Submission for the Special Rapporteur on the Sale, Sexual Exploitation and Sexual Abuse of Children in Relation to the Threat Posed to Children by Digital Technologies

* Spotlight on Digital Child Labour on Social Media Platforms

**Introduction**

This report is provided in response to the call for submissions relating to the potential threats posed by digital technologies to children. This report will set out some brief findings into recent research pertaining to child performers on social media platforms, as conducted by Dr Francis Rees (The Child Influencer Project).[[1]](#footnote-1) The Child Influencer Project has explored this issue within jurisdictions with legislative provisions, such as France, as well as conducting research in jurisdictions where there is currently no regulation, such as Ireland and the United Kingdom. In doing so, the project has identified thirty-two potential harms facing children who are performing within this space. Irrespective of any legislative interventions in this area, this research identifies major shortfalls in safeguarding practices for children who appear as performers on social media platforms.

**Identifying the Issue**

The first visible platform restriction on platforms such as Instagram and Tik Tok clearly state that users; “must be at least 13 years old”.[[2]](#footnote-2) This being said, there has been a proliferation of baby and toddler social media profiles appearing on these platforms from 2015 onwards,[[3]](#footnote-3) with many of these children appearing as extensions of their parents’ brands, or even as brands in their own right.[[4]](#footnote-4) While there is a reporting mechanism for accounts that are in breach of the age limitation rule,[[5]](#footnote-5) it does not seem to have had an impact on these multifarious ‘micro-microcelebrity’ accounts on Instagram,[[6]](#footnote-6) which has been further compounded by child performers on Tik Tok,[[7]](#footnote-7) and child gamers on platforms such as Twitch.[[8]](#footnote-8) This deliberate inadvertence is facilitated by the management of these accounts by an adult, usually a guardian or parent of the child, who generally assumes responsibility for the filming, editing and posting of the content, as well as the ‘production values’ of the content and any brand relationships.[[9]](#footnote-9)

While practices of parental sharing (or ‘sharenting’) of children’s digital imagery and performances have been normalised in contemporary society,[[10]](#footnote-10) this report considers the escalation of that sharing into forms of performative content that result in economic gain (including goods and services). The magnification and multiplication of such performative content can expose children on these platforms to a much greater range of potential harms, for both their current and future selves. This report draws upon existing research that identifies the harmful effects of sharenting practices on children, in relation to their privacy, consent, and the impact on their digital identity and reputation.[[11]](#footnote-11) The report also builds upon regulatory approaches to the harmful impact of technology on children as viewers, with the introduction of legislation such as the Digital Services Act[[12]](#footnote-12) and the Online Safety Act.[[13]](#footnote-13) In combining these discourses, this report will highlight the position of children as performers or creators within this digital space, rather than as viewers or consumers, and considers the risks and safeguarding (or lack thereof) for their performances.

**From Sharenting to Content Creation**

The distinction obviously needs to be made between amateur sharenting activities of parents who post content of their children’s activities, and specific accounts and forms of content that generate economic effects.[[14]](#footnote-14) The California State Assembly considered the scope of these activities as ‘work’ in a proposed ‘kidfluencer bill’,[[15]](#footnote-15) identifying that very young children were being dressed-up, staged, prompted, photographed, and filmed, in ways that created a working environment within the home, and with some of the content taking up to three days to complete.[[16]](#footnote-16) Abidin rejects the notion of these children becoming influencers in their own right, as they have not consented to the commodified representation of themselves; “but instead they are used, framed, and appropriated by their mothers for advertorials”,[[17]](#footnote-17) resulting in a “branded childhood”.[[18]](#footnote-18) Research indicates that such ethical issues relating to exploitation need to be fully considered by the adult account holder, as they have a responsibility to “navigate and balance commercialism, advocacy and children’s rights to privacy”.[[19]](#footnote-19) The ethical issues that are pertinent here usually relate to the privacy of the child and the lack of consent for the intrusion, as well as considerations of the workload or labour involved, and concerns around exploitative practices in the industry.

