

SHARENTING: CHILDREN'S PRIVACY IN THE AGE OF SOCIAL MEDIA

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ABSTRACT

Through sharenting, or online sharing about parenting, parents now shape their children's digital identity long before these young people open their first e-mail. The disclosures parents make online are sure to follow their children into adulthood. Indeed, social media and blogging have dramatically changed the landscape facing today's children as they come of age.

Children have an interest in privacy. Yet parents' rights to control the upbringing of their children and parents' rights to free speech may trump this interest. When parents share information about their children online, they do so without their children's consent. These parents act as both gatekeepers of their children's personal information and as narrators of their children's personal stories. This dual role of parents in their children's online identity gives children little protection as their online identity evolves. A conflict of interests exists as children might one day resent the disclosures made years earlier by their parents.

This Article is the first to offer an in-depth legal analysis of the conflict inherent between a parent's right to share online and a child's interest in privacy. It considers whether children have a legal or moral right to control their own digital footprint and discusses the unique and novel conflict at the heart of parental sharing in the digital age. The Article explores potential legal solutions to this issue and offers a set of best practices for parents to consider

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when sharing about children online. It concludes by providing a child-centered, public-health-based model of reform that protects a child's interest in privacy while also recognizing a parent's right to share online.

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INTRODUCTION

Johnny, age eight, is struggling to fit in at school.¹ He has the traditional symptoms of ADHD, and Johnny has been suspended from class multiple times. His mother, frustrated with his behavior and looking for support and a community of mothers experiencing similar parenting struggles, starts a blog detailing his misbehaviors. Johnny's mother posts pictures alongside Johnny's weekly behavior reports. She has many followers and is often asked to guest blog for large news websites.

Each week, she has coffee with Becky's mom.² Becky,³ a ten-year-old girl with a chronic health condition, calls the local children's hospital "home." Becky is preparing for a stem cell transplant. Becky's brother and sister reside three hours away with their grandmother, and Becky's mother sleeps on the pullout couch in the hospital room. Becky's mother writes a public blog, detailing her life as a mother of a chronically ill child. She has many followers on her blog and sells inspirational shirts and bracelets to help offset the costs of her daughter's medical treatment. Becky often contributes to the blog, and beams when she receives inspirational messages from her supporters. Becky has a college savings account set up by one of her anonymous fans.

As they chat about their respective blogs, they often run into Emily's father.⁴ Emily's dad does not run a blog. He knows little about social media but does have a Facebook page and Instagram feed. He keeps his newsfeed private, but over the past few years, he has accumulated approximately 700 friends on Facebook—some from his years in college, some coworkers, some family, and other longtime friends. Emily's father posts updates about Emily.⁵ He posts her achievements and occasionally posts the cute things she says. Emily is an avid gymnast, and her father posts pictures of her at gymnastics meets.

Parents like those of Johnny, Becky, and Emily use technology and social media not only to share information about their own lives, but also to discuss their children's lives. When parents use social media in this way, they often share personal information about their children.⁶ These disclosures offer

¹ Hypothetical child, based on a composite of real-life situations.

² Hypothetical parent, based on a composite of real-life situations.

³ Hypothetical child, based on a composite of real-life situations.

⁴ Hypothetical parent, based on a composite of real-life situations.

⁵ Hypothetical child, based on a composite of real-life situations.

⁶ See *Digital Birth: Welcome to the Online World*, BUS. WIRE (Oct. 6, 2010, 1:02 PM), <http://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World>.

families the opportunity to connect with their communities—to share and to seek support.⁷ At the same time, parents sometimes share without the permission of their children, and these disclosures may foreclose their children from the opportunity to create their own digital footprints.⁸

This Article argues that “sharenting,” a term used to describe the ways many parents share details about their children’s lives online,⁹ must be a central part of child-rearing discourse and legal analysis of the conflict between children’s rights and parental rights. There has been ample discussion focused on how young people often create (and harm) their digital identities,¹⁰ and scholars have explored the threats children face from third parties online.¹¹ Yet little discussion is centered at the intersection of parents’ choices to publish information about their children in the virtual world and the effect such disclosures can have on the children.¹² The dearth of discussion on this topic means that even some of the most well-intentioned parents likely press “share” on their digital devices without thinking about how their postings may affect their children’s overall well-being.

In many contexts, parents act as guardians for their children’s online identity, protecting children from harm online.¹³ Most parents reasonably expect schools,

⁷ *Id.*

⁸ These children might also become young adults who choose not to create a digital footprint at all.

