

Shedding light on child influencers

Insights on the influencer economy, Dutch private law and children's rights

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'Kindfluencers' ofwel minderjarigen die via sociale media geld verdienen door bijvoorbeeld reclames te maken zijn een nieuw verschijnsel met de komst en populariteit van sociale media. Minderjarigen kunnen op verschillende manieren als 'influencer' te werk gaan, zelfstandig in hun eigen naam of als onderdeel van hun familie bijvoorbeeld bij zogenaamde 'familievloggers'. In deze bijdrage belichten wij de praktijk en wetgeving rondom 'kindfluencers' in Nederland, meer specifiek rondom hun commerciële activiteiten.

1. Introduction

In summer 2022, a TikTok video that made a remix ('stitch') out of an interview with then 7-year old Tariq who was proclaiming his love for corn became viral overnight, launching Tariq to unexpected Internet fame.² Days later, he was already making money off his new-found fame.³ He starred in a Chipotle commercial that went equally viral on Twitter, and he also got a Cameo account from where he makes 20 second videos which can be purchased off the platform for over € 200 for personal videos and € 1000 for business videos. Tariq, now going by the name of 'Corn Kid', is an example of the many children who are at the heart of Internet fame, and who become influencers in this space.

This popularity is fueled by new ways of making revenue on the Internet as an individual. In particular, the popularity of native advertising on social media, which is advertising hidden behind the veil of informative or entertaining content, has brought renewed concerns about the harms it may propagate. These harms include influencing buyer or voter behavior through inconspicuous advertising, or promoting unhealthy foods and drinks or unsafe products.⁴ Such harms have been in the spotlight for regulators around the world, as they focus on reforming legal frameworks in such a way to fit the popular propagation of advertising that relies on

influencers. Also known as content creators, influencers are a 'content creator with a commercial intent, who builds trust and authenticity-based relationships with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetisation purposes'.⁵ Children are said to be particularly vulnerable in this environment, where they establish so-called 'parasocial relations' with the influencers they follow.⁶ Children as audiences for influencers of all ages (including other children) is a topic where causes of harms need to be further investigated.⁷ However, attention also needs to be paid to another category of vulnerable minors who participate in this ecosystem: child influencers themselves.⁸

From a legal perspective, due to their limited capacity, child influencers generally find themselves under the protective authority of their parents. According to legal capacity rules, particularly the commercial activity of child influencers is mediated by parents who conclude contracts on their behalf. As manager-parents, the legal guardians of child influencers need to juggle the financial interests of attaining new deals and increasing their patrimony with the parental interest of nurturing the physical and psychological development of their child to the best of their abilities. Yet the influencer marketing industry is highly volatile.⁹ Platforms change their business models at an unprecedented pace, and viewer preferences are fickle. In this environment, it is difficult to generate and maintain the attention of audiences. However, the vast amounts of money which can be gained in influencer marketing may make it a worthwhile stint, where parents may choose to give priority to financial interests. This has generated a lot of concerns for the labour of children, and the Dutch government is, at the time of writing this paper, looking into solutions to make sure children

1 Dr. C.R. (Charlotte) Mol is assistant professor in family law at Utrecht University within UCERF (Utrecht Centre for European Research into Family Law) and dr. E.C. (Catalina) Goanta is associate professor in private law and technology at Utrecht University. This research was partly supported by the ERC Starting Grant research project HUMANads (2022-2027), ERC-2021-StG No 101041824.
2 L. Harper, "He's having the time of his life!" How Tariq the Corn Kid embraced global fame – and broccoli!, *www.theguardian.com*, 28 December 2022.
3 Ibid.
4 A.E. Coates et al., 'Food and Beverage Cues Featured in YouTube Videos of Social Media Influencers Popular With Children: An Exploratory Study', *Frontiers in Psychology* 2019, vol. 10, doi.org/10.3389/fpsyg.2019.02142.

5 F. Michaelsen et al., 'The impact of influencers on advertising and consumer protection in the Single Market', Study requested by the IMCO Committee, February 2022, p. 9, [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).
6 A.N. Toblert & K.L. Drogos, 'Tweens' Wishful Identification and Parasocial Relationships With YouTubers', *Frontiers in Psychology* 2019, vol. 10, doi.org/10.3389/fpsyg.2019.02781.
7 For instance, the concept of 'sharenting' (i.a. parents who share a lot of content of their children) has received some attention in literature, see G. Ouvrein & K. Verswijvel, 'Sharenting: Parental adoration or public humiliation? A focus group study on adolescents' experiences with sharenting against the background of their own impression management', *Children and Youth Services Review* 2019, vol. 99, doi.org/10.1016/j.childyouth.2019.02.011. However, sharenting research still needs to be extended to advertising business models to better link to the discussions relating to influencer marketing and children.
8 E. Walker, 'Nothing Is Protecting Child Influencers From Exploitation', *wired.com*, 25 August 2022.
9 R. Caplan & T. Gillespie, 'Tiered Governance and Demonetization: The Shifting Terms of Labor and Compensation in the Platform Economy', *Social Media + Society* 2020, vol. 6, issue 2, doi.org/10.1177/2056305120936636.

are not exploited if they perform such artistic activities in the heart of their home, in addition to guidelines from agencies such as the *Commissariaat voor de Media* for video content made by influencers.¹⁰ Labour law questions, however, go beyond the scope of this article. While these questions are far from settled,¹¹ the complex social, legal and economic relationships between children and their parents in the context of content monetization also have additional angles that are important for the analysis of this phenomenon. One of the fundamentals of the transactional implications of this relationship is reflected by the notions of consent and legal capacity.

This paper focuses on shedding light on the legal regime applicable to the transactions of child influencers by bringing together insights from Dutch private law, specifically the consent and capacity of minors in Book 1 Dutch Civil Code (hereafter DCC), as well as from children's rights scholarship. In doing so, the paper inquires whether the capacity standards relevant to child influencers under these two particular perspectives are sufficient to govern their commercial activities. We aim to take preliminary steps in addressing the (potential) issues of child influencers in this novel industry, which is characterized by its scale, easy access and intimate at-home nature.