Commentators in this area often refer to the potential exploitation of parents managing these accounts,[[20]](#footnote-20) but do not fully consider the complex wider commercial network within this $24 billion industry.[[21]](#footnote-21) These children occupy a rapidly professionalising space,[[22]](#footnote-22) with a host of other parties now claiming a space within the industry, including influencer agencies, advertising agencies, brand managers, and even ‘influencer camps’.[[23]](#footnote-23) In order to effectively safeguard children performing in this space, there needs to be a more comprehensive and collaborative approach in the risk management of the digital labour involved, which would involve governments, platforms, parents and brands.[[24]](#footnote-24) This report considers the specific nature of the risks facing child performers working in this space in order to inform such risk-based discourses.

**The Gap in Existing Safeguarding – Viewer over Performer**

While there has been an increase in academic and regulatory discourses pertaining to the impact of social media on children’s well-being, the majority of these discussions relate to the child as viewer (consumer), rather than creator (producer).[[25]](#footnote-25) This has created increased regulatory protections for children online,[[26]](#footnote-26) but has not fully considered the impact of a digital workload on child influencers’ economic, social, psychological, and physical well-being.[[27]](#footnote-27) While the platforms seem reluctant to discuss the management of children’s images on their platform,[[28]](#footnote-28) a range of academics, government officials, child protection officers, children’s charities, journalists, and even influencer agencies, have recognised the need for more guidance in this area, identifying it as a new global “phenomenon”.[[29]](#footnote-29) International regulatory discourses in this area primarily relate online child labour with other types of performance labour, such as child models and actors, but this model does not easily translate to performances that are conducted within the home, under parental supervision.

In the UK, a governmental Select Committee explored the legislative gap that exists for children working on these platforms,[[30]](#footnote-30) articulating that neither the provisions for child performers under the 1963 legislation,[[31]](#footnote-31) the updates in the 2014 regulations,[[32]](#footnote-32) or the new Online Safety Act,[[33]](#footnote-33) provided safeguards for children working in this realm.[[34]](#footnote-34) One child protection official noted that; “we do not know what they are doing, we do not know how often they are performing and we do not know the impact it has on them as a child”.[[35]](#footnote-35) 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.[[36]](#footnote-36) 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”.[[37]](#footnote-37) The report identified four key objectives for such measures; to bring the activities under the purview of local authorities, to identify working hours and conditions, to safeguard the child’s earnings, and to allow for their right to erasure.[[38]](#footnote-38) To date, while recognising the situation as anomalous with other protective mechanisms, and therefore “fundamentally wrong”,[[39]](#footnote-39) the Government response has been that “they have no plans to change this at this time”.[[40]](#footnote-40)

In France, the ‘Studer Bill’ became law in April 2021,[[41]](#footnote-41) and, while it is a new piece of legislation that protects those under-16, it is a form of hybrid legislation that amalgamates protective mechanisms for child influencers with the pre-existing child performance laws for other media formats.[[42]](#footnote-42) The provision requires the approval of the online work by competent authorities (usually 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,[[43]](#footnote-43) but also adds that the child has the “right to erasure” of the content by the platform.[[44]](#footnote-44) Additionally, it takes responsibility for informing the parents of their safeguarding responsibilities in this arena, and makes them aware of issues such as education, ethics and the privacy of the child.[[45]](#footnote-45) While reference is made to financial thresholds that denotes an employment-style relationship, the focus is on that of ‘brand partnerships’ and identifies such activities as work.[[46]](#footnote-46)

The French legislation is the first of its kind globally and many other jurisdictions will be interested to see both its implementation, and administration, as it develops in practice. It appears to accord with academic perspectives that a collaborative approach of government, parent, platform, and brand are needed in this area,[[47]](#footnote-47) and meets the four key objectives set out by the UK Select Committee.[[48]](#footnote-48) It will be in the long-term implementation of the legislation that any of the previously identified issues might emerge, potentially requiring more robust regulatory mechanisms for child influencer labour. Such a response would conduct a thorough risk assessment of the various harms that children face in this arena, and potentially recommend a broader range of safeguarding practices and procedures.

