

NOTES

CASH KID: THE NEED FOR INCREASED FINANCIAL PROTECTIONS OF INTERNET CHILD STARS ON YOUTUBE

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INTRODUCTION

“We’re giving [our dog] to somebody else because we feel like we can’t take good enough care of him at our house,” says Savannah LaBrant to the camera.¹ Her six-year-old daughter, Everleigh, sits by her side, looking distraught.² Her husband, Cole LaBrant, is filming this interaction, which is intended to be an April Fools’ Day prank on Everleigh.³ The video—which was later deleted due to public backlash—was titled “We Have To Give Our Puppy Away ... Saying Goodbye Forever.”⁴ The video was posted to the LaBrant Family YouTube channel for their millions of subscribers to watch.⁵ As Savannah whispers into Everleigh’s ear, “April Fools’,” Everleigh’s demeanor does not change much.⁶ In fact, as her parents simultaneously shout, “[w]e’re keeping [the dog]!” and “[w]e get to keep [the dog]!”⁷ Everleigh bursts into tears.⁸ The video was viewed over 1.7 million times.⁹ Although the video focused on Everleigh and her reaction to the prank, she is not entitled to a single cent of the revenue that the video may have generated while it was up on YouTube.¹⁰

1. Inside Edition, *Cole and Sav Slammed for Pretending to Give Away Kid’s Dog*, YOUTUBE (Apr. 3, 2019), <https://www.youtube.com/watch?v=IjNyfCbtLTM> [<https://perma.cc/HH34-QLGU>].

2. *See id.*

3. *Id.*

4. Minyvonne Burke, *YouTubers Cole and Savannah LaBrant’s Prank on 6-year-old Daughter About Puppy Sparks Backlash*, NBC NEWS (Apr. 2, 2019, 3:47 PM), <https://www.nbcnews.com/news/us-news/youtubers-cole-savannah-labrant-s-prank-6-year-old-daughter-n990156> [<https://perma.cc/4XBX-VLKK>].

5. In 2019, their channel, “The LaBrant Fam,” had more than eight million subscribers. *Id.* Today, their YouTube channel has more than thirteen million subscribers. *The LaBrant Fam*, YOUTUBE, https://www.youtube.com/channel/UC4-CH0epzZpD_ARhxCx6LaQ [<https://perma.cc/W2FS-UF8G>].

6. *See* Inside Edition, *supra* note 1.

7. *Id.*

8. *See* Burke, *supra* note 4; Inside Edition, *supra* note 1.

9. *Id.*

10. *See* 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), <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/5V6C-3PRT>].

Family channels like the LaBrant family are not uncommon on YouTube.¹¹ In fact, they are a growing genre on the platform: “YouTube says that time spent watching family vloggers [was] up 90 [percent] in [2017].”¹² The rise of popularity in family channels such as the LaBrants’ symbolizes a new age of media: one where any parent can pick up a video camera and turn their children’s names and likenesses into a revenue stream if enough people are interested. Through the YouTube Partner Program, online creators can earn a cut of the revenue generated by advertisements that run alongside the videos they post.¹³ As long as they meet the requirements to join, parents of family channels can monetize their home videos and make millions.¹⁴ The children who are at the center of those home videos, and likely a primary interest for the fans, are not entitled to any of the generated revenue.¹⁵

In many ways, the rise of YouTube has been the great equalizer of entertainment. Instead of moving across the country to become a star in California, anyone can now gain fame and notoriety from videos they create with the phone in their pocket. As new technology disrupts the entertainment market, the lack of regulatory protection of the children involved is clear.¹⁶ There are legislative protections in place for child actors in traditional media at the state level, but those protections do not extend to children who are online stars.¹⁷

11. The term “family channel” refers to YouTube accounts owned by families who document the lives of both the parents and children on social media. See Nila McGinnis, Note, *“They’re Just Playing”: Why Child Media Stars Need Enhanced Coogan Protections to Save Them from Their Parents*, 87 MO. L. REV. 247, 250 (2022).

12. Belinda Luscombe, *The YouTube Parents Who Are Turning Family Moments into Big Bucks*, TIME (May 18, 2017, 6:00 AM), <https://time.com/4783215/growing-up-in-public/> [<https://perma.cc/5UBF-8UZN>].

13. See Gwendolyn Seale, *Making Sense of YouTube’s Monetization Policies*, L.J. NEWSLS. (Jan. 2019), <https://www.lawjournalnewsletters.com/2019/01/01/making-sense-of-youtubes-monetization-policies/> [<https://perma.cc/PC59-4L8U>].

14. Requirements to join the YouTube Partner Program include having more than 1,000 subscribers and more than 4,000 valid public watch hours within the past 12 months. *YouTube Partner Program Overview & Eligibility*, YOUTUBEHELP, <https://support.google.com/youtube/answer/72851?hl=en> [<https://perma.cc/U4WZ-2PV9>].

15. See Wong, *supra* note 10.

16. See *id.* (“The situation is a bit like ‘Uber but for ... child labor,’ with a disruptive technology upending markets by, among other things, side-stepping regulation.”).

17. See *Coogan Law*, SCREEN ACTORS GUILD, <https://www.sagaftra.org/membership-benefits/young-performers/coogan-law> [<https://perma.cc/NSR4-4PDL>].

This Note explores the gaps in California's child entertainment law and the dangers of leaving child internet stars unprotected. This Note argues that while California could update their "Coogan Law"¹⁸ to include young internet stars, a previous attempt (and failure) to do so suggests that this may not be the best way to address the issue. In the alternative, YouTube itself has the framework to address this problem through its Partner Program.¹⁹ If YouTube were to fix the problem directly, it would leave child stars on other online platforms unprotected; but it could set a precedent among other platforms that this is a problem worth solving. Part I of this Note provides background information on YouTube monetization policies, child entertainment laws, and child privacy concerns. Part II explores the feasibility of California expanding its Coogan Law to include online child stars within its protection. Part III discusses the alternative solution of YouTube addressing this issue directly by modeling a portion of its Partner Program after California's Coogan Law.

I. RELEVANT BACKGROUND INFORMATION

Before addressing child entertainers and their lack of protection on the internet, it is important to understand the landscape of this issue. Understanding the scope of this problem requires recognizing the power YouTube has—as a platform, as a revenue stream, and as a source of child entertainment. This Part explores the prevalence of child users on YouTube, and some of the protections YouTube has put in place to protect children *watching* their content. This Part also dissects the YouTube Partner Program: how content creators can receive a portion of the revenue generated from advertisements running against their videos on the platform, and what criteria has already been put in place to comply with YouTube's "community guidelines."

Next, this Part addresses current laws put in place to protect child entertainers: Coogan Laws.²⁰ Such laws are passed at the state level, and this Note focuses on California's Coogan Law and the

18. See, e.g., 16 C.F.R. § 312.3 (2013).

19. See *YouTube Partner Program Overview & Eligibility*, *supra* note 14.

20. See *infra* Section I.C.

protections already in place for classic child entertainers.²¹ Finally, this Part considers a seemingly separate, yet compelling issue that arises from the prevalence of family channels: the privacy rights of children being posted online.