In terms of the structure of the paper, Section 2 starts by mapping various definitions relating to the concept of 'children'. Section 3 dives into the market practices of child influencers generally and in the Netherlands in two ways: by describing the activity of child influencers by proposing a taxonomy of their involvement in the influencer economy (3.1) and by offering some statistical insights into the activity of Dutch child influencers by reporting on relevant Chamber of Commerce registrations as well as civil procedures before Dutch courts for emancipation for commercial purposes (3.2). Section 4 addresses consent by and capacity of child influencers in the light of the Dutch Civil Code, and Section 5 adds insights from children's rights. Finally, section 7 provides critical reflections and concludes.

2. Defining 'children' for child influencers

All children are minors, but one might not say that all minors are children. The term 'children' can be used to refer to different age groups when used in combination with terms such as 'babies', 'teens' or 'youth'. It is necessary to therefore define what is meant in this article with minor and children, but also to grasp which definitions (or age limits) relevant laws adhere to.

10 L. Samplonius, 'Scoren met je kind op Instagram: populair, maar discutabel' (*RTL Nieuws*, 17 maart 2023), <https://www.rtlnieuws.nl/nieuws/nederland/artikel/5367034/kidfluencers-momvloggers-familievlogs-beroemde-kinderen-sociale>.

11 Previous research shows that many young influencers under the age of 13 may require an exemption which parents must request, something which rarely happens in practice. See R. Coenmans and I.M.P. Extra, 'Kindfluencers' en kinderarbeid', *TRA* 2022/59 and M.D. Bulk, 'Kindvloggers op YouTube: wie is verantwoordelijk?', *ArbeidsRecht* 2022/14.

The UN Convention on the Rights of the Child (UNCRC) generally uses the term 'child' to refer to everyone under the age of eighteen.¹² This is also the generally accepted European age of majority and is the recommended age of legal capacity by the Council of Europe Committee of Ministers.¹³ Similarly, in Dutch law minors (*minderjarigen*) are persons under the age of eighteen years.¹⁴ There are, however, various relevant age limits in Dutch law which apply to minors. For example, a minor may request limited legal capacity (*handlichting*) from the age of 16 years (see Section 3.2 below). There is no minimum age for minors to register their company in the Dutch Business Register (*Kamer van Koophandel*), however minors may only do so with the permission of their legal representatives (i.e. their parents) unless they have limited legal capacity.¹⁵ Finally, in the Netherlands, while child labour is forbidden, a number of exceptions apply for children from the age of thirteen, fourteen and sixteen years old.¹⁶ An important distinction includes the legal capacity of children from the age of sixteen years to enter into an employment contract.¹⁷ According to article 7:612 DCC, once the child enters into the employment contract he/she has legal capacity for everything related to the employment contract, including procedural capacity to represent themselves in court without the assistance of their legal representatives, i.e. their parents.

Self-regulation also plays an important role in defining minors in the context of advertising. According to the Child and Youth Code (*Kinder- en Jeugddeclamecode*) of the Advertising Code Association (*Stichting Reclame Code*), minors are defined as persons under 18, and children are considered as persons who are 12 or younger. After pressure from civil society and regulators, social media platforms have also considered the role of minors in formulating their general terms. For instance, the EU version of TikTok's Terms of Service actually establishes a minimum age for users (13) and prohibits the use of the platform by minors under this age.¹⁸ However, it is unclear – at least from the terms – how this policy is enforced across the different so-called tiers of governance of social media content creators. According to Caplan and Gillespie, tiered governance reflects the private regulatory discretion of social media platforms 'in which

12 See Article 1 UNCRC. This article does clarify that this follows the domestic laws on minority, i.e. if a child attains majority prior to the age of 18, this is the age until which the term child in the scope of the CRC refers to.

13 Council of Europe, Resolution (72)29 on the Lowering of the Age of Full Capacity, adopted by the Committee of Ministers on 19 September 1972. See Explanatory Report to the European Convention on the Exercise of Children's Rights, 25 January 1996, para. 11.

14 Article 1:233 DCC. It is, however, possible for minor mothers from the age of 16 years to be emancipated.

15 Article 1:234 DCC. See also Section 4.

16 Article 3:2 Arbeidstijdenwet.

17 Article 7:612 DCC.

18 TikTok Terms of Service, <https://www.tiktok.com/legal/page/eea/terms-of-service/en>. 'Minimum Age: You can only use the Platform if you are 13 years of age or older. We monitor for underage use and we will terminate your account if we reasonably suspect that you are underage. You can appeal our decision to terminate your account if you think we have made a mistake about your age.'

different users are offered different sets of rules, different material resources, and different procedural protections when content is demonetized'.¹⁹ As an example, while TikTok prohibits the activity of children under 13, the account of 9-year old North Kardashian is not only allowed, but also has become increasingly popular with an audience whose demographic characteristics remain unknown.²⁰ Similarly, AdSense requires underaged users to 'have a parent or guardian sign up for AdSense using their own Google Account. If their AdSense account is approved, we will make all payments to the adult responsible for the site'.²¹

The different rules and procedures that take into account different age segments are necessary but also problematic. On the one hand, the neurological developments of children warrant some differentiation between for instance a 4-year-old and a 14-year-old minor.²² On the other hand, most legal rules on the capacity of children are not really linked to neuroscientific evidence, but rather are relics of protective regimes embedded in a given legal system (e.g. the civil code). This makes the legal landscape of children and decision-making rather difficult to navigate, given the legal fragmentation brought about by different frameworks pertaining to separate policy areas. Throughout this paper we use the term 'child influencers' to refer to all influencers under the age of 18 years old. This allows us to examine the broader legal landscape and reflect on possible needs to differentiate between (very) young child influencers and child influencers who are nearing adulthood.

