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Famous at five: risk assessing digital child labour

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ABSTRACT


Commercialised representations of children and babies have been normalised as content on social media platforms in the same way as child models and actors have in traditional media. This paper explores the impact of this workload on children in practice, evidencing a range of potential risks of harm which are not currently provided for in policy or practice. This paper synthesises approaches to parental digital sharing (sharenting) alongside child labour considerations in order to analyse this legal lacuna, which is not constituted within any privacy, child labour, or child online safety laws within the UK. It proposes that pre-existing legal frameworks cannot effectively address these risks, which extend beyond issues surrounding data protection and financial security, and include impacts on children's identity, dignity, and psychological development. This paper suggests alternative contemporary approaches to policy and practice, which could provide new and enhanced safeguarding processes for children working in digital spaces.

KEYWORDS

Child influencers; social media; sharenting; child labour; digital risks

1. Introduction

Children have long held a place in popular media and sports industries, whether it be child actors like Shirley Temple or Drew Barrymore, striving junior golfers like Tiger Woods, young singers like Charlotte Church, or even the fictitious 'Milky Bar Kid'. We have become accustomed to seeing young faces on screens, stages, sports arenas, and now on our devices.¹ The volume of child-related content on social media platforms such as Instagram, TikTok and Twitch has increased significantly over the past ten years, with parents publicly posting intimate domestic images of their children which they deem funny or cute, demonstrating aspects of their child's personality.² The normalisation of this parental sharing (or 'sharenting') of children's digital imagery has resulted in numerous active baby and children accounts on these platforms, with parents or guardians retaining responsibility for the creation and management of the accounts and

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¹C Abidin, 'Pre-school Stars on YouTube: Child Microcelebrities, Commercially Viable Biographies, and Interactions with Technology' in L Green and Others (eds), *The Routledge Companion to Digital Media and Children* (Routledge, 2020).

²C Wegener, F Jage-D'Aprile and L Plumeier, 'Motherhood in Social Media: Phenomena and Consequences of the Professionalization of Mothers and their Media (Self-) Representation' (2023) 23 *Fem Media Stud* 3222.

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their content.³ This bypasses platform governance seeking to prohibit child access; for example, Instagram clearly states that its users ‘must be at least 13 years old’, but here the ‘user’ is the parent and not the child.⁴

Sharenting activities have received scrutiny in their own right and can be perceived as potentially causing harmful effects pertaining to the child’s data security, capacity to consent to the sharing of intimate images, and the impact on their identity and reputation.⁵ This paper builds upon this research, considering the increased risks of harm to children, where sharenting magnifies and becomes a form of digital child labour. This occurs because the child’s performance results in financial gains (including goods and services), through brand affiliations with companies such as McDonald’s, Lego, and Primark.⁶ The ‘attention’ gained by the child content can even result in children becoming influencers or brands in their own right,⁷ placing them within a \$24 billion influencer marketing industry.⁸ This paper, by drawing from both sharenting and child labour literature, as well as child impact examples from the literature and interviews with child influencers and their parents, will articulate an array of potential risks to these children, who do not benefit from the same legal protections and safeguarding measures as child performers in traditional media.⁹ The consequences of failing to act are extensive. For example, the literature review evidences one 6-year-old child model in the US, who amassed a following of 6.6 million followers and earned her parents over \$1.2million, but who cannot afford her university fees because she has no entitlement to those earnings.¹⁰ In addition to such financial risks of harm, however, a number of more nuanced risks exist; for example, within one of the research interviews a young British man explained that he felt he had to change his name, in case his employer or colleagues discover the humiliating childhood video of him that went viral.¹¹ While there have been reform proposals within some jurisdictions pertaining to the financial imbalances,¹² the adverse impacts on the child’s identity and future prospects have not been examined previously, expanding potential legislative gaps for digital child labour.

This paper delineates these ‘legal lacunae’ in relation to children’s safeguarding,¹³ juridical gaps which encompass many doctrinal areas such as tort, contract, employment, and family law. The paper, through the UK lens of performative safeguarding provisions and practices, analyses the omissions for a range of potential risks under existent jurisprudence pertaining to children’s privacy rights,¹⁴ child labour laws,¹⁵ or children’s online safety measures.¹⁶ Having categorised the risks, the paper will identify gaps in the

³C Abidin, ‘Micromicrocelebrity: Branding Babies on the Internet’ (2015) 18 M/C Journal.

⁴Meta, ‘Terms of Use’ (5 April 2023) <https://help.instagram.com/581066165581870/?helpref=uf_share> accessed 10 September 2024.

⁵José-M Romero-Rodríguez and others, ‘Sharing Images or Videos of Minors Online: Validation of the Sharenting Evaluation Scale (SES)’ (2022) 136 Child Youth Serv Rev 106396.

⁶T Leaver, T Highfield and C Abidin, *Instagram: Visual Social Media Cultures* (John Wiley & Sons 2020).

⁷Int.1 UK (Appendix 2).

⁸V Dencheva, ‘Influencer Marketing Market Size Worldwide from 2016 to 2024’ (*Statista*, 6 February 2024) <<https://www.statista.com/statistics/1092819/global-influencer-market-size/>> accessed 10 September 2024.

⁹MA Masterson, ‘When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers”’ (2020) 169 U Pa L Rev 577.

¹⁰Ex.1 US (Appendix 1).

¹¹Int.2 UK (Appendix 2).

¹²Masterson (n 9).

¹³Digital, Culture, Media and Sport Committee, Oral evidence: Influencer Culture, HC 258, Monday 1 February 2022, Q180.

¹⁴SB Steinberg, ‘Sharenting: Children’s Privacy in the Age of Social Media’ (2016) 66 Emory LJ 839.

¹⁵V Verdoodt, S van der Hof and M Leiser, ‘Child Labour and Online Protection in a World of Influencers’ in C Goanta and S Ranchordás (eds), *The Regulation of Social Media Influencers* (Edward Elgar Publishing, 2020).

¹⁶Such as the Online Safety Act 2023 (UK) or Digital Services Act Regulation (EU) 2022/2065.

current legislative framework within the UK, demonstrating that the law fails to provide sufficient protections for children within this new ‘workspace’. Sharenting and child influencer research outputs traditionally provide critiques of core issues and legal frameworks by drawing upon analogies with pre-existing jurisprudential constructs, such as labour laws for child models and actors.¹⁷ These have been proffered alongside other recognisable rights-based remedies, such as the right to removal of the content, or the right to erasure.¹⁸ This paper proposes that the risks facing children on social media platforms are so widespread, yet specific in nature, that they necessitate completely new perspectives on policy and practice which move beyond traditional ‘workspace’ models for child labour.

To effectively safeguard children performing in this space, a more comprehensive and collaborative approach to the risk management of the digital labour is needed and this should involve governments, platforms, parents, and brands.¹⁹ This paper lays the foundation for a risk assessment framework for these safeguarding considerations, advocating for new methods and different solutions to the conundrum of digital child labour within the UK. These proposals, which include the investiture of a new Child Digital Content Commissioner or Ombudsperson to act in the best interest of child content creators, provide a contribution to the legal discourses for reform that are of value to a number of jurisdictions.

2. A ‘best interest’ risk assessment methodology

The impetus for this research stemmed from a question posed in the UK Select Committee Hearing into influencer culture: ‘The question is: What are the harms here to the children?’²⁰ This point is pertinent when evaluating omissions in sharenting regulation and/or child labour legislation, and in the design of new and effective safeguarding policies and practices for child influencer labour. Academics within the field of child labour²¹ and children’s digital rights²² however, increasingly advocate for a move from harm-based discourses to those which recognise potential risks to children, while also enabling and empowering them to engage with technology.²³

Harm as both a moral and legal construct, relates to forms of ill-treatment to the person or property and it proves useful as a legal measure for accountability, as remedies usually respond to the harm caused.²⁴ While this can be an instructive tool for articulating legal duties towards child influencers, it may not be a suitable method for designing safer approaches to child influencer activity. This paper therefore employs a risk-based methodology, which allows for the recognition of potential harms occurring but proposes

¹⁷MN Fineman, ‘Honey, I Monetized the Kids: Commercial Sharenting and Protecting the Rights of Consumers and the Internet’s Child Stars’ (2022) 111 *Geo LJ* 847.

