

The Guardian

'It's not play if you're making money': How Instagram and YouTube disrupted child labor laws

'Kidfluencers' are earning millions on social media, but who owns that money?

by Julia Carrie Wong

Main image: The rise of social media child stars. Illustration: Tsjisse Talsma

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They open boxes, play with toys, pull pranks and make slime. They sing, they dance, and they remember their lines: "Subscribe to my channel!" Children are among the biggest stars of YouTube and Instagram, earning millions through influencer deals with blue-chip brands or YouTube's partner program, which gives creators a cut of ad revenues.

Where network television gave us Mary-Kate and Ashley Olsen, social media produced identical twins Alexis and Ava McClure. Macaulay Culkin's million-dollar mug has given way to the toothy grin of Ryan, a seven-year-old whose toy reviews made him the highest-paid YouTube star of 2018. The child-of-actors niche once occupied by the likes of Drew Barrymore is now filled by starlets such as six-year-old Everleigh Rose, whose adorable antics are a key attraction to her parents' massively popular YouTube vlogs.

But while today's child stars can achieve incredible fame and fortune without ever setting foot in a Hollywood studio, they may be missing out on one of the less glitzy features of working in the southern California-based entertainment industry: the strongest child labor laws for performers in the country.



New Jersey twins Ava and Alexis McClure were included in Forbes magazine's list of top kid influencers in 2017. Photograph: HollenderX2/The Guardian

Those laws, which were designed to protect child stars from exploitation by both their parents and their employers, are not being regularly applied to today's pint-sized celebrities, despite the fact that the major platforms, YouTube and Instagram, are based in California. The situation is a bit like "Uber but for ... child labor", with a disruptive technology upending markets by, among other things, side-stepping regulation.

Now former child actors and legal experts are speaking out in hopes that parents and platforms change their practices - or lawmakers and regulators get involved.

"I don't care if it's simply unboxing presents, that's work," said Sheila James Kuehl, a former child star and co-author of the 1999 law that overhauled California's labor protections for child performers. "It is not play if you're making money off it."

Kuehl started acting professionally in radio at the age of eight, spent her teenage years starring as Zelda Gilroy in the sitcom *The Many Loves of Dobie Gillis*, then went on to law school and a 14-year tenure in the California state legislature. She is currently a Los Angeles county supervisor.

"It definitely is time to take a look at the ways parents or other adults are making money off the performance or work of minors," Kuehl added. "The law needs to be amended to catch up with the technology."

Is kidfluencing work?

"The thing I always stress is that we work, the girls do not," said Ami McClure, the mother of twins Alexis and Ava, in a recent Guardian interview.

Indeed, Ami and her husband, Justin, quit their jobs last year to manage their daughters' careers full time, resulting in lucrative partnerships such as a promotion for Facebook's "smart camera", Portal, which they posted on their Instagram account.

Some parents of influencers point out that the kids are having fun - or are barely conscious of what they are doing. In a 2017 Instagram post on Instagram's own corporate account, the mother of kidfluencer Zooey Miyoshi shared a "#momtip" about capturing good pictures of the then-five-year-old's signature look: "Sunglasses also help when taking photos. Most of the time, she is not looking directly at me, which sunnies help hide."

Bee Fisher, the mother of three Instagram-famous boys, told Wired, “If there’re days they’re totally not into it, they don’t have to be ... Unless it’s paid work. Then they have to be there. We always have lollipops on those days.”

If these tales induce a touch of unease, they are nothing compared with the story of Machel Hobson, a 47-year-old Arizona woman who in March was charged with abusing five of her seven adopted children. The details of the abuse - beating, pepper-spraying, molesting and starving children ages six to 15 - are horrific; the alleged motivation is chilling.

“All the children made mention of having to participate in their mom’s YouTube channel called Fantastic Adventures where she has over 700,800 followers and over 242 million views,” read the police charging documents. “The Fantastic Adventures series stars the adopted children in different scenarios. They stated they are disciplined in the manners above if they do not recall their lines or do not participate as they are directed to. They further stated this is one of the reasons their mom took them out of school so they can keep filming their series and they mentioned they have not been in school for years.”

YouTube’s initial response to the arrest was to demonetize the Fantastic Adventures account (ie stop running ads on the videos); the company later terminated the account. Hobson has pleaded not guilty. A tax form from Google shows that she made nearly \$300,000 from the YouTube channel in 2018, according to the Arizona Republic.

Somewhere along the spectrum between garden variety stage-parenting and straight-up abuse are situations such as the headline-grabbing April Fool’s Day “prank” pulled by YouTube stars Cole and Savannah LaBrant on their daughter, six-year-old Everleigh Rose.