3. Market practices: Typologies and empirical insights into Dutch child influencers

3.1 Taxonomy of the involvement of children in the influencer economy

Child influencers have often featured in media stories that focused on their high earnings, work hours and mental health implications.²³ In communication studies, children are vulnerable categories that are easily influenced because they are highly susceptible to peer pressure. Very few studies take the perspective of children as influencers.²⁴ In one such study, researchers interviewed teenage influencers

about their early monetization efforts, revealing how teenage influencers end up promoting products that they do not really like or align with, but perceive as necessary transactions to build a brand deal portfolio.²⁵

Comprehensive studies that could shed light onto questions such as which industries and practices are specific to child influencers, are generally lacking. Content monetization models as well as other patterns of engagement remain opaque to law-makers and even researchers,²⁶ and so do the practices of parents who support their children in content creation. On the basis of existing literature, we can divide the activities of child influencers into three main categories:

1. **Child influencers as self-standing brands:** in this model, monetization revolves around the child influencer as the main character. Channels, profiles as well as commercial engagements reflect the child's identity. A good example of a child influencer who became a self-standing brand is Ryan's Toys Review,²⁷ who used to have the most popular child account on YouTube. The account features his name and the content largely reflects his activities. Without Ryan, there would be no channel, and no YouTube revenue.
2. **Child influencers as supporting characters:** this is the model of family channels, which focus on a broader environment. Family vlogging was mostly popular around a decade ago, when it also became rather infamous due to public scandals such as those surrounding the YouTube channel DaddyOFive.²⁸ At some point, this YouTube channel, ran by a father and his second wife, was revolving exclusively around pranking their children for shock value expected to generate views and engagement. Family vlogging is also a keen reminder of the reality tv genre, as families try to convey their relatability by showing audiences their 'real' lives. In the Netherlands, family vlogging is making a come-back,²⁹ with some online families even choosing to share intimate moments such as child birth.³⁰ In this setup, children are supporting characters rather than the main profile identity. They are part of the online family and its cast of characters.
3. **Brand networks:** this approach is taken by merging the two aforementioned models. Content creation is increasingly happening cross-platform, so that creators

19 Caplan & Gillespie 2020.

20 'Kanye West calls out Kim Kardashian over daughter North's TikTok videos', <https://metro.co.uk>, 13 March 2022.

21 <https://support.google.com/adsense/answer/14230?hl=en>.

22 See e.g. D.P. Keating, 'The Evolving Capacities of the Child: Neurodevelopment and Children's Rights', in: M.D. Ruck et al. (eds.), *Handbook of Children's Rights: Global and Multidisciplinary Perspectives*, London: Routledge 2016.

23 B. Luscombe, 'How YouTube Star Ryan Kaji Built a Empire With Ryan's World', <https://time.com>, 12 November 2021.

24 I. Pedersen & K. Aspevig, 'Being Jacob: Young Children, Automedial Subjectivity, and Child Social Media Influencers', *M/C Journal* 2018, vol. 21, issue 2, doi.org/10.5204/mcj.1352; S.C. Boerman & E.A. van Reijmersdal, 'Disclosing Influencer Marketing on YouTube to Children: The Moderating Role of Para-Social Relationship', *Frontiers in Psychology* 2020, vol. 10, doi.org/10.3389/fpsyg.2019.03042; V. Verdoodt, S. van der Hof & M. Leiser, 'Child labour and online protection in a world of influencers', in: C. Goanta & S. Ranchordás (eds.), *The Regulation of Social Media Influencers*, Cheltenham: Edward Elgar Publishing 2020, p. 98-124.

25 M. De Veirman, L. Hudders & M.R. Nelson, 'What Is Influencer Marketing and How Does It Target Children? A Review and Direction for Future Research', *Frontiers in Psychology* 2019, vol. 10, doi.org/10.3389/fpsyg.2019.02685. See also M. De Veirman e.a., 'Unravelling the power of social media influencers: a qualitative study on teenage influencers as commercial content creators on social media', in: C. Goanta & S. Ranchordás (eds.), *The Regulation of Social Media Influencers*, Cheltenham: Edward Elgar Publishing 2020, p. 126-166.

26 C. Goanta & S. Ranchordás, 'The regulation of social media influencers: an introduction', in: C. Goanta & S. Ranchordás (eds.), *The Regulation of Social Media Influencers*, Cheltenham: Edward Elgar Publishing 2020, p. 1-20.

27 https://www.youtube.com/channel/UChGjGhZ9SOOHvBB0Y4D00_w.

28 R. Dunphy, 'DaddyOFive YouTube Abuse Controversy, Explained', <https://nymag.com>, 28 April 2017.

29 'Mag je je kinderen inzetten in vlogs? - Wordt Vervolgd', www.amnesty.nl.

30 'Channah Koerten heeft haar hele, ja hele, bevalling rauw en écht op video gedeeld - Kids en Kurken', www.kidsenkurken.nl, 14 November 2020.

do not have to exclusively rely on one social media platform and suffer the risks that come with tiered governance. Yet here, the network is not only about crossing platforms, but also about identity commodification as a portfolio. Children may have their own channels, and at the same time be supporting characters for other channels. An example in this regard is reflected by the Bellinga family,³¹ where each child has an Instagram account, and the family as a whole has multiple YouTube accounts. Variations on this model also include the professionalization of the child influencer as a self-standing brand. Some child influencer accounts (e.g. Like Nastya³²) are turned into global media labels, with content being offered in various languages and tailored for different regional markets, in the hope of reaching and engaging more audiences around the world.

3.2 Mapping child influencers in the Netherlands

The position of child influencers raises many interesting legal and moral questions and in the previous section noteworthy examples of Dutch child influencers are included in the classification. But how big is the group of child influencers in the Netherlands? While this may not be a legal question per se, such evidence can play an important role in regulatory policy: will expanding the interpretation of current Dutch law to cover new factual situations suffice if the phenomenon is not very wide-spread, or is an overall reform necessary by virtue of the scale of this phenomenon? Providing a hard number is not possible as there are no official statistics of minors who are involved in the influencer economy. Instead, we must rely on limited secondary evidence to map child influencers within the Netherlands.

One available source to map child influencers is the Commercial Register of the Dutch Chamber of Commerce (*Handelsregister Kamer van Koophandel*, hereafter: *KvK*). All businesses must register with the *KvK*, including sole traders,³³ if they fulfill the criteria of being a business.³⁴ There are no age limits to register a business, which means that minors must register their business if they fulfill the criteria. Child influencers with regular commercial transactions or who earn money supplying services in the form of advertisement should therefore be found in the *KvK* Commercial Register. Every registered business is given a so-called 'SBI-code', a number that indicates the activities of the business.³⁵ There is no specific SBI-code for influencers, instead their business activities will have to be translated to other SBI-codes, for example the code 'Sale of time and space for advertising', the code 'Motion picture production (not for television)' for

vloggers, or the code 'Manufacture of games and toys' for eSport influencers. Following a request to the *KvK*, a preliminary overview was provided of active businesses registered with a description including the terms 'blog', 'vlog', 'youtube', 'tiktok' or 'influence/influencer'.³⁶ In the table below, the active businesses per year (on the first of January) are shown with the age of the minor in the left column.