¹⁸Charlotte Yates, ‘Influencing “Kidfluencing”: Protecting Children by Limiting the Right to Profit from “Sharenting”’ (2023) 25 *Vand J Ent & Tech L* 845.

¹⁹Leaver et al. (n 6).

²⁰DCMS Oral Evidence (n 13), C Goanta at Q219.

²¹R Maconachie, N Howard and R Bock, ‘Re-thinking ‘Harm’in Relation to Children’s Work: A Situated, Multi-Disciplinary Perspective’ (2022) 50 *Oxf Dev Stud* 259.

²²E Staksrud, K Ólafsson and S Livingstone, ‘Does the Use of Social Networking Sites Increase Children’s Risk of Harm?’ (2013) 29 *Comput Hum Behav* 40.

²³M Stoilova, S Livingstone and R Khazbak, ‘Investigating Risks and Opportunities for Children in a Digital World: A Rapid Review of the Evidence on Children’s Internet Use and Outcomes’, *Innocenti Discussion Papers* (2021).

²⁴Z Chafee Jr, ‘Does Equity Follow the Law of Torts’ (1926) 75 *U Pa L Rev* 1.

reforms which could minimise such risks. In doing so, it categorises a range of potential risks to child influencers, so that policy and practice can respond with the necessary 'digital seatbelts for kids', which may include the creation of new safeguarding institutions and bodies.²⁵ Bourdillon et al. opine that, were policymakers to design their proposals using more scientific attempts to understand and advance child wellbeing, they would more clearly align with the 'best interests of the child' approach, as upheld in Article 3 of the UNCRC.²⁶ This paper therefore aims to provide an evidence-based risk assessment framework that could inform policy reforms, articulating a range of fundamental risks to children's wellbeing inherent in child influencer activities, and advocating for an independent child digital content commissioner or ombudsperson to act in the best interests of the children when addressing these risks.

2.1. Context and method

This paper focuses on the risks to the wellbeing of children under 13, who cannot have social media accounts under their own authority and, therefore, a parent or guardian controls or manages the account and its content. From this perspective, the article will not relate to the self-generation of content by children or young people but, instead, focuses on accounts where babies and young children are appointed independent named accounts by their parents or are included in family account activities. Additionally, in order to articulate current gaps in early years child protection and safeguarding measures, the paper will not go into detail relating to criminal activities, such as child neglect, abuse, grooming and kidnapping, etc., and instead relates to current legal gaps relating to sharenting, child employment, and online safety, using policies and practices within the UK as frames of reference.

In identifying a range of potential risks for early years child influencers, this paper draws from academic sharenting and child labour research to evidence these safeguarding gaps. In articulating the experiential impact on children, a range of international examples have been collated from analyses of prominent child influencer accounts online, or media reportage of account activities. While the subjects have been named and publicly identified in the media outlets and online commentaries, this research respects the integrity and dignity of both child and parent in these situations and has chosen to anonymise this publicly available data.²⁷ These broader global examples are included within the paper, as they provide supporting evidence-based examples of potential risks to children working in this space. In order to anonymise this data they have been labelled with ex. (example) and a number, followed by a jurisdictional identifier, and they are listed fully in the reference section.²⁸

Additionally, the project has undertaken 11 interviews within families of child influencers in the Republic of Ireland and the UK. This small-scale research sample was mostly identified through contact on Instagram, where the participants were asked if they

²⁵D boyd, 'Risks vs. Harms: Youth & Social Media' (*Made not Found*, 8 October 2024) < <https://zephoria.substack.com/p/risks-vs-harms-youth-and-social-media> > accessed 15 October 2024.

²⁶Michael FC Bourdillon, *Rights and Wrongs of Children's Work* (Rutgers University Press 2010).

²⁷T Helland, 'In the Periphery: Ethical Considerations When Indirectly Involving Children in Research' (2024) *Ethics Soc Welf* 1.

²⁸See Appendix 1.

could be observed and/or interviewed in order to better understand child influencer practices and how families were making their own risk-based decisions in relation to the practice. As a result of this, the author observed 4 families within their ‘usual daily routine’ and asked free-form questions prompted by the practices. In addition, 7 other families agreed to conversations with the author relating to their family or child account activities. This paper does not provide a full empirical overview of this interview data, but cites examples of risk-related behaviours that were discussed or observed during the influencer activity and/or within the free-form interviews. These small-scale case studies will be labelled with int. (interview) and a number, followed by the jurisdiction, and will also appear in the reference section.²⁹ Again, this project respects the privacy of child and parent participants in the research and, therefore, does not identify individuals or accounts even where publicly available, preserving the academic integrity and anonymity of the research data.

3. Creating child content

This paper identifies that child content creation constitutes a dichotomy of two critical issues; the parental sharing of digital imagery (sharenting) and the escalation of that behaviour into branded content creation, engendering forms of digital child labour. This section explores the normalisation of sharenting practices and some sharenting jurisprudence, before evidencing how these performances magnify to the extent that children are working within the home.

3.1. Sharenting and parental authority

Sharenting research on children born since the growth of social media in the early 2000s refers to them as ‘generation tagged’, because parents have unquestioningly and increasingly shared their images and constructed their digital identities.³⁰ Parents in the UK, in sharing these images and performances of young children are operating under parental authority, which means that they do not need any form of express or implied consent from the child to do so.³¹ Ong et al. recognise that it is the normalisation of these sharenting practices that has resulted in the rise of commercial activities from external stakeholders with a range of economic interests in the child, whether as performer, consumer, or data subject.³² Bessant, in exploring the jurisprudence for this area, states that parents act as the conduit to consent in these situations, becoming ‘privacy stewards’ for their children.³³ Therefore, in practice in the UK, a child’s right to privacy is generally only enforceable against a third party and not their parent, as evidenced when J.K. Rowling successfully claimed against a newspaper photographer who had taken unsanctioned photos of her baby: Here the critical issue was the lack of parental consent.³⁴

²⁹See Appendix 2.

³⁰M Oswald and others, ‘Have ‘Generation Tagged’ Lost Their Privacy?’ *A Report on the Consultation Workshop to Discuss the Legislative, Regulatory and Ethical Framework Surrounding the Depiction of Young Children on Digital, Online and Broadcast Media* (2017).

³¹C Bessant, ‘Sharenting: Balancing the Conflicting Rights of Parents and Children’ (2018) 23 Comms L 7.

³²LL Ong and others, ‘Sharenting in an Evolving Digital World: Increasing Online Connection and Consumer Vulnerability’ (2022) 56 JCA 1106.

³³Bessant (n 31) 13.

³⁴*Murray v Big Pictures (UK) Ltd* [2008] EWCA Civ 446.

Academic research supports differing legal responses to such inequities, with recommendations that an enhanced tort of privacy for children, dependent on proof of harm, might be appropriate.³⁵ Others mandate for the appointment of an independent Child Commissioner for Media, Broadcast & Internet,³⁶ while there are also proposals that standards should be similar to those of mainstream broadcasters, where the legal responsibility for children rests with the broadcaster (e.g. in the UK under s.1 of the OFCOM Broadcasting Code).³⁷ These suggestions help to ascertain what new legal sharenting safeguarding policies and procedures could look like, but do not fully consider the range of external actors that are involved when the sharenting has escalated to a commercial level. It is therefore advantageous to synthesise the approaches to sharenting with those of child labour, in order to determine how this increases the potential for a broader range of risks to children.

3.2. From sharenting to digital child labour

Children and babies have traditionally been used to advertise material goods in a variety of media and for a number of strategic reasons;³⁸ whether that be representations of innocence, arousing nurturing emotions, creating aspirations or even just as peer marketing.³⁹ As with other visual media, children prove to be useful as attention lures within the platform economy, as they have a ‘cute factor’ of ‘extreme youth, vulnerability, harmlessness and need’.⁴⁰ The attention gained by child content can prove valuable, as brands contract with parents to promote goods and services to their audience, with payment involving anything from a pair of trainers up to six-figure sums.⁴¹ These financial rewards are secured by parents who see themselves as influencers or ‘brands’,⁴² with children often becoming the face and name of the brand.⁴³ Children are thereby situated within an influencer marketing industry worth \$24 billion, with a host of other professional stakeholders, including influencer agencies, advertising agencies, and brand managers.⁴⁴

While a commodified version of the child promotes the financial interests of external brands, this can involve layers of hidden work being conducted within the home.⁴⁵ This has been discussed within the context of child labour reform, however many parents in this arena do not perceive that their child is truly ‘working’.⁴⁶ In conversations with the parents of child influencers in the US and UK, they focussed on their own workload, detailing the time spent on the management of the influencer account, the negotiation of contracts with agencies and brands, and the production and post-production phases of

³⁵S Agarwala, ‘When Sharing Isn’t Caring: Children’s Reputations and Sharenting’ (2024) 51 *Colum Hum Rts*.

