

## NOTE

### GROWING UP VIRAL: “KIDFLUENCERS” AS THE NEW FACE OF CHILD LABOR AND THE NEED FOR PROTECTIVE LEGISLATION IN THE UNITED KINGDOM

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#### ABSTRACT

*The world of child influencing has forged a path for children to reach Internet stardom while simultaneously making a small fortune. Every day, more and more parents try to have their children break into this market and become a “kidfluencer” by posting content of them on social media. This Note argues that current advertising and child labor laws in the United Kingdom are insufficient to protect the interests of child influencers. This Note addresses the legal framework for dealing with potentially negative consequences that children working as kidfluencers may confront. Due to the role of parents and the private nature of the industry, child influencers are in a unique position to endure psychological and reputational harm, as well as financial exploitation. By allowing the kidfluencer industry to continue in this unregulated manner, the United Kingdom fails to fulfill the obligations imposed by the United Nations Convention on the Rights of the Child. To solve this problem, this Note proposes that Parliament adopt legislation that requires obtaining a license before working in the kidfluencer industry, and that mandates the creation of blocked trust accounts for kidfluencers. Implementing this legislation will allow the United Kingdom to fulfill the obligations set by the United Nations Convention on the Rights of the Child, while simultaneously respecting family autonomy.*

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## I. INTRODUCTION

“*What do you want to be when you grow up?*” If asked to guess how children answer this question, you would likely predict jobs such as a doctor, lawyer, police officer, or teacher. However, if your answer did not also include “influencer,” then you may have a lot to learn. An influencer is “a person who is paid by a company to show and describe its products and services on social media, encouraging other people to buy them.”<sup>1</sup> Incredibly, nearly one in five children ages eleven through sixteen in the United Kingdom want to be an influencer as their full-time job.<sup>2</sup>

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1. *Influencer*, CAMBRIDGE ENG. DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/influencer> [<https://perma.cc/WM98-8ZFJ>]. In 2019, the Merriam-Webster Dictionary also added the word “influencer.” See *Influencer*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/influencer> [<https://perma.cc/79Q7-6E57>] (defining “influencer” as “a person who is able to generate interest in something (such as a consumer product) by posting about it on social media”).

2. Aphrodite Papadatou, *1 of 5 British Children Want a Career as Social Media Influencers*, HR REVIEW (Jan. 31, 2019), <https://www.hrreview.co.uk/hr-news/1-of-5-british-children-want-a-career-as-social-media-influencers/114597> [<https://perma.cc/N3NB-L35L>].

However, a child does not need to wait until they are an adult to be an influencer. When an influencer is a child, they are often referred to as a kidfluencer.<sup>3</sup> There are many highly successful kidfluencers, such as ten-year-old Lorenzo Greer, known as “Tekkerz Kid,” from Birmingham, who earns more than £400,000 per year as an influencer.<sup>4</sup> Lorenzo has over 1.6 million YouTube subscribers who tune into his channel to watch him unbox toys, review soccer shoes, perform soccer tutorials, and more.<sup>5</sup> He even has his own line of merchandise, a role in a global Nike campaign, and partnerships with toy brands such as Lego and Hasbro.<sup>6</sup> Not all influencers are the same; there are different levels of influencer status that one can attain, ranging from “nano” to “mega,” with ample money to be made at all tiers.<sup>7</sup> An example of a mega-kidfluencer is American video blogger Ryan Kaji of “Ryan’s World,” who has earned approximately \$180 million and racked up more than 30 million subscribers from playing with and reviewing toys on his YouTube channel.<sup>8</sup> Because influencing has become so popular, public relations companies now target parents who are trying to get their kids famous through influencing.<sup>9</sup>

With the rise of this new industry also comes new problems. Current U.K. advertising and child labor laws are insufficient to protect the interests of children working in the new and expanding child influencer industry.<sup>10</sup> In order to fulfill the obligations

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3. See *Kidfluencer*, MACMILLAN DICTIONARY, <https://www.macmillandictionary.com/us/dictionary/american/kidfluencer> [https://perma.cc/AF58-SPL7] (defining “kidfluencer” as “a child who is an influencer on social media”).

4. See Deborah Linton, ‘When I’m 16, My Baby Brother Will Take Over’: The Rise of the Kidfluencer, THE GUARDIAN (Mar. 23, 2019, 2:00 AM), <https://www.theguardian.com/media/2019/mar/23/rise-of-the-kidfluencer-tekkerz-kid-mcclure-twins> [https://perma.cc/9TW7-SBT3].

5. See generally Tekkerz kid, YOUTUBE, [https://www.youtube.com/channel/UCfvLH5R0Rv\\_GWldg\\_YFYacA](https://www.youtube.com/channel/UCfvLH5R0Rv_GWldg_YFYacA) [https://perma.cc/VV26-A4HV] (depicting Lorenzo Greer’s YouTube channel).

6. See Linton, *supra* note 4.

7. See Kaya Ismail, *Social Media Influencers: Mega, Macro, Micro, or Nano*, CMS WIRE (Dec. 10, 2018), <https://www.cmswire.com/digital-marketing/social-media-influencers-mega-macro-micro-or-nano/> [https://perma.cc/CW3L-5N7A].

8. See *How Much Money Ryan’s World Makes on YouTube – Net Worth*, NAILBUZZ (Dec. 28, 2020), <https://naibuzz.com/much-money-ryan-toys-review-makes-youtube> [https://perma.cc/4P2T-FHTE]; see generally Ryan’s World, YOUTUBE, [https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO\\_w](https://www.youtube.com/channel/UChGJGhZ9SOOHvBB0Y4DOO_w) [https://perma.cc/8Y9W-J6DB] (showing Ryan Kaji’s YouTube channel).

9. See, e.g., THE VIRAL GROUP, <https://viraltalent.co.uk/viral-kids/> (last visited Feb. 28, 2022) (Viral Talent, a British marketing agency, has created influencer academies and camps for children who want to be famous on platforms such as YouTube, TikTok, Twitch, Instagram and more).

10. See discussion *infra* Section III.B.

imposed by the U.N. Convention on the Rights of the Child, Parliament should adopt new legislation that carefully balances family autonomy with protecting children from exploitation by expanding mandatory licensing requirements and requiring the creation of blocked trust accounts.

This Note begins by exploring the background of the kidfluencer industry. Next, it analyzes potential unique harms of kidfluencing and addresses why protective legislation is needed. This section distinguishes kidfluencing from traditional child acting and addresses the psychological and reputational harm kidfluencers may face, as well as the potential for financial exploitation. Further, this paper suggests that current advertising laws are insufficient to protect kidfluencers because they focus on regulating content, not the creators. The next section explains why kidfluencers often fall outside the scope of child labor laws, particularly licensing requirements. The following section addresses Children's Rights, specifically those created by the U.N. Convention on the Rights of the Child, and why these rights necessitate implementing protection for kidfluencers. The last section proposes a much-needed legislative solution.

## II. BACKGROUND: THE KIDFLUENCER INDUSTRY

The world of influencing is relatively new, but it has experienced exponential growth due to the rise of social media. Because so many people are active on social media,<sup>11</sup> brands have adapted their marketing strategies to reach this audience by using what is known as “influencer marketing.”<sup>12</sup> Influencer marketing is when “companies partner with influencers to increase brand awareness or conversions among a specific target audience.”<sup>13</sup> Companies will sponsor an influencer's online content, either through direct cash payment or free promotional goods, in exchange for endorse-

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11. There are approximately 45 million social media users in the United Kingdom, and by 2025, that number is projected to reach almost 51 million individuals. See Joseph Johnson, *Social Media Usage in the United Kingdom (UK)- Statistics & Facts*, STATISTA (Oct. 27, 2020), <https://www.statista.com/topics/3236/social-media-usage-in-the-uk/> [<https://perma.cc/4M7L-RYH3>]; Joseph Johnson, *Forecast of Social Network User Numbers in the United Kingdom (UK) from 2015 to 2025*, STATISTA (Jan. 25, 2021), <https://www.statista.com/statistics/553530/predicted-number-of-social-network-users-in-the-united-kingdom-uk/> [<https://perma.cc/32J3-4533>].

12. See Rochelle Bailis, *The State of Influencer Marketing: 10 Influencer Marketing Statistics to Inform Where You Invest*, BIG COM., <https://www.bigcommerce.co.uk/blog/influencer-marketing-statistics/#10-most-important-influencer-marketing-statistics-for-2020> [<https://perma.cc/V362-LA29>].

