



**Regulating the authorization for the personal data processing of underage influencers in
Colombia**

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The contents of this document have not been previously submitted for a degree, either in the same form or with variations, at this or any other university.

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Acronyms and abbreviations

APA	American Psychological Association
ICBF	Colombian Institution of Family Welfare
ILO	International Labour Organization
MSc	Magister Scientiae
Par	Paragraph
SIC	Superintendence of Industry and Commerce
USA	United States of America
UPB	Universidad Pontificia Bolivariana

1 Abstract

With the relevance that social media currently has in everyone's lives, underage influencers and parents who feature their children on different platforms are constantly growing, but their legal protection is not. In that sense, the problem consists of a lack of specific regulation in force in Colombia on the authorization for the personal data processing of minors whose image is commercially exploited on internet platforms by their legal representatives. The problem's relevance resides in the fact that children featured on digital platforms face multiple short- and long-term risks that can negatively affect their lives. For these reasons, this research will propose a regulation surrounding underage influencers and the authorization of their data processing in a specific way. To achieve that, this research will use an inductive and deductive method to carry out a descriptive study based on the positivist paradigm and the qualitative technique of documentary analysis to perform a dogmatic type of research. Solving said problem, will provide legal certainty and allow children to remain as subjects of special protection.

Keywords: kidfluencers, sharenting, personal data, data processing, privacy, child labor, social media.

2 Resumen

Con la relevancia que actualmente tienen las redes sociales en la vida de todos los seres humanos, los menores de edad influenciadores y los padres que exponen a sus hijos en las redes sociales están en contante crecimiento; a diferencia de lo que ocurre con su protección legal. En ese sentido, el problema radica en la falta de regulación específica vigente en Colombia sobre la autorización para el tratamiento de datos personales de menores de edad cuya imagen es explotada comercialmente en plataformas de internet por parte de sus representantes legales. Dicho problema es relevante entendiendo los múltiples riesgos tanto a corto como largo plazo a los que se encuentran expuestos los niños y niñas presentes en plataformas digitales, que pueden afectar negativamente sus vidas. Por estos motivos, esta investigación propondrá una regulación en torno a los menores de edad influenciadores y a la autorización del tratamiento de sus datos de forma específica. Para ello, esta investigación utilizará un método inductivo y deductivo para realizar un estudio descriptivo basado en el paradigma positivista y la técnica cualitativa de análisis documental para realizar una investigación de tipo dogmática. Resolver dicha problemática, brindará seguridad jurídica y permitirá que los niños sigan siendo sujetos de especial protección.

Palabras clave: Menores de edad influencers, sharenting, datos personales, tratamiento de datos, trabajo infantil, redes sociales.

3 Introduction

The rapid growth of social media has consequently increased the existence of underage influencers and parents who feature their children on social media. With that, a growing concern has appeared, since a lack of specific regulation in Colombia regarding said presence of minors on social media and their data processing has become noticeable and has started to affect lives in the short and long term, with children being exposed to risks such as: reputational harm, anxiety and paranoia, and all the possibilities for strangers to download and use content however they want to (Masterson, 2021; Sung 2022). The most worrying aspect of the matter is that, in general, the protection of children's rights falls on their parents, who are sometimes the ones that profit from the image of their children without thinking about their welfare. Hence why it is vital to protect minors by regulating their presence on digital platforms, offering legal certainty and allowing children to stay as subjects of special protection. To contribute to that, this study will propose a specific legislation for Colombia regarding the authorization for the personal data processing of underage influencers whose image is commercially exploited by their legal representatives.

Research paradigms, methods and investigation techniques: This research will apply an inductive and deductive method, given that logical reasoning that leads from the general to the particular and from the particular to the general will be used. In addition, this work will make a descriptive study, since it correlates characteristics, elements and components of institutions or dogmatic categories of law. It should be clarified that to reach this descriptive phase, first, an exploratory work will be carried out. To achieve that, secondary data will be utilized, meaning that the information presented has been obtained by other researchers. Said information will be compiled through matrices and bibliographic files, for the preparation of which search equations will be employed and data will be collected and analyzed. It should also be clarified that qualitative techniques will be used for this study, specifically documentary analysis, through which words and meanings will be described and interpreted. Moreover, the positivist paradigm will be applied, given that the researcher and the object are autonomous entities, and assessments will be made based on the information collected and analyzed. Also, taking into account that personal data processing has a general regulation in Colombia, the criterion by which the object of this research will be studied is effectiveness, which will allow an analysis to be carried out to determine whether

said general rule can be met in an adequate manner when dealing with the specific unregulated matter, in this case, underage influencers' personal data. Finally, it will be a dogmatic type of research since institutions and categories of law will be considered from a referent consisting of the personal data protection regime to analyze the data processing of underage influencers.