⁹ See *Sharent*, MACMILLAN DICTIONARY, <http://www.macmillandictionary.com/us/buzzword/entries/sharent.html> (last visited Sept. 5, 2016); *Sharenting*, COLLINS DICTIONARY, <http://www.collinsdictionary.com/submission/11762/Sharenting> (last visited Sept. 5, 2016); *Sharenting*, URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=Sharenting> (last visited Sept. 5, 2016); see also Nione Meakin, *The Pros and Cons of ‘Sharenting’*, THE GUARDIAN (May 18, 2013, 2:00 AM), <http://www.theguardian.com/lifeandstyle/2013/may/18/pros-cons-of-sharenting>.

¹⁰ See, e.g., Amanda Harmon Cooley, *Guarding Against a Radical Redefinition of Liability for Internet Misrepresentation: The United States v. Drew Prosecution and the Computer Fraud and Abuse Act*, 14 J. INTERNET L., Feb. 2011, at 1, 23 (noting that “teenagers and younger children [should] ‘be educated about the full impact of the Internet [because] the Internet creates a permanent record’” (citing Interview by Editor with Christopher Wolf, *What Are the Limits of Cyber-Bullying on the Internet?*, METRO. CORP. COUNSEL (July 1, 2008, 12:00 AM), <http://www.metrocorpcounsel.com/articles/10146/what-are-limits-cyber-bullying-internet>)).

¹¹ See Albert Kienfie Liao, Angeline Khoo & Peng Hwa Ang, *Factors Influencing Adolescents Engagement in Risky Internet Behavior*, 8 CYBERPSYCHOLOGY & BEHAV. 513, 517 (2005), <http://online.liebertpub.com/doi/pdf/10.1089/cpb.2005.8.513>.

¹² See, e.g., Agnieszka McPeak, *Social Media Snooping and Its Ethical Bounds*, 46 ARIZ. ST. L.J. 845, 848 (2014) [hereinafter McPeak, *Social Media Snooping*] (suggesting a need for ethics rules governing spoliation and preservation of social media evidence); Agnieszka A. McPeak, *The Facebook Digital Footprint: Paving Fair and Consistent Pathways to Civil Discovery of Social Media Data*, 48 WAKE FOREST L. REV. 887, 911 (2013) [hereinafter McPeak, *Facebook Digital Footprint*] (discussing the ramifications on parents for posting social media content involving their children, including terminating parental rights).

¹³ See, e.g., Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. §§ 6501–6506 (2012) (providing parents with control over the information collected from children by websites aimed at children under

community organizations, and peer groups to obtain permission before sharing their children's picture online.¹⁴ Similarly, if a company negligently or purposefully discloses a child's personal information in a public arena, parents call on the harm to be remedied.¹⁵ Parents also play a supervisory role in their child's Internet use, often by setting limits on their child's access to the Internet and by discussing online safety threats such as cyber-bullying and sexting.¹⁶ Indeed, parents are seemingly the natural protector of their child's digital identity.

However, parents are not always protectors; their disclosures online may harm their children, whether intentionally or not.¹⁷ A parent's own decision to share a child's personal information online is a potential source of harm that has gone largely unaddressed.¹⁸ Children not only have interests in protecting negative information about themselves on their parent's newsfeed, but also may not agree with a parent's decision to share any personal information—negative

the age of 13); The Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g (2012) (protecting children's educational records from disclosure to third parties); Health Insurance Portability and Accountability Act of 1996 (HIPPA), Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 18 U.S.C., 26 U.S.C., 29 U.S.C., and 42 U.S.C.).

¹⁴ See, e.g., Erika Elmutz, *Please Stop Posting Pictures of My Child on Facebook*, CONSCIOUS PARENTS, <http://www.consciousparents.org/stop-posting-pictures-of-my-child-online-please> (last visited Sept. 12, 2016). Most schools, community organizations, and government agencies also expect to obtain parental consent before sharing children's pictures and information online. See, e.g., *Aspen Chase Apartments SPLASH 2015 Registration*, YMCA, <http://www.annarborymca.org/sites/default/files/pdf/SPLASHAspen.pdf> (last visited Jan. 26, 2016) (form for publication of child's picture); *Student Photo Release Form*, N.J. DEP'T EDUC., <http://www.state.nj.us/education/techno/idconsent/form.pdf> (last visited Jan. 26, 2016) (consent form to post information to school website).

¹⁵ Press Release, Fed. Trade Comm'n, Operators of Online "Virtual Worlds" to Pay \$3 Million to Settle FTC Charges that They Illegally Collected and Disclosed Children's Personal Information (May 12, 2001), <https://www.ftc.gov/news-events/press-releases/2011/05/operators-online-virtual-worlds-pay-3-million-settle-ftc-charges>.