13. *Id.*

ments of their brand, product, or service on the influencer's social media pages.<sup>14</sup> The theory is that because social media influencers typically have a loyal following that they built through substantial content creation, their followers are more likely to trust them and take their advice about what goods and services to buy, as opposed to recommendations from standard advertisements.<sup>15</sup> Globally, influencer marketing is a \$9.7 billion industry that is forecasted to grow to \$22.3 billion by 2024.<sup>16</sup> Businesses currently generate an average of "\$6.50 for every \$1 invested in influencer marketing."<sup>17</sup>

Children are a growing target of influencer marketing efforts. They not only impact the buying decisions of their parents, but they are also upcoming consumers themselves.<sup>18</sup> One way for companies to target these children is to work with kidfluencers.<sup>19</sup> Children do not see kidfluencers as celebrities, but as friends.<sup>20</sup> Thus, children are more susceptible to kidfluencers' marketing and are a popular target for influencer marketing.<sup>21</sup>

Kidfluencers earn money in a few ways. First, kidfluencers can receive compensation for sponsored content from companies through the above-mentioned influencer marketing arrangement.<sup>22</sup> These earnings can be monetary payments or products sent directly from the company.<sup>23</sup> For example, the mother of six-year-old Lily, who currently has approximately 150,000 followers

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14. *See id.*

15. *Influencer Marketing in the United Kingdom (UK)*, STARNGAGE, <https://starn-gage.com/influencer-marketing-united-kingdom/> [<https://perma.cc/9BXM-65V8>] ("71% of consumers are more likely to make a purchase based on a social media reference.").

16. *See* Werner Geyser, *The State of Influencer Marketing 2020: Benchmark Report*, INFLUENCER MKTG. HUB (Mar. 1, 2020), <https://influencermarketinghub.com/influencer-marketing-benchmark-report-2020/> [<https://perma.cc/YSM8-UNAJ>]; VUELIO, *UK INFLUENCER SURVEY 2020*, at 3 (2020), <https://www.vuelio.com/uk/wp-content/uploads/2020/05/UK-Influencer-Survey-2020.pdf> [<https://perma.cc/5FJZ-4CYU>].

17. *See* STARNGAGE, *supra* note 15.

18. Children influence up to 80 percent of all household purchasing decisions. *See* Amber Nicole Alston, *It's Cool to Be a Kid(fluencer)*, LICENSE GLOB. (Apr. 17, 2019), <https://www.licenseglobal.com/trends/its-cool-be-kidfluencer-0> [<https://perma.cc/36MF-SGEC>].

19. *See id.*

20. *See id.*

21. *See id.*

22. *See supra* discussion Section II.

23. *See* Linton, *supra* note 4; Ines Novacic, "It's Kinda Crazy": Kid Influencers Make Big Money on Social Media, and Few Rules Apply, CBS NEWS (Aug. 23, 2019, 8:08 AM), <https://www.cbsnews.com/news/kid-influencers-instagram-youtube-few-rules-big-money-cbsn-originals/> [<https://perma.cc/4MSU-TBRM>] (quoting a mother of twin kidfluencers: "[p]retty much every day we get shipments of boxes . . . from different companies that we work with, and the girls model their clothes.").

on Instagram and TikTok,<sup>24</sup> reports that in addition to charging for posts themselves, Lily receives daily packages of products for her to keep regardless of whether she posts reviews, including Gucci outfits, bags, shoes, clothes, and furniture.<sup>25</sup> Kidfluencers also make money from social media platforms that sell advertisement space on the kidfluencers' channels.<sup>26</sup> Making money in this manner does not depend on promoting sponsored content; kidfluencers earn money simply by obtaining a lot of views, no matter the post's content. YouTubers receive \$2–\$7 per 1,000 views.<sup>27</sup> In addition, influencers often use Google AdSense, which allows Google to show advertisements on influencers' YouTube accounts in exchange for payment to the influencer on a "per-click basis."<sup>28</sup> To put this into perspective, five-year-old kidfluencer Gabrielle generates a revenue of around \$30,000 per day from ads that appear on her YouTube channel called "Toys and Little Gaby."<sup>29</sup>

### III. ANALYSIS

#### A. *Harms of Kidfluencing: Is There Even a Problem?*

Children have been working in the public eye as actors in movies, television shows, and commercials for generations, and kidfluencing may seem to be no different from traditional advertisements featuring child actors. So, what makes kidfluencing any different? Why are kidfluencers in need of special protection if traditional child actors are not? The answer lies in the private

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24. Parents who run accounts for their children on TikTok have yet another way of earning money. In July 2020, TikTok announced the creation of a "creator fund," in which those account owners over 18 years old with a baseline number of followers who consistently post original content, have the potential to be paid by the app. See Vanessa Pappas, *Introducing the \$200M TikTok Creator Fund*, TIKTOK, <https://newsroom.tiktok.com/en-us/introducing-the-200-million-tiktok-creator-fund> [<https://perma.cc/9AUH-HUTA>].

25. See Linton, *supra* note 4; see generally Aleksandra Hoyles (@olkafiolka), INSTAGRAM, <https://www.instagram.com/olkafiolka/> [<https://perma.cc/Y5XJ-5MK7>] (depicting Lily's Instagram account).

26. See Julian, *How Much Money Toys and Little Gaby Makes on YouTube – Net Worth*, NAILBUZZ (Feb. 22, 2020), <https://naibuzz.com/how-much-money-toys-and-little-gaby-makes-on-youtube-net-worth/> [<https://perma.cc/3QVR-EFGK>] (explaining how the kidfluencer channel *Toys and Little Gabby* makes money from advertisements on her YouTube channel).

27. "Monetized views range from 40%–80% of the views." *Id.*

28. See generally GOOGLE, <https://support.google.com/adsense/answer/6242051?hl=EN> [<https://perma.cc/U8ES-L464>] (explaining how Google AdSense works).

29. See Julian *supra* note 26; See also Gaby and Alex, *Alex and Gaby Play at Excavator Land*, YOUTUBE (July 31, 2020), <https://www.youtube.com/watch?v=jjtP9IZjNOU> [<https://perma.cc/F8SH-ERY5>] (showing a video on Gaby's YouTube channel that has more than 1.7 million views).

nature of the kidfluencer industry and the unique role that parents have in it. Although kidfluencing may not be comparable to what is traditionally thought of as “child labor,” those who work as kidfluencers are not free from harm.<sup>30</sup> Kidfluencers face an unprecedented risk of psychological, reputational, and financial harm.<sup>31</sup> Existing laws that apply to those children working in the traditional child actor setting are not sufficient to cover the scope of the emerging kidfluencer industry.

### 1. What Makes the Kidfluencer Industry Unique?

The biggest difference between traditional acting and working as a kidfluencer stems from the private nature of kidfluencing. Traditional acting takes place outside of the home, usually at a formal set that is run by production personnel. Meanwhile, the social media platforms that kidfluencers use allow content creation to take place at any location, which is often inside the private home. When working as a child actor in the United Kingdom, working conditions need to meet labor law standards and child performers need to have licenses.<sup>32</sup> Conversely, kidfluencers do not need licenses, and labor law standards are often inapplicable.<sup>33</sup> Even though kidfluencers may have formal contracts with sponsors, the content creation itself is still in the hands of the parents.<sup>34</sup> Instead of professional production personnel running the show within the limits of legal regulations,<sup>35</sup> child social media content is most likely completely prepared by the child’s parents outside the scope of labor regulations, giving them unfettered control over the child’s working hours and content creation conditions.<sup>36</sup>

Parents of kidfluencers who make money solely through advertisements on their pages retain high levels of control. Parents may

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30. See discussion *infra* Section III.A.2.

31. See *id.*

32. See generally Children and Young Persons Act 1963, c. 37, § 37, <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/QK7Y-GRZP>] (The statute generally mandates child performers, such as child actors, obtain licenses before working).

33. See discussion *infra* Section III.B.

34. See Marina A. Masterson, Comment, *When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers,”* 169 U. PA. L. REV. 577, 592 (2020) (“Because the content creation is often managed by the parents, the company that contracted the work has almost no control when compared to a traditional film set.”).

