protective law applies.³⁸

In addition to restricting their employment, some states protect child performers’ earnings. In such states, parents or guardians must open trust accounts for their child performers.³⁹ These trusts are called Coogan Accounts after Jackie Coogan, who discovered as an adult that his parents had spent the majority of his child-performer earnings.⁴⁰ In New York, parents of a child performer are notified when their child applies for a work permit that they must establish a trust for her.⁴¹ At least fifteen percent of the child’s earnings must be placed in the trust, and the state will not renew the child’s work permit unless her parent or guardian can demonstrate compliance with the Coogan law requirement.⁴² New Mexico’s Coogan law is similar but only applies to

on “motion pictures or theatrical productions” from all North Carolina child-labor laws except the state’s certificate program for juvenile employees).

33. VA. CODE ANN. § 40.1-88 (2019).

34. *See id.* § 40.1-79.01(A)(6).

35. *See* 820 ILL. COMP. STAT. ANN. § 205/8.1(a) (2019).

36. *See* 820 ILL. COMP. STAT. ANN. § 205/8.1(a)-(b) (2019).

37. N.M. STAT. ANN. § 50-6-18(E) (West 2019).

38. *State Labor Laws*, U.S. DEP’T OF LABOR, <https://perma.cc/72FU-DEUS> (last visited Nov. 8, 2019).

39. *Coogan Law*, SCREEN ACTORS GUILD, AM. FED’N OF TELEVISION & RADIO ARTISTS, <https://perma.cc/PW2C-GJY2> (last visited Nov. 8, 2019).

40. *See id.* (“Coogan eventually sued his mother and former manager for his earnings. As a result, in 1939, the Coogan Law was put into effect, presumably to protect future young actors from finding themselves in the same terrible situation that Jackie Coogan was left in.”).

41. N.Y. LAB. LAW § 151(1)(d) (McKinney 2019).

42. *Id.* § 151(1)(d), (4)(a).

contracts worth over one thousand dollars in gross earnings.⁴³ Louisiana's Coogan law applies at five hundred dollars.⁴⁴ Other states such as California and Kansas have their own Coogan laws.⁴⁵ If parents fail to open a Coogan Account, they may not be able to renew their child's work permit,⁴⁶ or the state may hold the money until a compliant account exists.⁴⁷ Child performers in states with Coogan laws thus enjoy some legal protection if their parents are irresponsible with their earnings.

II. Regulating Mom-Influencers to Protect Child Performers' Well-Being and Compensate Child Performers for Lost Privacy

Existing statutory schemes insufficiently compensate a child performer on social media for the loss of privacy that occurs when a mom-influencer shares her personal information online for profit. This Part recommends that states adopt legislation to address this compensation deficiency. Although child-labor laws generally do not apply to children employed by their parents, states should extend child-labor laws to cover child performers working for mom-influencers on social media because of the privacy risks of exposing children's personal information online. This is consistent with the Supreme Court's willingness to interfere in the parent-child relationship when a child's well-being is seriously implicated by a parent's decision. In the mom-influencer context, compromising children's privacy before a large audience can have severe negative consequences.⁴⁸

Subpart II.A describes how implementing work-permit requirements for children of mom-influencers will assist states in tracking which children's privacy interests are at risk and understanding how mom-influencers use social media to earn money. Subpart II.B explains why states should adopt Coogan laws to protect the earnings of children of mom-influencers, especially given their compromised privacy. This Subpart also explains how drawing from existing Coogan laws can help states determine which social-media influencers fall within mom-influencer regulations and determine the percentage of earnings mom-influencers should hold for their child performers. These

43. See N.M. STAT. ANN. § 50-6-19(A), (I).

44. See LA. STAT. ANN. §§ 51:2132(A), 2133(A)(1) (West 2019).

45. See CAL. FAM. CODE §§ 6752(b)(1), 6753(a) (West 2019) (requiring employers of child performers to set aside fifteen percent of their gross earnings in a trust account); KAN. STAT. ANN. § 38-620(b)(1) (2019) (same).

46. N.Y. LAB. LAW § 151(1)(d).

47. See LA. STAT. ANN. § 51:2133(E) (requiring employers to forward 15% of a child performer's earnings to the state to hold if the child's parents do not open a Coogan account). In California, the nonprofit The Actors' Fund of America (rather than the state) holds a child's 15% earnings share if parents do not open a Coogan Account. CAL. FAM. CODE §§ 6752(b)(9)(A).