¹⁶ Mary Madden et al., *Parents, Teens, and Online Privacy*, PEW RES. CTR. (Nov. 20, 2012), <http://www.pewinternet.org/2012/11/20/parents-teens-and-online-privacy/>. Many children engage in online activities that invite third-party privacy breaches, online bullying, sexual contact, and other dangerous scenarios. See Jeana Lee Tahnk, *Is Your Teen Engaged in Risky Behavior Online?*, PARENTING.COM, <http://www.parenting.com/blogs/children-and-technology-blog/jeana-lee-tahnk/your-teen-engaged-risky-behavior-online> (last visited Jan. 19, 2017). In the usual course, parents are called upon to provide guidance to children to minimize the risks these children face and are often encouraged to set boundaries to limit their children's online disclosures. *Id.* However, the threat of how parents share information about their children online is rarely the subject of similar discourse.

¹⁷ Jenn Supple Bartels, *Parents' Growing Pains on Social Media: Modeling Authenticity*, 1 CHARACTER AND . . . SOC. MEDIA 51, 63 (2015), <http://digitalud.dbq.edu/ojs/character/article/view/5/6> (discussing an incident involving a mother accused of cyberbullying her daughter to teach her a lesson about cyberbullying).

¹⁸ Benjamin Shmueli & Ayelet Blecher-Prigat, *Privacy for Children*, 42 COLUM. HUM. RTS. L. REV. 759 (2011).

or positive—about them in the online world.¹⁹ There is no “opt-out” link for children²⁰ and split-second decisions made by their parents will result in indelible digital footprints.²¹ While adults have the ability to set their own parameters when sharing their personal information in the virtual world, children are not afforded such control over their digital footprint unless there are limits on parents.

This Article is the first to provide a legal analysis on the intersection of a parent’s right to share and a child’s interest in privacy and healthy development. This is a novel issue linked to the rapid growth of social media. While parents have always swapped parenting stories with friends, communities, and sometimes public sources, stories shared on the Internet have a reach that simply was unfathomable a generation ago.²² Search engines such as Google index and cache the information,²³ providing an opportunity for infinite rediscovery long after any value of the initial disclosure remains.²⁴

¹⁹ See *id.*

²⁰ For example, California recently passed a bill granting minor children a right to delete posts from online forums. CAL. BUS. & PROF. CODE § 22581 (West 2015). However, this only protects children from things they post and refers to the “right-to-deletion.” *Id.* This bill does not provide a deletion option to what their parents post about them. See *id.*

²¹ See *Your Digital Footprint Matters*, INTERNET SOC’Y, <http://www.internetsociety.org/your-digital-footprint-matters> (last visited Sept. 6, 2016) (describing digital footprints and how they are made). This Article considers these indelible because while a parent might be able to remove some information shared on social media, once the information is reshared across other Internet platforms, the parent may no longer be able to remove the information if requested to do so by an older child.

²² For a discussion and statistics regarding the growth of the Internet, see generally *Internet Growth Statistics*, INTERNET WORLD STATS, <http://www.internetworldstats.com/emarketing.htm> (last visited Sept. 6, 2016). Notably, in December of 1995, 0.4% of the world population used the Internet, whereas by December of 2015, 46.4% of the population used the Internet. *Id.* For examples of how quickly information can be reshared (or go “viral”) on the Internet, see Janelle Wilson, *Old Photo of SRU Fraternity Goes Viral as an Example of Rape Culture*, ROCKET (Sept. 3, 2015), <http://www.theonlinerocket.com/news/2015/09/03/viral-photo-of-sru-fraternity-is-used-as-an-example-of-rape-culture/>; *Mom’s Facebook Post on ‘Bill’ to 13-Year-Old Son Goes Viral*, FOX 8 (Sept. 18, 2015, 4:54 PM), <http://fox8.com/2015/09/18/moms-facebook-post-on-bill-to-13-year-old-son-goes-viral/>.

²³ View *Webpages Cached in Google Search Results*, GOOGLE, <https://support.google.com/websearch/answer/1687222?hl=en> (last visited Jan. 20, 2017) (explaining how to access a website that is no longer available through Google).

²⁴ For an example of such infinite rediscovery, see Greg McCoral, *Success Kid/I Hate Sandcastles*, KNOW YOUR MEME, <http://knowyourmeme.com/memes/success-kid-i-hate-sandcastles#fn6> (last visited Sept. 8, 2016). In 2007, a mother posted a picture of her son on her Flickr account and put it up on Getty Images. *Id.* She took the photos down when the picture went viral. *Id.* By 2011, 66,000 instances of “Success Kid” were online. *Id.* The photo has been used in billboard ads and Vitamin Water commercials. *Id.* This photo will forever be online and unable to be fully erased. The mother has lost all control over the image.

Part I of this Article explores the ways in which parents share details about their children's lives. It provides an overview on the manner, frequency, and types of information parents share about their children online. Next, it offers specific examples of parental sharing in some of its most questionable and invasive forms. By evaluating instances of concern, this Part provides the reader with a deeper understanding of the scope of this new phenomenon and offers a taxonomy of the ways in which parents share about their children online. Lastly, this Part highlights both the moral and legal risks inherent in the current sharing practices of many parents. Through this analysis, this Part exposes this underexplored issue in children's privacy scholarship.