35. For example, hours of work, rest breaks, meal breaks, and education hours are all regulated. See *In-House Guidance for the Licensing of Children in Productions*, BBC, 1, 16–19 (2015), [http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/childprotection/pdf/licensing\\_guide.pdf](http://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/policiesandguidelines/childprotection/pdf/licensing_guide.pdf) [<https://perma.cc/5SBV-V25J>].

36. See discussion *infra* Section III.B.2.

decide what lines the kid is going to say, what activity the kid is going to do, the length of the video, the quantity of posts, the arrangements of the post, and when and where the content is posted.<sup>37</sup> Because of the private nature of the content creation process, there is no way to truly know how much “work” a child is doing before the final product is posted, and under what conditions the content was created.<sup>38</sup> Was a video a spontaneous creation, or did a child spend hours learning what lines to say and what to do? Was the final product capturing the first reaction, or did the child have to re-do it dozens of times before the perfect post was captured?

Another important difference is that in traditional child acting, children learn lines and perform a part; there is a clear distinction between actor and role. Meanwhile, kidfluencer content is often meant to appear spontaneous and unrehearsed.<sup>39</sup> The Director of the University of Southern California’s social media program has said, “[t]he difference between traditional child actors and social media influencers is that it’s not a kid pretending to be somebody for a show; instead, the show is the kid.”<sup>40</sup> This means that a child’s personal life is public for all to see, as compared to acting, where the public sees the portrayal of a character and not intimate details of the child’s home life.

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37. In describing the work/play balance for her children, a mother of three kidfluencers said, “If there[ are] days they’re totally not into it, they don’t have to be . . . Unless it’s paid work. Then they must be there. We always have lollipops on those days.” Julia Carrie 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> [<https://perma.cc/6K25-KV2V>].

38. A recent example is demonstrative. YouTube vlogger Jordan Cheyenne wanted a YouTube thumbnail of her son “crying.” See Ross Martin-Pavitt, *YouTuber Accidentally Uploads Video Forcing Her Crying Son to Pose for Thumbnail*, INDEPENDENT, <https://www.independent.co.uk/tv/news/jordan-cheyenne-youtube-thumbnail-child-v1e732372> [<https://perma.cc/U7ZH-82ZW>] (depicting the video that Jordan Cheyenne accidentally uploaded of her son crying). One may think that all this involved was her snapping a quick photo of her child fake crying. However, Jordan Cheyenne made a mistake and accidentally posted a video that went viral of her attempting to capture this thumbnail. *Id.* The video revealed that it was not just a simple photograph of her son fake crying, but instead, capturing the photo resulted from her son actually crying and begging her to stop recording him. *Id.*

39. See Masterson, *supra* note 34, at 592 (“[S]ocial media content often purports to be capturing the child’s normal activities, rather than a rehearsed performance.”).

40. Novacic, *supra* note 23.

## 2. Kidfluencers Face the Risk of Psychological and Reputational Harm

Because kidfluencing is a new phenomenon, there is not much research on its long-term psychological consequences on children in the industry. However, based on the nature of kidfluencing and the parallels to working in reality television, some of the potential negative consequences are apparent without specific studies.<sup>41</sup>

A major consequence for kidfluencers is a pervasive loss of privacy. Parents control their children's privacy, and in the influencer context, parents can decide to forfeit their children's privacy for the chance at fame and wealth.<sup>42</sup> Although this is something that can also happen to child actors, one major difference is that because of the nature of kidfluencer content, the public knows about these children's lives in far more intimate ways than it does the personal lives of child actors.<sup>43</sup> For example, kidfluencer content often exposes the inside of the child's home, and personal details such as organizational memberships, affiliations, and geographic locations can be gleaned by followers even if those details are not part of the "performance."<sup>44</sup> Furthermore, parents who thrust their children into Internet stardom risk exposing them to hate from online "trolls," which can have a negative psychological impact on the child.<sup>45</sup>

Additionally, many kidfluencers have no input on how their lives should be publicly posted online or are simply too young to meaningfully consent.<sup>46</sup> A child might not even be aware that their par-

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41. See Masterson, *supra* note 34, at 595 (describing parallels between kidfluencers and child reality television stars).

42. See Emma Notingham, *Dad! Cut that Part Out! Children's Rights to Privacy in the Age of 'Generation Tagged': Sharenting, Digital Kidnapping and the Child Micro-celebrity*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK OF YOUNG CHILDREN'S RIGHTS 183, 189 (Jane Murray, Beth Blue Swadener & Kylie Smith eds., 2020) (asserting that parents are the gatekeepers of their children's privacy).

43. See Novacic, *supra* note 23 ("The big change when social media came in is that entertainment and interaction became very personal.")

44. See, e.g., *Tekkerz kid, A Very Real Morning Routine! ft Tekkerz Kid JR*, YOUTUBE (July 10, 2021), <https://www.youtube.com/watch?v=DBrKc8HB0wY> [<https://perma.cc/3E6V-3W64>] (showing one of Tekkerz Kid's YouTube videos that depicts details of the inside of his bedroom).

45. See 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> [<https://perma.cc/2CZS-AR84>] (explaining that the Internet has a "dark side, one teeming with racists, sexists, pedophiles, and trolls" that kidfluencers will be exposed to).

46. See Emma Notingham, *supra* note 42, at 184–85.

ents have shared their photos or information about them online.<sup>47</sup> There is a huge potential for emotional harm when a child is old enough to understand the extent of what has been shared about them with the public. They may be unhappy with their parents' decision to expose their personal lives and childhood for the world to see on social media.<sup>48</sup> In a survey for CBBC Newsround, a quarter of children reported that when their parents share content of them on social media, they "feel embarrassed, anxious, or worried."<sup>49</sup>

A parent's act of thrusting their child's personal life into the public eye can also have lasting effects on that child's reputation. When a child is old enough to comprehend the consequences of their parents' decision to put them in the limelight, they may be unhappy with it and even want the content removed. Children may be upset to learn about the light they have been portrayed in. For example, a child influencer whose content is all about toys and promoting products may eventually become unhappy with the materialistic and consumeristic reputation that follows them. But even after content is erased, it may still be available somewhere on the Internet for all to see, and any potential reputational damage will have already been done.<sup>50</sup> Canadian Ghyslain Raza, now widely known as "Star Wars Kid," found himself in this precise predicament when a classmate posted a video that went viral of him pretending to wield a golf ball retriever like a lightsaber "Star Wars style" when he was in the ninth grade.<sup>51</sup> Raza's newfound Internet fame came at the expense of his reputation, leading to "endless mockery," loss of friends, an inability to attend school, and

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47. *See id.* at 189.

48. *See id.*

49. 'Sharenting': Are You OK with What Your Parents Post? BBC (Feb. 7, 2017, 2:53 AM), <https://www.bbc.co.uk/newsround/38841469> [<https://perma.cc/6SS7-NWTG>].

50. For example, "The Wayback Machine" is a digital archive of the world wide web that allows users to see how Internet pages looked in the past. *See generally* INTERNET ARCHIVE, <https://web.archive.org/> [<https://perma.cc/9W7Z-ZZE8>] (depicting the Wayback Machine webpage).

51. 'Star Wars Kid' School Video Raises Web Privacy Issues, E SCH. NEWS (Sept. 23, 2003), <https://www.eschoolnews.com/2003/09/23/star-wars-kid-school-video-raises-web-privacy-issues/> [<https://perma.cc/2A8X-NY8H>]. The video now has over 36 million views on YouTube and led to parodies on popular shows such as *Family Guy* and *Arrested Development*. *See* Jimi Love, *Star Wars Kid*, YOUTUBE (Jan. 15, 2006), <https://www.youtube.com/watch?v=HPPj6viIBmU> [<https://perma.cc/M5ZM-WMGX>]; *see* Chris Taylor, 'Star Wars Kid' Blasts Bullies, Jedi Knights Defend Him, MASHABLE (May 10, 2013), <https://mashable.com/2013/05/10/star-wars-kid-interview-cyberbullying/> [<https://perma.cc/4ZMJ-M2B5>].

extreme cyberbullying.<sup>52</sup> When children grow up, they may not be able to free themselves of the stigmas that were once attached to them during their unwanted time as a social media star. A negative reputation has the potential to follow someone long-term and can even impact future career prospects and employment opportunities.

### 3. Financial Exploitation

What makes the potential consequences for kidfluencers even worse is that the kids may have nothing to show for it. A child may grow up to learn that their content earned large amounts of money,<sup>53</sup> only to find out that none of it is in their name or that their parents have spent it all.