Table 1: Active businesses in the Commercial Register per 1 November 2022

| Age in years | 2018 | 2019 | 2020 | 2021 | 2022 | 1-11-2022 |
|------------------|-----------|-----------|-----------|-----------|-----------|-----------|
| 9 | 1 | | | | | 1 |
| 10 | | 1 | | | | |
| 11 | 1 | 2 | 1 | | | |
| 12 | | 1 | 2 | 1 | | |
| 13 | | | 2 | 3 | 2 | |
| 14 | | 1 | 1 | 2 | 5 | 2 |
| 15 | 1 | | 3 | 4 | 4 | 5 |
| 16 | 2 | 5 | 11 | 7 | 4 | 7 |
| 17 | 7 | 4 | 11 | 18 | 18 | 6 |
| Total ≤17 | 12 | 14 | 31 | 35 | 33 | 21 |
| 18 | 18 | 22 | 13 | 26 | 34 | 36 |
| 19 | 28 | 37 | 39 | 38 | 49 | 63 |

There does not appear to be a large number of child influencers in the Netherlands, but the number of registrations has increased in the past years. Looking at the table, the group of 16 and 17-year-old minors consistently represent over half of child influencers in the Commercial Register. Important to note is the limitation in the search terms used and the fact that it is not known how many child influencers are *not* in the Commercial Register. More significantly, this table likely concerns minors who act as self-standing brands or in brand networks. Minors who are child influencers as supporting characters will most likely not be shown in this overview as they act within the business (i.e. vlogs, posts, etc.) of their parents or family members. We expect that the parents, as adults, will instead be registered with the *KvK*.³⁷

An additional source to map minor influencers are the published decisions granting limited legal capacity to contract (*handlichting*) to minors. Once a minor has reached the age of 16 years, he or she may request the subdistrict court (*kantonrechter*) to grant the minor *handlichting*. Through *handlichting* a minor receives certain competences which are usually reserved for adults. The subdistrict court will explicitly decide which competences are granted to the minor. These competences are limited to receiving and disposing of all or part of their own income, concluding lease or rental agreements, participating in a company or conducting their own business or profession.³⁸ A minor cannot be granted the

31 <https://www.youtube.com/channel/UCKf5LwdahHiO3YsnxJZOMCA>.

32 <https://www.youtube.com/channel/UCJplp5SjeGsdVdwsfb9Q7IQ>.

33 See Article 18 Handelsregisterwet 2007.

34 The three criteria are: supplying goods and/or services, demanding more than symbolic payment for this; and taking part in regular commercial transactions. See Article 2 Handelsregisterbesluit 2008 for the definition of a business (*onderneming*) in the sense of the *Handelsregisterwet*.

35 For more information, see <https://www.kvk.nl/english/information-and-data/overview-sbi-codes/>. The term 'SBI' refers to *Standaard Bedrijfsindeling*.

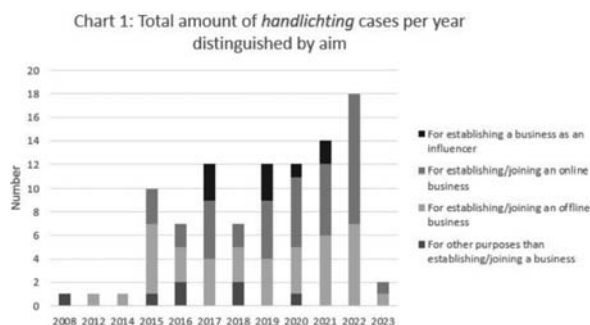
36 This overview was provided in email correspondence with the authors.

37 This is the case for example with the Bellingas, who are registered as 'Bellinga International V.O.F.' (*KvK* number 69944199), a general partnership in which only the two parents are registered as partner.

38 Article 1:235(3) DCC.

competence to dispose of registered property, securities or mortgaged claims. For a minor to be granted limited legal capacity to contract, the minor's parents with parental responsibilities must agree. If limited legal capacity to contract is granted, this must be published.³⁹ It is therefore possible to conduct a systematic search of the case law with respect to *handlichting* to try to identify the number of minors who have received *handlichting* for their businesses in the field of online influencing. A search was conducted in the Rechtspraak database which resulted in 110 hits of which 93 were relevant cases.⁴⁰ Following the selection of cases an overview was made of the year of publication, the name of the minor, and yes/no questions of whether the minor's *handlichting* concerned (a) establishing or joining a business, (b) conducting *online* business or work, and (c) working as an influencer. In some cases this information was explicitly included in the text, in others it wasn't. To supplement the information provided in the case itself an online google search was conducted to find additional information. All in all, this led to the identification of 9 influencers.

As shown in Chart 1, on the right, there are only a limited number of *handlichting* cases published on *Rechtspraak* per year. Most of these cases concern minors requesting limited legal capacity to contract to establish or join a business, either an offline business (e.g. joining a dairy farm) or an online business (e.g. all sorts of webshops). In nine cases, the aim was to establish an online business as an 'influencer'. Four of these minors concerned 'traditional' influencers, earning money through Youtube videos (TypicalModders, Games4Real, Charif, and Mike Buiten).⁴¹ One minor established a business to sell motorcycles and scooters through online influencing as '2WheelsMaffia'.⁴² Finally, two minors wished to sell merchandise online to their digital fanbase as an equestrian and motorcyclist, respectively,⁴³ and two minors established a business making and selling Instagram pages for likes and advertisement sales.⁴⁴ All in all, child influencers appear to form only a small portion of *handlichting* cases.