Part II explores how the law regulates children's privacy in the context of family life by providing an overview of relevant family law and privacy law cases. Additionally, this Part provides an overview of federal, state, and international laws aimed at protecting an individual's privacy interest. Lastly, this Part recognizes that society often addresses children's issues not only through a legal model, but also through a public health model of child protection. This Part provides examples of such models, including the role of best practice standards, in the child protection context.

Part III explores potential solutions in law and policy, highlighting the unique legal challenges surrounding this issue, and provides a novel legal approach to alleviating the potential harm caused by sharenting. This Part acknowledges that while the law can regulate children's privacy in extreme cases, it is unlikely that a comprehensive global solution will reside in the legal realm. With this in mind, this Part proposes alternate solutions and advocates for reform through a public health model of child protection. This model offers children's rights advocates an opportunity to effectuate change through advocacy, awareness, and education, similar to successful efforts in child safety issues such as Sudden Infant Death Syndrome (SIDS)²⁵ and second-hand smoke risks.²⁶ Consistent with such a model, this Part provides parents with a set of best practices to consider when sharing about children online grounded in public health and child development literature.

²⁵ See *Safe to Sleep: Public Education Campaign*, NAT'L INST. CHILD HEALTH & HUM. DEV., <http://www.nichd.nih.gov/sts/campaign/Pages/default.aspx> (last visited Jan. 20, 2017).

²⁶ Jill A. Jarvie & Ruth E. Malone, *Children's Secondhand Smoke Exposure in Private Homes and Cars: An Ethical Analysis*, 98 AM. J. PUB. HEALTH 2140, 2142 (2008); *Health Effects of Second Hand Smoke*, CTR. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/health_effects/ (last visited Sept. 8, 2016).

I. PARENTAL SHARING ON SOCIAL MEDIA AND BEYOND

Children have no control over the dissemination of their personal information by their parents. This is different than instances when adults and teenagers share online, as one could argue they are aware of the consequences of such personal disclosures.²⁷ Information shared on the Internet has the potential to exist long after the value of the disclosure remains, and therefore disclosures made during childhood have the potential to last a lifetime.²⁸ This issue is ripe for a child-centered, solution-focused discussion to ensure the protection of the best interests of children that is responsive to the age and developmental stages of children as they mature.²⁹ While today's young people will be the first to settle into adulthood under this new landscape, future generations will follow in their path.³⁰

Social media offers parents many positive benefits. When parents share on Facebook or blog about their children's lives, they are able to connect with friends and family, often receiving validating feedback, and in return, feeling supported in their decision to share information about their lives and the lives of their children.³¹ Whether by the award of a "like," a "share," or a gratuitous comment, public sharing of personal information often results in positive stimuli, which, in turn, encourages a parent to continue to put personal information in the public domain.³² Occasionally, a concerned friend or stranger might question the parent's decision to share more information online than is

²⁷ It is important to note that even when young adults make poor choices, the public shaming and digital footprint that follows is often unwarranted, instantaneous, and could pose catastrophic to a young person's future. *See, e.g.*, Monica Lewinsky, *The Price of Shame*, Address at TED Conference (Mar. 2015), http://www.ted.com/talks/monica_lewinsky_the_price_of_shame?language=en#t-1305595.

²⁸ *See* McPeak, *Facebook Digital Footprint*, *supra* note 12, at 899; McPeak, *Social Media Snooping*, *supra* note 12, at 872–73.

²⁹ *See* Shmueli & Blecher-Prigat, *supra* note 18, at 759.

³⁰ It is important to note the absence of scholarly discussion on much of the topic of parental disclosure on social media. While this Article's source materials reflect the compilation of data on this topic, most commentary appears only in news journals and other online sources.

³¹ *See* Bartels, *supra* note 17, at 59–60 (discussing the concept of "humblebragging," defined as "a specific type of brag that masks the boasting part of the statement in a faux-humble guise," as a way for parent's to avoid the negative consequences of bragging about their children); *see also* Maeve Duggan et al., *Concerns About Children, Social Media and Technology Use*, PEW RES. CTR. (July 16, 2015), <http://www.pewinternet.org/2015/07/16/concerns-about-children-social-media-and-technology-use/> ("Overall, 94% of parents who use Facebook ever post, share or comment on the platform. And parents are relatively active sharers of content. Fully 70% of parents on Facebook say they 'frequently' or 'sometimes' share, post, or comment on Facebook as opposed to simply reading or viewing content, including 30% who do so 'frequently.'").