Because social media companies often prohibit users younger than thirteen from having their own accounts, it is often parents that own and run the accounts on which kidfluencer content is posted.<sup>54</sup> Therefore, any advertisement revenue made through these social media sites is in the parents' name. It is then the parents' decision whether they choose to set aside these earnings for their child.<sup>55</sup> Similarly, when companies decide to contract a kidfluencer to sponsor their goods or services, they contract with the parents of the kidfluencer because contracts are unenforceable against minors.<sup>56</sup> Parents have full control over their children's earnings, and thus, any decision to save money that a child earns is left to the parents' own discretion.<sup>57</sup>

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52. See Taylor, *supra* note 51 (when describing the cyberbullying he endured, Raza stated, "On the Internet, there are no limits. It was poison . . . I couldn't help but feel worthless . . . it was a very dark period for me.").

53. The typical kidfluencer can earn approximately "\$100 per 1,000 followers per post;" therefore, a kidfluencer who has about 500,000 followers has the capability of earning \$5,000 for a single post. See Schwab, *supra* note 45. This creates an incentive for parents to make their child produce large quantities of content in hopes of obtaining more followers (and retaining the ones they already have), and therefore, making more money.

54. See, e.g., *Terms of Service*, YOUTUBE, <https://www.youtube.com/static?gl=GB&template=terms> [<https://perma.cc/HSZ9-6UKY>]; *Terms of Use*, INSTAGRAM, <https://help.instagram.com/581066165581870/> [<https://perma.cc/XD6N-5WKC>].

55. There are no current child labor or licensing laws in the United Kingdom requiring parents to set-aside their child's earnings. See *infra* note 117.

56. For example, a spokeswoman for the retail chain Staples said, "Whenever we work with younger influencers, all contracts and negotiations are conducted through their parents or talent agencies directly representing them." Sapna Maheshwari, *Online and Making Thousands at Age 4: Meet the Kidfluencers*, N.Y. TIMES (Mar. 1, 2019), <https://www.nytimes.com/2019/03/01/business/media/social-media-influencers-kids.html> [<https://perma.cc/FR3B-4CTY>].

57. See generally Children and Young Persons Act 1963, c. 37 (UK), <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/5M66-4SKY>] Licensing Act

Consequences can be even more severe if the influencer work prevents the child from excelling in school. In the United Kingdom, children are required to “get an education between the school term after their fifth birthday and the last Friday in June in the school year they turn sixteen.”<sup>58</sup> Parents of kidfluencers may pull them out of school on days when they have paid work, and if this becomes excessive, the parents may face penalties.<sup>59</sup> Even if kidfluencers are not missing substantial time in school, their education may still be negatively impacted. Parents may push their child to focus on content creation outside of school hours instead of working on school assignments, socializing, or participating in extracurricular activities. Because parents are not required to set aside their child’s earnings, a grown-up kidfluencer may not even have money to show for making sacrifices in their education and childhood.<sup>60</sup> Because setting aside kidfluencer earnings is currently voluntary, the opportunity is ripe for parents to financially exploit their children. This is an area where Parliament can and should provide children protection.

B. *Protections Provided by Advertising Laws and International and Domestic Child Labor Laws Do Not Adequately Protect Kidfluencers*

1. Advertising Laws Are Insufficient to Protect Kidfluencers Because They Focus on Regulating Content, Not Creators

There are many current U.K. advertising laws that are applicable to the influencer industry. However, the advertising laws in their current form focus on regulating *content* and protecting *viewers*, rather than protecting the *creators* themselves. This makes the current advertising regulatory framework insufficient to protect the interests of kidfluencers.

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2003, c. 17, § 17(3) (UK), <https://www.legislation.gov.uk/ukpga/2003/17/data.pdf> [<https://perma.cc/LZ5Y-C4V4>] (statutes on child licensing that do not include any provisions requiring child earnings to be set aside).

58. See *School Attendance and Absence*, GOV.UK, <https://www.gov.uk/school-attendance-absence> (last visited Feb. 28, 2022).

59. If it is apparent that children are “missing school without a good reason . . . local councils and schools can give parents a . . . Parenting Order, an Education Supervision Order, a School Attendance Order, or a fine.” See *School Attendance and Absence*, GOV.UK, <https://www.gov.uk/school-attendance-absence/legal-action-to-enforce-school-attendance> (last visited Feb. 28, 2022).

60. See Masterson, *supra* note 34, at 594 (“ . . . if [a kidfluencer’s] social media work prevents the child from excelling in school or developing other skills . . . their parents’ decision to make them a kidfluencer can have serious long-term financial effects.”).

The Communications Act of 2003 relates to the kidfluencer industry because it protects children from viewing harmful content, and it protects viewers of influencer content from absorbing advertisements without proper warning.<sup>61</sup> However, this Act does not provide any protection for the kidfluencers themselves. This Act confers functions on the Office of Communications (“OFCOM”) to, *inter alia*, regulate electronic communications networks and services, as well as broadcasting regulations.<sup>62</sup> This Act provides for OFCOM to have a role in protecting minors as media viewers. In fulfilling their responsibilities, OFCOM “must regard the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection.”<sup>63</sup> Specifically, OFCOM provides “that persons under the age of eighteen are protected” and § 319(2)(f) requires “that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material . . . .”<sup>64</sup> Also relevant is § 319(2)(l), which prohibits the “use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.”<sup>65</sup> Overall, these provisions prohibit influencers from posting sponsored content without proper disclosure. These regulations are beneficial; however, they only focus on protecting *viewers*.

Additionally, the European Audiovisual Media Services Directive 2018 (“AVMS Directive 2018”), which has been incorporated into U.K. law,<sup>66</sup> has new, far-reaching impacts on the influencer industry.<sup>67</sup> However, the regulations applicable to influencers focus on

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61. See Communications Act 2003, c. 21 (UK), <https://www.legislation.gov.uk/ukpga/2003/21/data.xht?view=snippet&wrap=true> [<https://perma.cc/UQV2-ECVG>].

62. Communications Act 2003, c. 21 (UK), <https://www.legislation.gov.uk/ukpga/2003/21/data.xht?view=snippet&wrap=true> [<https://perma.cc/UQV2-ECVG>].

63. Communications Act 2003, c. 21, § 3(4)(h) (UK), <https://www.legislation.gov.uk/ukpga/2003/21/data.xht?view=snippet&wrap=true> [<https://perma.cc/UQV2-ECVG>].

64. Communications Act 2003, c. 21, § 319(2)(f) (UK), <https://www.legislation.gov.uk/ukpga/2003/21/data.xht?view=snippet&wrap=true> [<https://perma.cc/UQV2-ECVG>].

65. Communications Act 2003, c. 21, § 319(2)(l) (UK), <https://www.legislation.gov.uk/ukpga/2003/21/data.xht?view=snippet&wrap=true> [<https://perma.cc/UQV2-ECVG>].

66. See Council Directive 2018/1808, 2018 O.J. (L 303) 61 (EU).

67. As delineated in sections 2 and 3 of the European Union (Withdrawal) Act 2018, E.U. “legislation which applied directly or indirectly to the [United Kingdom] before 11.00 p.m. on December 31, 2020 has been retained in [United Kingdom] law as a form of domestic legislation known as ‘retained [E.U.] legislation.’” European Union (With-

ensuring transparency and protecting *viewers* from manipulative discrete advertisements. As with The Communications Act, these regulations aptly regulate *content* and focus on protecting *viewers*, while doing nothing to protect the influencers themselves.

The AVMS Directive 2018 amended the European Audiovisual Media Services Directive 2010<sup>68</sup> and came into effect in September 2020.<sup>69</sup> Some of the main purposes of the AVMS Directive 2018 include protecting consumers, protecting minors and other vulnerable groups, and encouraging access to and production of European media content.<sup>70</sup> Of particular importance to the influencer industry, AVMS Directive 2018 brings video-sharing platforms (“VSPs”) like YouTube and Instagram within its scope.<sup>71</sup> The AVMS stipulates the inclusion of VSPs as follows:

Video-sharing platform services provide audiovisual content which is increasingly accessed by the general public, in particular by young people. This is also true regarding social media services, which have become an important medium to share information and to entertain and educate, including by providing access to programmes and user-generated videos. Those social media services need to be included in the scope of Directive 2010/13/EU because they compete for the same audiences and revenues as audiovisual media services. Furthermore, they also have a considerable impact in that they facilitate the possibility for users to shape and influence the opinions of other users. Therefore, in order to protect minors from harmful content and all citizens from incitement to hatred, violence, and terrorism, those services should be covered by Directive 2010/

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drawal) Act 2018, c. 16, §§ 2, 3 (UK), <https://www.legislation.gov.uk/ukpga/2018/16/enacted/data.pdf> [<https://perma.cc/NHW7-9LLH>]. Section 4 establishes that any remaining E.U. “rights and obligations, including directly effective rights within E.U. treaties, continue to be recognized and available in domestic law after exit.” European Union (Withdrawal) Act 2018, c. 16, § 4 (UK) <https://www.legislation.gov.uk/ukpga/2018/16/enacted/data.pdf> [<https://perma.cc/NHW7-9LLH>].