48. See *supra* notes 15-18 and accompanying text.

recommendations will ensure that social-media child performers are protected legally and financially in exchange for their compromised privacy.

A. Work-Permit Requirements

Not all states impose work-permit requirements on child performers,⁴⁹ but doing so would benefit children working for mom-influencers in several ways. First, states could track which children are working for their parents for profit on social media. This would allow states to better understand the trend of child-centric influencer marketing—states could adjust their child-performer laws according to any identifiable developments or concerns from the permitting process. For example, if permit renewals required mom-influencers to indicate the income their child-centric posts generated in the previous year, states would be better situated to determine whether there was a correlation between a child working as a performer for a mom-influencer and that same child missing school. States could also look for a correlation between the amount a child performer earned and the amount of school she missed—a significant number of absences could be a warning sign of a child working too many hours. Filling out a work permit application may also cause some mom-influencers to consider whether compromising her child’s privacy is worth the revenue.

Implementing a work-permit requirement could also help states ensure that mom-influencers understand that their children’s privacy is at risk, and ensure that older children are able to provide informed consent to the use of their information. COPPA helped define online privacy risk spaces.⁵⁰ Implementing a work-permit requirement would extend those risk spaces to social-media accounts sharing children’s personal information for money. States could further look to COPPA to create different age-appropriate permit requirements; under COPPA, children under thirteen are considered too young to understand online privacy.⁵¹ States might require mom-influencers with children thirteen and younger to certify on their child performer’s work permit that they understand the privacy risks of using a child’s personal information to earn money. Once a child turns fourteen, the permit process could differ. States could require older children to certify on their own work permits that they understand the privacy risks of their mom-influencers using their personal

49. See, e.g., ARIZ. REV. STAT. ANN. § 23-231 to -232, -235 (West 2019) (listing various requirements—but no work permit requirement—for workers under eighteen or under sixteen, and specifically exempting child performers from those requirements); see also *Child Entertainment Laws as of January 1, 2019*, U.S. DEP’T OF LABOR, WAGE & HOUR DIV., <https://perma.cc/7N6N-F5NY> (last visited Dec. 22, 2019) (listing the work permit requirements for each state).

50. See *Complying with COPPA*, *supra* note 25 (“The Rule applies to operators of commercial websites and online services (including mobile apps) directed to children under 13 that collect, use, or disclose personal information from children, and operators of general audience websites or online services with actual knowledge that they are collecting, using, or disclosing personal information from children under 13.”).

51. See *id.*

information. Such a system would acknowledge the importance of young children's privacy interests while providing older children with agency (at least legal agency) to decide whether their information is used to make money on social media. This would create an informed consent aspect to mom-influencing that does not currently exist, which would help ensure that both mom-influencers and their older child performers are aware of the privacy implications of such work.

B. Coogan Accounts

Establishing Coogan Accounts for child performers of mom-influencers would help compensate the child performers for their lost privacy. COPPA established that children's online privacy is a national priority; young children who cannot fully appreciate the implications of websites collecting and using their personal information are entitled to have their parents handle their online privacy. When parents use their children's personal information, which under COPPA includes a child's image or voice,⁵² the law should recognize and compensate for the invasion of the child's privacy, which COPPA does not currently do. A Coogan Account requirement is one way this might work. Mandating trust accounts for child performers working for mom-influencers would provide legal protection so that children can enjoy the fruits of their work when they are legal adults. Such accounts would also represent states' acknowledgement that is unjust for parents to capitalize on their children's compromised privacy without compensating the children directly. Plus, it is possible, and maybe probable, that some mom-influencers are already setting aside a portion of their profit for their children to use in the future.