³² *See* Bartels, *supra* note 17, at 59; *see also* Mary Bowerman, *Do You Overshare About Your Kids Online?*, USA TODAY (Mar. 16, 2015, 1:07 PM), <http://www.usatoday.com/story/tech/2015/03/16/parents-over-sharing-online/24825981/>.

publically deemed “acceptable.”³³ But most viewers will fail to even recognize the child’s privacy interest in the information.³⁴

To understand the conflict at hand, it is important to first explore the manners in which today’s parents share on social media. Families share on social media in many unique ways. In almost all circumstances, sharenting requires parents to make disclosures about their children. These online disclosures have the potential to benefit children in many ways, but the practice also presents a number of legal and safety risks.

A. *Understanding the Ways in Which Parents Disclose Information About Their Children*

Most parents act with good intentions when they share personal information and photos of their children online.³⁵ There are many benefits to online sharing,³⁶ and in the usual course, parents are best situated to decide when sharing on social media is appropriate for their family.³⁷ But parents often share without being fully informed of the consequences of their online disclosures and many are unaware of the long-term consequences of their posts.³⁸

For example, one mother found that innocent photos could instantly make their way into the wrong network and could be altered in alarming ways.³⁹ This mother posted pictures online of her young twins during toilet training.⁴⁰ She later learned that strangers accessed the photos, downloaded them, altered them, and shared them on a website commonly used by pedophiles.⁴¹ This mother warns other parents not to post pictures of children in any state of undress, to use Google’s search features to find any images shared online, and to reconsider

³³ See Bartels, *supra* note 17, at 63.

³⁴ See Bowerman, *supra* note 32.

³⁵ See Maeve Duggan et al., *Parents on Social Media*, PEW RES. CTR. (July 16, 2015), <http://www.pewinternet.org/2015/07/16/parents-and-social-media/>.

³⁶ *Id.*

³⁷ See MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA’S POLITICAL IDEALS* 62–67 (2010) (discussing family privacy, including the ability of family members to make decisions affecting their families).

³⁸ “Sharenting” Trends: *Do Parents Share Too Much About Their Kids on Social Media?*, C.S. MOTT CHILDREN’S HOSPITAL (Mar. 16, 2015) [hereinafter “Sharenting” Trends], <http://www.mottchildren.org/news/archive/201503/%E2%80%9Csharenting%E2%80%9D-trends-do-parents-share-too-much-about-their>.

³⁹ Andbabymakes4, *So I Posted Photos of My Kid Online and This Is Where They Ended Up*, BLOGGER (Feb. 14, 2013), <http://www.blogger.com/i-shouldve-been-food-blogger>.

⁴⁰ *Id.*

⁴¹ *Id.*

their interest in mommy blogging.⁴² While her post is written lightheartedly, it exposes a very real and dangerous problem that receives little attention in a world where posting and sharing personal data is the norm.⁴³

The University of Michigan conducted a study exploring the ways parents share online about their children.⁴⁴ The study's authors polled parents and categorized the shared information in five ways: (1) "getting children to sleep," (2) "nutrition and eating tips," (3) "discipline," (4) "daycare/preschool," and (5) behavioral issues.⁴⁵ The study noted that 56% of parents shared (potentially) embarrassing information⁴⁶ about their children online, 51% provided information that could lead to an identification of their child's location at a given time, and 27% of participants shared (potentially) inappropriate⁴⁷ photos.⁴⁸

Researchers at New York University explored how generally shared "personally identifiable" information can pose a risk to children.⁴⁹ By tracing a parent's social media data to voter registration materials, children's identity can be inferred, including name, location, age and birthday, and religion.⁵⁰ This information often leads to the traditional concerns of "Stranger Danger" and, more specifically, to overexposure to acquaintances, data brokers, and unwanted surveillance.⁵¹ When parents share information with their social media feeds, they are often sharing with more than just the individuals they would consider

⁴² *Id.*

⁴³ See Lucy Battersby, *Millions of Social Media Photos Found on Child Exploitation Sharing Sites*, SYDNEY MORNING HERALD (Sept. 30, 2015, 9:14 AM), <http://www.smh.com.au/national/millions-of-social-media-photos-found-on-child-exploitation-sharing-sites-20150929-gjxe55.html>.

⁴⁴ "Sharenting" Trends, *supra* note 38. The study was directed by Matthew Davis, M.D. at Mott Children's Hospital. *Id.* For the definition of "sharenting," see *supra* note 9.

⁴⁵ See "Sharenting" Trends, *supra* note 38.