A. *Children on YouTube*

YouTube is the third most popular website in the world—in the second quarter of 2021, the company reported that it had 2.5 billion active users.²² YouTube is behind only Google and Facebook in total usage online.²³ The company is estimated to be worth well above ten billion dollars.²⁴ YouTube is also the second largest search engine on the internet, averaging three billion searches per month.²⁵

Success as a YouTube creator has proven to be financially comparable to success in traditional media. The most lucrative channel on the platform generated fifty-four million dollars in revenue in 2021.²⁶ The seventh-highest earning YouTube star in 2021, generating twenty-seven million dollars that year, is Ryan Kaji, a nine-year-old boy who is featured on his channel “Ryan’s World.”²⁷ Ryan was the highest-paid YouTube star of 2018, and his content showcases him unboxing and playing with new toys for his young

21. See *Coogan Law*, *supra* note 17.

22. Mansoor Iqbal, *YouTube Revenue and Usage Statistics (2023)*, BUS. APPS (Jan. 9, 2023), <https://www.businessofapps.com/data/youtube-statistics/> [<https://perma.cc/M5VD-P3FX>].

23. *Id.*

24. Google owns YouTube and does not publish YouTube’s revenue and operating income, so the valuation of YouTube alone is an estimate. See Eric Jhonsa, *How Much Could Google’s YouTube Be Worth? Try More than \$100 Billion*, STREET (May 12, 2018, 6:45 AM), <https://www.thestreet.com/investing/youtube-might-be-worth-over-100-billion-14586599> [<https://perma.cc/YRQ3-SJKG>].

25. Adam Wagner, *Are You Maximizing the Use of Video in Your Content Marketing Strategy?*, FORBES (May 15, 2017, 8:00 AM), <https://www.forbes.com/sites/forbesagencycouncil/2017/05/15/are-you-maximizing-the-use-of-video-in-your-content-marketing-strategy/?sh=7d9539653584> [<https://perma.cc/SD24-RHP8>].

26. Iqbal, *supra* note 22.

27. *Id.*; Rupert Neate, *Ryan Kaji, 9, Earns \$29.5m as This Year’s Highest-Paid YouTuber*, GUARDIAN (Dec. 18, 2020, 1:38 PM), <https://www.theguardian.com/technology/2020/dec/18/ryan-kaji-9-earns-30m-as-this-years-highest-paid-youtuber> [<https://perma.cc/Y4FG-JTHP>]. The channel “Ryan’s World” was originally named “Ryan ToysReview” and has 34.6 million subscribers at the time of writing. *Ryan’s World*, YOUTUBE, <https://www.youtube.com/c/RyanToysReview> [<https://perma.cc/FSU4-FC3P>].

fanbase.²⁸ YouTube does not allow children under the age of thirteen to create channels on their own.²⁹ However, YouTube *does* allow parents to set up YouTube channels for their children, which is what allows Ryan Kaji to be the star of Ryan's World.³⁰

Children like Ryan Kaji are not only featured on YouTube, but they are also a large part of the platform's consumer base. A recent study found that 81 percent of parents with children ages eleven and younger allow their children to use YouTube.³¹ YouTube has taken some steps to protect their young viewers, proving the platform has considered the wellbeing of children in the past. YouTube Kids, a separate platform which provides more parental control over what their children see, has recently reported more than thirty-five million weekly users.³² Parents can set up monitored accounts for their children where they can grant access to "a supervised YouTube experience."³³ With a supervised account, parents can block content from their child, change content level settings, turn off the search feature, and review their child's watch history.³⁴

YouTube has also taken measures to protect the children featured in videos on the platform. According to YouTube, "[c]ontent that endangers the emotional and physical wellbeing of minors is not allowed."³⁵ The website defines "minors" as individuals under the legal age of majority in their country, which is usually under the age

28. See Wong, *supra* note 10.

29. *Setting up a YouTube Channel*, PARENTZONE (July 29, 2022), <https://parentzone.org.uk/article/setting-up-a-youtube-channel> [<https://perma.cc/2DJV-6N6U>].

30. *See id.*

31. Aaron Smith, Skye Toor & Patrick Van Kessel, *Many Turn to YouTube for Children's Content, News, How-To Lessons*, PEW RSCH. CTR. (Nov. 7, 2018), <https://www.pewresearch.org/internet/2018/11/07/many-turn-to-youtube-for-childrens-content-news-how-to-lessons> [<https://perma.cc/4YWK-F4B5>].

32. Joe Keeley, *YouTube Kids Now Boasts 35 Million Weekly Users Worldwide*, MAKEUSEOF (Feb. 18, 2021), <https://www.makeuseof.com/youtube-kids-35-million-weekly-users/> [<https://perma.cc/5CMS-C9PC>].

33. *Parental Controls & Settings for YouTube Kids Profiles & Supervised Accounts*, YOUTUBE KIDS PARENTAL GUIDE, <https://support.google.com/youtubekids/answer/6172308?hl=en> [<https://perma.cc/Z3AB-J9W8>].

34. *Id.*

35. YouTube Creators, *Child Safety Policy: YouTube Community Guidelines*, YOUTUBE (May 1, 2019), <https://www.youtube.com/watch?v=pHOH5SDK0pc&t=28s> [<https://perma.cc/HM5S-DUHP>].

of eighteen.³⁶ YouTube provides direction on “[b]est practices for content with children,” giving content creators some guidance on what to do when they post content featuring minors.³⁷ The platform requires anyone posting content with minors to secure consent from the minor’s parent before featuring the minor in the video, moderate user comments on the video, and manage the video’s privacy settings.³⁸ However, it is unclear whether YouTube holds creators accountable to these standards.³⁹ Furthermore, these standards do not go far enough to protect the child stars of family channels. For example, in the context of a family-run YouTube channel, a requirement for parental consent is superfluous, as the parents of the featured minors are the ones creating and uploading the content.

B. The YouTube Partner Program: Monetization and Policies

To begin making money on YouTube, a channel owner must apply to become a part of the YouTube Partner Program.⁴⁰ The minimum eligibility requirements to join the Partner Program include: (1) following channel monetization policies; (2) living in a country where the Partner Program is available; (3) having no active community guidelines strikes on the channel; (4) having more than 4,000 valid public watch hours within the last 12 months or having more than 1,000 subscribers with 10 million valid public shorts views in the last 90 days; and (5) having a linked AdSense Account.⁴¹ This new policy is a significant shift from the pre-2018 policy, which only required a channel to accumulate 10,000 views to qualify for the YouTube Partner Program.⁴² YouTube has justified this new qualifying criteria, stating, “we want creators to be good

36. *Child Safety Policy*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2801999?hl=en> [<https://perma.cc/LWK5-XWVG>].

37. *Best Practices for Content with Children*, YOUTUBE HELP, <https://support.google.com/youtube/answer/9229229?hl=en> [<https://perma.cc/6XN2-BLHL>].

38. *Id.*

39. *See generally id.* (including general calls to comply with the law, but not including any explicit consequences for noncompliance: “[p]lease make sure you understand and follow the law. You must comply with all the laws, rules, and regulations related to working with minors.”).

40. *See YouTube Partner Program Overview & Eligibility*, *supra* note 14.

41. *Id.* YouTube uses the program “AdSense” to pay the creators in its Partner Program.

