The Art of Sharing: Children's Rights in the Influencer Era

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THE ART OF SHARING: CHILDREN’S RIGHTS IN THE INFLUENCER ERA

Stacey Steinberg*

Catherine Grimley: It seems that a main focus of your scholarship has been sharenting. In fact, you have published an article on the topic, *Sharenting: Children’s Privacy in the Age of Social Media.* Can you define sharenting and further explain some of its legal implications?

Stacey Steinberg:

When I think about sharenting, I think of the intersection of a parent’s right to share on social media, or really to share about their child anywhere, and a child’s interest in maintaining control of their digital footprint and the child’s interest in privacy. The first time I saw the word “sharenting” used was in the Wall Street Journal around 2012, and in 2015, I started to really think about sharenting and how it was impacting my life, as a parent and as a photographer. I set out to try and understand it better from a legal perspective.

One of the legal implications of sharenting is the impact that it has on kids, and it starts with the fundamental right that parents have to raise their children as they see fit. That fundamental right is defined by a number of United States Supreme Court cases that spoke on this issue, which try to balance the parents’ interest with the States’ *parens patriae* interest. However, from the child’s perspective, the child might have an

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3. *See* Meyer v. Nebraska, 43 S. Ct. 625, 626 (1923) (recognizing that the parental right to raise one’s children is a fundamental right within the Fourteenth Amendment that cannot be infringed upon by the government without the due process of law).
5. *See* Steinberg, *supra* note 1, at 871 (explaining that under parens patriae, a state may bring a civil action on behalf of the residents of the state to enjoin a practice, enforce compliance, obtain damages, or obtain other relief as appropriate in order to protect persons legally incapable of caring for themselves); Meyer, 43 S. Ct. at 626 (recognizing the parents’ fundamental right to raise their children); Pierce, 269 U.S. at 534–35 (explaining that the Fourteenth Amendment protects the liberty interests of parents and guardians to direct their children’s education, and this
interest in privacy and might have an interest in getting to adulthood with the ability to define themselves on their own terms online. Sharenting, if done inappropriately, can lead to identity theft, stolen photos, and/or a myriad of other consequences. While I set out to explore sharenting from a legal perspective, I really found that a public health model of child protection might be the best way to protect kids because I think most parents do want to do what is best for their kids. Oftentimes, they just need more information to make those decisions.

Catherine Grimley: In your sharenting article, you mention the Sidis case, where the court deemed a former child prodigy a public figure even though Sidis had left the public eye in his adulthood. Thus, the court denied Sidis the privacy rights available to private individuals. Since this time, courts have considered child entertainers public figures. Should this same reasoning apply to children who gain attention from adults sharing content of them on the adult’s social media?

Stacey Steinberg

When that case was decided, it was a time long before social media. It was a time before information traveled at the speed of light that it does now. In Sidis, the child’s parents had chosen to highlight the fact that he was a child prodigy. He was featured at different events, and newspapers would follow him and run stories about how brilliant he was. All sorts of things that most parents, and kids, would be very proud. However, as he became an adult, Sidis wanted to live a life that was more private, and the New Yorker magazine acted like paparazzi and stalked him down. They captured photos, gathered information, and ran a story about where this child prodigy was today, now that he was an adult. Sidis sued, arguing that he had a right to privacy, and the court basically said, once you are a public figure, you are always a public figure. And so, your right cannot be curtailed unless a state can show a reasonable relation to a purpose within the competency of the state); Prince, 321 U.S. at 165–66 (explaining that although the Court acknowledges that decisions made within the private realm of family life cannot be regulated by the state, the family itself is not beyond regulation in the public interest).

6. See Steinberg, supra note 1, at 866 (explaining that “[t]he public health model attempts to effectuate change by educating professionals, the public, and parents about potential dangers facing children”).
8. Id.
9. Id.
10. See id. at 809 (arguing that at some point, the public’s interest in obtaining information becomes dominant over the individual’s desire for privacy especially when for those who chose to place themselves in the public eye, and even though Sidis has cloaked himself in obscurity since his child prodigy days, details of his life today are still a matter of public concern).
question really focuses on what parents share about their kids on social media, and whether the children would be public figures. And I believe that that is a great question. Generally speaking, parents are not turning their kids into internet celebrities. For kids whose parents share about them to friends and family, probably not. But for the parents who do try to make their kids celebrities online, I think they are going to run into an interesting issue as the court tries to navigate how to apply the reasoning in Sidis to the reality of social media and internet fame that so many young people experience.

Catherine Grimley: Some current legislation regarding sharenting focuses on ensuring that the child is compensated if their likeness produces a profit. Do you think future legislation should also focus on requiring a parent to receive their child’s consent before using their likeness?