⁴⁶ See *id.* The study does not define "embarrassing information." Instead, the study uses the term as a potential answer in a parenting questionnaire completed by study participants. *Id.*

⁴⁷ *Id.* The study does not define "potentially inappropriate." Instead, the study uses the term as a potential answer in a parenting questionnaire completed by study participants. *Id.*

⁴⁸ *Id.*

⁴⁹ TEHILA MINKUS, KELVIN LIU & KEITH W. ROSS, CHILDREN SEEN BUT NOT HEARD: WHEN PARENTS COMPROMISE CHILDREN'S ONLINE PRIVACY (2015), <http://cse.poly.edu/~tehila/pubs/WWW2015children.pdf>; see also Samantha Olson, *Consequences of 'Sharenting': Parent Online Social Media Posts May Create Digital Identity for Child*, MEDICAL DAILY: THE GRAPEVINE (Mar. 18, 2015, 4:49 PM), <http://www.medicaldaily.com/consequences-sharenting-parent-online-social-media-posts-may-create-digital-identity-326216> (discussing different types of "personally identifiable" information); UMHealthSystem, "Sharenting" Trends: Do Parents Share Too Much About Their Kids on Social Media?, YOUTUBE (Mar. 16, 2015), https://www.youtube.com/watch?v=o_xn6xwI0BI (addressing the question: "How far is too far when it comes to creating a digital identity for children?").

⁵⁰ MINKUS, LIU & ROSS, *supra* note 49.

⁵¹ *Id.* at 2.

“friends” in face-to-face relationships.⁵² This reality, coupled with the fact that “76% of kidnappings and 90% of all violent crimes against juveniles [are] perpetrated by relatives or acquaintances,” indicates that personal information about the location, likes, and dislikes of a child can be revealed to those who might wish to harm the child.⁵³

The threat posed by data brokers and electronic surveillance is equally worrisome.⁵⁴ According to the NYU researchers, “[d]ata brokers build profiles about people and sell them to advertisers, spammers, malware distributors, employment agencies, and college admission offices.”⁵⁵ The researchers expounded, saying:

[C]hildren’s merchandise market is in the hundreds of billion dollars in the US alone, it is not surprising that data brokers are already seeking to compile dossiers on children. Using the information that parents post about their children, data brokers can create mini-profiles that can be continually enhanced throughout an individual’s lifetime.⁵⁶

This same information could become subject to surveillance by various agencies, both governmental and nongovernmental.⁵⁷

In the United States, 92% of two-year-olds already have an online presence.⁵⁸ Of these children, approximately one-third appear on social media sites as a mere newborn.⁵⁹ When children appear in Facebook photos, 45.2% of the posts also mention the child’s first name, and 6.2% reference the child’s date of birth, allowing all viewers to establish the exact age of the child.⁶⁰ On Instagram, 63% of parents reference their child’s first name in at least one photo in their stream, 27% of parents reference their child’s date of birth, and 19% share both pieces of information.⁶¹

Many babies have an online presence even before birth because parents share sonogram pictures online in nearly one-fourth of pregnancies.⁶² “It’s shocking

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* (endnotes omitted).

⁵⁷ *Id.*

⁵⁸ *Digital Birth: Welcome to the Online World*, *supra* note 6.

⁵⁹ *See id.*; *see also* Olson, *supra* note 49.

⁶⁰ MINKUS, LIU & ROSS, *supra* note 49, at 3.

⁶¹ *Id.* at 7.

⁶² *Digital Birth: Welcome to the Online World*, *supra* note 6.

to think that a 30-year-old has an online footprint stretching back 10–15 years at most, while the vast majority of children today will have online presence by the time they are two-years-old—a presence that will continue to build throughout their whole lives.”⁶³ Parents seemingly endorse this reality, as multitudes of well-wishers and supporters follow, comment on, and re-post much of the child-centered disclosures available on social media sites and blogs.⁶⁴

Some parents are lulled into a false sense of security that the data they share about their children will not be seen beyond a select audience. Some parents choose to post pictures and data about their children on websites and social media sites such as Facebook, which offer the user the ability to choose the audience for each disclosure.⁶⁵ Many parents believe this provides them with a safety net, and they use little discretion sharing with their chosen audience.⁶⁶ In reality, even these posts can reach a large audience, as the intended audience has the ability to save and repost the data in alternate forums.⁶⁷

One writer, Phoebe Maltz Bovy, has voiced concern that parents are potentially exploiting their children through the public disclosure of personal information in online forums.⁶⁸ This writer has attempted to define the concept of *oversharing* to criticize parents’ use of social media that goes beyond sharing to exploitation of their own children.⁶⁹ She defines the concept this way:

Parental overshar[ing] . . . does not refer to parents discussing their kids with friends and family. . . . Two criteria must be present: First, the children need to be identifiable. That does not necessarily mean full names. The author’s full name is plenty, even if the children have a different (i.e. their father’s) last name. Next, there needs to be ambition to reach a mass audience.⁷⁰

Bovy explores whether children can ever give consent for online disclosure of personal, potentially harmful and embarrassing information.⁷¹ She states, “[t]he reader assumes that the parent will do what’s best for her child. While the parent

⁶³ *Id.*

⁶⁴ See Duggan, *supra* note 31.