Topic development

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1. Underage influencers and the exploitation of their personal data on internet platforms.

1.1 Concept of Underage Influencer

To understand the concept of underage influencer, it is essential to know the genre from which said term is derived: influencer.

According to Ruiz-Gómez:

Influencers are do-it-yourself social media users that create their own digital persona, create their own content and build their own audience. They must be able to draw attention to themselves and to products and have a considerable following to be of use for brands. (2019, p. 15)

In other words, an influencer is anyone who is dedicated to content creation on social media and who, in addition, has a representative audience that they can, in one way or another, influence.

That said, it becomes clear that the term influencer is quite general and allows multiple approaches. This means that, in order to be considered an influencer, one can target any type of audience interested in any topic. Because of that, there are multiple types of influencers. Some are dedicated to fashion, others to reviewing video games, among others.

Currently, some of the most popular influencers are those centered around family content or content targeted to children. These types of influencers often, are children themselves. As a result, the concept of underage influencer comes to light.

A specific definition for underage influencer does not exist. However, a concept can be construed by recognizing the two primary ways minors' personal lives are shared online: 'Kidfluencing' and 'Sharenting' (Ali and Coronado, 2023).

Concerning these, Morris explains that 'Kidfluencers' are minors who create and share their own content online. Whilst 'Sharenting' is a practice that involves parents or legal guardians sharing images and videos of their underage children on the internet (2023).

With these notions clear, it can be deduced that an underage influencer is any minor, child or adolescent, that produces content online, in which case said minor is a 'Kidfluencer', or that appears on social media as a result of their parents' presence on it, in which case the minor is subject to 'Sharenting'.

With the subject of this research duly identified, it is important to understand the ecosystem in which this subject is present to subsequently understand in greater detail the problems that this figure may present for the Colombian legal system regarding the protection of children's rights.

1.2 Environment in which underage influencers, their legal representatives, and companies operate

As mentioned above, with the exponential growth of social media in recent years, the influencer figure has become quite relevant. This is mainly because, due to the decline of traditional media such as television, content creators have become the most used tool by companies to promote their products and thus give them greater visibility (Jayroe, 2024).

Underage influencers, specifically, have become the primary source of advertisement for companies that target children. These companies often compensate 'Kidfluencers' for posting videos playing with their toys or reviewing their products and have, because of that, helped make the 'Kidfluencer' market one of the most lucrative in the social media world (Jayroe, 2024). So much so that by the year 2022, two of the top 10 highest-paid YouTube stars were 'Kidfluencers' Nastia and Ryan Kaji, with earnings of approximately 28 and 27 million dollars, respectively (Brown and Freeman, 2022).

The main problem with this issue lies in the fact that there is evidence of an ecosystem in which underage influencers are the image of their channels. Due to their age, parents sign contracts with sponsors forcing their children, often without their consent, to promote products while meeting deadlines for production purposes (Jayroe, 2024).

The fact that most of these underage influencers, especially those considered successful within the industry, are contractually obligated to their sponsors also blurs the line between simply being present online and working on social media (Jayroe, 2024).

As a result, when covering the ecosystem, it is essential to explore whether the obligations these children acquire through their legal representatives with the brands that sponsor them constitute child labor or not.

To accomplish that, a definition of child labor must be presented.

The International Labour Organization (ILO) maintains that the term child labor refers to a work that deprives children of their childhood, potential and dignity, is harmful to their physical and mental development, and interferes with their schooling; whilst clarifying that the term can vary from country to country (n.d.).

Another important concept when talking about child labor and underage influencers is digital labor. Mengfei Pan and Yuqing He studied said notion and said that “(...) digital labor is alienated digital work, and all activities involved in the technical production of digital media and content production belong to digital labor” (2023, p. 78).