³⁶Oswald et al. (n 30).

³⁷S Sorensen, ‘Protecting Children’s Right to Privacy in the Digital Age: Parents as Trustees of Children’s Rights’ (2016) 36 *Child Legal Rts J* 156.

³⁸E Seiter, ‘Different Children, Different Dreams: Racial Representation in Advertising’ (1990) 14 *J Commun Inq* 31.

³⁹J Kinsey, ‘The Use of Children in Advertising and the Impact of Advertising Aimed at Children’ (1987) 6 *J Advert* 169.

⁴⁰N Angier, ‘The Cute Factor’ *The New York Times* (3 January 2006).

⁴¹C Abidin, ‘#familygoals: Family Influencers, Calibrated Amateurism, and Justifying Young Digital Labor’ (2017) 3 *SM + S* 1.

⁴²Leaver et al. (n 6).

⁴³Int.1 UK.

⁴⁴Dencheva (n 8).

⁴⁵Masterson (n 9).

⁴⁶JC Wong, ‘It’s not Play if You’re Making Money’ *The Guardian* (24 April 2019).

filming, etc.⁴⁷ In contrast, the children’s activities are often referred to as ‘play’,⁴⁸ and parallels are drawn with a range of other extra-curricular or domestic activities on which children spend many hours, such as practising musical instruments, training for sport, or entertainment such as gaming; none of which are labelled ‘labour’.⁴⁹ These analogies appear overly reductive however, especially when considering the workload involved in influencer activities,⁵⁰ as well as the volume of the content and its impact on daily life.⁵¹ The content often involves children being dressed-up, staged, prompted, photographed, and filmed, in ways that create a working environment within the home, taking up to three days to complete a 30-second video reel.⁵² Additionally, the advertorial content relies upon the child using or wearing specific items or attending certain events; they are produced with time-dependent elements or to deadlines; and they are made for financial gain.⁵³ This evidences that income generating content, reliant upon children’s performances, denotes a form of child labour that has not been fully analysed from a safeguarding and risk assessment perspective.

4. Current legal discourses

This section briefly articulates some European perspectives on the regulation of child influencer labour; beginning with the EU kidfluencer statement,⁵⁴ before progressing to demonstrate the UK’s ‘legal lacuna’ of child influencer provisions.⁵⁵ The section concludes with a brief overview of new digital child labour policies, such as the French child influencer provisions.⁵⁶

4.1. Eu instruction – UK impediments

The EU Council for Youth, Education, Culture & Sport recently recognised the significance of the influencer marketing industry, acknowledging that influencers are ‘part of the everyday life of many Europeans’.⁵⁷ While the Council called for more support for influencers and clearer rules for them to create a positive impact on communities, the position on child influencers was somewhat oblique. Parents were highlighted as critical in terms of accountability, with the Council stating that they bear the ‘responsibility for the well-being and awareness of responsible online behaviour of kidfluencers’ and that ‘parents ... should inform themselves and their kidfluencers about relevant legal obligations and rights and strengthen their media literacy skills’.⁵⁸ However, as will be evidenced

⁴⁷ibid and Ex.5 US.

⁴⁸ibid.

⁴⁹R Fishbein, ‘Growing up Viral: “Kidfluencers” as the New Face of Child Labor and the Need for Protective Legislation in the United Kingdom’ (2022) 54 Geo Wash Int’l L Rev 127.

⁵⁰Digital, Culture, Media and Sport Committee Report, ‘Influencer Culture: Lights, Camera Inaction?’, HC687 2021–22 (12).

⁵¹Masterson (n 9).

⁵²Int.6 IRE.

⁵³Masterson (n 9) and Int.7 IRE.

⁵⁴EU Council for Youth, Culture & Sport, ‘Council Conclusions on Support for Influencers as Online Content Creators’ (14 May 2024) <<https://data.consilium.europa.eu/doc/document/ST-9301-2024-INIT/en/pdf>> accessed 10 September 2024.

⁵⁵DCMS Oral Evidence (n 13) Q480.

⁵⁶LOI n° 2020-1266 – visant à encadrer l’exploitation commerciale de l’image d’enfants de moins de seize ans sur les plateformes en ligne.

⁵⁷EU Council (n 54) para 1.

⁵⁸ibid para 7.

further below, these ‘legal obligations and rights’ are not clarified within any UK jurisprudence relating to digital child labour or online safety, so it is unclear as to how parents could inform themselves effectively.

In the UK, the Select Committee acknowledged these legislative gaps, articulating that neither the provisions for child performers under the 1963 legislation,⁵⁹ the updates in the 2014 regulations,⁶⁰ or the new Online Safety Act,⁶¹ provided specific safeguards for children working in this realm.⁶² In contrast, children working on movie sets or in photo shoots would have a range of protective mechanisms available to them, which are administered by their local authority. These include; the reporting of the activity, risk assessments relating to the ‘health and kind treatment’ of the child, restrictions placed upon their working hours, an evaluation of the impact on their education, and protection of any income generated by the performance.⁶³ In identifying this disparity in safeguarding measures as a ‘legislative grey area’, the Committee identified that new legislation should be drafted ‘to address the complexities of the influencer industry’.⁶⁴

4.2. Possible policy solutions: the French approach

Wider international regulatory discourses in this area primarily find online child labour analogous with other types of performance labour, such as child models and actors working in traditional media, with the addition of the ‘right to erasure’ or removal of the content.⁶⁵ This has been the approach proffered by the French legislature, with a new hybrid legislation that amalgamates protective mechanisms for child influencers with the pre-existing child performance laws for traditional media formats. The provision requires the approval of the online work by the labour directorate, an awareness of risk to the child’s well-being and impacts on their education, mandates that their earnings are protected until the child is of age,⁶⁶ but also adds that the child has the ‘right to erasure’ of the content by the platform.⁶⁷ While reference is made to financial thresholds that indicate an employment-style relationship, the focus is on that of ‘brand partnerships’ and such activities are identified as employment.⁶⁸ This provision is notable in recognising brand responsibilities for ensuring that the money is paid into a safeguarded account for the child, bypassing parental intervention.⁶⁹ The remainder of the provisions, however, rely on an amount of ‘good faith’ self-reporting and self-monitoring by the parents, which makes enforcement problematic in effect.⁷⁰

In addition to the enforcement issues that seem problematic with this new law,⁷¹ the ‘right to be forgotten’ comes with inherent limitations:⁷² The right to erasure of the

⁵⁹S.37 Children and Young Persons Act 1963.

⁶⁰Children (Performances and Activities) (England) Regulations 2014.

⁶¹Online Safety Act 2023.

⁶²DCMS Report (n 50) at 128.

⁶³S.37 Children and Young Persons Act 1963.

⁶⁴DCMS Oral Evidence (n 13) Q472.

⁶⁵Masterson (n 9).

⁶⁶LOI n° 2020-1266 Article 3.

⁶⁷LOI n° 2020-1266 Article 4(6) and Article 6.

⁶⁸LOI n° 2020-1266 Article 1.

⁶⁹LOI n° 2020-1266 Article 3(4) – otherwise they are liable for a fine of €3750.

⁷⁰Zoom interview with Bruno Studer and the author on 24 July 2023.

⁷¹ibid – no parents had faced action under the new law by July 2023.