Earlier this month, the couple published a video showing Everleigh in distress. “You haven’t even told the vlog yet, do you want to tell the vlog?” Cole LaBrant prompted the child, as she cried and hid her face under a blanket in the opening moments of the video. The tears were the result of the LaBrants telling Everleigh they were going to give her dog away but they didn’t mean it; the dog giveaway was an April Fool’s Day prank gone too far. Following a backlash, the couple published a

video addressing “all the hate we’ve received”, acknowledged the prank video was a “mistake” and removed it.

“We know it’s something that we could have not put out on YouTube, but we film our whole lives,” Savannah LaBrant said. “That’s what we signed up for.”

Everleigh has featured in numerous vlogs and Instagram posts since the controversy. She regularly appears in videos published on her parents’ YouTube channel (8.8 million subscribers), her own YouTube channel (2.2 million subscribers) and her “best friends” YouTube channel (1.5 million subscribers). She also has a personal Instagram account (4.3 million followers) and a “best friends” Instagram account (1.2 million followers), and can frequently be seen in sponsored posts on her mother’s Instagram account (5.1 million followers). The LaBrants did not respond to questions about whether they pay Everleigh a percentage of their YouTube revenues or have a savings account for her.

To Paul Petersen, legal protections like those in California should apply equally to Everleigh, who lives in the state, and the Hobson kids in Arizona or the McClures in New Jersey.

“It’s shameful” said Petersen, who founded a support and advocacy group for former child performers, A Minor Consideration, in 1991.

“YouTube is in San Bruno, California, which is under the authority of California law,” he added. “If you’re going to broadcast the images of minor children and pay them, the provisions of California law must apply. That is the position of A Minor Consideration. That’s why we changed the law.”

‘Every dollar a kid earns belongs to his parents’

Before Petersen started changing laws, he, too, was a child star, appearing as one of the original “Mouseketeers” in the first iteration of The Mickey Mouse Club. He went on to star in The Donna Reed Show from age 12 to 20, but struggled when the show ended in 1966.

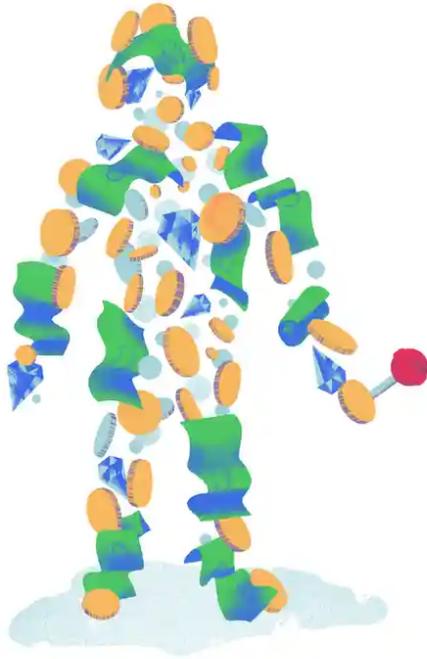
“As I had to deal with my own demons when fame slipped away, I became keenly aware that other kids had the same problem: estrangement from parents and siblings, the loss of identity when fame goes away,” Petersen told the Guardian. “If you have given up - in the name of fame - your right to education free of bad influences, you are at risk, and this is not unknown to people.”

Petersen and his group were instrumental in working with lawmakers - including Kuehl - on the 1999 overhaul of the Coogan Act, California’s original labor law to protect child actors.

That bill was enacted in 1939 and is named after Jackie Coogan, the nation’s very first child movie star. Coogan shot to stardom after playing Charlie Chaplin’s sidekick in 1921’s *The Kid*, and went on to star in a string of movies for Metro-Goldwyn-Mayer, earning as much as \$4m while still a minor. He expected to take control of his fortune when he turned 21, but after his father died and his mother remarried, he learned the unfortunate truth: “Every dollar a kid earns before he is 21 belongs to his parents,” Coogan’s stepfather told the press in 1938, after Coogan sued to gain access to his money. “Jackie will not get a cent of his earnings.”

The sentiment may have been ugly, but it was true. Under common law, parents have always owned the earnings of their children.

Legislators quickly enacted Coogan's eponymous bill, which required parents to set aside a percentage of a child performer's earnings in a blocked trust (now known as a Coogan account) where it would remain untouched until the child reached adulthood.



The law also required state courts to ratify the contracts of child performers - a provision lobbied for by Walt Disney himself that codified the state's distrust of stage parents to act in the best interest of their children, explained David Pierce, co-chair of the entertainment law section of the Beverly Hills Bar Association.