68. See Council Directive 2010/13, 2010 O.J. 53 (L 95) (EU).

69. See Council Directive 2018/1808, art. 2, 2018 O.J. (L 303) 61 69, 92 (EU).

70. See Madeleine de Cock Buning, *Life After the European Audiovisual Media Services Directive: Social Media Influencers Through the Looking-Glass*, in *THE REGULATION OF SOCIAL MEDIA INFLUENCERS* 47, 60–61 (Catalina Goanta et al. eds., 2020).

71. According to the AVMS Directive 2018, a VSP is as follows:

[A] service . . . where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programs, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC and the organization of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

Council Directive 2018/1808, art. 1, 2018 O.J. (L 303) 61 69, 78 (EU).

13/EU to the extent that they meet the definition of a video-sharing platform service.<sup>72</sup>

Article 28(b)(2) of the AMVS Directive 2018 states VSP providers should “take appropriate measures” to guarantee their users abide by the requirements of the Directive.<sup>73</sup> Influencers are users of VSPs, and hence are within the Directive’s scope.<sup>74</sup>

The regulations applicable to influencers focus on ensuring transparency and protecting *viewers* from manipulative discrete advertisements. For example, regulations require influencers on VSPs to make commercial communication clearly recognizable and free from subliminal techniques, and influencers’ communication may not encourage dangerous behavior or persuade minors to buy certain unsafe products.<sup>75</sup> Thus, kidfluencer content must adequately disclose sponsorships to followers and may not promote dangerous behavior. There are additional provisions targeted at protecting minors as *viewers*, such as Article 6(a), which imposes an obligation to “ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them.”<sup>76</sup> Overall, the AVMS Directive 2018 adds additional protection for minors as *viewers* and regulates influencer *content*, while avoiding adding any protections that would be applicable to protecting kidfluencers themselves from any form of exploitation. While it is beneficial that new regulations are being promulgated and that the dangers of online advertising are being recognized, they are missing an important piece of the puzzle: protecting the *creators*.

The Competition and Markets Authority (CMA), an “independent non-ministerial department” in the United Kingdom that is responsible for strengthening business competition and reducing anti-competitive activities, recently began playing a larger role in monitoring the influencer industry.<sup>77</sup> However, this new role is also focused only on regulating content and not protecting cre-

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72. Council Directive 2018/1808, art. 4, 2018 O.J. (L 303) 61 69, 70 (EU).

73. See Council Directive 2018/1808, art. 28b, 2018 O.J. (L 303) 61 69, 88 (EU).

74. See Madeleine de Cock Buning, *supra* note 70.

75. See Council Directive 2018/1808, art. 9(1), 2018 O.J. (L 303) 61 69, 84–85 (EU); see also Madeleine de Cock Buning, *supra* note 70, at 63 (explaining the applicability of Article 9(1) to influencers).

76. Council Directive 2018/1808, art. 6(a), 2018 O.J. (L 303) 61 69, 83 (EU).

77. See *About Us*, GOV.UK, <https://www.gov.uk/government/organisations/competition-and-markets-authority/about> (last visited Mar. 28, 2022) (describing what the Competition and Markets Authority (CMA) is and what role it plays).

ators. CMA investigates social media influencers to make sure they are compliant with advertisement disclosures. In 2019, CMA published guidance that requires influencers, *inter alia*, to tell their followers when they are being paid or have been given or loaned an item, telling them to “[b]e clear about your relationship with a brand or business.”<sup>78</sup> This further demonstrates that laws are being sufficiently updated to cover the scope of the influencer industry in regard to content regulation and protection for content *viewers*, while overlooking protecting the *creators*. Current advertising laws sufficiently regulate the content influencers post and satisfactorily prevent minors from viewing unsafe content; however, the advertising laws do nothing to protect child influencers themselves from exploitation.

## 2. Kidfluencers Fall Outside the Scope of International and Domestic Child Labor Laws Because Kidfluencing Often Does Not Require an “Employment Relationship” and Kidfluencers Can Circumvent Licensing Requirements

Due to the unique nature of the kidfluencer industry, current labor laws also leave kidfluencers without adequate protection from exploitation. The United Kingdom has signed and ratified several international treaties regarding child labor.<sup>79</sup> For instance, the Minimum Age Convention provides a generic minimum age for *employment* at fifteen years old in Article 2(3).<sup>80</sup> The United Kingdom ratified this convention specifying a minimum age of sixteen instead of fifteen.<sup>81</sup> However, the use of the word “employment” creates a loophole for much of the kidfluencer industry. Many kidfluencers are not “employed” within the meaning of applicable statutes; they often make money without establishing formal employment relationships. Most kidfluencers generate revenue through advertisements on their social media pages, which does not involve the formation of any sort of employment relation-

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78. *Social Media Endorsements: Being Transparent with Your Followers*, GOV.UK (Jan. 23, 2019), <https://www.gov.uk/government/publications/social-media-endorsements-guide-for-influencers/social-media-endorsements-being-transparent-with-your-followers> (last visited Mar. 28, 2022).

79. *See, e.g.*, International Labour Organization, Minimum Age Convention, art. 2, June 26, 1973, 58 ILO 138; G.A. Res. 2200A (XXI), at 3, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

80. *See* International Labour Organization, Minimum Age Convention, art. 2, June 26, 1973, 58 ILO 138 (emphasis added).

81. *See id.*

ship.<sup>82</sup> Additionally, even if kidfluencers have corporate sponsors, they may be “independent contractors” or “workers” and not employees, which would deprive them of many protections.<sup>83</sup> Because most kidfluencers are not “employed,” the Minimum Age Convention is not applicable to them.<sup>84</sup> Therefore, this Convention creates no legal limitations that restrict what age a parent can begin their child’s career as an influencer.

Even for those few kidfluencers who are formally employed through sponsorships, The Minimum Age Convention is not an all-encompassing ban. Article 7 creates an exception for “light work.”<sup>85</sup> National laws “may permit the employment or work of persons 13 to 15 years old on light work which is (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school . . . or their capacity to benefit from the instruction received.”<sup>86</sup> The use of the term “light work” is important because kidfluencing can be categorized as light work, and therefore formal employment in this industry would not be prohibited under The Minimum Age Convention as long as the required formalities are met.<sup>87</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) is also relevant.<sup>88</sup> ICESCR states the following:

Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely

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82. See *supra* discussion Section II (explaining that a large portion of kidfluencers’ earnings come from advertisements on social media platforms).

83. See generally *Legal Framework Differentiating Employees from Independent Contractors*, L&E GLOBAL, <https://knowledge.leglobal.org/eic/country/united-kingdom/legal-framework-differentiating-employees-independent-contractors-21/> [https://perma.cc/FR3X-JEBD] (describing the difference between employees, workers, and independent contractors; how to determine which label a person has; and what benefits and obligations derive from each categorization). Additionally, the Employment Rights Act of 1996 defines an employee as “an individual who has entered into or works under . . . a contract of employment,” and defines a worker as an individual who works under “a contract of employment; or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer or any profession or business undertaking carried on by the individual.” Employment Rights Act 1996, c. 18, §230(1), (3) (UK), <https://www.legislation.gov.uk/ukpga/1996/18> [https://perma.cc/G4FY-E7S9].

84. See International Labour Organization, Minimum Age Convention, art. 2(1), June 26, 1973, 58 ILO 138 (stating that the minimum age requirement is for “employment”).

85. *Id.* art. 7.

86. *Id.*

87. See *id.*

88. See G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966).

to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.<sup>89</sup>

While ICESCR reiterates the importance of protecting children from exploitation, it has a relatively narrow scope due to the use of the word “employment.” As stated above, kidfluencers are rarely “employed,” and thus, this Covenant has no impact on those working in the kidfluencer industry that are not in formal employment relationships with sponsors.