Stacey Steinberg:

I think that it would be wise for future legislation to do that when parents share about older kids. The ramifications of using a child’s picture or using a child’s information in a public setting can impact the child long past childhood. I have also been concerned about in the debate over sharenting is that it does put a lot of obligation on parents who might not be in the best position to understand all the risks and take on all the financial costs that are involved. Perhaps we could shift some of the obligation onto the business sector.

Catherine Grimley: Now, more than ever, social media influencers are rising in popularity. Thus, an increasing number of minors are choosing to place themselves in the public eye as influencers. Tell us about this new trend of child influencers, and what potential legal implications it raises.

Stacey Steinberg:

When I started my research on children’s privacy, the child influencer spot was really a tiny piece of the work that I was doing. It was something that I was able to politely ignore. I did not want to go into this area, and it was not a big enough piece of the sharenting equation that I felt like I had to. That is not true anymore. That was not even true in 2020 when my book came out. But right now, when we talk about children’s online

privacy and how it intersects with parent’s rights, the focus is on child influencers and the roles that kids play in their parent’s social media when parents are profiting.

There are laws that exist to protect children who are actors. These laws, like California’s Coogan’s Law, protect the monies they are allowed to receive and put limits on the number of hours and under what conditions the children are able to work.13 Those laws don’t generally apply to children who work for their parents doing similar types of performance art. That is probably because, years ago, when these laws were created, this sort of situation did not exist, even offline. This may also be because, in the United States, we give such strong deference to parental autonomy.14 For example, when we think about a child who is working on a parent’s farm, they are able to do things that are much more dangerous than if they were working on a neighbor’s farm. That is because the parents have the right to employ their child or to have their child work in more dangerous conditions under their constitutional right to family autonomy and to control how their child is raised.15 When we talk about child influencers, we have this unique situation where the parent is both the employer of the child and the protector of the child. And so, states are looking to find ways to ensure that children are protected when parents serve as the gatekeepers and the gate-openers. The laws that shield the income of child actors away from parents16 are laws that give us some precedent for the idea that children do have a right to some of the earnings. It will be interesting to see how courts parse through these laws to determine where the parents’ right to control their child ends and the states’ parens patriae right to protect the child begins.

14. See Meyer v. Nebraska, 43 S. Ct. 625, 626 (1923) (acknowledging that the Fourteenth Amendment protects the parental right to raise one’s children, free from government intervention without the due process of law); Troxel v. Granville, 120 S. Ct. 2054, 2063–64 (2000) (explaining that “the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a ‘better’ decision could be made”); Wisconsin v. Yoder, 92 S. Ct. 1526, 1541–42 (1972) (explaining that parental autonomy, which has long been a pillar of Western history and culture, “is now established beyond debate as an enduring American tradition” via the Due Process Clause of the Fourteenth Amendment).
15. See 29 U.S.C. § 213(c) (2023); see also supra note 13.
Catherine Grimley: What kinds of implications can the rise of child influencing have on family dynamics, and how do these changing dynamics impact the interests of the child, the parents, and the state?

Stacey Steinberg:

One of the things that I think about when I talk about sharenting generally, and one of the reasons why it flies under the radar so much, is that children might not feel comfortable objecting to their parent’s actions online. But more than just feeling uncomfortable about it, they might not understand that they have interests that conflict with their parents. And when you don’t know that you have an interest, it is difficult to exercise any sort of right to protect that interest.

When parents use their children as part of their social media profit scheme, or when parent’s get so much of their identity from their children’s performances, it absolutely impacts family dynamics and the way that a family interacts. This impact is not only online but is also offline, which is perhaps more important for the child’s development because most of their time, presumably, is taking place offline. This dynamic can impact how the child sees themselves as an individual, and it can change how the child sees themselves as a part of a larger group. The blame is often placed on the parents, but perhaps it is part of a more significant societal shift where private family matters—or things that would be interesting only to family and close friends—are no longer private.

Catherine Grimley: Are there any benefits of creating laws that specifically protect child influencers on the internet instead of fitting child influencers under existing legislation that protects child performers? If so, what are they?

Stacey Steinberg:

I think that we will need to create new laws because kids are doing things as child influencers that were never contemplated when the existing laws were enacted. So, the current laws will have to be amended or new laws will have to be created to protect this population. As far as, “what are they?” I think Washington state has new legislation regarding children who appear on their parents’ commercial social media sites that could be a good model for other states to follow.17

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Catherine Grimley: Some of your forthcoming research focuses on parental control of children’s access to and use of social media pages. Can you tell us about the proposed laws related to this topic and highlight their legal implications?