An earlier analysis of *KvK* data yielded rather different results.⁴⁵ According to an *RTL Nieuws* investigation dating October 2020, the number of minors registered at the *KvK* with an own company that was active on YouTube, Instagram or TikTok was over 200. The investigation does not clarify what criteria were used to retrieve these numbers (e.g. search terms). In addition, influencer retrieval platforms reveal an even more complicated landscape of child influencers. A June 2020 search of the influencer retrieval platform Heepsy for child and family influencers with over 100,000 followers, revealed 43 relevant accounts on Instagram, two on TikTok and 14 on YouTube.⁴⁶

What this tells us is that in the influencer industry, even counting all stakeholders is currently a difficult task that raises a lot of accuracy questions. What influences the accuracy of these approximations is a list of factors such as a lack of administrative definitions and interpretations of influencer activities, the voluntary nature of registrations to the *KvK*, as well as the fact that there are no activity codes used exclusively for influencer business models. Even influencer retrieval platforms that tout data access to social media organizations' Application Programming Interfaces (APIs) have difficulties in triangulating influencers, particularly since in the absence of administrative registrations, a lot of data-driven inferences are made to ascertain the geographical scope of influencer activities. This often leads to false positives, which is why manual curation remains necessary.

Although leading to an unclear picture, the data presented in this section reveal that minors are active on social media as entrepreneurs, which makes them commercial actors in a marketplace defined by contractual interactions. At the same time, there are seemingly not that many child influencers acting independently within the Netherlands, instead we expect there to be a much larger shadow group of child influencers acting as support actors or in brand networks through family accounts. It is difficult to clearly identify

39 According to Article 1:237(1) DCC, *handlichting* has to be published in the *Staatscourant* and in two designated daily newspapers. Seeing as the *Staatscourant* and Dutch court decisions are now openly accessible online, the current practice is to simply publish the court decision without anonymization. See J.H.M. ter Haar in: *T&C Burgerlijk Wetboek*, art. 1:237 BW.

40 The search was conducted on *rechtspraak.nl* with the search term '*handlichting*'. No other filters were applied to the search. The final search was conducted on January 25, 2023. An attempt was made to conduct an additional search in the *Staatscourant*, however as the search functions on <https://zoek.officielebekendmakingen.nl/> are limited it is not possible to find the published *handlichting* decisions without combing manually through 15 thousand scanned documents.

41 Rechtbank Limburg 12 March 2019, ECLI:NL:RBLIM:2019:2254; Rechtbank Noord-Holland 17 December 2019, ECLI:NL:RBNHO:2019:10383; Rechtbank Gelderland 11 February 2019, ECLI:NL:RBGEL:2019:508; Rechtbank Noord-Holland 5 February 2020, ECLI:NL:RBNHO:2020:733.

42 Rechtbank Oost-Brabant 16 juni 2021, ECLI:NL:RBOBR:2021:2991.

43 Rechtbank Zeeland-West-Brabant 26 February 2021, ECLI:NL:RBZWB:2021:833; Rechtbank Noord-Nederland 18 December 2017, ECLI:NL:RBNNE:2017:4889.

44 Rechtbank Overijssel 8 februari 2017, ECLI:NL:RBOVE:2017:641; Rechtbank Overijssel 8 februari 2017, ECLI:NL:RBOVE:2017:642.

45 'Enorme stijging minderjarige influencers in Nederland: "Gevaar voor ontwikkeling kind"', www.rtlnieuws.nl, 28 oktober 2020.

46 The search terms included child and family channels: 'mommy', 'kids', 'family' or 'daddy'. The search terms were also categories used by the platform to label the accounts provided, and do not only reflect hetero-normative families. The search results were manually curated by having a researcher filter out non-relevant accounts. Relevance was considered in the light of the child influencer categories elaborated upon in Section 3.1.

this group. More importantly, the question remains how many of these child influencers, whether independently or through their parents, earn serious money. As such transactions occur off-platform, and little to no research has been done into influencer contracts, it is currently difficult to estimate in practice which influencers earn which amounts. However, hypothesizing that content monetization is opening the door to more revenue for some children, we can reflect upon legal questions relating to the patrimonial implications of such developments. In the following section, we will explore the contractual implications of influencer activities by looking at the capacity regime applicable to minors in transactions.

4. Consent and capacity in private law

In spite of the fact that the commodification of child identities is a lucrative type of creative work in the influencer economy, children remain limited in their transactional actions due to the commercial nature of these environments. All monetization models used in the course of their labour entail taking on legal obligations. For instance, a barter agreement between a brand and an influencer entails bilateral obligations in that the brand is obliged to give specific goods to the influencer, who in exchange has an obligation to advertise the goods and the brand.

Common to most jurisdictions is the fact that children have limited legal capacity.⁴⁷ Instead, a child's legal representatives, most commonly their parents, will act on their behalf. Within Europe it is common that the holders of parental responsibilities legally represent the child in matters concerning their person or property.⁴⁸ Additionally, holders of parental responsibilities commonly have the duty to administer the child's property.⁴⁹ The latter is only relevant in so far as children have their own property. Most children do not have much. As Ter Haar and others note, children will presumably only have substantial assets by virtue of a gift, a personal injury payment, an inheritance, or a life insurance payment.⁵⁰ However, the practices common to the influencer economy threaten this status quo. Self-reporting by parents shows the profitability of this industry for 'a generation of kids who, from an early age, are earning thousands of dollars and showered with free gifts from brands'.⁵¹

In Dutch private law, minors are restricted in their legal capacity (*handelingsbekwaamheid*). Therefore, the role of their parents (or other holders of parental responsibility) is

crucial. As per article 1:253i DCC, parents with shared parental responsibilities jointly administer the child's assets and jointly represent the child in civil acts. If children earn their own money or receive gifts through their work as influencers in their own name, this property belongs to them and must be administered by their parents. Parents must act as proper administrators, in case of poor administration the parents are liable for the damage caused, except in so far as it concerns the proceeds of the assets to which parents are entitled. According to article 1:253l DCC, parents have a right to proceeds of the assets (*ouderlijk vruchtgenot*) after reduction of the related expenses. This does not mean that parents may touch the child's income from employment, which would likely be the case for child influencers. Only if the child receives structural income from employment, not incidental income, he or she has an obligation to contribute to the household costs.⁵² In light of the volatility of the influencer economy, we doubt this obligation will arise often.⁵³ Notably, the right of parents to the proceeds of the child's assets is critiqued – most recently by Ter Haar, Kolkman, Schrama & Verstappen.⁵⁴