Domestic U.K. laws further regulate child labor; however, such regulations also tend not to cover kidfluencers because kidfluencers often fall outside the scope of licensing requirements. The Children and Young Persons Act of 1963 provides limitations on the employment of children.<sup>90</sup> Specifically, this Act requires that persons under sixteen who take part in public performances obtain a license granted by a local authority.<sup>91</sup> The Act goes on to provide details regarding licensing requirements and gives additional details for the provision of these licenses.<sup>92</sup> Local authorities are not to confer a license for a child to perform “unless they are satisfied that he is fit to do it, that proper provision has been made to secure [the child’s] health and kind treatment and that. . . the child’s education will not suffer.”<sup>93</sup> Although the word “perform” is not defined, it has been construed to mean “being put into a contrived or constructed environment or experience,” and includes acting, dancing, modeling, and singing.<sup>94</sup> Also, licenses given for public performances must specify any time in which the child is allowed to miss school for the purposes authorized in the license.<sup>95</sup> Furthermore, the application process to obtain a performance license is comprehensive. Applications require substantial paperwork, including “two passport photos, a copy of the child’s birth certificate, a school permission letter, the filled in license application form, a declaration stating that the role cannot be played by an adult, assurances that a child protection policy is in

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89. *Id.* art. 10(3)

90. *See generally* Children and Young Persons Act 1963, c. 37, <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/8V4B-6VX2>].

91. *See id.*

92. *See id.* at 9–14.

93. *See id.* at 37.

94. *See In-House Guidance for the Licensing of Children in Productions*, *supra* note 35, at 2.

95. *See id.*

place, and proof that all the risks that the child may encounter have been assessed.”<sup>96</sup>

The Children and Young Persons Act provides comprehensive protections for child performers, such as child actors, by requiring detailed and protective licenses; however, “user generated content does not usually need to be licensed.”<sup>97</sup> Licenses are only required if the child is considered to be taking part in a performance, and something is only a performance if the child “. . . takes the place of a performer in any rehearsal or in any preparation for the recording of the performance.”<sup>98</sup> Because of this provision, there yet again appears to be a loophole for most kidfluencers that would allow them to circumvent the licensing requirement. Unless a child has an employment relationship with a company, parents of kidfluencers will likely assert that the child does not “rehearse” or partake in any “preparation” for the recording of the content, as much kidfluencer content can appear spontaneous or natural.<sup>99</sup> Besides relying on the unverifiable honesty of parents, there is no real way to determine if the performance published was indeed natural or involved extensive behind-the-scenes preparation and rehearsals. Therefore, the majority of kidfluencers would not be covered within the scope of the Children and Young Persons Act and are not required to obtain licenses in order to post content.

The Licensing Act of 2003 gives additional details for the provision of the above-mentioned licenses.<sup>100</sup> The Act clarifies that a “licensing authority must carry out its functions under this Act . . . with a view to promoting the licensing objectives,” which includes “the protection of children from harm.”<sup>101</sup> Additionally, The Children and Families Act of 2014 provides for the “extension of licensing of child performances to children under 14” years old.<sup>102</sup> Importantly, neither of these Acts provide any revisions or addi-

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96. See *In-House Guidance for the Licensing of Children in Productions*, *supra* note 35, at 6.

97. See *In-House Guidance for the Licensing of Children in Productions*, *supra* note 35, at 15.

98. Children and Young Persons Act 1963, c. 37, § 37(2)(e) (UK), <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/8V4B-6VX2>].

99. See *e.g.*, Wong, *supra* note 37 (providing statements from parents of kidfluencers asserting that the parents are the ones doing the real work and that the “kids are having fun - or are barely conscious of what they are doing.”).

100. See *generally* Licensing Act 2003, c. 17 (UK), <https://www.legislation.gov.uk/ukpga/2003/17/data.pdf> [<https://perma.cc/279P-YXZS>] (outlining the terms of licensing).

101. *Id.* § 4.

102. See *generally* Children and Families Act 2014, c. 6, § 90 (UK), <https://www.legislation.gov.uk/ukpga/2014/6/contents/data.pdf> [<https://perma.cc/N3HK-VW7R>].

tions that would bring kidfluencers within their scope. All in all, current U.N. and U.K. child labor laws that apply to child actors and other performers do not provide sufficient protection for most kidfluencers.

C. *The United Nations Convention on the Rights of the Child  
Obligates the United Kingdom to Implement Protections for  
Kidfluencers*

The United Kingdom signed and ratified the Convention on the Rights of the Child (CRC), which imposes many obligations on the United Kingdom regarding the health and safety of minors.<sup>103</sup> In order to fully effectuate these commitments, the United Kingdom must find a way to comprehensibly protect children working in the influencer industry, specifically children whose work is done without a formal employment relationship.

Article 3 of the CRC supports the proposition that Parliament should take legislative action in order to protect the well-being of kidfluencers.<sup>104</sup> Article 3 establishes that “in all actions concerning children, the best interests of the child shall be a primary consideration.”<sup>105</sup> Specifically, Article 3 states the following:

. . . States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, considering the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.<sup>106</sup>

By ratifying the CRC, the United Kingdom agreed that children’s best interests should be a leading concern, and legislative measures may need to be taken to ensure that a child’s well-being is protected. Therefore, in the kidfluencer context, it is necessary for Parliament to truly consider how a child influencer’s well-being is affected by working in this industry and adopt legislation or administrative measures to protect them.

Article 19 of the CRC provides further justification for demanding new protections to cover the novel harms that kidfluencers may

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103. See *Treaties, States Parties and Commentaries*, INT’L COMM. OF THE RED CROSS, [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=540](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=540) [<https://perma.cc/UP83-EKXT>]; G.A. Res. 44/25, Convention on the Rights of the Child (Nov. 20, 1989).

104. See *id.* art. 3, ¶ 1 (“In all actions concerning children undertaken by . . . legislative bodies, the best interests of the child shall be a primary consideration”).

105. *Id.*

106. G.A. Res. 44/25, *supra* note 103, art. 3, ¶ 2.

face. Article 19 states that “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence . . . maltreatment or exploitation . . . while in the care of parent(s). . . .”<sup>107</sup> Relatedly, all parents in the United Kingdom are bound, directly and indirectly, by the child abuse laws delineated in The Children Act of 1989 and expanded upon by The Children Act of 2004.<sup>108</sup> Local authorities have a “duty to investigate” allegations of abuse, which may be triggered “when there is reasonable cause to suspect that a child . . . is suffering, or is likely to suffer, significant harm.”<sup>109</sup> Authorities must investigate to the extent “necessary to enable them to decide whether they should take any action to safeguard or promote the child’s welfare.”<sup>110</sup> However, much of the harm that kidfluencers face may be “invisible,” and not apparent to any investigator or outside observer.<sup>111</sup> Kidfluencing is much more likely to result in psychological harm and harm that may only show itself in the long run, as opposed to physical harm that produces instantaneous visible injuries.<sup>112</sup> Child abuse investigators may be looking for children who lack proper clothes rather than children whose parents are wasting the child’s money on material items. It is highly unlikely that anyone would report a child on YouTube opening toys and creating tutorials to the local authorities as abuse. This does not discredit the potential harm kidfluencers face. Rather, it is just not presently observable because the harm is psychological, reputational, and/or financial. While the United Kingdom’s child abuse laws provide an avenue to protect against visible parental mistreatment, legislative action is needed to protect kidfluencers from the inconspicuous maltreatment and exploitation that Article 19 of the CRC seeks to prevent.

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107. *Id.*, art. 19, ¶ 1.

108. *See generally* Children Act 1989, c. 41 (UK), <https://www.legislation.gov.uk/ukpga/1989/41/data.pdf> [<https://perma.cc/3AXM-U8MC>]; Children Act 2004, c. 31 (UK), <https://www.legislation.gov.uk/ukpga/2004/31/data.pdf> [<https://perma.cc/KY25-4CSL>] (expanding the child protection framework in the United Kingdom by establishing a children’s commissioner, placing additional duties on local authorities, placing additional duties on agencies tasked with safeguarding children, and establishing new partnerships, among other acts).

109. Children Act 1989, c. 41, § 47(1) (UK), <https://www.legislation.gov.uk/ukpga/1989/41/data.pdf> [<https://perma.cc/3AXM-U8MC>] (quoting title of section and paragraph (1)).