⁷²Yates (n 18).

content rests upon the premise that a child could understand such a concept, effectively communicate that they wish to avail of it, and have that request acted upon by the person managing the account. Where content involves the performance of babies and toddlers, that right would be ineffective until many years later and, where the content has spread through the internet (gone viral), the right is ineffectual.⁷³ The French child influencer legislation was the first of its kind globally and other jurisdictions are introducing and/or considering their own juridical responses but,⁷⁴ even with these interventions, safeguarding gaps remain, as articulated within the risk assessment framework set out below. While some parity with the safeguarding provisions for child performers in traditional media would help to rectify some legal imbalances, this paper will outline a range of risks that fall outside these provisions or any other form of child safeguarding measures. The paper therefore proposes that a full risk assessment of the potential harms facing child content creators should inform any potential reform discourses in addressing these legislative gaps, and articulate clearer responsibilities for a range of other stakeholders in conjunction with parents.

5. Categorisation of the risks

This section provides a categorised collation of potential risks facing child content creators, synthesising sharenting and child labour considerations and evidencing gaps in safeguarding policies and practice, using UK provisions as a frame of reference. These risks include threats to their education, financial disadvantages, health & safety omissions, impacts on family dynamics, and negative effects on their identity and reputation.

5.1. Educational impact

The fundamental precept for child labour legislation stemmed from ‘modern’ mid-1800s models of child welfare in Northern Europe and West America, and the perceived benefits of education or ‘schooling’.⁷⁵ From this perspective, children were to be removed from the manual labour of factories, mills, and fields, and instead enrolled in schools, with a view that they should learn rather than earn.⁷⁶ This was complemented by legislation that effected both: For example, in the UK, the 1867 Factory Act prohibited factories from employing children under 8 years old, and the 1870 Education Act introduced mass education for 5–12 year-olds. The fundamental value of this ‘schooling’ was seen not just in terms of personal growth for the child but also in terms of producing more skilled and literate workforces, contributing to the economic growth of the era.⁷⁷ Internationally, these developments resulted in the prohibition of employment for children under 14 in any industrial enterprise by 1919,⁷⁸ and in 1989 the UN mandated to

⁷³Fishbein (n 48).

⁷⁴In Illinois, Public Act 103-0556 SB1782 came into effect on 1 July 2024 (certifies employment and secures earnings within a trust). Similar bills have been introduced in Minnesota (in effect from 1 July 2025), Arizona, California, Georgia, Maryland, Missouri, Ohio, Pennsylvania and Washington.

⁷⁵H Cunningham and S Stromquist, ‘Child Labor and the Rights of Children: Historical Patterns of Decline and Persistence’ in BH Weston (ed), *Child Labor and Human Rights: Making Children Matter* (Lynne Rienner, 2005).

⁷⁶S Bissell, ‘Earning and Learning: Tensions and Compatibility’ in BH Weston (ed), *Child Labor and Human Rights: Making Children Matter* (Lynne Rienner, 2005).

⁷⁷J Humphries, ‘Childhood and Child Labour in the British Industrial Revolution’ (2013) 66 *Econ Hist Rev* 395.

⁷⁸International Labour Organization: C5 Minimum Age (Industry) Convention, 1919.

prevent employment likely to ‘interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development’.⁷⁹

Translating such considerations to digital child labour, it is evident that the performances generally take place outside school hours, during evening and weekend leisure periods.⁸⁰ Where accounts predominantly depend on the performance of the child, it is possible to compare this labour with that of adult influencers, as for many of them it is a full-time occupation.⁸¹ Research identifies that, in order to become a successful influencer, a lot of time is invested in producing quality content on a regular basis,⁸² and that this labour often does not have any immediate recognisable economic gain.⁸³ This means that children can spend many hours on these activities, to the detriment of their school attendance, as well as their educational attainment, but without any guarantee of brand sponsorships or financial rewards. The potential risks of harm to the child’s education can be identified as a critical legislative gap, as traditional media industry standards include provision for the education of the child,⁸⁴ but there is often no similar provision for children engaged in digital labour.⁸⁵ This means that parents have a heightened responsibility for the educational attendance and attainment of the child influencer, potentially resulting in differing approaches to their education.

With some adult influencers eschewing higher education in favour of more aesthetic activities such as modelling and working out,⁸⁶ it follows that influencer parents could question the value of education in their own family practices. Influencer careers can provide high earning potential, but are not dependent on or bolstered by academic credentials for their successes, and this can result in diverse parental attitudes towards education itself, as evidenced by the research interviews: Some parents viewed mainstream education in a negative light, stating that school ‘gets in the way’ of the freedom that an influencer lifestyle requires,⁸⁷ but other parents valued the role of education in their children’s lives and their own account activities prioritise education-focused content, to show peers ‘what child-centred parenting and education looks like’.⁸⁸ Fundamentally, this evidences disjointed and subjective approaches, not just to children’s attendance at school but to the role of education more broadly. Since educational advancement was a fundamental tenet for the introduction of child employment legislation, practical and effective guidance and/or regulation is needed for these digital child performers and such provisions would allocate responsibility for the oversight of their education. This could come under the remit of a Child Digital Content Commissioner or Ombudsperson, who would show commitment to the inherent value of child influencers’ educational development and mandate for their academic attendance and attainment.

⁷⁹The United Nations Convention on the Rights of the Child, Article 32.

⁸⁰Ex.2 US.

⁸¹Gemma Newlands and Christian Fieseler, ‘#dreamjob: Navigating Pathways to Success as an Aspiring Instagram Influencer’ in C Goanta and S Ranchordás (eds), *The Regulation of Social Media Influencers* (Edward Elgar Publishing, 2020).

⁸²Verdoodt et al. (n 15).

⁸³BE Duffy, (*Not*) *Getting Paid to do What you Love: Gender, Social Media, and Aspirational Work* (Yale University Press, 2017).

⁸⁴UK – S.37(3)(b) Children and Young Persons Act 1963.

⁸⁵Except for France as discussed above.

⁸⁶AY Roccapriore and TG Pollock, ‘I Don’t Need a Degree, I’ve got Abs: Influencer Warmth and Competence, Communication Mode, and Stakeholder Engagement on Social Media’ (2023) 66 AMJ 979.

⁸⁷Ex.5 UK.

⁸⁸Ex.6 UK.

5.2. Financial risks

5.2.1. Compensation or payment?

Many academic and regulatory discourses in this area pertain to the financial protection of the child, in terms of both their current and future selves.⁸⁹ This has been considered from a compensatory perspective, with a view to financially compensating the child for impacts on their privacy, as the content can rely upon the filming of intimate domestic scenes.⁹⁰ It could prove difficult to determine what compensatory remedies would be appropriate without a change to the rules regarding sharenting and/or without a financial connection to any alleged privacy invasion, raising questions as to who would compensate in such instances: Would it be the brands, who have at times only provided goods or services in return for performances, or would it be the parent managing the account and posting content? In terms of legal redress, the ‘deep pockets’ approach to private law damages indicates that the most financially viable ‘wrongdoer’ would be most likely to be able to remedy such breaches and/or to have insurance that would pay on their behalf.⁹¹ This would require a determination that the brands themselves have a legal responsibility to protect the child from the harmful consequences of over-exposure, but this is not the current legal position.⁹²

Therefore, the dominant discourses usually relate to the financial remuneration for the child’s performance as a form of digital labour.⁹³ The complex nature of the platform model, however, means that brands do not have to consider the children as potential employees, with recognisable wages or earnings.⁹⁴ Parents also do not have to give the child access to any of the earnings, nor are they required to put any percentage of the money into a trust for their benefit.⁹⁵ This means that, in the UK, neither brands nor parents are tasked with safeguarding the financial earnings stemming from the child’s performative content, failing to recognise the labour of the child in a fair and equitable manner.⁹⁶ To date, the harmful consequences of this have mostly been evidenced in the US, such as in the example of a 6 year-old child model, whose parents earned over \$1.2 million through her online account, but then withheld money that would enable her to go to University.⁹⁷ One UK research interview did articulate however that influencer parents had increasingly become aware of these discourses and were implementing their own ‘best practice’ to safeguard the funds, in lieu of any mandates to do so.⁹⁸ Some parity with the laws for other child performers could help to address these gaps, but would not rectify the omission of compensatory mechanisms for any harms caused to the child where content is not branded.

5.2.2. Parent as contract negotiator and data manager

The complexities of these contracts and inequalities in bargaining power also create dilemmas for parents with limited financial expertise, as they become responsible for

⁸⁹Masterson (n 9).

⁹⁰EE O’Neill, ‘Influencing the Future: Compensating Children in the Age of Social-Media Influencer Marketing’ (2019) 72 *Stan L Rev Online* 42.