42. Seale, *supra* note 13.

citizens on the platform, and these requirements ensure our teams have enough information to really review [the] channel.”⁴³

Once a channel is accepted into the YouTube Partner Program, it is considered to be “monetized.”⁴⁴ A monetized channel earns 55 percent of the revenue generated by the advertisements that are placed alongside the YouTube video, while the other 45 percent goes to Google.⁴⁵ The 55 percent that goes to the creator is allocated among the parties who own different assets of the video.⁴⁶ For example, if a music video is monetized, portions of the 55 percent would go to the owner of the recording, the publisher, and the record label.⁴⁷

Complying with monetization policies primarily means that channels in the Partner Program must avoid harmful or dangerous content, hate speech, cyberbullying, and nudity and sexual content.⁴⁸ If a channel is determined to be creating “kids and family content,” there are separate quality principles that determine the monetization status of that content.⁴⁹ If YouTube finds that a video does not comply with the community guidelines of the website, it can “demonetize” such content, which prevents the creator from generating any revenue from the problematic video and disincentivizes similar content from being created in the future.⁵⁰ Recently, YouTube demonetized a swath of what they deemed to be “low quality” children’s content, which included videos that were “heavily commercial or promotional, and encourage[d] negative behaviors or attitudes.”⁵¹ To comply with YouTube’s guidelines for children’s content, videos must promote one or more of the following qualities:

43. YouTube Creators, *Intro to Making Money on YouTube*, YOUTUBE (Jan. 22, 2019), <https://www.youtube.com/watch?v=bIngfKyJyUw> [<https://perma.cc/XH9T-THNN>].

44. See *YouTube Partner Program Overview & Eligibility*, *supra* note 14.

45. Seale, *supra* note 13.

46. *Id.*

47. *Id.*

48. *YouTube Channel Monetization Policies*, YOUTUBE HELP (Jan. 2023), <https://support.google.com/youtube/answer/1311392> [<https://perma.cc/K9BX-3EJF>]; *YouTube’s Community Guidelines*, YOUTUBE HELP, <https://support.google.com/youtube/answer/9288567?sjid=4148205424872831187-NA> [<https://perma.cc/8WD4-ZW5Y>].

49. *YouTube Channel Monetization Policies*, *supra* note 48.

50. See, e.g., Alexandra Whyte, *YouTube to Demonetize ‘Low Quality’ Kids Content*, KIDSCREEN (Oct. 26, 2021), <https://kidscreen.com/2021/10/26/youtube-to-demonetize-low-quality-kids-content/> [<https://perma.cc/ELZ8-F2NQ>].

51. *Id.*

“[(1)] being a good person; [(2)] learning and inspiring curiosity; [(3)] creativity, play, and a sense of imagination; [(4)] interaction with real world issues; and [(5)] diversity, equity, and inclusion.”⁵²

When a creator uploads a video, YouTube requires them to disclose whether the content is made for children.⁵³ This requirement comes from a recent settlement between the United States Federal Trade Commission (FTC) and Google LLC for YouTube’s violation of the Children’s Online Privacy Protection Act (COPPA) Rule.⁵⁴ COPPA, a federal law enacted in 1998, makes it “unlawful for any operator of a website or online service directed to children ... to collect personal information from a child.”⁵⁵ In 2019, the FTC and the New York Attorney General alleged that YouTube violated this rule by collecting personal information from viewers of child-directed channels without parental consent.⁵⁶ YouTube agreed to create a feature to enable channel owners to designate when the videos they upload to YouTube are directed to children, ensuring that owners are complying with COPPA.⁵⁷

YouTube now provides guidelines aligned with the FTC’s requirements to determine whether content is directed towards children.⁵⁸ YouTube considers content to be made for kids if children are the primary audience of the content; alternatively, if children are not the primary audience the video content may be considered directed towards children if it features subject matter that reflects an intent to target children.⁵⁹ YouTube encourages its creators to consider whether their content features the following to determine whether their content is made for children: child actors; characters that appeal to children; songs for children; or activities that appeal

52. Lawrence Ng, *YouTube Kids, More Content with More Ads or Less Content with Less Ads?*, TECH360 (Oct. 28, 2021), <https://www.tech360.tv/youtube-kids-more-content-more-ads-or-less-content-less-ads> [<https://perma.cc/L7L9-HLUS>].

53. *Determining if Your Content is “Made for Kids,”* YOUTUBE HELP, <https://support.google.com/youtube/answer/9528076> [<https://perma.cc/Y24W-PHYZ>].

54. *Google and YouTube Will Pay Record \$170 Million for Alleged Violations of Children’s Privacy Law*, FED. TRADE COMM. (Sept. 4, 2019) [hereinafter *COPPA Lawsuit*], <https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law> [<https://perma.cc/5R8A-AHGQ>].

55. 16 C.F.R. § 312.3 (2013).

56. See *COPPA Lawsuit*, *supra* note 54.

57. *Id.*

58. See *Determining if Your Content is “Made for Kids,”* *supra* note 53.

59. *Id.*

to children.⁶⁰ YouTube asserts that YouTube Analytics, the software YouTube uses to help creators understand their video performance, is “not designed to help determine if [the creator’s] content is child directed. [The creator] should use the factors outlined by the FTC ... to set [their] audience,” placing the responsibility on creators to comply with FTC policies, rather than on YouTube to monitor their compliance.⁶¹

C. Children in Entertainment: Coogan Laws

Over 100 years ago, in 1919, Charlie Chaplin discovered a five-year-old boy named Jackie Coogan, and America’s first child star was born.⁶² From his first big break as Chaplin’s sidekick in *The Kid* onward, Jackie was an overwhelmingly successful child actor throughout his youth.⁶³ Over the course of his career as a child star, Jackie earned upwards of two million dollars—over five million dollars in today’s money.⁶⁴ At the time, California common law stated that the earnings of a minor belonged solely to that minor’s parent, and the money Jackie earned throughout his early career went directly to his mother.⁶⁵ When Jackie turned twenty-one and requested access to the money he had earned as a child, he discovered that his mother and stepfather spent most of his money.⁶⁶ Jackie filed suit against his mother and stepfather to recover his earnings, but eventually “settled out of court for an amount he once put at about \$80,000.”⁶⁷ Although Jackie only saw a fraction of the money he earned, the media attention surrounding his lawsuit inspired the State of California to pass a “Coogan Law,” which

60. *Id.*

61. *Id.*

62. *See Coogan Law, supra* note 17.

63. *Id.*

64. James Barron, *Jackie Coogan, Child Star of Films, Dies at 69*, N.Y. TIMES (Mar. 2, 1984), <https://www.nytimes.com/1984/03/02/obituaries/jackie-coogan-child-star-of-films-dies-at-69.html> [<https://perma.cc/6C7F-5VPV>]. The value of two million dollars in 1984 compared to 2023 was calculated using officialdata.org.

65. *Coogan Law, supra* note 17.

66. *See Barron, supra* note 64.