110. *Id.*

111. *See supra* discussion Section III.A.2 (discussing the “invisible” harms that kidfluencers may face, including psychological, reputational, and financial harms).

112. *See id.*

Furthermore, under Article 32, the United Kingdom agreed to “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.”<sup>113</sup> The Article’s use of the word “work” instead of “employment” is critical. Although not defined in the CRC, generally “worker” is broader than “employee” and therefore includes more than just what is done under a formal employment relationship.<sup>114</sup> Accordingly, this provision is applicable to *all* children working in the kidfluencer industry, not just those with employment relationships.

Relatedly, Article 36 broadly states that “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.”<sup>115</sup> The kidfluencer industry creates unprecedented opportunity for any parent with a smart phone and Internet access to make money and gain fame from the work of their child. Unless a kidfluencer is “employed,” the industry remains mostly unregulated, making it easy for parents to use and potentially exploit their child in order to make a profit.<sup>116</sup> The opportunity for economic exploitation is ripe because there is nothing stopping a parent from keeping or spending all of the child’s earnings.<sup>117</sup> Also, working as a kidfluencer has the potential to interfere with a child’s education, harm their reputation, or cause psychological damage later in life.<sup>118</sup> Parliament is obligated to protect children from harm, even “invisible” harm, and even if the source of that harm stems from working in a new and developing industry.

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113. G.A. Res. 44/25, *supra* note 103, art. 32, ¶ 1 (emphasis added).

114. See *Employment Status*, UK CENTRAL GOVERNMENT, <https://www.gov.uk/employment-status/employee> (last visited Mar. 28, 2022) (explaining that “[a]ll employees are workers, but an employee has extra employment rights and responsibilities that don’t apply to workers who aren’t employees”).

115. G.A. Res. 44/25, *supra* note 103, art. 36.

116. See *supra* discussion Section III.B.2 (explaining that kidfluencers fall outside of the labor laws because they are not formally “employed”).

117. Child labor and Licensing laws do not affirmatively provide requirements for parents to set-aside their child’s earnings. See *generally* Children and Young Persons Act 1963, c. 37, § 37 (UK), <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/8V4B-6VX2>]; Licensing Act 2003, c. 17 (UK), <https://www.legislation.gov.uk/ukpga/2003/17/data.pdf> [<https://perma.cc/279P-YXZS>].

118. See *supra* discussion Section III.A.2.

## 1. Family Autonomy

Importantly, because kidfluencing takes place within the home and is in the hands of the parents, there is a need to balance family autonomy with protecting the interests of the children. The government does not raise children; parents raise children. It is a basic tenet of society that, subject to some fundamental limitations, parents should be in charge of making decisions about their own child's upbringing. Shaped by differing cultures, experiences, and values, every family is unique and therefore parents may have different opinions about how to most effectively raise their child. Recognizing this, Article 8 of the European Convention on Human Rights provides a "right to respect for private and family life."<sup>119</sup> Specifically, it states that "everyone has the right to respect for his private and family life, his home and his correspondence."<sup>120</sup> It is within the right of a parent to decide how much of their child's life to post on social media and how much privacy they want their child to have. However, financial and psychological exploitation cannot be justified simply because a parent has the right to make decisions regarding their child's upbringing. Future regulation of the kidfluencer industry cannot be so comprehensive that it encroaches on family autonomy and the rights of parents to make decisions about their children's lives. This Note's proposed solution accounts for the importance of respecting discretionary parenting decisions and balancing it with a need to comprehensively protect children.

### D. *Kidfluencers Need Legislative Protection*

Parliament should adopt new legislation that specifically addresses potential exploitation that kidfluencers face. Effective legislation will require parents to obtain a license for their child to work as a kidfluencer, regardless of whether the child has a formal sponsorship or if revenue is solely made through advertisements on their channels. This legislation must also require parents to deposit a percentage of the child's profits in a blocked trust account until the child reaches the age of majority. This legislation satisfactorily protects kidfluencers while simultaneously respecting family autonomy and the private family sphere.

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119. *See* Convention for the Protection of Human Rights and Fundamental Freedoms art. 8, Apr. 11, 1950, 213 U.N.T.S. 221, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf) [<https://perma.cc/QB9G-Z6ZS>].

120. *Id.*

If enacted, the United Kingdom will be the second country to adopt formal protections for kidfluencers. On October 19, 2020, France passed legislation to protect child influencers.<sup>121</sup> This is important because it reveals that protective kidfluencer legislation is practical and desirable. Under France's legislation, kidfluencers "will be protected by the French Labor Code in a manner similar to child models or child actors."<sup>122</sup> This legislation requires "prior government authorization before a child can engage in online video activities that can be considered as being within a labor relation."<sup>123</sup> However, this legislation is not limited to labor relations; "the National Assembly's committee report on the bill" explains that it covers a "grey zone," "where the child is not in a labor relation, but nevertheless spends a significant amount of time making videos or derives a significant level of income from them."<sup>124</sup> Additionally, this legislation will protect kidfluencer earnings. Parents can only be paid a part of the child's income; the rest will have to be placed in a "special savings account that the child will be able to access when he or she reach[es] adulthood . . . ."<sup>125</sup> Finally, France's legislation requires video platforms to "remove the child's videos upon their direct request, even without the parents' consent."<sup>126</sup> France's legislation can serve as a useful example for the U.K. Parliament to study in order to adjust and perfect the country's kidfluencer legislation by discerning what aspects of the law are working well and what aspects need modification.

#### 1. Parliament Should Require Licenses to Participate in the Kidfluencer Industry

Under the existing licensing scheme for child performers in the United Kingdom, if there is no formal employment relationship or if a child's participation is not rehearsed, there is no need to

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121. See 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 RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Oct. 20, 2020.

122. France: Parliament Adopts Law to Protect Child "Influencers" on Social Media, LIB. OF CONG. (Oct. 30, 2020), <https://www.loc.gov/item/global-legal-monitor/2020-10-30/france-parliament-adopts-law-to-protect-child-influencers-on-social-media/> [<https://perma.cc/3G38-NH9V>].

123. See *id.* (stating an example of a labor relation is if the child receives orders or directions from the video producer).

124. See *id.*

125. See *id.*

126. See *id.*

obtain a license.<sup>127</sup> This is a problem for the kidfluencer industry because kidfluencers are often not in employment relationships, and because of the private nature of kidfluencing, there is no way to know whether their content is rehearsed.<sup>128</sup> Because no license is required to work as a kidfluencer, kidfluencers are not currently afforded the many protections that come from inclusion in a licensing scheme.<sup>129</sup>

Parliament should require parents of kidfluencers under the age of majority to obtain a special “kidfluencer license” from the same local authority that is responsible for issuing a child performance license under The Children and Young Persons Act of 1963.<sup>130</sup> A “kidfluencer license” should be required before a child is permitted to enter into sponsorship agreements or earn advertisement revenue from social media pages and channels. Companies should be required to verify that kidfluencers have the appropriate license on file before working with them or even sending them free promotional goods.

Additionally, to ensure this legislation protects children whose parents are hoping to break into the kidfluencer market but do not already have enough followers to earn substantial advertisement revenue, kidfluencer licenses should also be required for these “kidfluencers-in-the-making.” When children devote a *substantial* portion of time to making videos for social media, regardless of whether they are currently earning significant amounts of money, licensing should be mandated. For the licensing requirement to apply, the child must spend a *substantial* amount of time participating in content creation. The definition of “substantial” may vary by the child’s age and should be long enough to prevent this licensing requirement from being overly burdensome. The rationale for the substantial time limitation is to ensure that this legislation does not unduly restrict parental freedom and personal expression. Social media is an outlet for self-expression, and a parent should be able to decide if they want to express themselves by posting photos and videos of their children. The substantial time requirement allows for this to be taken into account while still protecting children.

The private nature of content creation makes the requirement for kidfluencers-in-the-making to obtain a kidfluencer license diffi-

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127. See *supra* discussion Section III.B.2.