⁹¹PS Atiyah, *The Damages Lottery* (Bloomsbury Publishing, 1997).

⁹²O’Neill (n 90).

⁹³Masterson (n 9).

⁹⁴Verdoodt et al. (n 15).

⁹⁵A Saragoza, ‘The Kids are Alright? The Need for Kidfluencer Protections’ (2019) 28 *Am UJ Gender Soc Pol’y & L* 575.

⁹⁶Fishbein (n 48).

⁹⁷Ex.1 US.

⁹⁸Int.7 UK.

financial negotiations relating to the performances. Parents may feel ‘out of their depth’ when negotiating with large brands or agencies, most of whom will have extensive industry experience and supporting infrastructure.⁹⁹ Masterson recognises the inequity here, where parents may not have negotiation skills or training, may not use agencies, and will not have any collective or union support.¹⁰⁰ This can lead parents to accept goods or services in return for performances, where traditionally brands would have given wages to a child model or actor engaged on a photoshoot or ad campaign.¹⁰¹ Brands could be made more aware of better practice in these interactions, and parents could similarly be supported by the appointment of a professional body or ombudsperson to provide guidance and act as an advocate for children working on these platforms.

Another recognised financial risk stemming from these activities is the potential for identify theft/fraud, as a higher volume of personal data has been shared about the child.¹⁰² On average, parents share 300 images of their children annually, which turns into a mass of accessible data as well as enabling AI to access a trove of information on that child.¹⁰³ This means that information used to ascertain their financial identity and security will be freely available to those wishing to misuse it for a number of reasons, as parents have created a ‘digital dossier’ of their child for fraudsters.¹⁰⁴ For example, standard security questions that appear on banking applications, email verification sites or government portals such as; ‘first pet’, ‘first school’, or ‘date of birth’, may have been posted as content.¹⁰⁵ Identity theft can pose a great risk to the financial future of the child, as the perpetrators could use this information to open bank accounts, credit cards, and even loan facilities.¹⁰⁶ This issue, in combination with the other financial risks outlined above, indicates the need for a broader investigation into economic safeguarding for child performers, for both their current and future financial selves.

5.3. Health & safety

5.3.1. Whose responsibility?

Nielsen et al. suggest that young people face the greatest disadvantages on a platform economy that operates within ‘grey-zones’ of occupational health and safety, creating ‘protective gaps’.¹⁰⁷ Words like ‘entrepreneur’, ‘content creator’, and ‘freelancer’ are used to negate the employer/employee relationship, creating a multiplicity of relationships and blurring the lines of accountability for the provision of training, risk-assessments, and equipment, for platform workers.¹⁰⁸ The platforms and brands, in transferring the effort and cost of health and safety practices to content creators, avoid

⁹⁹ibid.

¹⁰⁰Masterson (n 9).

¹⁰¹D Chaffey and F Ellis-Chadwick, *Digital Marketing* (Pearson 2019).

¹⁰²Agarwala (n 35).

¹⁰³Z Bežáková, A Madleňák and M Švec, ‘Security Risks of Sharing Content Based on Minors by their Family Members on Social Media in Times of Technology Interference’ (2021) 4 MLAR 53.

¹⁰⁴P Ferrara and others, ‘Online “Sharenting”: The Dangers of Posting Sensitive Information about Children on Social Media’ (2023) 257 J Pediatr 1.

¹⁰⁵All easily found in content of Ex.2 US.

¹⁰⁶A Sarkadi and others, ‘Children Want Parents to ask for Permission Before “Sharenting”’ (2020) 56 J Pediatr Child Health 981.

¹⁰⁷ML Nielsen, CS Laursen and J Dyreborg, ‘Who Takes Care of Safety and Health Among Young Workers? Responsibilization of OSH in the Platform Economy’ (2022) 149 Safe Sci 149, 150.

¹⁰⁸ibid.

responsibility for a variety of training needs, the provision of appropriate equipment, and risk assessment processes: This adds further expectations for parents to understand the value of these practices and to have the relevant expertise and finances to perform such health and safety tasks themselves.¹⁰⁹

For child performers in other media, UK legislation mandates that the local authority should be provided with evidence that a Young Person's Risk Assessment has been conducted, and that this has been shared with parents and carers.¹¹⁰ This places a clear duty on the commercial party, who are financially benefitting from the child's performance, to consider the risks and effectively safeguard against them. Industry standards in traditional media also recognise the need for robust safeguarding practices when working with minors, with safeguarding departments within institutions designated to advise and support the child and the parties involved with their performance.¹¹¹ The BBC produces briefing packs with information relating to the performance and risk assessments outlining any health and safety issues, which require the child's consent.¹¹² One such risk assessment lists 36 types of risks that must be considered when filming; these include manual handling, working at height, repetitive actions, etc.¹¹³ Similarly, child models on photo shoots also have their activities risk assessed, with their contracts articulating whether the agency and/or brand assumes liability for these processes.¹¹⁴ These examples show a disparity between the protections afforded to child performers in other media formats, which are not currently being provided for child content creators on social media platforms.

5.3.2. *Where and when is the child at work?*

Apart from assigning legal duties towards the child, the work location and working hours would usually be stipulated within standard performance provisions. The location is vital from an insurance perspective, as children are heavily insured against harm in a variety of settings such as school, sports clubs, or a movie set or photo shoot.¹¹⁵ In the UK, child performers in other media must show their local authority that they will be covered by employer's liability insurance in order to secure their performance licence.¹¹⁶ If a child was injured in the course of any content creation, however, they would not benefit from the insurance protections that they experience elsewhere and such business activities are usually not covered under standard home insurance policies.¹¹⁷ Insurance provision is also usually specified within child model contracts,¹¹⁸ and an increased emphasis on this within the contracts that parents sign with brands and agencies could resolve this safeguarding omission.

¹⁰⁹Int.7 UK.

¹¹⁰Management of Health & Safety at Work Regulations 1999.

¹¹¹BBC, 'Guidance: Working with Children and Young People as Contributors' (April 2022) <<https://www.bbc.co.uk/editorialguidelines/guidance/children-young-people-working>> accessed 10 September 2024.

¹¹²BBC, 'Child Protection at the BBC: Policies And Practices' (2012) <https://downloads.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/pdf/bbc_report_childprotection_process.pdf> accessed 10 September 2024.

¹¹³ibid.

¹¹⁴Arwen & Co., 'Terms & Conditions' (2022) <<https://www.arwenandco.com/general-5>> accessed 10 September 2024.

¹¹⁵D Mangan, 'Influencer Marketing as Labour: Between the Public and Private Divide' in C Goanta and S Ranchordás (eds), *The Regulation of Social Media Influencers* (Edward Elgar Publishing, 2020).

¹¹⁶Bury Council, 'Applying for a Child Employment Licence' (2022) <<https://www.bury.gov.uk/asset-library/imported/read-the-guidance-and-make-an-application-for-a-child-employment-licence.pdf>> accessed 10 September 2024.

¹¹⁷P Lishman, 'Why your Home Insurer Won't Pay your Claim' (2019) 32 BDJ In Practice 14.

¹¹⁸Arwen (n 114).

Industry health & safety practices also require consideration of the working hours of the child, with restrictions to the number of hours that child performers can work, mandated according to the age of the child.¹¹⁹ These regulations include any rehearsal time and stipulate the days and hours that the child can be in the ‘workspace’, their maximum periods of continuous performance, total performance time, and their required rest periods. These provisions are in place because of the time allocated to the child’s education, but also to ensure that the work does not become onerous and impact on their physical and/or mental health.¹²⁰ Comparisons to reality tv programming are also of value, as within reality tv any time that the cameras are on and the child is not on a designated break is considered ‘working time’.¹²¹ For social media, this could translate the hours of propping, dressing, practicing, prompting, performing, and reviewing, into discernible working hours that should be monitored and accounted for. As noted previously, it may seem difficult to translate these standards to social media performances, which is largely due to the reliance of a ‘workspace’ model to define and regulate legal rights and responsibilities, but their existence, and the disparity between industry safeguarding practices, is of note. Again, recognition of this through either regulatory provisions, or the interactions of brands and professional bodies, could better account for child influencers’ working hours and an ombudsperson could provide oversight of this.