67. Martin Weil, *Jackie Coogan, First Child Film Star, Dies at 69*, WASH. POST (Mar. 2, 1984), <https://www.washingtonpost.com/archive/local/1984/03/02/jackie-coogan-first-child-film-star-dies-at-69/d092ba1c-3abc-4c85-bef2-696181c5bfdc/> [<https://perma.cc/9BJ2-QQBZ>].

aimed to protect child stars' earnings from being squandered by their parents.⁶⁸

The Fair Labor Standards Act (FLSA) governs federal law regarding child labor.⁶⁹ While the FLSA prohibits the employment of minors in child labor, it exempts from its purview “[minors] employed as actors or performers in motion pictures, theatrical, radio, or television productions.”⁷⁰ Therefore, any regulation addressing children in the entertainment industry is left to the states to decide.⁷¹

California's Coogan Law—also known as the California Child Actor's Bill—affirms that the money minors earn while working in entertainment is the property of the minor and not their parents.⁷² California has been praised for having “the strongest child labor laws for performers in the country.”⁷³ The law requires that a minimum of 15 percent of all minors' earnings must be set aside in a “Coogan Account,” which is a trust account with a California bank that the minor cannot access until they come of age.⁷⁴ This requirement is based on gross earnings of the child, as opposed to net earnings.⁷⁵ The employer deposits the child entertainer's money directly into the Coogan Account—meaning parents are not involved in the payment process.⁷⁶ This requirement is enforced through work permits—if a parent cannot provide the studio with a Coogan Account number, the child's work permit is voided and they are unable to continue with the project.⁷⁷ The law differentiates child

68. *See id.*

69. *See* 29 U.S.C. § 212.

70. *FLSA—Child Labor Rules Advisor: Exemptions from Child Labor Rules in Non-Agriculture*, U.S. DEPT LAB., <https://webapps.dol.gov/elaws/whd/flsa/cl/exemptions.asp> [<https://perma.cc/XN64-74A8>].

71. *See id.*

72. *California Child Actor's Bill*, WIKIPEDIA, https://en.wikipedia.org/wiki/California_Child_Actor%27s_Bill [<https://perma.cc/3G9V-D8C3>]; *Coogan Law*, *supra* note 17.

73. *See* Wong, *supra* note 10.

74. *Id.*

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

76. *See id.*

77. Harper Lambert, *Why Child Social Media Stars Need a Coogan Law to Protect Them From Parents*, HOLLYWOOD REP. (Aug. 20, 2019, 6:00 AM), <https://www.hollywoodreporter.com/business/digital/why-child-social-media-stars-need-a-coogan-law-protect-parents-1230968/> [<https://perma.cc/VG6K-XP76>].

stars' wages from child wages in other sectors, as the money in other industries often legally belongs to the parents and not the child.⁷⁸

In order for a minor entertainer to work on a project, a court must approve their employment contract before their term of employment begins. Either party to the minor entertainer's employment contract may petition the court for approval.⁷⁹ A contract is subject to disaffirmance if the court has not approved it, although the earnings of a minor under such a contract are still protected, even if the contract was not approved by the court.⁸⁰ This assurance favors the children who are party to the contracts over the producers who offer the contracts.⁸¹

The Coogan Laws in place at the state level have been criticized for not being protective enough.⁸² While California law emphasizes that all the money earned by a minor in entertainment is the minor's property, the minimum 85 percent of their earnings which are not in trust are still in the control of their parents.⁸³ The money that is not in trust is intended to be used by the child's parents to cover job-related expenses, such as paying taxes, fees, or commissions that the child owes.⁸⁴ However, the state does not monitor how parents manage their child's finances beyond the use of their Coogan Account.⁸⁵ Even with the Coogan Laws in place, multiple former child stars have sued their parents for misuse of the money not placed in trust, including Macaulay Culkin, Gary Coleman, Amanda Bynes, and Leighton Meester.⁸⁶

78. See Bryn Sandberg, *When Young Stars Sue Their Parents: Whose Money Is It, Anyway?*, HOLLYWOOD REP. (Aug. 13, 2018, 6:00 AM), <https://www.hollywoodreporter.com/lifestyle/lifestyle-news/young-stars-sue-parents-money-is-it-1132846/> [<https://perma.cc/N7BG-BBKJ>].

79. CAL. FAM. CODE § 6751(b) (West 2000).

80. Danielle Ayalon, Note, *Minor Changes: Altering Current Coogan Law to Better Protect Children Working in Entertainment*, 35 HASTINGS COMM'NS & ENT. L.J. 353, 358 (2013).

81. *Id.*

82. *Id.* at 359-60.

83. *Id.* at 362.

84. *See id.*

85. *Id.*

86. See Jessica Fecteau, *Family Feuds: When Child Stars and Their Parents Collide in Court*, PEOPLE (Apr. 9, 2015, 8:15 AM), <https://people.com/crime/child-stars-who-have-sued-their-parents/> [<https://perma.cc/C4NL-CXYM>].

D. Privacy Rights of Children Online

It is no secret that parents post pictures, videos, and updates about their children online.⁸⁷ Despite the ultimate message of this Note, this is not inherently wrong for ordinary parents to do. However, as the consumers of this content extend beyond family and friends to an audience of millions, there are serious questions about whether parents violate their children's autonomy and privacy rights when posting their image online.⁸⁸ This section considers the non-monetary harms that children of family channels may suffer from their lives being posted on the internet for financial gain.

Current legal discourse surrounding the protection of children's privacy on the internet centers around the protection of children's data.⁸⁹ The first time children's privacy online was recognized as an interest to be protected was with the enactment of COPPA in 1998.⁹⁰ COPPA focuses on protecting children's personal data from being sold to third parties without parental consent as children use the internet.⁹¹ Once children go from behind a computer screen to in front of a camera, however, their privacy rights are much less clear.⁹²

There is a growing argument that children cannot consent to having their image posted online.⁹³ As social media increases in popularity, it has become harder and harder for users to control

87. See Chelsea Jarvie & Karen Renaud, *Parents Who Share Info About Their Kids Online Are a Cybersecurity Risk. Here's Why.*, WALL ST. J. (Dec. 4, 2022, 12:00 PM), <https://www.wsj.com/articles/parents-who-share-info-about-their-kids-online-are-a-cybersecurity-risk-heres-why-116700221383> [<https://perma.cc/3ACK-A2KU>].

88. *See id.*

89. *See, e.g.*, Bethany Brown, Note, *Children's Right to Privacy on the Internet in the Digital Age*, 20 PITT. J. TECH. L. & POL'Y 223, 223-26 (2020); Eldar Haber, *The Internet of Children: Protecting Children's Privacy in a Hyper-Connected World*, 2020 U. ILL. L. REV. 1209, 1223-28 (2020).

90. 16 C.F.R. § 312.3 (2013); Haber, *supra* note 89, at 1224.

91. *See* 16 C.F.R. § 312.3 (2013).

92. Ellen Walker, *Nothing Is Protecting Child Influencers from Exploitation*, WIRED (Aug. 25, 2022, 9:00 AM), <https://www.wired.com/story/child-influencers-exploitation-legal-protection/> [<https://perma.cc/JFN2-28FK>].