128. See *supra* discussion Section III.B.2.

129. See *supra* discussion Section III.B.2.

130. See Children and Young Persons Act 1963, c. 37, § 37 (UK), <https://www.legislation.gov.uk/ukpga/1963/37/data.pdf> [<https://perma.cc/8V4B-6VX2>].

cult to enforce because it will be based on parental honesty. Although some parents may ignore these requirements, the requirement should not be abandoned altogether. Just as advertisement disclosures are required for posting sponsored content on social media,<sup>131</sup> once parents obtain a “kidfluencer license,” all content should be required to have a “kidfluencer license disclosure” in the caption as well. The purpose of this is to make the licensing requirement easier to monitor and enforce. Ideally, it will become the new norm for all kidfluencer content to have a “kidfluencer license disclosure.” Therefore, it will be obvious to viewers when content is being posted without a license. Not only does this increase the possibility that the license requirement will be followed out of fear of public shame, but it also increases the possibility that a viewer will report those posting unlicensed content.

The following kidfluencer license application process is formulated to guard against the psychological harm and exploitation that may arise from kidfluencing. The license application process would be similar to obtaining a child actor license.<sup>132</sup> Kidfluencer license applications would require documents identifying the child, the parents, the person(s) in charge of running the child’s social media accounts, and the people involved in content creation. There would be a license application form that includes a place to designate the usernames of all known social media accounts to which the content will be posted. Additionally, there would be a small application fee. One advantage of obtaining this information is that if parents are aware that the government has enough information to potentially monitor their child’s posted content, they may be less willing to have their child create content that appears dangerous or harmful in any way.

If the child is of school-going age, the application must contain a school permission letter, just as is required for child actor licenses.<sup>133</sup> Also, the application must include a statement of assurance that the parent has considered all of the potential short-term and long-term harms a child may encounter from kidfluencing and potential social media fame. If granted, the license will designate limitations, such as acceptable working hours and conditions, and what is to be considered “work.” The license will not excuse the child from school in order to make content.

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131. *See supra* discussion Section III.B.1.

132. *See supra* discussion Section III.B.2.

133. *See supra* discussion Section III.B.2.

In order to ensure that kidfluencing does not begin to negatively impact the child after the license is granted, there should be a license renewal requirement every two years. For the license to be renewed, the parent must submit school attendance records and justify any irregular absences, as well as pay a small renewal fee. A parent must also submit a statement describing the conditions in which their child makes videos and how often and how long content creation takes. It should be in the licensing authority's discretion whether to require an interview with or a statement from the child to renew the license. An interview with the child would focus on the conditions in which they make videos, if they like or dislike creating content, and if they have any concerns.

The mandate to obtain a kidfluencer license before working as a kidfluencer will allow the United Kingdom to fulfill its obligations to protect children from harm and exploitation that is required under Articles 3, 19, 32, and 36 of the CRC.<sup>134</sup>

## 2. Blocked Trust Accounts

While the kidfluencer license requirement is designed to protect children from potential psychological and reputational harm, requiring a blocked trust account for a percentage of kidfluencer earnings will protect children from financial exploitation. Parents are responsible for protecting their children financially; however, if fame and fast money are at stake, parents' protective instincts may become distorted. Parliament must ensure that kidfluencers are compensated for their time, labor, and potential educational or reputational sacrifices.

Modeled after Coogan Laws<sup>135</sup> in the United States, the U.K. Parliament should require 30 percent of kidfluencer earnings to be deposited in a blocked trust account that the child can access when they reach the age of majority. Requiring 30 percent of earnings to be given to the child recognizes that parents often deserve a substantial portion of the compensation and parents may incur expenses to create the content. Many parents of kidfluencers claim they are the ones doing the real work.<sup>136</sup> Parents negotiate contracts, post the content, set up shoots, and more. However, the

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134. See *supra* discussion Section III.C.

135. Currently California, Louisiana, New Mexico, and New York require 15 percent of the income of child actors to be retained in a blocked trust account, commonly known as a "Coogan Account." See generally CAL. FAM. CODE § 6752; LA. REV. STAT. § 51:2133 (2006); N.M. STAT. ANN. § 50-6-19 (2007); N.Y. COMP. CODES R. & REGS. tit. 12 § 186 (2013).

136. See Wong, *supra* note 37.

child remains the star of the show, and arguably no earnings would be made without the child. Ensuring that 30 percent of profits end up in the child's possession is one way for the United Kingdom to protect children from economic exploitation, and therefore fulfill its obligation under Article 32 of the CRC.<sup>137</sup>

Despite the benefits of this proposed U.K. legislation, there are two realities of influencing work that cannot be fully addressed with this system. First, the fast-paced nature of social media work may make it impractical in limited circumstances to obtain a license in the needed timeframe to capitalize on content production. This may be the case when a parent posts on their own personal social media account a photo or video of their child that inadvertently goes "viral" overnight.<sup>138</sup> In order to capitalize on their unexpected influx of followers and online attention, the parent may need to immediately post more content of their child or create new accounts on other mediums of social media in order to maximize the possibility of retaining and growing their new mass of followers. Obtaining copious numbers of followers is often the gatekeeper to entering the lucrative business of kidfluencing.<sup>139</sup> If one cannot quickly capitalize on their luck of unintentionally going viral because they need to obtain a license from the government before they can proceed, they may miss out on the opportunity to break into the kidfluencing market.

Second, influencers are often paid in products and services instead of money.<sup>140</sup> Blocked trust accounts are adequate to ensure that children remain in control of a portion of their monetary earnings. However, if a kidfluencer is paid through products, there is no way to ensure that these products end up in their possession. In order to circumvent the blocked trust account obligation, parents may opt to have sponsors pay them in products instead of money. Although taxes may need to be paid on these products, parents would still be able to keep the products for themselves or to subsequently re-sell them at market value. The solution to this issue is not clear because many would consider it to be a governmental over-encroachment into citizens' private lives to

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137. See *supra* discussion Section III.C.

138. A viral post is "something that spreads very quickly, and very widely." Robert Wynne, *There Are No Guarantees – Or Exact Statistics – For Going Viral*, FORBES (Mar. 9, 2018, 3:25 PM), <https://www.forbes.com/sites/robertwynne/2018/03/09/there-are-no-guarantees-or-exact-statistics-for-going-viral/?sh=4a554cb25e8c> [<https://perma.cc/C245-6QZE>].

139. In influencer marketing, the amount of money a creator makes is positively correlated with the number of followers they have. See Kaya Ismail, *supra* note 7.

140. See Linton, *supra* note 4.

attempt to monitor what the recipients of property do with that property. Additionally, some may consider any attempt to limit kidfluencers' compensation to monetary payment—instead of payment through products or services—to be an undue restriction on the freedom of contract. Therefore, there are some additional challenges that the proposed solution will not be able to address.

#### IV. CONCLUSION

The kidfluencer industry is here to stay. As more parents see kids like Lorenzo Greer<sup>141</sup> and Ryan Kaji<sup>142</sup> making millions of dollars for starring in videos on YouTube and other social media platforms, the temptation to try to turn children into an overnight sensation to break into this market is almost irresistible. The kidfluencer industry creates an unparalleled opportunity for parents to try to make money off their child's work, which unfortunately may have negative side effects on the child's well-being.

Currently, the United Kingdom's advertising and child labor laws are insufficient to adequately protect the interests of children working in the kidfluencer industry. The current statutory scheme leaves much of the industry unregulated. This lack of regulation can have significant negative impacts on those children working in the industry, such as psychological and reputational harm, as well as financial exploitation. To solve this problem, Parliament should adopt new legislation that requires obtaining a license before working in the kidfluencer industry, and that mandates the creation of blocked trust accounts for kidfluencers. Implementing this legislation will allow the United Kingdom to fulfill the obligations imposed by Articles 3, 19, 32, and 36 of the U.N. Convention on the Rights of the Child, while simultaneously respecting family autonomy.

It often takes time for the law to catch up to our constantly changing society. Sometimes private actors step in to fill the void that the law's slow progression may leave. Until Parliament decides it is time for the law to catch up with the new and expanding child influencer industry, private actors can voluntarily implement new policies that set minimum standards for working with kidfluencers. Companies can implement new terms and conditions that must be agreed upon before entering into sponsorship agreements with the parents of kidfluencers. These terms can mimic the proposed leg-

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141. *See supra* discussion Introduction.

142. *See supra* discussion Introduction.

isolation by providing for a portion of payments to be reserved in a blocked trust account for the child. Companies can also decide to contract with only kidfluencers whose parents agree to implement certain baseline working conditions for the child. However, there is not much of an incentive for companies to do this on their own because of the potential for increased costs and burdens on the company. So, while in theory this sounds like a suitable way to privately solve the problem without government intervention, it is not very realistic and therefore protective legislation will still be needed.