5.4. Family relations

5.4.1. Son/Daughter or star in the making?

Research shows that children’s long-term physical and mental health is positively affected by stable family dynamics,¹²² but that child employment within families can adversely impact upon those relationships and positive effects.¹²³ While most family social media accounts depict happy, normative and conservative family values and activities,¹²⁴ the day-to-day family life of content creators can be disruptive, as the ‘pressure to perform’, linked with multiple financial considerations, causes destabilising effects on the family.¹²⁵ As a successful child influencer’s workload increases so do the parental responsibilities, as evidenced through the negative portrayal of the ‘momager’, where mothers are portrayed as controlling the commodification of their children.¹²⁶ This occurs as parents assume roles of contract negotiation, content direction and production, financial management, health & safety oversight, and data management.

Additionally, parent–child relationships can face strain in situations where the family’s finances become reliant upon the child’s continuing success. While the pressure to succeed is endemic within influencer culture,¹²⁷ the expectations for child influencers have been inflated by international media articles such as ‘Why isn’t your toddler

¹¹⁹E.g. in the UK – The Children (Performances) Regulations 1968.

¹²⁰D Crabtree-Ireland, ‘Labor Law in the Entertainment Industry’ (2014) 31 Ent & Sports Law 4.

¹²¹Masterson (n 9).

¹²²E Chen, GH Brody and GE Miller, ‘Childhood Close Family Relationships and Health’ (2017) 72 Am Psychol 555.

¹²³E Webbink, J Smits and E De Jong, ‘Hidden Child Labor: Determinants of Housework and Family Business Work of Children in 16 Developing Countries’ (2012) 40 World Dev 631.

¹²⁴Abidin (n 41).

¹²⁵Ex.3 GER.

¹²⁶EI Van den Abeele, I Vanwesenbeeck and L Hudders, ‘Child’s Privacy versus Mother’s Fame: Unravelling the Biased Decision-making Process of Momfluencers to Portray their Children Online’ (2024) 27 Inf Commun Soc 297.

¹²⁷Duffy (n 82).

paying the mortgage?'.¹²⁸ These prospective gains are supported by famous child influencer success stories, with one Australian 11-year-old announcing her 'retirement' with \$millions due to the financial success of her Instagram account.¹²⁹ The financial incentives for successful influencers are large and, with parents leaving their full-time jobs and becoming more dependent on this fragile income,¹³⁰ the concern is that this will place undue pressure on children as the principal wage-earners for their family.

Difficulties in quantifying working hours can lead to a child feeling always on show with little or no down time.¹³¹ This is a difficult balance for parents, who can become adept at viewing and chronicling children's activities as 'content', rather than just as play or as part of normal childhood interactions.¹³² Interview responses indicated that parents assume an active role 'behind the scenes' in the preparation and production of sponsored content, in order to ensure brand directives are met.¹³³ For some content, very young children are directed to use quite specific language, including brand names, and to interact with the product in deliberate ways, ensuring that the brand name is visible, etc.¹³⁴ These interactions require a great deal of skill and balance from the parent, ensuring that the child complies with the instructions, that the task is completed satisfactorily and to time; all while according with directions that it looks 'natural' and 'relaxed' and that the child is 'really having fun'.¹³⁵ In more extreme situations, this results in coercive and punitive practices and there are growing numbers of child abuse cases where parents have not successfully navigated the complexities of parenting child performers, publishing content, and punishing non-compliance.¹³⁶ Within traditional media, these roles are performed by professionals, employed or contracted to interact with the child according to a range of safeguarding protocols and practices: Good practice would require that brands account for this when contracting with parents for child-related content.

5.4.2. *Who else cares?*

This category includes adverse impacts on other familial relationships, as the management of a child influencer's career affects the wider family dynamic. Examples from the literature review evidence instances of disruption between a variety of relationships, including exacerbated sibling rivalries,¹³⁷ differing viewpoints for grandparents,¹³⁸ and discord between parents.¹³⁹ The relationship between siblings, and even between other children within the family and their parents, can become strained where other children choose not to be involved in the content creation.¹⁴⁰ There is also evidence however that, even where siblings are performing together, there are often negative comparisons

¹²⁸Katherine Rosman, 'Why isn't your Toddler Paying the Mortgage?' *New York Times* (17 September 2017).

¹²⁹Ex.4 AU.

¹³⁰Ex.3 GER.

¹³¹Ex.2 US.

¹³²Int.6 IRE.

¹³³Int.7 UK.

¹³⁴Ex.12 UK.

¹³⁵Ex.3 GER.

¹³⁶Ex.6 US.

¹³⁷Ex.7 IND.

¹³⁸Ex.5 US.

¹³⁹Ex.8 CAN.

¹⁴⁰Int.8 UK.

made between the siblings, with these comparisons coming from both parents as content directors¹⁴¹ and the public as viewers.¹⁴² This external gaze and commentary can impact upon delicate family power dynamics and tensions, potentially causing long-lasting damage to family relationships.

Another relationship that can come under strain is that of grandparents, who may have differing opinions as to the role of social media in their grandchildren's lives. Literature review examples show a growing frustration by some grandparents that their views are not considered,¹⁴³ and within one of the research interviews grandparents articulated feelings that there could be risks of harm in the practices that they do not want their grandchildren exposed to.¹⁴⁴ Similarly, there can be discord between parents as to the practices, especially where parents are separated or estranged. This tension has been acknowledged and provided for within new French sharenting provisions,¹⁴⁵ as judges can prevent a parent from sharing the child's image without the approval or consent of the other parent.¹⁴⁶ Provisions such as these could assist in more extreme cases; for example, the child influencer who was taken to another jurisdiction by a parent who objected to the perceived exploitation of the child by their mother,¹⁴⁷ resulting in a long, costly, and extremely hostile custody battle. While it would prove difficult to legislate for all of these issues, this familial disruption shows the potential for disputes presenting at family law courts; social media use/abuse therefore needs to become a more prominent and valued discourse within the field of child protection and family law. The Digital Child Content Commissioner or ombudsperson could act as an expert witness and subject specialist within this field, further advocating for the child's best interest in each case.

5.5. Identity, dignity & reputation

5.5.1. The commodified kid as construct

As previously identified, the risks outlined throughout this paper stem from the escalation of parental sharenting activities, intentionally repackaging everyday domestic interactions as public entertainment.¹⁴⁸ This is done to induce engagement from 'fans',¹⁴⁹ commodifying the children within the home and changing the language usage relating to the content and its related activities.¹⁵⁰ The content creation increasingly becomes an active purposive process, aiming to attract attention and increase the numbers of people who will consequentially like, comment, or ideally purchase, the products or services.¹⁵¹ Abidin refers to this process as 'calibrated amateurism',¹⁵² where an identity is

¹⁴¹Int.3 UK.

¹⁴²Ex.14 IND.

¹⁴³Ex.11 US.

¹⁴⁴Ex.10 IRE.

¹⁴⁵LOI n° 2024-120 visant à garantir le respect du droit à l'image des enfants.

¹⁴⁶ibid Article 3.

¹⁴⁷Ex.8 CAN.

¹⁴⁸D boyd, 'Social Network Sites as Networked Publics: Affordances, Dynamics, and Implications' in Z Papacharissi (ed), *A Networked Self* (Routledge, 2010).

¹⁴⁹C Abidin, 'Privacy for Profit: Commodifying Privacy in Lifestyle Blogging' (2014) *AoIR Selected Papers of Internet Research*.

¹⁵⁰Wong (n 46).

¹⁵¹Leaver et al. (n 6).

¹⁵²Abidin (n 40).

constructed to appear natural, naïve, and approachable, in order to appeal to a wide audience comprising ‘followers’ as well as marketers, talent brokers and agencies.¹⁵³

Some families normalise everyday discussions about this calibration, with regular conversations about ‘numbers’ and ‘likes’, as well as external comments relating to the content.¹⁵⁴ Other conversations can be led by the parent(s), as to how ‘natural’ the child looked,¹⁵⁵ how ‘happy’ they seemed,¹⁵⁶ and what might be needed from the child to increase their ‘numbers’.¹⁵⁷ These discussions occur because it must seem like the child is not ‘playing a part’ or acting, like other child performers, but is a real and relatable person.¹⁵⁸ The commercial success of the account therefore becomes reliant upon the ‘real’ nature of the child, and the audience’s appreciation of their personality, reactions, emotions, preferences, hobbies, and family life, etc. These calibrations can have an adverse effect on the identity formation of the child, which is being moulded by external commercial factors more heavily than other children.¹⁵⁹ While the concept of a commodified ‘constructed identity’ is not new for social media users and influencers,¹⁶⁰ it can prove problematic where a child is trying to form their own identity alongside this construction.