Other legal protections followed. Child performers must obtain work permits, and there are strict regulations limiting their working hours, requiring "rest and recreation" time when they are on set, and mandating that work not interfere with their education. Producers on film sets are responsible for safeguarding the "health, welfare, safety and moral well being of the children" on set, Pierce said, which includes screening the backgrounds of the cast and crew and ensuring the children aren't exposed to age-inappropriate sex or violence.

Still, it wasn't until the 1999 overhaul that California legislators took the radical step of stating in law that child performers own all of their earnings, not just the 15% set aside in Coogan accounts. Parents can use the remaining 85% to care for the child, whether that's purchasing a house, covering their expenses, or even paying themselves a salary to manage the child's career, but the money is the child's property.

"It's kind of a blurry situation," said Pierce. "I don't think any case has ever come forward where a child has said, 'Hey, this was my money and you embezzled it'. But theoretically, when you look at the law, that could happen."

More than just fun and games

But do kidfluencers own their earnings when they don't even own their social media accounts?

YouTube and Instagram ban children under 13 from having accounts, which means that no pre-teen stars own the accounts to which YouTube pays a share of advertising revenue. Influencer

arrangements - in which brands pay influencers to post a photo or video of themselves promoting a product - take place off platform, and are presumably negotiated by parents.

Pierce argued that YouTube should institute policies requiring that children featured in monetized videos are entitled to a share of the revenues from the account owner. "If they had that kind of policy, then the money that was earmarked for the child, under California law, would be the child's money, and if the parent misused it, then the child could sue," he said.

Pierce also theorized that influencer deals made by parents on behalf of their children could be invalid unless the earnings are owned entirely by the child, because a parent consenting to the use of their child's image in advertising in order to enrich himself would be "self-dealing and in breach of the covenant of good faith and dealing".

Spokespeople for YouTube and Instagram said they were working with experts around policies related to children, but neither commented directly on whether the companies viewed themselves as bound to require Coogan accounts or other protections for child performers.

"We work closely with experts, non-profit organizations, and others in our industry to protect families using our services," said a spokeswoman for YouTube. "We have a variety of educational materials available to families ... to make sure creators are made aware of our policies and applicable labor laws when featuring minors in their videos."

A spokeswoman for Instagram said, "Influencer marketing continues to evolve and we're committed to working with regulators, brands, and influencers on best practices. We are reviewing our policies in this area in partnership with wider industry and members of our community in an effort to land in the right place."

The Instagram spokeswoman also claimed that Instagram does not employ child influencers. When the Guardian pointed out that Instagram's parent company, Facebook, was using child influencers to sell Portals, the spokeswoman said the campaign was coordinated by an outside agency which was "obligated to comply with all applicable laws". She declined to identify the agency.

Veena Dubal, a University of California, Hastings law professor who specializes in employment law and the gig economy, said that YouTube, at least, has more of an obligation to its child stars than just informing their parents that labor laws exist.

"You could argue that YouTube is the joint employer of the child," said Dubal. "YouTube controls what the child can and cannot do. They control the dissemination of the money. They would very likely be considered joint employers under California wage laws and child labor laws."

That question has yet to be settled by the California labor regulator, a spokeswoman said, though the issues around child influencers are currently under consideration by the labor commissioner's office.

"It's more than just innocent fun and games," said Dubal. "They are performing work, and if that work is being monetized, then those children deserve wages for their future."

YouTube did not respond to a query about the joint employer question, saying that it does not comment on speculation. The legal theory probably won't be tested unless and until a kidfluencer grows up and has a Jackie Coogan moment of their own.

In the meantime, Dubal said, change will rely on a “change in the public discourse” about what it means to monetize the images of children.

“Once there is more public recognition that this is traditional work, then the state is more likely to step in, especially since we’re talking about children,” Dubal said.

At least one lawmaker has attempted to step in. In 2018, the Democratic California assembly member Kansen Chu introduced a bill that would have amended the Coogan Act to cover the “employment of a minor in social media advertising”.

It passed the legislature and was signed by the governor, but the bill that became law barely resembled the bill that was proposed.

“We ran into the challenge of how do we comply with the Coogan Act ... when they are being paid by tickets and toys and clothes and other little things?” Chu said. “We need to get the wrinkles ironed out before we can take it to the next level.”

Said Dubal: “It took six years for people to stop using the term ‘sharing economy’ and start looking at what Uber drivers do as traditional work. We’re going to have to move from ogling the novelty of the situation to recognizing this is work and re-regulate these arenas that have been regulated for a century.”

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- Instagram
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