Today’s concept of digital work can open legislators to the idea of labeling underage content creators’ efforts as child labor.

However, as much as some authors label ‘Kidfluencing’ and ‘Sharenting’ as forms of child labor, there is no regulation that characterizes it as such. Leaving children unprotected in an environment where companies and parents constantly tell them what to do, often without their consent, subtly transforming them from producers to part of the product (Mengfei and Yuqing, 2023).

Parallel to child labor and all the ecosystem explained in this section, it is evident that while underage influencers are producing content for their channels or appearing on their parents' social media, their image and, therefore, their personal data are being processed. Said personal data processing is the next notion to tackle to recognize all the problems that come with the presence of minors on social media.

1.3 The processing of underage influencers' personal data on internet platforms.

To determine what personal data processing entails, first, it is important to understand what a person's personal data is.

Colombia's Law 1581 of 2012 states that personal data is any information that is linked to or that can be associated with one or more natural persons, whether determined or determinable (article 3).

Whilst data processing "includes the **collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination** or otherwise making available, **alignment or combination, restriction, erasure or destruction** of personal data" (European Commission, n.d., par. 1) (Bold font specific to the text).

With that said it is clear that any type of information about a child or adolescent being shared online constitutes data processing and, therefore, should have certain limitations.

However, before studying data processing in a more specific way from the lens of Colombian legislation, as the center of this study requires, it is key to explore how the internet platforms tackle this issue, considering that, as a general conception, as a result of the lack of legislation and recognition of underage influencers' work as child labor "the onus falls on the platforms themselves to regulate and remove content that exploits children" (Morris, 2023, p. 116).

With that said, it can be useful to summarize what are the terms and conditions that some of the internet's biggest platforms, YouTube, Instagram and TikTok have when it comes to underage influencers and their protection.

First, Geider analyzes YouTube's policies and concludes that said platform:

(...) prohibits the posting of content that endangers the emotional and physical well-being of a child including sexualization of minors; harmful or dangerous acts involving minors; infliction of emotional distress on minors; misleading family content; and harassment involving minors. YouTube does not address child labor in its terms and conditions. Instead,

YouTube advises that it is the parent's responsibility to understand local child labor laws and to comply with them. (pp. 15-16)

As for Instagram, another relevant platform, the focus of protection relies on children under the age of thirteen who's accounts, in order to be able to produce or consume any type of content, must be managed by their parents or tutor (Instagram, 2022).

Similarly, TikTok's community guidelines establish that a person must be at least thirteen years old to have an account, and content created by anyone under the age of sixteen cannot be featured in the 'for you' feed (TikTok, 2023).

Ultimately, it becomes clear that the platforms tend to pass the responsibility of protecting children, to their parents, which at first hand seems like the reasonable thing to do, but eventually proves to be insufficient considering that, as Morris says "the responsibility falls to the parents to ensure their kids are safe and protected when producing content online, but when the abuse stems from the family, no one is there to protect children from their parents" (2023, p. 116).

That also proves lacking once it is acknowledged that, because of the lack of regulation the money these children earn legally belongs to their parents (Wong, 2020).

With that said, it can be concluded that, currently, the general rules one goes looking for to solve the problem are not enough to protect children as the subjects of special protection they are; because they put all the power on the legal representatives, who are the ones that, most of the time, benefit the most from their children being online which can make them put their kids' wellbeing, second to their interests, as will be explored on the next section.

1.4 The long and short-term risks of being an underage influencer

Because of the recency of the new digital era, the long-term consequences of children and adolescents being on social media's public eye are not yet evident. The issue is that, in order to provide definitive solutions to a problem, it is important to know exactly what it entails, which is difficult in this study because most 'kidfluencers' are still children. Nevertheless, some concerns have started to rise. Morgan Sung, NBC news reporter, states that some parents that used to post videos of their children online have started to realize the dangers of publicly documenting a child's

life, especially as social media usership increases, and the potential viewership for every video is endless as are the possibilities for strangers to download said content and use it however they want to (2022).