**Recognising the Harms**

*“The question is: What are the harms to the children?”[[49]](#footnote-49)*

This question, posed in the UK ‘Influencer Culture’ Hearing,[[50]](#footnote-50) is critical in identifying any gaps in safeguarding for child performers and informing the necessary regulatory responses. Nielsen at al. suggest that young people face the greatest disadvantages on a platform economy that seemingly operates as a “grey-zone” of occupational health and safety, where words like ‘entrepreneur’, ‘independent contractor’, ‘content creator’, and ‘freelancer’ are used to negate the employer/employee relationship, and create “protective gaps”.[[51]](#footnote-51) In exploring the responsibility for safe working practices, there are a multiplicity of relationships that blur the lines of accountability for the provision of training, risk-assessments and equipment for platform workers.[[52]](#footnote-52) It seems that, for child performers, parents must navigate this complex framework and, in the absence of any specific protective legislation, safeguard their children from the harms that child influencer labour could incur.[[53]](#footnote-53)

The author of this report refers to a categorised risk assessment framework, which articulates thirty-two types of potential harms that face children working in this space: This piece is in preparation for publication.[[54]](#footnote-54) These potential harms have been compiled as a result of research into the foundations of child employment legislation, industry guidelines and practices within other media, literature relating to specific harms for children on social media platforms, and a number of case studies.

**The Risk Assessment Framework**

While there is some overlap, the thirty-two harms articulated within the framework are collated into the following categories;

1. Education
2. Financial
3. Health & Safety
4. Family Relations
5. Self-Development
6. Dignity

For the purpose of this report, the potential harms are framed as questions, in order to replicate a risk assessment approach to the framework.[[55]](#footnote-55)

***1. Education:***

1. Could the performance commitments of the child have negative impacts on the child’s school attendance?
2. Could the performance commitments of the child also negatively impact the child’s academic performance (e.g. child cannot keep up with homework/revision)?
3. Could this mean that the requirement for regular 'content' might negatively impact on the longer-term academic prospects of the child? For example, the child might not value the role of education, where they see content creation as a potentially lucrative career path.[[56]](#footnote-56)

***2. Financial***

1. Should the potential invasion of the child's privacy be financially compensated for?

This would be where there might not be monetary gain, but that there should be a ‘duty of care’ for brands to provide some form of compensation instead.[[57]](#footnote-57)

1. Where there is some financial gain resulting from the child’s performance, should they be paid and/or the money kept safe for their future?
2. If parents are conducting complex commercial negotiations with brands and agencies, could the child be disadvantaged due to their parents' lack of knowledge in this area? For example, where parents enter into a contractual relationship with serious inequality in terms of bargaining power and expertise.[[58]](#footnote-58)
3. Where the child’s personal data is shared in volume, could this provide identity thieves/fraudsters with the information to steal/hack the child’s identity? For example, lots of information that is shared is usually the subject of security questions, such as the child’s first pet, their first school etc.[[59]](#footnote-59)
4. As the child becomes used to expensive items and experiences, could this create material expectations that may be difficult to keep up with long-term?

***3. Health & Safety***

1. As the child’s performance takes place in the home, rather than a movie set, stage, or photoshoot, does the child have sufficient workplace health and safety training and support?
2. Does the lack of health and safety guidance mean that the risks posed by any equipment, props, and activities should be assessed by the parent/guardian?

For example, under the UK legislation, full risk assessments are required for other media performances.[[60]](#footnote-60)

1. Child performance legislation would record any hours of performance (including preparation and rehearsal etc.), but are the working hours for child influencers hard to record, as they take place within the home and not on a set/photoshoot?
2. As the child’s performance takes place in the home, rather than a movie set, stage, or photoshoot, does the child have any insurance protection, as they would in those locations?