⁶⁵ See McPeak, *Facebook Digital Footprint*, *supra* note 12, at 901.

⁶⁶ See *id.* at 899–900.

⁶⁷ See *id.* at 901 (describing the process by which social media posts may reach unintended audiences).

⁶⁸ Phoebe Maltz Bovy, *The Ethical Implications of Parents Writing About Their Kids*, THE ATLANTIC (Jan. 15, 2013), <http://www.theatlantic.com/sexes/archive/2013/01/the-ethical-implications-of-parents-writing-about-their-kids/267170/>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

may set out to do this, using their own children in the service of a larger argument clouds their ability to self-censor. And with confession can come vanity.⁷²

Consider one mother's essay, *I Am Adam Lanza's Mother*.⁷³ After twenty-year-old Adam Lanza killed twenty children and six faculty members at Sandy Hook Elementary School in 2011,⁷⁴ this mother (who is not Adam Lanza's mother) wrote an impassioned essay expressing her struggle raising a mentally ill son.⁷⁵ In the article, she pleaded for mental health reform, stating,

I am sharing this story because I am Adam Lanza's mother. I am Dylan Klebold's and Eric Harris's mother. I am James Holmes's mother. I am Jared Loughner's mother. I am Seung-Hui Cho's mother. And these boys—and their mothers—need help. In the wake of another horrific national tragedy, it's easy to talk about guns. But it's time to talk about mental illness.⁷⁶

By sharing her own story, and the story of her thirteen-year-old son, this mother graphically and bravely expressed the catastrophic challenges of raising a mentally ill and violent child.⁷⁷ She included her own name and a picture of her son, and she described her daily parenting struggles.⁷⁸ By expressing herself, perhaps this mother offered a much needed reality check to politicians and others at the forefront of public discourse on childhood mental health. Yet at the same time, she disclosed very personal, private information about her child to the

⁷² *Id.*

⁷³ Liza Long, *I Am Adam Lanza's Mother*, BLUE REV. (Dec. 15, 2012), <https://thebluereview.org/i-am-adam-lanzas-mother/>. Bovy also discusses Long's, *I Am Adam Lanza's Mother* article in detail and the public outcry that followed its publication. Bovy, *supra* note 68.

⁷⁴ See James Barron, *Nation Reels After Gunman Massacres 20 Children at School in Connecticut*, N.Y. TIMES (Dec. 14, 2012), http://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html?_r=0 (reporting on the massacre).

⁷⁵ Long, *supra* note 73.

⁷⁶ *Id.* Dylan Klebold and Eric Harris were the individuals who killed thirteen people and injured twenty others in the Columbine High School Massacre. *Dylan Klebold*, BIOGRAPHY.COM, <http://www.biography.com/people/dylan-klebold-235979> (last visited Sept. 11, 2016). Jared Loughner killed six individuals and injured twelve others in Tucson, Arizona in 2011. Michael Muskal, *Jared Loughner Sentenced to Life in Tucson Mass Shooting*, L.A. TIMES (Nov. 8, 2012), <http://articles.latimes.com/2012/nov/08/nation/la-na-nn-jared-loughner-life-in-prison-20121108>. Seung-Hui Cho killed thirty-two people at Virginia Tech in 2007. *Seung-Hui Cho*, BIOGRAPHY.COM, <http://www.biography.com/people/seung-hui-cho-235991> (last visited Sept. 11, 2016).

⁷⁷ Long, *supra* note 73.

⁷⁸ See *id.*

world.⁷⁹ Thus, it can be very difficult to differentiate advocacy from oversharing.⁸⁰

Some parents post about their children's mental health, and others post detailed information regarding their children's medical conditions.⁸¹ There clearly are benefits to sharing these personal experiences.⁸² By sharing, families with medically fragile children are able to connect with one another.⁸³ These families break down stereotypes,⁸⁴ help raise money for important research and advocacy,⁸⁵ and often receive positive personal support from the community.⁸⁶ But some adults with chronic disabilities have expressed concern about these common parental sharing practices. Carly Findlay, an adult who grew up with a chronic disability, wrote, "I would be mortified if my parents shared my condition at length (and publicly) as a child or an adult."⁸⁷ She continued, "I am glad I can make the informed educated choice to tell my story my way. . . . I wonder about the long term impact of parents sharing stories about [their child's] disabilities online."⁸⁸

⁷⁹ See *id.*; see also Deborah Becker & Lynn Jolicoeur, 'I Am Adam Lanza's Mother' Blogger Reveals Regrets, Hopes for Mental Health Care, WBUR (May 30, 2014), <http://www.wbur.org/2014/05/30/i-am-adam-lanzas-mother-blogger-mental-health>. Liza Long admits that she had some regrets for sharing because a judge in Idaho determined that her two younger children were unsafe due to the mental illness and violent tendencies. *Id.* She temporarily lost custody of her children, and her son is now seeking treatment. *Id.*

⁸⁰ See Liza Long, *Advocacy or Privacy?*, PSYCHOL. TODAY: THE ACCIDENTAL ADVOC. (Mar. 30, 2015), <https://www.psychologytoday.com/blog/the-accidental-advocate/201503/advocacy-or-privacy>.