Sung also asserts that some creators who grew up being watched online are beginning to speak out about their childhoods, some stating that being featured on their parents' social media affected them negatively causing paranoia and anxiety (2022).

Parallel to that, these children not only suffer from a risk of exploitation by their parents, but also by the companies that sponsor them, as was mentioned before, reassuring the need for special protection and regulation.

There are also multiple other consequences to 'sharenting' and 'kidfluencing' like reputational harm, losing privacy and missing school (Masterson, 2021).

All of that without mentioning the fact that, because of the lack of regulation all the money underage influencers earn legally belongs to their parents (Wong, 2020); leaving them unprotected and possibly affecting their lifestyle in the future.

In the end, there are multiple risks regarding underage influencers' presence on social media that are not tackled by the different internet platforms regulations that tend to leave the kids' protection to their parents or guardians who are, most of the time, the ones that end up putting minors in danger by placing their personal benefits above their children's wellbeing. Because of that, and to get closer to a solution to the problem object of this study, the next step is exploring Colombia's personal data processing regime to see if it is lacking, like the terms and conditions already explored, or if it shows, even indirectly, a possible answer.

2. Colombia's personal data processing regime.

2.1 General study of the personal data processing regime currently in force in Colombia.

The main data processing regime currently in force in Colombia is the Law 1581 of 2012, which dictates general provisions for protecting personal data.

According to said Law, as mentioned before, personal data is any personal information that is linked or that can be associated with one or more natural persons, determined or determinable (article 3).

It is also important to note that personal data is not only protected by the Law previously mentioned. Colombia's Political Constitution also labels personal data as a constitutional right and states that freedom and multiple other guarantees are to be respected when it comes to said data processing (article 15).

With that said, it becomes evident, that personal data is a matter of special protection within the Colombian Legal System and, therefore, that data processing is extremely regulated within said system, as will be shown on this section.

As a general rule, the Law 1581 of 2012 enshrines freedom as one of the guiding principles of data processing, establishing that "Processing may only be exercised with the prior, explicit and informed consent of the Data Subject. Personal data cannot be obtained or disclosed without prior authorization, or in the absence of legal or judicial mandate that relieves consent" (article 4).

Thus, the data subject, that is, the natural person whose data is object to processing, in principle, is the only one who can dispose of his personal data, meaning that other persons may only have access to said data, once he authorizes them to do so; moment in which they become either data controllers or processors (Law 1581 of 2012, article 3).

Focusing on the object of this research, and to further land the idea, it can be said that in compliance with Colombian law, when people access different social platforms, as regular users, they must authorize said platforms to treat their data. In this cases, the scopes of the authorization the data subject gives are reduced, because only the persons mentioned on the platform's personal

data processing policy as eventual data controllers or processors, are the ones that end up having access to the subject's data.

Nevertheless, this issue becomes more complex when users go from having a passive role within a social platform to publishing their own content and becoming influencers; considering that, once that happens, data controllers and processors authorized by the data subject are no longer the only ones with access to an influencer's personal data, in these cases, said personal data also becomes available to whoever consumes an influencer's content, meaning that people without an explicit authorization given by the data subject, end up having access to their personal data. In that scenario some believe that, for this reason, influencer's that publish content online implicitly authorize third parties that come across said content to process their personal data, considering that personal data once published online for the public to see, turns into public domain.

However, at least in the lens of Colombian's legal system, that belief is erroneous, and has been disregarded by the Superintendence of Industry and Commerce (SIC), entity in charge of complying with Colombia's personal data protection law, which states that the publication of personal data on publicly accessible sites does not convert them, by that fact alone, into data of public nature. (2020).

With that clear, it can be said that an influencers' personal data does not cease to be personal data just because said data is published on social networks. Therefore, in principle, for example, a person who comes across an influencer's video online that features their face cannot use said video, even though it has been published online, unless the influencer authorizes him directly, through a prior, explicit, and informed consent.

Notwithstanding the preceding, the complexity remains, considering that, although formally influencers do not authorize users who consume their content to treat their data and the protection system around personal data still covers them, materially, by being published, these data is available to everyone, making it almost impossible to control the use that people make of it. Thus, in many cases, the first barrier to the protection of personal data provided by Colombian law is innocuous.