93. Morgan Sung, *Their Children Went Viral. Now They Wish They Could Wipe Them from the Internet.*, NBC NEWS (Nov. 3, 2022, 8:30 AM), <https://www.nbcnews.com/pop-culture/influencers-parents-posting-kids-online-privacy-security-concerns-rcna55318> [<https://perma.cc/7BUQ-JL96>].

their private information.⁹⁴ A child cannot consent to personal photos or information being shared about them on a parent’s social media account when that parent has inherent authority over their child.⁹⁵ While parents may think that posting a video or photo to their personal social media account will not reach a large audience, “[a]s social media usership increases—especially on video platforms like TikTok—the potential viewership of every video is limitless. Going viral, whether intentionally or accidentally, isn’t uncommon.”⁹⁶

There is also a concern for the wellbeing of children who grow up in households in which their financial stability depends on the content the family creates.⁹⁷ As adolescents grow up, there is a normal belief in the “imaginary audience,” a psychological state where an individual believes others are constantly watching and paying attention to them.⁹⁸ As children of family channels grow up behind a camera lens, this “imaginary” audience becomes increasingly tangible, and it may be hard for these children to grow out of this belief and into their sense of self.⁹⁹

II. UPDATING COOGAN LAWS

The primary push to address online child labor protection is for California to update its Coogan Law to include child internet stars.¹⁰⁰ Major media platforms—Instagram, YouTube, and TikTok, to name a few—all have headquarters in California.¹⁰¹ California

94. See, e.g., *Protect Your Personal Information and Data*, FED. TRADE COMM’N (May 2021), <https://consumer.ftc.gov/articles/protect-your-personal-information-data> [<https://perma.cc/XM9A-8T8Y>] (outlining a myriad of ways consumers can attempt to protect their personal information on the internet).

95. Jelena Gligorijević, *Children’s Privacy: The Role of Parental Control and Consent*, 19 HUM. RTS. L. REV. 201, 204 (2019).

96. Sung, *supra* note 93.

97. See *id.*

98. *Id.*

99. *Id.*

100. See Walker, *supra* note 92.

101. Instagram’s headquarters are located in Menlo Park, California; YouTube’s headquarters are located in San Bruno, California; and TikTok’s U.S. headquarters are located in Culver City, California. *Instagram Headquarters and Office Locations*, CRAFT, <https://craft.co/instagram/locations> [<https://perma.cc/J3RH-VWLW>]; *YouTube Headquarters and Office Locations*, CRAFT, <https://craft.co/youtube/locations> [<https://perma.cc/BQ5N-UJ9N>]; *TikTok*

therefore has jurisdiction over these companies, and an updated Coogan Law would be able to protect children working on various social media and online platforms.¹⁰² Although this strategy would be the most direct way of protecting child internet stars, it is not without its setbacks.¹⁰³ This Part considers criticisms of the Coogan Law as it stands, potential problems with crafting legislation that addresses the realities of online fame, and how far an updated Coogan Law could (or should) reach.

A. Shortcomings of the Current Coogan Law

The purpose of California's Coogan Law is to protect child actors from their parents having full control of the money they earn.¹⁰⁴ As previously discussed in Part I.C., California's Coogan Law requires 15 percent of a child actor's gross earnings to be put in trust, accessible to the minor only when they reach the age of eighteen.¹⁰⁵ The remaining 85 percent is still considered to be the property of the minor, but is left in the hands of parents to cover work-related expenses.¹⁰⁶ The Coogan Law as it stands lacks any sort of regulation for the remaining 85 percent that is not required to be deposited into a Coogan Account.¹⁰⁷ Although the minor technically owns the remaining 85 percent, there are no legislative safeguards in place to ensure that this money is, in fact, going to the minor.¹⁰⁸ After the employer deposits the funds into the Coogan Account, they no longer have an obligation to monitor the funds or the account.¹⁰⁹

This means that the remaining money not put in trust goes to the parents of the minor—presumably for managing the actor's

Headquarters and Office Locations, CRAFT, <https://craft.co/tiktok/locations> [<https://perma.cc/5P2T-AWNP>].

102. "We believe that the 'nerve center' will typically be found at a corporation's headquarters." *Hertz Corp. v. Friend*, 559 U.S. 77, 81 (2010) (determining that corporations can be sued in diversity in the state of their nerve center).

103. See discussion *infra* Part II.B.

104. See CAL. FAM. CODE § 6752 (West 2020).

105. *Id.* § 6752(b)(4); see *supra* Part I.C.

106. See *supra* Part I.C.

107. See *supra* Part I.C.

108. See *supra* Part I.C.

109. CAL. FAM. CODE § 6752(b)(6) (West 2020).

expenses related to being a performer.¹¹⁰ However, when a family's primary source of income is their child entertainer, and the parents are given full control of 85 percent of that child's earnings with no supervision, it is all too common for parents to do what they wish with that money, leaving the child unprotected.¹¹¹ The Coogan Law assumes parents will use the remaining funds to act in the best interest of their child.¹¹² While that may be true in some cases, as a child star becomes more successful, there is an increasingly lucrative opportunity for the parent to use their child's funds for their own personal gain.¹¹³ The assumption that parents will act in their child's best interest without any legislative safeguards in place leaves children at risk of exploitation by the very people the law assumes will protect them.¹¹⁴

California's Coogan Law forbids minors from disaffirming contracts that have been approved by the court.¹¹⁵ However, most contracts between minors and entertainment companies are not court-approved.¹¹⁶ In fact, "[t]he law specifically makes *employment* contracts eligible for court approval, and does nothing to ensure that contracts entered into by the minor for related services are eligible for court approval—and thus protected against disaffirmance by the minor."¹¹⁷ This loophole enables entertainment companies to contract not with the minor actor themselves, but the parents of the

110. See *supra* Section I.C.

111. For example, Shirley Temple supported a household of twelve people throughout her career, and her only assets at the end of her career were "a few thousand dollars and the deed to her dollhouse in the back yard of her parents' Beverly Hills home." Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS BAR ASS'N J., 21, 22 (1997).

112. See Ayalon, *supra* note 80, at 362.

113. For example, Gary Coleman had to sue his parents to recover millions of dollars after he discovered his parents listed themselves as paid employees of his production company. His parents' share of the company was worth \$770,000, while Coleman's was worth only \$220,000. Staenberg & Stuart, *supra* note 111, at 23.

114. See Ayalon, *supra* note 80, at 363.

115. CAL. FAM. CODE § 6751(a) (West 2000).

116. See Ayalon, *supra* note 80, at 360.

117. *Id.*

minor actor.¹¹⁸ The California Court of Appeal upheld this legislative shortcoming, asserting that “a disaffirmance of an agreement by a minor does not operate to terminate the contractual obligations of the parent who signed the agreement.”¹¹⁹

If California were to expand its Coogan Law to cover child internet stars on YouTube, these issues would persist. Although *some* protection would be better than *no* protection, these issues with the Coogan Law as it stands would still leave child internet stars vulnerable to financial exploitation.

B. Roadblocks to Updating the Coogan Law

California lawmakers previously attempted to include social media stars in their child entertainment laws in 2018.¹²⁰ The proposed legislation sought to clarify that the current Coogan Law in place applies to minors under sixteen years of age employed in “social media advertising.”¹²¹ The bill defined “social media advertising” as “the use, demonstration, or placement of a product through a social media communication” and defined “social media” as “an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations.”¹²²

In the legislation, Assembly Member Kansen Chu stated that creators with large social media followings can earn anywhere from \$10,000 to \$20,000 per post—and if such social media followings hinge upon featuring their minor children, there is a gaping lack of financial protection.¹²³ The bill clarifies that child influencers are advertisers, and should fall within the definition of “employment of

118. See, e.g., *Berg v. Traylor*, 56 Cal. Rptr. 3d 140, 141-42 (Cal. Ct. App. 2007) (describing an instance where a parent of a minor entered into a contract with the minor’s personal manager and the court found that while the minor was able to disaffirm the contract, the parent was not).