According to article 1:234 Dutch Civil Code, minors only have legal capacity when they have the permission of their legal representative, i.e. their parents, for a specific legal act or a specific purpose. A minor's parent cannot provide unrestricted permission.⁵⁵ A legal representative's permission is presumed to be granted to a minor when it concerns a legal act for which it is generally accepted practice that a minor of this age can act independently.⁵⁶ Generally accepted legal acts include, for example, the buying of groceries, a bus or movie ticket, or becoming a member of a sport association etc. In case law there are examples where courts find certain acts not to fall under this concept, for example when a minor signs up for online education or homework tutoring.⁵⁷ However, to date, there is no Dutch case law relating to legal acts in the influencer economy. Yet there is a growing need to interpret what can be considered a generally accepted practice in the growing influencer industry, relating to at least two dimensions: what is generally permissible for minors in terms of their engagement with social media platforms? And what is the extent of freedom of contract as applicable to minors who undertake activities as influencers? For the latter question, child influencers

47 See e.g. P. Varul, A. Avi & T. Kivisild, 'Restrictions on Active Legal Capacity', *Juridica International* 2004, issue IX.

48 See in this regard the CEFL Principles of European Family Law Regarding Parental Responsibilities, Principle 3:24.

49 See CEFL Principles of European Family Law Regarding Parental Responsibilities, Principle 3:22.

50 See J.H.M. ter Haar, W.D. Kolkman, W.M. Schrama & L.C.A. Verstappen, *Toezicht op het bewind van ouders en voogden over het vermogen van minderjarigen*, WODC 2016, p. 5.

51 P. Mohan, 'My kid is an Instagram Influencer. Here's what I do with her money', www.fastcompany.com, 5 August 2019.

52 J.H.M. ter Haar, commentaar op artikel 1:253l BW, in: GS Personen- en familierecht.

53 Compare in this regard a decision of the district court Midden-Nederland, where the earned income of two children sometimes acting in musicals was not accepted as structural income in light of article 1:253l DCC (Rechtbank Midden-Nederland 18 July 2019, ECLI:NL:RBMNE:2019:3167) versus a decision of the district court Den Haag in which the child who concluded a employment contract for 40 hours a week for the duration of a year was considered to start earning a structural income in light of article 1:253l DCC (Rechtbank Den Haag 10 August 2022, ECLI:NL:RBDHA:2022:8511).

54 Ter Haar, Kolkman, Schrama & Verstappen 2016, p. 309-310.

55 J.H.M. ter Haar, commentaar op artikel 1:234 BW, in: GS Personen- en familierecht.

56 Article 1:234(3) DCC.

57 See J.H.M. ter Haar, commentaar op artikel 1:234 BW, in: GS Personen- en familierecht.

from the age of 16 and older may take recourse to either *handlichting* or through entering into a labour contract with brands – both routes grant them (limited) legal capacity. For younger children it is perhaps not desirable to grant more autonomy to contract. Minors' legal capacity is limited for a reason, the State has a responsibility to protect children from risky behaviour. Parents will then act as gatekeepers, which allows for children to be protected against transactions that disadvantage them.

Earning thousands of euros from a sponsor is, however, a different type of transaction than that of making a social media account. Given the proliferation of social media, it can be argued that it is common for children to open social media accounts by themselves, or with parental guidance. In the past, as social media transactions for non-commercial users were primarily based on a 'pay with your data' business model, there was no other quid pro quo than opening an account in exchange for access to a user's activity on a specific platform. Seeing the demographic data on the preferences of children relating to social media, it is difficult to argue that social media is not part of the daily lives of children.⁵⁸ According to UK agency Ofcom, a majority of children under 13 had at least one profile on social media, and more than six in ten children aged 8-17 reported having more than one social media profile (62%).⁵⁹ The same developments are reported in US surveys.⁶⁰ Whether we like it or not, social media is mundane for younger generations, and an equivalence can be made with communication contracts (e.g. mobile telephone contracts). There may be slight demographic differences and preferences, but the trend is clear. This results in the argument that gratuitous social media contracts may be generally accepted practices as interpreted under Art. 1:234 DCC.

In the past years, content monetization has diversified significantly, leading to a plethora of new transactions, this time entailing the exchange of more than simply personal data. For instance, social media accounts now have linked wallets, from where users can make and receive payments through the form of platform tokens.⁶¹ Similarly, a YouTube account, which can generally be used to watch videos on the platforms, can also enable monetization under certain conditions.⁶² As a consequence, access to a monetized account which receives payment from Google's AdSense programme also entails access to the revenue resulting from such payments. In this context, it becomes increasingly difficult to consider that such transactions are common for children,

as the monetization developments which are changing the nature of social media to a more visibly transactional and money-based environment are currently unfolding and still need to crystalize. Until they do, we believe such transactions must be interpreted as requiring parental consent.

But what happens when children are not the ones making these accounts, and parents make them on their behalf for the purpose of monetization? For instance, if a parent makes an Instagram account for their four-year old, in order to post sponsored content, where does that leave the child's capacity? According to our current legal frameworks, parents are the guardians of their children, and their contractual decisions may only be challenged if they come into conflict with mandatory rules around labour or privacy. Outside these tensions, transactions on behalf of children are covered by the default capacity regime which legitimizes parents as the decision-makers of how much monetization they are willing to expose their children to, as well as decisions around managing the money earned by their children in this way. As described in Section 3.2, it is possible for adolescents from the age of 16 years old to request *handlichting*, i.e. limited legal capacity to contract. This provides a possibility for child influencers heading towards the age of maturity to contract with brands through their own business within the bounds of the maximum set by the subdistrict court. Yet this is an option only for a narrow range of monetized children. If parents abuse this legitimacy and no labour or privacy rules can restrict their contractual freedoms of acting as the agents of their progenies, their children may become trapped in a legal framework initially meant to protect them. To complement the restrictive views on child empowerment available under capacity rules, we now focus on the narratives common in children's rights literature.

5. Children's rights perspective

Though there is no single article focusing on children's digital rights or their property rights in the UN Convention on the Rights of the Child (CRC), the position of children in the influencer economy touches upon various protected rights. In 2021, the Committee on the Rights of the Child (hereafter: Committee) further clarified the scope of the CRC's articles with regards to the digital environment.⁶³

Most commonly, the position of child influencers is discussed with regards to Article 32 CRC.⁶⁴ This article provides for the right of the child to be protected from economic exploitation, i.e. protection against child labour.⁶⁵ As noted by

58 In the Netherlands, in 2021, the preferred social media platforms of youth between 14 and 22 were WhatsApp, Instagram, Snapchat, Facebook and TikTok.