The same exercise can be carried out regarding all the other principles, rights, and notions that nourish Colombia's personal data regime, but in the end, most of them will fall short when confronted with the challenges that arise when talking about influencers.

Another critical part that furthers the notion that in Colombia, the specific regulation of influencers' personal data does not seem to be a priority is evident considering that most of the efforts of the SIC in recent years related to influencers tend to target protection towards the consumer of the content and not its producer, like the expedition of the Influencer Advertising Best Practice Guide, that promotes the idea that in order to be transparent, when doing an advertisement, influencers' must inform said condition to their audience, including the hashtag #advertisemet (2020).

All things considered, it can be concluded that currently, Colombia's personal data processing regime has all the bases to formally protect a person's personal data; however, the specific challenges that come when said person is an influencer and, therefore, chooses to publish their data online for everyone to see are not tackled, leaving said specific group of people unprotected in many regards.

That lack of specific protection applies to all influencers, which implies a big problem. However, an even bigger problem comes considering that, up until this point, the focus has been on influencers who willingly choose to publish content online. But what happens when said influencers do not even consent to appearing on social media or do so following someone else's orders? Is there special protection or a bigger lack of it?

Said issue will be tackled in the next section by focusing on this study's subject: underage influencers

2.2 An emphasis on the regulation of data processing in Colombia regarding minors.

In chapter one, it was established that the main internet platforms leave the protection of underage influencers to their guardians. However, it was also determined that said conception leaves children unprotected in cases in which abuse comes directly from their parents.

On the other hand, in the last section of this chapter, a lack of protection towards influencers in general on Colombia's current regimen data protection was also detected.

For those reasons, it is key to study the regulation of data processing in Colombia regarding minors to see if it applies, both formally and materially, to underage influencers.

Different countries usually establish certain limitations on data processing regarding minors. Colombia's personal data protection law prohibits the processing of children's and adolescents' data, except for those of a public nature (Law 1581 of 2012, article 7).

In that sense, children's personal data should not be processed. However, said affirmation has been tamed by the Colombian Institute of Family Welfare (ICBF). Said entity was designated to develop further the notions regarding minors contained in Law 1581 of 2012, specifically, the cited article 7, and in doing so, determined that minor's personal data can be processed if it responds to the best interests of children and adolescents and if it ensures the respect of their fundamental rights. (Colombian Institute of Family Welfare, 2015).

The ICBF also establishes that "All persons responsible and involved in the processing of personal data of children and adolescents shall ensure the proper use of such data (...)" (2015, p. 7).

With that, the ICBF allows children's personal data to be processed whenever their guardians, data controllers, and processors consider it to be framed in the exceptions mentioned. This means that it is up to the people who participate and, most of the time, have an interest in processing minors' personal data, whether it can be done or not.

In conclusion, by trying to protect minors as the subjects of special protection that they are, Colombia's personal data regime leaves the decision of whether their personal data can be processed to the discretion of parents, data controllers, and processors. Again, this falls short, especially considering that a minor's consent must be given through their legal guardians.

Now that Colombia's personal data regime has been found to lack specific regulation of influencers and to have bittersweet provisions regarding minors' personal data protection, it is

possible to provide an analysis of said regime regarding this investigation's subject: underage influencers.

2.3 An analysis of Colombia's current data processing regime and its capacity- or lack thereof- to protect underage influencers.

No regulation in Colombia currently addresses child and adolescent influencers (Noroño, Hernández, Espina, and Meriño, 2023).

Because of that, underage influencers are only protected by the general data processing regime studied in the last two subchapters, which already proved lacking when it comes to influencers and minors. Consequently, that is also not enough for underage influencers who require special protection because of the risks associated with said figure.

The two main problems surrounding Colombia's personal data regime were already mentioned, but this subchapter will address them through the lens of underage influencers.

The first problem is that there is no guarantee that when children are present on social media, they do it because that is what they desire. The reason behind that is the fact that, as was seen in the past section, the authorization for data processing given to data processors and controllers ultimately comes from the kids' parents, not themselves.

The second is that even if there was said guarantee, once personal data is available online for an audience, even though it is still personal data (SIC, 2020). Said notion ends up being only a formality, since, in reality, when someone comes across, for example, a video of a minor on social media, nobody can ensure that they are not going to process it, whether it means reposting it, creating a meme out of it or whichever use possible that can, in the short and long term, seriously affect a child's life.