119. *Id.* at 149.

120. See McGinnis, *supra* note 11, at 259.

121. *Employment: Minors: Hearing on A.B. 2388 Before the Assemb. Comm. on Arts, Ent. Sports, Tourism, & Internet Media*, 2017-2018 Leg., 1 (Cal. 2018) (discussing the potential for using existing entertainment industry standards in social media applications).

122. *Id.*

123. *Id.* at 2.

a minor as an advertising or photographic model.”¹²⁴ This clarification intended to extend the existing Coogan Law to child influencers, seemingly without any significant changes to the Coogan Law itself.¹²⁵

Although the proposed legislation was met with no opposition, it ultimately failed to protect child internet stars in the manner in which it was intended.¹²⁶ The bill that was inevitably signed into law did not have any language relating to “social media.”¹²⁷ This was partially because the Coogan Law regulates a more regimented entertainment system than what social media stars experience, and the law was not as easily transferrable as legislators had hoped.¹²⁸ California’s Coogan Laws rely on permitting systems to ensure compliance among parents and media companies.¹²⁹ In the traditional media context, the child actor’s work permit is voided if their parent does not provide a Coogan Account number.¹³⁰ In the family channel context, parents are often filming their children throughout their day, without set film times or particular locations.¹³¹ Although the permitting system provided by the Coogan Law ensures compliance for traditional media, it would likely not affect the behavior of parents who essentially work for themselves as content creators.¹³² If permits are effectively unworkable for content creators, there will be no legal obligation for parents of internet child stars to open a Coogan Account and manage the funds properly.¹³³

124. *Id.* at 2-3.

125. *See id.*

126. *Id.* at 5; *see Lambert, supra* note 77 (“The version of Assemblyman Kansen Chu’s bill that was signed into law and went into effect in January was diluted significantly from what the Bay Area representative originally proposed.”).

127. *See McGinnis, supra* note 11, at 259.

128. *See Lambert, supra* note 77 (“Unlike traditional media, which is subject to strict schedules and studio oversight, digital content can be filmed whenever and wherever a creator wants. This was particularly problematic for the Studio Teachers Union, as California law requires the service of an on-set educator.”).

129. California law also requires verification of the minor’s school record and attendance and enables the California Division of Labor Standards Enforcement to require the minor to undergo physical examinations when needed. Christopher C. Cianci, Note, *Entertainment or Exploitation?: Reality Television and the Inadequate Protection of Child Participants Under the Law*, 18 S. CAL. INTERDISC. L.J. 363, 376 n.101 (2009).

130. *See Lambert, supra* note 77.

131. *See Walker, supra* note 92.

132. *See Lambert, supra* note 77.

133. *See id.*

C. How Far Can the Coogan Law Reach?

If California's Coogan Law was successfully updated to include child internet stars, there would need to be boundaries in place to ensure the law is not affecting children who are posting their own content recreationally, and not for a profit. This distinction could be similar to the distinction drawn by California law relating to children featured on reality television shows.¹³⁴ There are significant similarities between social media content and reality television: "loose if any scripted content, cameras set up in the home or in family situations rather than on a traditional 'set,' and working hours which are not defined."¹³⁵

The proposed 2018 legislation pointed to an opinion by a staff attorney for the California Labor Commissioner's Office addressing the boundaries of labor in reality television.¹³⁶ "Hours worked" for reality television is defined as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."¹³⁷ In other words, any time the minor is being filmed other than rest periods is considered to be hours worked.¹³⁸

Because social media usage is often recreational, this definition would only come into play when any social media user earns money for posts. Because children are often subject to the control of their parents, much like a reality television star is subject to an employer, the definition of "hours worked" for child stars could be analogous to reality TV: any time a parent films their child for YouTube would qualify as hours worked. By adding this extra requirement, the legislation would prevent the average daily social media user from being subjected to extra responsibilities because they post pictures of their children online.

134. See *Employment: Minors: Hearing on A.B. 2388 Before the Assemb. Comm. on Arts, Ent. Sports, Tourism, & Internet Media*, 2017-2018 Leg., 1 (Cal. 2018).

135. *Id.* at 3.

136. *Id.* at 4.

137. *Id.*

138. *Id.*

III. YOUTUBE UPDATING THE PARTNER PROGRAM

Because of the legislative wrinkles discussed in Part II, another option to expand the protections of internet child stars is for platforms like YouTube to directly change their terms of service and payment structure. Although this may initially seem like an extensive undertaking, YouTube already has the mechanisms in place to set up a private version of a Coogan Account for minors who are featured in monetized videos.¹³⁹ YouTube's precedent for changing advertising algorithms quickly points to its capability of restructuring its payment policy when it comes to channels that are classified as kids and family content.¹⁴⁰ YouTube also has potential punishment structures in place—such as demonetization—that it would be able to use against family channels that do not comply with an updated policy.¹⁴¹ This Part proposes a revision to YouTube's payment structure and penalties with regard to minors featured in monetized content, considers possible litigation that could arise from any changes to YouTube's terms of service, and examines potential corporate incentives to expand protections on YouTube's minor content creators.

A. Payment Structure and Penalties

YouTube's policies urge creators to “understand and follow the law” when posting content that includes minors.¹⁴² In doing so, it advises creators to:

139. See Seale, *supra* note 13 (describing the allocation of AdSense revenue: “the YouTube/Creator split is 45 [percent] YouTube/55 [percent] Creator. The 55 [percent] allocated to the content creator is then split among the parties who own different assets of the video.”).

140. See Sangeet Kumar, *The Algorithmic Dance: YouTube's Adpocalypse and the Gatekeeping of Cultural Content on Digital Platforms*, 8 INTERNET POL'Y REV., June 2019, at 1, 2-3 (describing YouTube's dramatic policy changes as the “Adpocalypse”).

141. Emma Garofalo, *4 Reasons Why Your YouTube Channel Got Demonetized*, MAKEUSEOF (Dec. 28, 2021), <https://www.makeuseof.com/reasons-youtube-channel-demonetized/> [<https://perma.cc/R3QU-MYWMM>] (“YouTube usually demonetizes videos in response to one or more infractions of its community guidelines. After demonetization, YouTube revokes your right to earn money with each view, all on a video-by-video basis.”).