***4. Family Relations***

1. Does the financial pressure to perform disrupt the role of the child within the family, placing the pressure of ‘wage earner’ on their shoulders?
2. If there is an expectation of financial reward stemming from the child's performance, could this lead to parents pushing/coercing the child to perform?
3. Does the child get to ‘be a child’ within the family in the ordinary sense or does their role as influencer make this difficult?
4. Where some children in the family are more ‘popular’ on social media than others, could this lead to greater friction between siblings and parents?
5. If grandparents disagree with the child appearing in social media in this way, could this cause family disagreements?
6. If parents have differing opinions on the performances (especially where parents are separated), could this cause family disruption?

***5. Self-Development***

* 1. Do the performance hours within the home and during leisure time negatively impact the child's privacy (i.e. when is the ‘down’ time)?
  2. Can the child ask for the content to be removed if they find the invasion of privacy too great (and are they of an age that they can understand such concepts and request it)?
  3. Could the child hear external opinions from viewers of the performance (whether positive or negative) that might negatively impact their self-esteem? For example, the conversion of an audience into ‘numbers’, ‘likes’ and ‘comments’ creates pressures of its own.[[61]](#footnote-61)
  4. Can the child express their own opinions/identity, or do they have to conform to brand? For example, where the child is advertising products that they may not actually like or use.[[62]](#footnote-62)
  5. Could the performance of the child result in any bullying or harassment in their real-world interactions?
  6. Could the performance of the child result in any online bullying or harassment by viewers/users?
  7. Are there ways to recognise the child's need for support, where the performances are resulting in negative impacts on their mental health?

***6. Dignity***

* 1. Does the child have to fit into an identifiable ‘brand’ that may negatively impact on their reputation in the short term and/or long term?
  2. Is the child encouraged to engage in ‘attention grabbing’ activities, such as swearing, smoking, crying, having tantrums etc.?
  3. Is the child subjected to any ‘hoaxing’? For example, telling them something upsetting that is untrue, in order to provoke an emotional response.[[63]](#footnote-63)
  4. Is the child subjected to any ‘pranking’? For example, playing tricks on the child to make the viewer laugh.[[64]](#footnote-64)
  5. Is the child posed or dressed in ways that might somehow sexualize them? For example, in leotards or swimwear, or wearing age-inappropriate clothing/makeup.[[65]](#footnote-65)
  6. Does the fact that the child is ‘real’, and not acting a part, place them in greater danger of physical harm (stalking etc.), as the child is relatively accessible?
  7. Does the fact that the child is ‘real’, and not acting a part, place them in greater danger of online grooming, as the child is relatively accessible?

**Conclusion**

In addition to the framework set out above, and in response to the more specific scope of the call for submissions, this report would also recognise that additional aspects of these practices could be deemed exploitative in nature. Some of the child content will not be made publicly available on the account’s profile page, but is instead provided privately either to subscribers and/or for a fee.[[66]](#footnote-66) While parents could view this as similar to other forms of commissioned photoshoots, such as a celebrity magazine piece that has been paid for, in essence this practice involves the sale of child content to unknown agents, which could lead to exploitative practices.[[67]](#footnote-67) In addition, it has been shown that this content can lead to the sexualization of the child in many instances,[[68]](#footnote-68) resulting in attention from those who are using the content for the purposes of sexual gratification,[[69]](#footnote-69) as well as potentially operating as a ‘storefront’ for child exploitation to order.[[70]](#footnote-70)

The research underpinning this risk assessment framework evidences that a more comprehensive consideration of the harms inherent in child digital labour on social media platforms is needed in order to inform any proposed regulatory measures.[[71]](#footnote-71) The harms articulated above extend beyond the education, financial, and privacy considerations implemented within the current French provisions. Addressing these harms should be a priority for policy makers, platforms, brands, marketing and advertising agencies, influencer agencies and parents. A more concerted effort is needed to provide effective 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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