In conclusion, there is a lack of specific regulation in Colombia regarding underage influencers that calls for immediate action; since the growth of social media has increased not only the number of minors active on social media but also the risks said minors are exposed to when producing content on digital platforms.

3. Underage influencers and their protection on different data processing regimes: existing regulation regarding underage influencers or minors in similar situations in other countries.

As established in the previous chapter, Colombia has no specific regulation regarding underage influencers' personal data. Because of that, a study of comparative law is key to finding a possible solution to the problem at the heart of this investigation, as other countries' regulations can serve as an example.

Therefore, this chapter will center around how other countries, specifically Spain and the United States of America (USA), have responded to the phenomenon of underage influencers and the challenges associated with their presence online.

Firstly, Spain has acknowledged the need for a specific regulation regarding underage influencers' personal data. Because of that, the Congress of Deputies of Spain has emphasized the importance of consent when children's personal data is being published online and insists that a child's data can only be processed if that is what they desire when they are mature enough to say so and, when not, only with a written permission from their legal guardian previously notified to the Fiscal Ministry (Organic Law 1 of 1982, article 3).

Spain's proposal can be useful as a basis for recognizing that while some minors might be mature enough to understand the consequences of being present on social media, others might not and, therefore, cannot consent to having a digital presence. It is also notable that, though this conception still leaves the power of decision on the minor's legal representative, it is also aware of the fact that sometimes said guardians might not have the children's best interest in mind when exposing them to social media and, because of that, adds a supervisory body, in this case, the Fiscal Ministry, to decide whether, on each specific case, a minor's presence on social media is dangerous or not.

However, the said solution does not represent a definitive one, as there are still some issues. The first one being the fact that it does not establish a parameter that allows to determine when a minor is mature enough to consent or not, creating a loophole from which the guardians of underage influencers can expose they are not mature enough children to social media without notifying the

Fiscal Ministry. And the second one being that, even if a parameter existed, and parents were obligated to notify the Fiscal Ministry, given the growth of social media and the underage influencer figure, such a formal way of supervising can end up being just a formality not capable of protecting the way it was meant to.

On the other hand, the United States of America, as a country, does not have any general regulations regarding underage influencers. However, some of its states have started to see the importance of having a specific regulation regarding said subjects. For example, the state of Illinois passed Bill 1782, “requiring adults who use ‘the likeness, name or photograph’ of a minor in paid online content to set aside a portion of the earnings in a trust” (Safronova, 2023, par. 12) (quotation marks specific to the text).

It is also important to note that the USA has historically been a pillar country regarding the protection of minors that have, at some point, found themselves in situations similar to underage influencers. An example is California’s Coogan Act, a law created in 1939 to protect child performers' earnings. This law forces parents to establish trusts for their children and employers to deposit at least fifteen percent of their revenue in that trust (Sung, 2022; Ayalon, 2013).

Since the decline of traditional media and the rise of social media, underage influencers can be seen as the new child actors; ultimately, both subjects are minors whose personal data is exposed for the public to see and eventually process and who are at risk of being exploited by their parents. However, the earnings of child actors in the USA are protected by the Coogan Act, whilst underage influencers' earnings still legally belong to their parents (Wong, 2020).

It is also concerning that countries like the USA, well known for being full of entertainers and, probably, full of influencers and consequently ‘Kidfluencers’, have not specifically regulated the issue. Further confirming that even though underage influencers desperately call for protection, doing so does not seem to be a priority.

In conclusion, countries like Spain and the USA, with different starting points—Spain focusing on personal data protection and the USA focusing on financial protection—are starting to call for action regarding the safety and well-being of underage influencers not only in the present

but also once they are older. However, a specific regulation that can serve as a definitive solution to the issue is still lacking.

4. A specific way to legislate the authorization for the personal data processing of underage influencers in Colombia.

4.1 Approaching possible solutions and ways to legislate the authorization for the personal data processing of underage influencers in Colombia.

In this section, the solutions that some authors who have covered the topic of underage influencers have proposed regarding possible ways to legislate the authorization for the personal data processing of underage influencers will be studied to see how they might—or might not—work in a country like Colombia.