142. See *Best Practices for Content with Children*, *supra* note 37.

Review local laws and regulations to find out if minors ... need a permit, registration, or license to work.... follow applicable laws around paying minors for their work.... follow all applicable laws to protect from interference with adequate schooling and education.... [and ensure that] [t]he working environment [is] safe for the minor.¹⁴³

These guidelines do not come with an explicit consequence if creators fail to comply, but YouTube's primary penalty is demonetizing the video that violates these guidelines so the creator will be unable to make a profit.¹⁴⁴ YouTube's more extreme consequence is "deplatforming" a creator, which means removing a channel that consistently violates the terms of service on YouTube.¹⁴⁵

YouTube conducts its payment procedure through a program called "AdSense," which creators must sign up for once they meet the criteria to join YouTube's Partner Program.¹⁴⁶ With AdSense, creators are able to give their payment information so they can receive their portion of the revenue generated by advertisements on YouTube.¹⁴⁷ As previously mentioned in Part I.B., YouTube automatically divides the revenue among the parties who own different assets of the video.¹⁴⁸

YouTube's ability to allocate different shares of revenue based on creators' ownership of the content proves that the website has the infrastructure to essentially set up private Coogan Accounts for children featured on family channels. To do this, YouTube would have family channels register as "kids and family content" through AdSense and then individually list each child in the video on their AdSense account.¹⁴⁹ In this scenario, each child who is associated

143. *Id.*

144. See Garofalo, *supra* note 141.

145. Adrian Rauchfleisch & Jonas Kaiser, *Deplatforming the Far-Right: An Analysis of YouTube and BitChute 4* (June 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3867818 [<https://perma.cc/P5YZ-H84B>].

146. Greg Preece, *How YouTube Pays You in 2022 (Payment System Explained)*, YOUTUBE (May 4, 2020), <https://www.youtube.com/watch?v=ezZwKMIs0Dg> [<https://perma.cc/Z469-BYNS>].

147. See *YouTube Partner Program Overview & Eligibility*, *supra* note 14.

148. See *supra* Part I.B.

149. YouTube already classifies family channels and similar content as "kids and family content," which comes with a different standard of conduct as compared to adult content on the platform. See *Determining if Your Content is "Made for Kids," supra* note 53. Such a

with the family channel account would be listed as a co-creator, and YouTube could directly deposit a portion of the generated ad revenue into the child's own account. YouTube could model this payment structure after California's Coogan Law—automatically depositing 15 percent of the creator's generated revenue into the child's own trust, which would be accessible to the child when the child reaches the age of eighteen.¹⁵⁰

Through AdSense, creators link their own bank information to be paid by YouTube.¹⁵¹ YouTube could require children featured in monetized content to have their own trust account linked to AdSense in order for any creator to receive their portion of the generated revenue.¹⁵² This requirement would fix the problem that stifled meaningful legislation from being effective in the past. Instead of requiring work permits which are easy to ignore in an informal social media setting, YouTube would withhold funds from all creators involved in a monetized video until they provide AdSense with the child's trust account.¹⁵³

Similar to the scope of an updated Coogan Law, YouTube's new policy could be modeled after reality television standards, meaning children would be compensated for “the time during which [the child] is subject to control of [the creator], [including] all time [the child] is suffered or permitted to work, whether or not required to do so.”¹⁵⁴ Updating YouTube's monetization policy would ensure some level of financial protection for the rising child stars that are central to the success of family channels. Instead of its current policy, which urges creators to “understand and follow the law,” updated monetization structures would ensure children are compensated for their work and provide some protection against exploitation.¹⁵⁵

classification could be more formalized in this monetization structure, but is not a foreign concept for the platform. *See id.* (explaining how content creators are classified as children's content creators for the sake of complying with COPPA regulations).

150. *See* CAL. FAM. CODE § 6752 (West 2020).

151. *See* Seale, *supra* note 13.

152. Similar to the Coogan Law's requirement that parents produce their child's Coogan Account number before they can start filming. *See* Lambert, *supra* note 77.

153. *See id.* (“Critics ... argued that enforcing work permits would be difficult, if not impossible.”).

154. Cal. A.B. 2388, 4.

155. *See Best Practices for Content with Children*, *supra* note 37.

B. Possible Litigation

If YouTube were to condition payment to family channels on the creation and management of Coogan Accounts for featured children, there could be subsequent litigation from family channel owners who lose revenue to their children. This section discusses potential claims such family channel owners would have and the precedent that suggests that the courts will likely accept YouTube's explicit terms of service clauses, enabling YouTube to unilaterally change its payment structures. Because of this, YouTube would likely prevail in any litigation related to the change in the payment structure related to protecting young adult internet stars.

Class action lawsuits from creators in response to YouTube changing its terms of service are not unprecedented. In 2017, YouTube changed its monetization criteria for creators and established more requirements for creators to stay in the YouTube Partner Program.¹⁵⁶ During a period commonly referred to as the "Adpocalypse," YouTube substantially changed its monetization policies in response to controversy related to advertisements playing alongside extremist and sexually-explicit content.¹⁵⁷ Companies threatened to withdraw their advertising campaigns from YouTube because they did not want to be associated with such content, and in response, the platform swiftly made multiple significant changes: (1) expanded human moderation of content; (2) allowed advertisers to exclude broad content categories; (3) created more exclusive requirements for creators to join the YouTube Partner Program; and (4) established a stricter standard of demonetizing videos deemed to not be "advertiser friendly."¹⁵⁸

Before the "Adpocalypse," YouTube's threshold for qualifying for the Partner Program was a total of 10,000 views on one's channel.¹⁵⁹ After the "Adpocalypse," the requirements for joining and staying in the Partner Program were more extensive—with a minimum of 1,000 subscribers and 4,000 hours of total watch time over a 12-

156. See Seale, *supra* note 13.

157. See Kumar, *supra* note 140, at 2-4.

158. *Id.* at 3.

159. See Seale, *supra* note 13.

month period.¹⁶⁰ This change made it more difficult for creators to monetize their content, and many content creators lost their ability to generate revenue.¹⁶¹

This revenue change prompted the owners of a YouTube Channel called “Zombiegoboom” (Zombie) to file suit against Google in *Sweet v. Google Inc.*¹⁶² Zombie alleged that its advertising revenue after YouTube’s changes to the advertising algorithm fell from \$300-\$500 per day to \$20-\$40 per day.¹⁶³ Zombie brought five claims for relief against Google: (1) violation of California Business & Professions Code § 17200; (2) tortious interference with contractual relations and/or prospective economic advantage; (3) breach of contract; (4) breach of the duty of good faith and fair dealing; and (5) breach of quasi-contract.¹⁶⁴

Google moved to dismiss this action, alleging that Zombie failed to state a claim because the conduct Zombie alleged was expressly permitted by the parties’ contract.¹⁶⁵ Zombie’s response included a declaration from a software engineer at YouTube as supporting evidence.¹⁶⁶ In the supporting declaration, the engineer testified that users must assent to YouTube’s Terms of Service Agreement before they are able to set up their channels.¹⁶⁷ The Partner Program Terms include a contract term critical to this action: “YouTube is not obligated to display any advertisements alongside your videos and may determine the type and format of ads available on the YouTube Service.”¹⁶⁸

160. *Id.*

161. *See id.*

162. *See Sweet v. Google Inc.*, No. 17-cv-03953-EMC, 2018 WL 1184777, at *1 (N.D. Cal. Mar. 7, 2018).

163. *Id.* at *2.

164. *Id.* This section of the California Business and Professions Code provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” CAL. BUS. & PROF. CODE § 17200 (West 1993). The plaintiffs alleged that YouTube engaged in unfair conduct (and did not allege unlawful conduct) because it had “devised and executed a material change to its advertising terms ... without providing any notice” to content creators. *Sweet*, 2018 WL 1184777, at *2

165. *Sweet*, 2018 WL 1184777, at *4.