59 Ofcom, 'Children and parents: media use and attitudes report 2022', p. 3, www.ofcom.org.uk/_data/assets/pdf_file/0024/234609/childrens-media-use-and-attitudes-report-2022.pdf.

60 M. Wenner Moyer, 'Kids as Young as 8 Are Using Social Media More Than Ever, Study Finds', www.nytimes.com, 24 March 2022.

61 Michaelsen et al. 2022.

62 YouTube channel monetization policies, <https://support.google.com/youtube/answer/1311392?hl=en>.

63 General Comment No. 25.

64 See e.g. V. Verdoodt, 'The Role of Children's Rights in Regulating Digital Advertising', *International Journal of Children's Rights*, vol. 27, 2019, 455-481; S. van der Hof et al., 'The Child's Right to Protection against Economic Exploitation in the Digital World', *International Journal of Children's Rights*, vol. 28, 2020, 833-859.

65 See also Verdoodt 2019, p. 471 on broadening the notion of economic exploitation.

the Committee: 'by creating and sharing content, children may be economic actors in the digital environment, which may result in their exploitation'.⁶⁶ Therefore the Committee directs States to ensure that children are protected against exploitation and that their rights to work and remuneration are protected.⁶⁷ The involvement of children in the influencer economy – providing labour either for their self-standing brands, as a supporting character or within brand networks – raises valid concerns about the economic exploitation of children. This in turn has led to debates regarding the exceptions to the prohibition of child labour in the Netherlands and for example, new legislation in this regard in France.⁶⁸ In this regard the proper administration of a child's property (i.e. earned income) by their parents is also key.

When children and social media are discussed, the child's right to privacy (Article 16 CRC) is also commonly cited. Where child influencers are supporting characters or fall within brand networks there is an overlap with 'sharenting', i.e., parents sharing pictures or videos of their children online.⁶⁹ Parents may decide to 'sharent' for valid reasons, however 'sharenting' does pose a (potential) conflict between parental and children's rights.⁷⁰ As Kaesling notes, the protection of children's privacy is overwhelmingly placed with parents themselves, which leads to insufficient protection of children's privacy when it is their parents who are crossing the line.⁷¹ This applies equally to parents who put their children to work as influencers. In these situations there is an even greater danger that parents are increasingly led by the economic benefits of influencing rather than considering the impact on their children.

Both Articles 16 and 32 CRC are rights which focus on protecting the child. The CRC, however, not only provides rights for the protection of children, but also emphasizes the child as a rights-holder with increasing autonomy. In that regard, two of the general provisions of the CRC (Articles 5 and 12 CRC) are key. Both may be considered relevant in grasping the relationship between child influencers and their parents, specifically with regard to the choices children may make freely as influencers versus the authority of parents.

Article 5 CRC is a unique provision as it recognizes the triangular relationship between the child, the parents and

the state.⁷² Article 5 requires States parties to 'respect the responsibilities, rights and duties of parents' (or other legal guardians and sometimes the extended family) to 'provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance' to the child in exercising his or her Convention rights. Children are granted the right to 'receive appropriate direction and guidance' from their parents in exercising their Convention rights.⁷³ At the same time, Article 5 provides parents with the right to provide this direction and guidance, and contains an obligation for the state to respect parents' rights in doing so.⁷⁴ Central to this right is the recognition of the shifting equilibrium between the direction and guidance of parents and children's independent decision-making powers. Additionally, the principle of 'evolving capacities' has started to live a life of its own in the interpretation and implementation of many CRC rights.⁷⁵ It is recognized as an 'enabling principle' by the Committee as it is 'used to empower children in the exercise of their rights under the UNCRC'⁷⁶ and as it 'addresses the process of their gradual acquisition of competencies, understanding and agency'.⁷⁷ In respect of children's rights in the digital environment, the Committee explicitly notes that 'States parties should promote awareness among parents and caregivers of the need to respect children's evolving autonomy, capacities and privacy'.⁷⁸

In reading Article 5 together with Article 12 CRC, which provides for the child's right to participate in all decisions affecting them, the inclusion of children and increasing decision-making power in decisions affecting them becomes central. When parents make decisions affecting the child, for example decisions in relation to the child acting as an influencer or in relation to the child's finances, they ought to provide their child the opportunity to express their views and must give due weight to their views. Although we may expect that parents and children will discuss aspects of influencer work at home – it is not possible to determine how these discussions occur in practice, as the work of child influencers occurs behind front doors and remains – to a large extent – within the confines of parents' authority. Problematic would be those situations in which children are not able to voice their views or make their own decisions regarding their participation as supporting actors or as actors within brand networks, especially within the field of family influencers. There is a very real risk that children do not consent to the role they play or that children do not have the freedom to oppose their parents where serious

66 General Comment No. 25, para. 112.

67 General Comment No. 25, para. 113.

68 Bulk 2022; Coenmans & Extra 2022.

69 General Comment No. 25, para. 67.

70 K. Kaesling, 'Children's digital rights: Realizing the potential of the CRC', in: E. Marrus & P. Laufer-Ukeles (eds.), *Global Reflections on Children's Rights and the Law: 30 Years After the Convention on the Rights of the Child*, Routledge: London 2021, p. 189.

71 Kaesling 2021, p. 190. See also S. Livingstone & B. O'Neill, 'Children's Rights Online: Challenges, Dilemmas and Emerging Directions', in: S. van der Hof, B. van den Berg & B. Schermer (eds.), *Minding Minors Wandering the Web: Regulating Online Child Safety*, Berlin: Springer 2014, p. 32.

72 E.E. Sutherland, 'The Enigma of Article 5 of the United Nations Convention on the Rights of the Child: Central or Peripheral?', *International Journal of Children's Rights*, vol. 28, 2020, p. 448.

73 Tobin & Varadan 2019, p. 161.

74 Sutherland 2020, p. 455; and Tobin & Varadan 2019, p. 161.

75 J. Tobin & S. Varadan, 'Art. 5 The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities', in: J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*, OUP: Oxford 2019, p. 162.