Firstly, Morris points out the possibility of relying, as was said before, on each platform's regulation to remove content that exploits children. However, the most famous platforms' terms and conditions are insufficient to solve the issue, and options like removing content do not directly address the problem, mainly because that might take the abuse out of the public eye. However, it does not help children being actively abused (2023).

Morris also alludes to the strategy of protecting children by banning parents from sharing any image or video that features minors and online content produced by them. But that ends up being a drastic measure, as many parents do not post with malicious intent, and many kids create online content as a non-monetized hobby (2023).

Likewise, but with a more moderate view, Ali and Coronado suggest that children under the age of two cannot consent to be filmed and, therefore, should not be presented online for longer than two minutes per video, and children over that age can consent, meaning that they can only be featured if they want to (2023). This solution seems reasonable and not only aligns with what Spain proposes, as was seen before but further develops the idea by establishing an age that serves as a parameter to determine whether a minor is old enough to comprehend what having social media presence entails. However, the exact age proposed of two years old seems a little too young to be able to understand and deal with all the possible risks that come with being a 'Kidfluencer'.

Ultimately, there is not a conclusive solution that ensures the protection of ‘influencers’ whilst also allowing them to grow and stay present in social media when they desire to because there is a question mark as to when and how they can consent and a lack of long-term evidence regarding the issue. “The lines are thus blurred between maintaining family authority versus intervening against child exploitation” (Suleiman, 2022, par. 6).

4.2 Proposal of a specific way to legislate the authorization for the personal data processing of underage influencers in Colombia.

After studying all the possible solutions proposed by different authors, this section will establish a possible way of legislating the authorization for the personal data processing of underage influencers in Colombia derived from some of those propositions.

The proposal is inspired by Ali and Coronado's suggestion to use a certain age as an objective parameter to determine whether a minor can consent to using social media (2023) and by the Congress of Deputies of Spain's idea that it is important to determine, subjectively, whether a minor is mature enough to comprehend what using social media entails (Organic Law 1 of 1982, article 3).

Said proposition is a hybrid of the two, establishing that children under the age of fourteen cannot consent to be present on social media and, therefore, cannot produce content of their own unless the guardians of said minor can accredit the fact that he or she comprehends what being public online and having an audience represents with a psychologist's concept. Children of this age range can only be featured on their guardian's social media recreationally, meaning that minors' legal representatives cannot obtain an economic benefit from publishing their guarded online.

On the other hand, children over fourteen can consent to be present on social media; hence, they can either create their own content or be featured on their guardians' social media if that is what they desire.

With this proposal, objective and subjective criteria exist to determine whether a child can be present online or not. The reason behind choosing the age of fourteen relies solely on the fact that that is the age of consent in Colombia.

However, it is important to note that this proposal is only given as a starting point to begin a conversation about the importance of protecting underage influencers' personal data. There are a lot more factors to consider, and, as was said before, there still is not a conclusive solution.

5. Conclusions

There is currently no definitive solution regarding the authorization for the personal data processing of underage influencers, not only in Colombia but globally. However, a starting point comes by establishing criteria collecting the existing regulation on situations similar to this study's issue, and the possible solutions proposed by other authors also interested in protecting these minors as the subjects of special protection that they are.

Underage influencers are currently the primary source of advertisement for companies that target to children. Because of that, they are extremely exposed to being commercially exploited by their guardians, who are currently the ones responsible for their protection and have the ultimate say on whether their children are present online or not. Hence, it is fundamental to start regulating the processing of personal data, considering that, sometimes, parents put their personal interests before their children's.

Colombia's data processing regime does not have any specific regulation regarding underage influencers, and the general rules of which it is composed fall short of the challenges that come when talking about the presence of minors on social media.

A similar conclusion can be reached when discussing the existing regulations regarding underage influencers in other countries; even though some have started to recognize the problem and are issuing provisions to try to find a solution, those proposals are still very raw and have many opportunities for improvement.

In the same sense, different authors interested in the issue have started to develop their own solutions to protect underage influencers and the processing of their personal data. This has been extremely positive as it starts a conversation and raises awareness to the topic but still, a definitive solution has not been reached.

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