5.5.2. What harm in a constructed identity?

Parents usually have an important role in the identity construction of younger pre-adolescent children¹⁶¹ but competing external commercial factors can affect the guidance they provide. Some parents articulated within the interviews that, with rising household costs, any additional income would be welcomed: This can mean that they are willing to accept minimal financial incentives in return for their child’s performances.¹⁶² In some instances, the commercial incentives result in brand affiliations which contrast with the child’s beliefs or habits; for example, where young athletes promote fast food companies in their posts but may not usually eat such products.¹⁶³ This could lead to confusion for a child who is striving for parental approval, while also navigating internal and external factors that form their sense of self.

The ‘perceived interconnectedness’ between audience and influencer heightens emotional connections and responses to the content,¹⁶⁴ meaning that young audiences will show extreme reactions, positive and negative, to the child and the content.¹⁶⁵ This can result in increased risks of both real-life bullying and harassment, and cyberbullying.¹⁶⁶ This risk is recognised and provided for in traditional media in the

¹⁵³C Abidin, ‘Layers of Identity: How to be “Real” When Everyone is Watching’ (2018) 16 *Real Life*.

¹⁵⁴Int.9 IRE.

¹⁵⁵Int.3 UK.

¹⁵⁶Int.9 IRE.

¹⁵⁷Int.7 UK.

¹⁵⁸S Gennaro and B Miller, *Young People and Social Media: Contemporary Children’s Digital Culture* (Vernon Press, 2021).

¹⁵⁹Van den Abeele et al. (n 126).

¹⁶⁰Dawn R Gilpin, ‘Working the Twittersphere: Microblogging as Professional Identity Construction’ in Z Papacharissi (ed), *A Networked Self* (Routledge 2010).

¹⁶¹EP Schachter and JJ Ventura, ‘Identity Agents: Parents as Active and Reflective Participants in their Children’s Identity Formation’ (2008) 18 *J Adolesc Res* 449.

¹⁶²Int.6 IRE.

¹⁶³Int.5 IRE.

¹⁶⁴C Abidin, ‘Communicative Intimacies: Influencers and Perceived Interconnectedness’ (2015) 8 *J Gen New Med Tech*.

¹⁶⁵Ex.7 IND.

¹⁶⁶Crystal Abidin, ‘Victim, Rival, Bully: Influencers’ Narrative Cultures around Cyberbullying’ in H Vandebosch and L Green (eds), *Narratives in Research and Interventions on Cyberbullying Among Young People* (Springer, 2019).

UK,¹⁶⁷ as broadcasters have a duty to consider the risk of bullying (including online) that any filming could cause.¹⁶⁸ This duty acknowledges that the child may become a target for their peers, resulting in bullying behaviours at school, as well as cyberbullying at home, which usually happens where the child is perceived as ‘different’ or ‘uncool’ in some way by their peers.¹⁶⁹ Both the examples from the literature review and the interview responses indicate that children have experienced bullying and/or cyberbullying in a range of circumstances, such as; the child has same gender parents,¹⁷⁰ the child has a physical impairment,¹⁷¹ the child has autism,¹⁷² the child has done something ‘embarrassing’,¹⁷³ or the child is wearing something deemed ugly.¹⁷⁴ This arbitrary negative identity is designated by the child’s peers or the external audience, exposing them to ridicule and resulting in some children stating that such embarrassing viral moments ruined their childhoods: ‘It’s not something that you want to be associated with when you’re trying to build your identity... I tried to ignore people telling me to commit suicide... I couldn’t help but feel worthless, like my life wasn’t worth living’.¹⁷⁵

Children’s capacity to comprehend, contextualise, and process, such public and global responses to ‘themselves’ needs to be examined further in order to determine how it may impact on their identity formation. Berg et al. recognise that, if constructed digital identities are imposed upon children without effective and meaningful consent, then children will be left without a voice and without a choice.¹⁷⁶ In the absence of any other legal duties for these children, this heightens responsibilities for parents in this domain, to act in the best interest of the child when posting content.

5.5.3. Taunting toddlers: tagging, pranking and hoaxing

As previously discussed, the consistent drive for ‘attention’ from external audiences motivates content creators to provoke emotions and reactions from the audience.¹⁷⁷ Some of this content, however, in intentionally exposing its subject to ridicule, appears to conflict with the dignity of the child.¹⁷⁸ While this content may not be branded in its own right, it attracts the gaze and becomes a part of the archival content that builds a ‘following’ for the account.¹⁷⁹ Sharenting research indicates that parents can negatively direct the narrative lens through which the world views their child, as parents use social media tools to ‘tag’ or identify the child through their various traits and characteristics.¹⁸⁰ For example, trends such as ‘toddler shaming’ have developed their own hashtags and followings, with parents deliberately highlighting negative

¹⁶⁷Under s.1 of the OFCOM Broadcasting Code.

¹⁶⁸M Oswald, H James and E Nottingham, ‘The Not-So-Secret Life of Five-Year-Olds: Legal and Ethical Issues Relating to Disclosure of Information and the Depiction of Children on Broadcast and Social Media’ (2016) 8 *JML* 198.

¹⁶⁹Bessant (n 31).

¹⁷⁰Ex.9 IRE.

¹⁷¹Int.10 UK.

¹⁷²Int.11 UK.

¹⁷³Int.2 UK and Ex.2 US.

¹⁷⁴Ex.7 IND.

¹⁷⁵Ex.10 US.

¹⁷⁶V Berg and others, ‘Young Children and the Creation of a Digital Identity on Social Networking Sites: Scoping Review’ (2024) 7 *JMIR Pediatr* e54414.

¹⁷⁷AE Marwick, ‘Instafame: Luxury Selfies in the Attention Economy’ (2015) 27 *Publ Cult* 137.

¹⁷⁸Bessant (n 31).

¹⁷⁹Abidin (n 41).

¹⁸⁰Oswald et al. (n 30).

behaviours.¹⁸¹ This research identified the following hashtags on Instagram, with the bracketed number evidencing the number of posts relating to that content; #terribletwos (1 million posts), #pottytraining (757,000 posts), #toddlertantrums (127,000 posts) and #naughtykids (71,600 posts). Most of this content depicts very young children during vulnerable moments, where they may be learning basic human functions under the supervision of their parents, or they may be experiencing some distress or discomfort. These intimate domestic moments should not be exposed to make a spectacle of the child in these situations, but the prevalence of this behaviour shows that such content has been socially normalised and accepted and, in the absence of any prohibited forms of child abuse, it is not unlawful.

This 'trend' can escalate into active posts and reels that exhibit extreme behaviours, such as children swearing,¹⁸² making racial slurs,¹⁸³ or smoking.¹⁸⁴ This content is intended to cause reactions, whether to make the audience laugh at such juxtapositions, or to voice disapproval, as any engagement is seen as positive.¹⁸⁵ The drive to more extreme content also leads to other methods of degrading behaviours, such as pranking, where a trick is played on the child, or hoaxing, where the child is told something untrue.¹⁸⁶ Pranking often builds on socially condoned activities, such as TikTok challenges, including the recent #eggcrackchallenge, where young children preparing to bake with Mum experience public humiliation as an egg is cracked on their heads.¹⁸⁷ Some of these behaviours have also entered mainstream pop culture; for example, the Jimmy Kimmel show's 'Halloween candy prank' solicited videos of children being told that their parents had eaten their Halloween candy.¹⁸⁸ While this is viewed by many as entertainment, intimate moments of distressed children are being published on global platforms and, as with reality tv, more emotionally charged content receives the most attention. For example, in one 'hoax' a mother tells her 4-year-old son that he will not be going on the family holiday and that he will have to stay at home alone, with the footage showing a child transition from excitement and anticipation to distress and confusion.¹⁸⁹ While these hoaxing and pranking posts appear to have been at least partially socially accepted, there have been instances where the content has constituted abuse, with one parent losing custody of their children because of their pranking behaviours on their family YouTube channel.¹⁹⁰ The implementation of a Digital Child Content Commissioner could go some way to address these issues, as they would be tasked with acting as steward of the children's dignity in these cases, as well as addressing this from a societal perspective and questioning such practices.