A blend of existing state Coogan laws is most appropriate for provisions related to mom-influencers. From New York, states should adopt a provision that requires mom-influencers to provide proof of a compliant account for their child performer to receive a work permit. This provides an incentive to any mom-influencer who anticipates working for more than a year to adhere to the law. In Louisiana, if parents do not create a Coogan Account for their minor performer, the employer is responsible for sending fifteen percent of the child's earnings to the state to hold.⁵³ Because the employer in a mom-influencer scenario is the parent herself, states might copy Louisiana and require the brands paying mom-influencers to ensure that a Coogan Account exists and, if not, to forward the appropriate funds to the state for placement in a blocked trust account. As is usually the case, the funds should not be available until the child is eighteen.⁵⁴

52. See Tianna Gadbaw, *Legislative Update: Children's Online Privacy Protection Act of 1998*, 36 CHILD. LEGAL RTS. J. 228, 229 (2016).

53. LA. STAT. ANN. § 51:2133(E) (West 2019).

54. See, e.g., CAL. FAM. CODE § 6753(b) (West 2019); LA. STAT. ANN. § 51:2133(A)(2); N.M. STAT. ANN. § 50-6-19(B) (West 2019).

Additionally, to ensure fairness to mom-influencers and their child performers, states should set threshold amounts for when a mom-influencer is required to open a Coogan Account. This would distinguish between a mom-influencer who features her child so predominantly in revenue-driving posts that she must register for a work permit and social-media influencers who occasionally post about their children but who earn money solely from non-child-centric posts.⁵⁵ A threshold amount would similarly acknowledge that revenue-driving posts are a greater privacy risk for children when they reach a large audience. Mom-influencer contracts are often tied to the success of posts.⁵⁶ With a threshold Coogan Account requirement, a mom-influencer would not have to open a blocked trust if a post (or series of posts) that was projected to be successful instead fell flat. In setting thresholds, states should consider New Mexico's one-thousand-dollar threshold or Louisiana's five-hundred-dollar threshold. That is, a mom-influencer would not have to establish a Coogan Account until she earned, for example, one thousand gross dollars from posts involving a child performer (regardless of how many posts it took to reach that level).

Finally, states should consider the differences between typical child performers and social-media child performers when establishing the percentage of mom-influencer earnings that must be set aside. Most current Coogan Accounts require parents to set aside fifteen percent of their child performer's earnings.⁵⁷ On social media, the mom-influencer creates the content and communicates with brands to facilitate business. States may consider reducing the percentage to acknowledge that mom-influencers do more of the work than when a child performer acts in a movie. Additionally, unlike child actors on movie sets, child performers on social media may only

55. Work-permit and Coogan Account requirements may cause mom-influencers to construct their revenue-driving posts such that they do not feature their child's personal information. As it stands, mom-influencers often make posts about their children that are not specifically intended to drive profit. *See, e.g.,* Stauffer, *supra* note 4 (Mar. 18, 2019), <https://perma.cc/CW2C-G89P> (showing a photo of Mila and Emma without any advertisement). Although these posts have a potential to reach a large audience, regulating such posts may be a governmental overstep into parents' right to raise their children as they see fit.

An important question, then, is whether every single child-centric post for a successful mom-influencer is technically income-driving because such posts keep social media followers engaged and create the platform that brands value when they reach out to influencers for marketing purposes. States will have to address this question if and when they decide to regulate mom-influencers.

56. *See How to Create a Social Media Influencer Agreement*, IZEA (Jan. 8, 2019), <https://perma.cc/4PQD-9GER>.

57. *See Coogan Law*, *supra* note 39. Another issue that states may have to confront is mothers like Katie Stauffer whose content sometimes features just one child and other times features multiple children. In this case, states may have to decide if the children pictured should be compensated equally for the purposes of their Coogan Accounts, or if there is a methodical way to determine how to much each child should be paid.

need to work for a few minutes at home to create a profitable post. States may alternatively raise the percentage to recognize that sharing posts on social media ordinarily involves child performers acting as themselves rather than playing a character. A higher percentage may compensate child performers for the increased danger from posts that will jeopardize their privacy and potentially cause future embarrassment or reputational harm. States implementing Coogan laws for mom-influencers will have to grapple with the appropriate percentage of earnings that compensates child performers while allowing mom-influencers to profit from their work.

Conclusion

Social media appears to be a trend with staying power. The prevalence of mom-influencers is likely to rise as social media becomes more entrenched in society. As social-media platforms evolve, states should ensure their laws can, at minimum, compensate child performers for the loss of their online privacy. This Essay provides a starting point that states should consider as they regulate in the digital age. Social-media child performers whose privacy is at risk will benefit from such consideration.