Stacey Steinberg:

Some states are in the process of drafting and passing laws that would require parental consent before kids are allowed to use social media platforms and that parental consent requirement would extend all the way up until the age of eighteen. So, even seventeen-year-olds would not be able to access sites like Instagram or TikTok without a parent’s express permission. These laws aim to make children safer, but by doing so, they often curtail a child’s privacy rights. It is interesting to look at these laws through the lens of the international community, and how they view child privacy because the United Nations Convention on the Rights of the Child (UNCRC) focuses on children’s rights in a digital world. Included in those rights are the rights to access of information. The United States has signed the UNCRC, but we are the only UN member country that has not ratified the document. And so, laws like the Utah Law seem to stand in stark contrast to both the UNCRC’s comment on children’s rights in the digital world and the international consensus on the autonomy of children as they come of age.

As a parent, I absolutely understand the desire to keep kids off of TikTok and Instagram. My interest as a parent is to shelter my child from as many dangerous things as I possibly can. But I think that as laws are created, the job of these laws is not to just protect my interests as a parent, but to balance those interests with those of young people. This balancing will involve weighing the risks relative to the benefits of these laws.

Catherine Grimley: The Electronic Frontier Foundation has critiqued proposed federal legislation, the Protecting Kids on Social Media Act, by stating it requires privacy-invasive verification procedures and creates a second-class online experience for social media users. When developing regulations, how can legislators best balance the minors’ interests in freely accessing media against the potentially harmful effects of social media use, such as privacy concerns? Likewise, do you think legislators are in the best position to address these concerns, or should parents be responsible for their child’s access to and actions on social media?

Stacey Steinberg:

To the first piece, legislators can better balance these interests by considering the role of the companies and digital platforms to create platforms that aim to be safe by design. The age-appropriate design code used in Europe is one example. If the onus and burden could shift to the internet companies to make websites that are generally more appropriate for all of us, that could go a long way. To that end, legislatures are in a good position to parse out and identify the concerns. I hesitate to say that parents should be responsible for their child’s access to and actions on social media because I think parents are all in vastly different positions to take on that responsibility. Additionally, the knowledge and experience necessary to keep kids safe online is out of reach for so many, including myself; I have spent many years trying to understand this area and still do not have all the answers.

Catherine Grimley: There has been some debate regarding social media platforms’ rights to provide a satisfactory experience for users versus parents’ rights to raise their children and protect them from the potential dangers of the internet. Do parents’ rights fully represent children’s interests, or are there additional considerations that should be contemplated?


Stacey Steinberg

I think that, as a society, we believe parents’ and children’s rights are almost always aligned, but in reality, the two diverge more often than we see at first glance. And so, parents’ rights can never fully represent children’s interests because children have interests that are separate and apart from those of their parents and those interests need to be contemplated.24 When I say that they need to be contemplated, I am not necessarily saying that the laws need to be framed to fully protect what children want. In my world of child welfare, we call that a child’s stated interest as opposed to a child’s best interest. But to pass smart legislation, we need to consider both the child’s best interest and the child’s stated interest.25 Finally, we need to listen to the child to really be able to understand what those stated interests are.

Catherine Grimley: One more question for you. You are a professor at UF Law, so you spend a lot of time around law school students. If there was one piece of advice that you could give to law school students, what would it be?

Stacey Steinberg:

My one piece of advice is to be true to who you are now and who you were before law school and to not be afraid to let that part of you—that unique special part of you that makes you different from your classmates—shine. I always knew I wanted to work with kids, but I did not know what that would look like. In law school, I became a guardian ad litem volunteer, which led me to my work as a special victims unit prosecutor and then an attorney for child welfare services. But when I came to the law school, I really, in some ways, thought I had professionally left that love of working with kids behind. I was hired here as a legal writing professor. At the same time, I started taking a lot more pictures, and I had a photography business that was getting off the ground. At the time, I felt those two pieces of myself did not align. They did not intersect. Honestly, sometimes I was embarrassed to be a law professor with a photography business on the side. But honestly, it was that photography business that really led me to ask the difficult questions when I studied sharenting, and it was that passion for children’s rights that allowed me to look at it through a legal lens. I feel really fortunate that at the time, Dean Laura Rosenbury and Professor Lyrissa Lidsky,

two of my friends and mentors at UF Law, really encouraged me to not be constrained by the legal analyses that existed in the past but to view it through a new lens and to bring with that new lens my own experiences as a parent and as a photographer.

So, the one piece of advice that I would give law students is to not try to follow in someone else’s path. Create your own path. Learn from the people around you, have confidence in yourself, and know that the things that you enjoy and are good at, while not having anything to do with the law, can still be a part of what makes you a successful attorney.