¹⁸¹Sorensen (n 37).

¹⁸²Ex.8 CAN.

¹⁸³Ex.11 US.

¹⁸⁴Ex.12 UK.

¹⁸⁵C Goanta and S Ranchordás, *The Regulation of Social Media Influencers* (Edward Elgar Publishing, 2020).

¹⁸⁶Bessant (n 30).

¹⁸⁷A Ruggeri, 'Why Young Children don't Understand "Pranks"' (BBC, 30 August 2023) <<https://www.bbc.com/future/article/20230829-why-young-children-dont-understand-pranks>> accessed 10 September 2024.

¹⁸⁸L Paul, 'Jimmy Kimmel Sends Another Swarm of Kids Into Turmoil With Annual Halloween Candy Prank' (*Rolling Stone*, 3 November 2022) <<https://www.rollingstone.com/tv-movies/tv-movie-news/jimmy-kimmel-annual-halloween-candy-prank-1234623770/>> accessed 10 September 2024.

¹⁸⁹Ex.13 US.

¹⁹⁰Ex.14 US.

6. Reform: parents, policy & practice

While there has been an increase in academic and regulatory discourses pertaining to the impact of social media on children's well-being in recent years, the majority of these discussions relate to the child as viewer (consumer), rather than creator (producer).¹⁹¹ This has created increased regulatory protections for children online,¹⁹² but has not fully considered the impact of a digital workload on child influencers' economic, social, psychological, and physical well-being.¹⁹³ Sharenting research has predominantly focused on issues around children's privacy and data, and the heightened potential for identity theft caused by the sharing,¹⁹⁴ while the dominant academic and regulatory discourses on child influencer labour relate to the provision of education, security of earnings,¹⁹⁵ and safeguarding practices to protect the child from exploitation or physical harm.¹⁹⁶ In contrast, however, little research exists in either arena pertaining to the harmful effects on children's identity formation,¹⁹⁷ or the impacts on their 'moral or social development'.¹⁹⁸ The potential risks outlined within this research evidence that the narrative needs to shift beyond the pre-existing legal constructs and doctrinal approaches of traditional media child performances, which take place in heavily regulated workspaces. A new perspective is needed to address the potential risks that contemporary media formats create for children as actors, as well as viewers, and therefore new propositions and solutions are needed. These solutions require a connected and collaborative approach, underpinning support for parents with appropriate policy and guidance, as well as assigning responsibility to commercial agents in practice.

Regulation could be introduced pertaining to the education and financial well-being of these child performers, in line with their child model and actor counterparts, but this will not suffice in addressing the full range of potential risks. The establishment of an independent professional body, with oversight by a Digital Child Content Commissioner or Ombudsperson would be appropriate, as this would allocate responsibility for the safeguarding of child performers on social media. This body could act as an advocate for the best interest of the child, working with parents and educating them on their responsibilities, as well as supporting them with issues such as contract negotiation, data security, insurance advice, and risk assessments. The Commissioner could also work with colleagues in the legal profession, acting as an expert witness for social media abuse cases within child protection and family law. Additionally, the Commissioner would act as a child content ambassador, working with bodies such as schools, children's charities, advertising bodies, media regulators, and the platforms themselves, to raise awareness of the increasing burdens and challenges facing child performers on social media. Platform accountability remains an ongoing concern and the Commissioner, in their advocacy capacity, would be well placed to discuss the ethical and moral implications of child-related content from this perspective.

¹⁹¹Verdoodt et al. (n 15).

¹⁹²OSA and DSA (n 16).

¹⁹³Gennaro and Miller (n158).

¹⁹⁴Berg et al. (n 176).

¹⁹⁵Saragoza (n 95).

¹⁹⁶Masterson (n 9).

¹⁹⁷Berg et al. (n 176).

¹⁹⁸UN CRC Article 32 (n 79).

In practice, brands and advertising agencies should have a legal duty towards child performers and not a duty that can be abrogated by contracting with parents. These contracts should be revised from a risk-based perspective, recognising the need for protections such as insurance cover, health and safety checks, financial remuneration for the child, and clarity as regards total working hours. The brands, in doing so, would ensure that their contracts are similar to those of child performers in other media and assume risk assessment responsibility for the child, as they would if they were on set or at a photo-shoot. Again, oversight of this could be a part of the Child Content Commissioner's office, with penalties for non-compliance.

7. Conclusion

This paper shows that the rise in parental sharing of children's images and performances creates a workload for these children, establishing their place as child performers within a lucrative and complex influencer industry. However, unlike their child model or actor counterparts, these children are working in the UK without any safeguarding provisions or practices, evidencing a gap in current policy and child performance practices. While some sharenting proposals relate to aspects of the child's privacy and data protection, and child labour discourses consider the financial and health and safety aspects, the expanded categorisation set out above provides a more comprehensive overview of the novel and complex risks facing child content creators on social media platforms. In doing so, it provides the foundation for a risk assessment approach to reforms for both policy and practice which places child well-being at its core.

The risks outlined above identify a contemporary range of risks to children in this workspace, including; threats to their education, financial risks of harm for their current and future selves, a lack of basic health & safety protections, impacts on their family relationships, as well as threats to the formation of their identity and reputations, and their psychological and physical wellbeing. The responsibility for these risks must be shared, as it cannot be left to parents to navigate these issues alone. This paper recommends the investiture of a Digital Child Content Commissioner or Ombudsperson, with a mandate to act on all of these matters and to advocate for the best interest of the children. This paper also proposes that policymakers, parents and practitioners assume collective responsibilities, with purposive governance being provided to ensure that parents, brands, agencies and platforms introduce cogent safeguarding measures and practices for child-related content. A more concerted effort is needed to provide appropriate safeguarding measures, in order to effectively protect children's identity, dignity and reputation, as well as their physical and mental health.

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Disclosure statement

No potential conflict of interest was reported by the author(s).

Appendices

Appendix 1. Examples from Literature Review

Code	Descriptor
Ex.1 US	Child model on social media and reality TV – now early-20s
Ex.2 US	6-year-old with 3-page schedule of planned content during family holiday
Ex.3 GER	Parents and 11-year-old child having heated conversations most days
Ex.4 AU	11-year-old girl who has been making and modelling hair accessories
Ex.5 US	Mother of twins discussed the amount of time to 'stage' and 'prep' the girls
Ex.6 US	Influencer mother of 6 children charged with abuse and neglect
Ex.7 IND	Twin influencers who compete with dressing up and dancing
Ex.8 CAN	One parent in Canada and other in US, with differing viewpoints
Ex.9 IRE	Homophobic comments on the page of a toddler with male parents
Ex.10 US	Young man now early-20s – Embarrassing video went viral at young age
Ex.11 US	4-year-old white girl struggling to pronounce racial slurs towards minorities
Ex.12 UK	8-year-old boy on TikTok doing routines
Ex.13 US	Mother tells distressed 4-year-old that he is not going on family holiday
Ex.14 US	Parents of 5 children charged with neglect for 'prank channel'

Appendix 2. Interviews with child influencer families

Code	Descriptor
Int.1 UK	3-year-old with own account and has their own line in baby/toddler wear
Int.2 UK	Young man now early-20s – Embarrassing video went viral when he was 8
Int.3 UK	Parents of 2, with branding opportunities in Dubai and Saudi Arabia
Int.4 UK	Parent of eSports player sharing their home schooling practices
Int.5 IRE	Parents dealing with major sports brands for their junior athlete (8)
Int.6 IRE	Mother discusses 'pressure' of having to keep content flowing
Int.7 UK	Father refers to directions that come from the brand or agency as 'detailed'
Int.8 UK	One child of 'influencer family' of 5, blurred out of any group pictures
Int.9 IRE	8-year-old dancer who has regular 'updates' about her performances
Int.10 UK	Couple with physical impairments, raising kids with impairments (3 and 5)
Int.11 UK	9-year-old neurodiverse boy showing mathematical skills