76 General Comment No. 7, para. 17.

77 General Comment No. 7, para. 17 and General Comment No. 25, para. 19.

78 General Comment No. 25, para. 21.

financial gain may be had.⁷⁹ The question then becomes whether States have a responsibility to further enforce both the protection and self-determination rights of children in this field, or whether it is sufficient to promote awareness amongst parents.

6. Salient issues and questions for further thought

In light of the breadth of minors, ranging from very young children to those on the cusp of adulthood, the taxonomy of minors in the influencer economy shows the different ways in which minors may be involved as influencers online. Recognizing these differences is relevant in highlighting the potential problems minors may face as well as the different protections in place. Particular concerns may exist for children as self-standing brands, where monetization depends on the participation of the child who is the face of that brand. Similarly, brand networks reflect the professionalization of child influencer activities to such an extent that children partake in complex and time-consuming multi-channel monetization.

We posed and attempted to answer the question how many minor children in the Netherlands are involved in the influencer economy. Answering this question has proven to be difficult. Although various data sources allowed us to conduct a preliminary mapping of minor influencers in the Netherlands, better data are needed to determine how many minors act as self-standing brands, as supporting characters or in brand networks. More crucially, better data are needed to determine the extent to which minor Dutch children are earning (substantive) sums of money. Although it is known that the influencer economy may lead to significant earnings for adults and minors alike, it is difficult to determine whether the Dutch market is as vast as English-language markets, for example. Additionally, the data available to us does not allow us to distinguish who is earning (most of) the money: the minor themselves or their parents. It is likely that parents are generating most of the income from content creation. We suppose this to be the case, for various reasons. On the one hand, many (young) minors will often act as supporting characters or in brand networks, rather than as self-standing brands. On the other hand, even when children are self-standing brands their parents will likely often manage the commercial interests of the child, depending – of course – on the age of the child involved.

In that light, it is important to address the different issues facing different groups of minors. Very young minors are most prone to exploitation in the form of child labour, violations of their privacy rights, and potential commercialization of their lives. These children are highly dependent

on their parents to protect their interests, which may be problematic when parents are also stimulated financially to act in their own competing interests. The question then becomes how far parents' prerogative reaches and where the line is considered to lie between harmful parenting decisions or economic exploitation and choices that may be made within a family.

If we turn to the opposite end of the spectrum, i.e. to teens, then we see that there are specific legal options in place to allow these minors to act on their own behalf within protective bounds. In line with the CRC, this recognizes that minors who approach the age of adulthood have more autonomy and capabilities. In Dutch law, minors from the age of 16 years and older may therefore request *handlichting* and be granted limited legal capacity to contract for specific purposes or legal acts. At the same time, these minors may also enter into employment contracts with brands and within that scope gain limited legal capacity. These minors can therefore be presumed to have sufficient legal protections available to them in the influencer economy.

It is the group between the very young children and these teens who perhaps face most issues. As is the case with the very young children, these youths may be subject to exploitation through their parents or may act autonomously on their own behalf without any legal opportunities or protections in place. In both situations, there is a significant responsibility placed on parents: they ought to protect their children, but also support and guide their child in exercising their increasing autonomy. If children have decided to work in the influencer economy of their own volition and act as self-standing brands this does not need to be a problem as long as parents support their child. If, however, these children are pressured explicitly or implicitly by their parents to act in the influencer economy as self-standing brands, supporting characters or in brand networks, there is more risk for a conflict of interests between the child and their parents and in turn for potential exploitation of the child.⁸⁰ In these situations, the starting point in private law that children lack capacity and parents must represent their children may not function properly. Especially when parents act as the administrators of children's property with no oversight. Only when these children reach the age of majority may they themselves realize and act on (potential) poor administration by their parents.⁸¹ Assuming here that any money earned is the child's and not earned by the parents themselves, the latter of which may (often) be the case where children act as supporting characters or in brand networks.

The loyalty of children to their parents may stand in the way of minors voicing their (potential) displeasure towards

79 See e.g. F. Latifi, 'Influencer Parents and The Kids Who Had Their Childhood Made Into Content', www.teenvogue.com, 10 March 2023; and J. Maddox, 'Why aren't there any legal protections for the child of influencers', www.theconversation.com, 18 January 2023.

80 See e.g. 'Daughter of Mom Influencer Was So Tired of Having Her Picture Taken, She Put "No Pictures" on Her Sweatshirt', www.parents.com.

81 See in this regard also J.H.M. ter Haar, 'Hoe lang zijn ouders aansprakelijk wegens slecht bewind?', *TE* 2016-5, p. 94-98.

these parents or to others. In addition, it is unlikely that children will take any legal action against their parents as they lack legal capacity to do so as minors and are therefore dependent on their legal representative, i.e. the same parents they may want to act against. In light thereof it is not unexpected that there is no case law in the Netherlands concerning minors in the influencer economy, only where parents are separated or where children are subject to child protection measures is it likely that an adult might act on behalf of the child.⁸² Perhaps some children will do so once they are adults, but even then it is unlikely to occur unless the relations have soured greatly.

To conclude, this article posed the question whether the current capacity standards are sufficient for children in the influencer economy. Our answer at this point is yes, in most situations one may assume that parents are best placed to protect their children's interests by acting as their legal representative. There are routes available for children to request limited legal capacity to contract from the age of 16 years and one may question whether it is advisable to grant younger children more capacity, taking into account the responsibilities and risks attached. In addition, it remains unclear how many minors in the Netherlands are currently economically active in the influencer economy, earn significant sums of money in that respect, and experience issues in the administration of their property. The potential risks of minors in the influencer economy are likely better solved through better government oversight, either in the form of labour laws and/or the registration of parents and children, and additional information campaigns to further educate parents with respect to potential online and offline harms that children may be exposed to through monetization. The theme of child influencers, particularly in relation to their contractual freedoms regarded as a form of transactional agency remains an interesting area for further research especially as we are yet to see what the future holds.

82 This is similarly the case with regards to sharenting, see e.g. W.M. Schrama, 'Over sociale media en minderjarigen', in: C.G. Jeppesen de Boer, C.R. Mol, F. Schuthof (red.), *Actuele ontwikkelingen in het familierecht: Zeventiende UCERF symposium*, Nijmegen: Ars Aequi 2023.