166. *Id.* at *3.

167. *Id.*

168. *Id.* at *4. The Terms also asserted that “YouTube reserves the right to retain all other revenues derived from the YouTube service, including any revenues relating to ads on search page results.” *Id.*

The court in *Sweet* determined that the implied covenant of good faith and fair dealing did not contravene the express provision conferring complete discretion on YouTube.¹⁶⁹ The implied covenant of good faith and fair dealing primarily applies to agreements which initially appear illusory.¹⁷⁰ However, in this case, there was adequate consideration between Zombie and YouTube: YouTube provided a forum for Zombie to post videos in exchange for a license to Zombie's content.¹⁷¹ Because of this—and the fact that the YouTube Partner Program encompassed more than advertising revenues—the provision of the Partner Program that conferred complete control upon YouTube over advertising decisions was not subject to the implied covenant of good faith and fair dealing in order to prevent the agreement from being illusory.¹⁷² The court further contended that an argument that YouTube did not have complete discretion under the Partner Program Terms had no merit, because of the clarity of the provision that violation of the Partner Program Terms was one reason—not the only reason—why YouTube was not obligated to display advertisements alongside channel owners' content.¹⁷³

The court subsequently dismissed all of Zombie's claims with prejudice because of the explicit terms of the agreement.¹⁷⁴ The court, hinging on YouTube's explicit language in its Partner Program Terms, signaled that any claims that family channel owners may have related to a breach of contract, breach of good faith and fair dealing, or lost revenue will likely fail. YouTube could change its compensation policies to include Coogan-like trust accounts for child actors without tangible legal pushback. As the Zombie-YouTube litigation demonstrates, changes to YouTube's payment policy will not result in a litany of legal risk or financial problems for the company.

169. *Id.* at *9.

170. *See* Third Story Music, Inc. v. Waits, 48 Cal. Rptr. 2d 747, 751 (Cal. Ct. App. 1995).

171. *Sweet*, 2018 WL 1184777, at *9.

172. *Id.*

173. *Id.* at *9-10.

174. *Id.* at *10.

C. Incentives for YouTube

The question remains—*why* would YouTube change its monetization policy? If the best solution to this problem is for YouTube to directly address it, what would make the company take matters into its own hands?

In the past, YouTube has changed its corporate policies when there was financial motivation. YouTube substantially changed its Partner Program in 2017 during the “Adpocalypse” in response to threats that companies would withdraw their advertising campaigns from the website because their advertisements were running alongside sexually explicit and extremely violent content.¹⁷⁵ There does not seem to be a similar financial incentive in this case. The calls for increased financial protection of children on the platform are generally coming from lawyers, legislators, and reporters, but not from advertisers.¹⁷⁶

YouTube again changed its algorithm in 2019 when it became apparent that pedophiles were using the website to collect child-related content and communicate with one another.¹⁷⁷ In response, YouTube demonetized videos of children and disabled comments on videos featuring children.¹⁷⁸ The platform reported illegal comments to law enforcement and terminated over 400 channels.¹⁷⁹ A YouTube spokesperson made it clear that “[a]ny content—including comments—that endangers minors is abhorrent and we have clear policies prohibiting this on YouTube. We took immediate action by deleting accounts and channels, reporting illegal activity to

175. See Kumar, *supra* note 140, at 2.

176. See Lambert, *supra* note 77; Wong, *supra* note 10; Cal. A.B. 2388, 2-3; McGinnis, *supra* note 11, at 249.

177. Fruzsina Eordogh, *While Solving its Pedophile Problem, Did YouTube Forget to Contact the Parents?*, FORBES (Feb. 28, 2019, 9:58 PM), <https://www.forbes.com/sites/fruzsinaeordogh/2019/02/28/while-solving-its-pedophile-problem-did-youtube-forget-to-contact-the-parents/?sh=76e39261f1f6> [https://perma.cc/PD64-TC65].

178. *Id.*

179. Marrian Zhou, *YouTube Axes More than 400 Channels over Child Exploitation Controversy*, CBS NEWS (Feb. 21, 2019, 2:27 PM), <https://www.cbsnews.com/news/youtube-axes-more-than-400-channels-over-child-exploitation-controversy/> [https://perma.cc/PKZ4-QZ EJ].

authorities and disabling comments on tens of millions of videos that include minors.”¹⁸⁰

Although the company addressed this controversy quickly, critics continue to call for YouTube to take a more proactive approach to child safety.¹⁸¹ Although critics were focusing on child safety from sexual predators, YouTube has an opportunity to be proactive about the safety of children on the platform once again. Emphasizing a need to proactively protect internet child stars’ assets could incentivize the company to adopt this policy before waiting to do so as a response to a major controversy.

CONCLUSION

California passed the first Coogan Law as a response to Jackie Coogan’s public loss of his fortune to his parents. This law, while helpful to many child stars, was reactionary in nature and came too late to help its namesake.¹⁸² Since then, the law has developed and expanded to ensure parents cannot take advantage of their children. Although the current Coogan Law is not perfect, it is a significant improvement from a complete absence of child protection—and all because parents exploited their child at a time when there was little protection to stop that from happening.

As we enter this new age of media, we once again have an opportunity to expand protections for children whose parents thrust them into stardom. This time, there is an opportunity to adjust the law—or YouTube corporate policy—to protect children *before* any tangible financial harm has occurred. Protecting internet child stars’ financial interests is essential to the development of child entertainment law and vital to protecting a new generation of Jackie Coogans from being exploited by the people who are supposed to care for them the most.

180. *Id.*

181. *See, e.g.,* Richard Nieva, *YouTube’s ‘Whack-A-Mole Approach’ to Child Safety isn’t Working, Critics Say*, CNET (Feb. 21, 2019, 2:48 PM), <https://www.cnet.com/tech/tech-industry/youtubes-whack-a-mole-approach-to-child-exploitation-isnt-working-critics-say/> [<https://perma.cc/PM5Y-LQLS>] (“Why isn’t it YouTube’s No. 1 priority to create sustained solutions, instead of carrying on with its current whack-a-mole approach?”).

182. *See* Barron, *supra* note 64.

While updating the existing Coogan Law initially seems like the most logical answer to this problem, the attempt to do so in 2018 showed the cracks in the system. The current Coogan Law was created around a rigid artform. Traditional media has set locations, times, and protocols that are conducive to a legal framework relying on permits. Trying to apply existing Coogan Law to social media is like trying on a suit that was tailor-made for someone else: it does not quite fit.

Social media platforms where creators receive revenue directly from the company—like YouTube—are uniquely positioned to address this problem. Their terms of service enable them to make changes to their compensation structures relatively freely. Their algorithms can classify different types of content creators and isolate videos featuring children. The main roadblock to this solution is that YouTube does not have any pressing incentive to take this project on. In the past, YouTube has acted in a reactionary way—changing its policies in the wake of scandal to ensure it does not lose any revenue. Without legal pressure or any financial incentive, it is unlikely that YouTube will change on its own. If YouTube addresses this problem sooner rather than later, it may protect millions of children featured on its platform and set a strong example for other social media companies to take significant steps to prevent harm to minor content creators.

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