⁸¹ See, e.g., Lauren Swick Jordan, *Writing for the Mighty, for My Son, and with My Son*, WASH. POST (Jan. 6, 2016), <https://www.washingtonpost.com/news/parenting/wp/2016/01/06/writing-for-the-mighty-for-my-son-and-with-my-son/>; Amy Quintal, *When You Need to Help Yourself Before You Help Your Child*, THE MIGHTY (Jan. 18, 2016), <http://themighty.com/2016/01/when-you-need-to-help-yourself-before-you-can-help-your-child/>.

⁸² See generally Long, *supra* note 73.

⁸³ *Parenting in the Information Age: Am I Oversharing?*, CONFESSIONS OF THE CHROMOSOMALLY ENHANCED (Aug. 13, 2015), <http://www.confessionsofthechromosomallyenhanced.com/2015/08/parenting-information-age-am-i.html>.

⁸⁴ See *id.*

⁸⁵ See *Advocacy Can Make All the Difference*, AUTISM SPEAKS, <https://www.autismspeaks.org/family-services/community-connections/advocacy-can-make-all-difference> (last visited Jan. 21, 2017) ("Lots of families have shared stories, sought help, or asked questions about legal issues. Many families are looking to better understand what they can do to become better advocates for their loved ones with autism.").

⁸⁶ See generally CARING BRIDGE, <http://www.caringbridge.org/> (last visited Sept. 11, 2016) ("Your personal CaringBridge website is designed to rally your family and friends together, to offer you support when and how you need it.").

⁸⁷ Carly Findlay, *When Parents Overshare Their Children's Disability*, SYDNEY MORNING HERALD (July 27, 2015), <http://www.dailylife.com.au/news-and-views/dl-opinion/when-parents-overshare-their-childrens-disability-20150724-gjtw6.html>.

⁸⁸ *Id.*

In response to Findlay's article, one mother responded, "it is my hope that special needs families will continue [to] shar[e] their stories. [Because] [p]rejudice is based in ignorance and an overall lack of exposure."⁸⁹ For many parents of disabled children, parents act as the child's "only voice."⁹⁰ Another mother pleads, "[p]lease don't attempt to silence that voice."⁹¹ If society did not support these online disclosures, the realities of raising children with disabilities would often remain hidden.⁹² These family stories help create the patchwork of community our society depends upon for important research, advocacy, and support.⁹³

Parents also "sharent" to discipline their children.⁹⁴ Parents are garnering Internet fame for posting pictures and videos of their children holding up signs in public spaces detailing their misbehavior.⁹⁵ These parents, acting apparently with the goal of achieving behavioral change through public shaming, might receive some negative reaction from both their physical and online communities, but public shaming also garners praise from the public, and many parent's share seeking public support.⁹⁶ Yet experts point out not only that online discipline is disrespectful to children and humiliating, but unlike more traditional forms of

⁸⁹ *Parenting in the Information Age: Am I Oversharing?*, *supra* note 83.

⁹⁰ *Our Sharing Is Not Shaming*, FROM THE BOWELS OF MOTHERHOOD (July 29, 2015), <http://fromthebowelsofmotherhood.blogspot.com/2015/07/our-sharing-is-not-shaming.html>.

⁹¹ *Id.*

⁹² *See id.*

⁹³ *See id.*

⁹⁴ Lisa Belkin, *Humiliating Children in Public: A New Parenting Trend?*, HUFFINGTON POST (Oct. 4, 2013), http://www.huffingtonpost.com/lisa-belkin/humiliating-children-to-teach-them-_b_1435315.html (discussing the growing trend of forcing children to do humiliating things in public to teach a lesson, that are later posted online, and publicly praised by other parents); *see also* Quentin Fottrell, *Read This Before Posting Photos of Your Kids on Facebook*, MKT. WATCH (Mar. 9, 2016, 12:03 PM), <http://www.marketwatch.com/story/read-this-before-posting-photos-of-your-kids-on-facebook-2015-08-05> ("I disciplined my son and he threw a tantrum that I thought was so funny that I disciplined him again just so I could video it. After uploading it on Instagram I thought, 'What did I just do?'" (quoting the mother of a three-year-old child)).

⁹⁵ *See* Belkin, *supra* note 94.

⁹⁶ *Id.*; *see also* Fottrell, *supra* note 94 ("Behind this growing body of research on 'sharenting'—parents who share details of their family life online, ostensibly to give other parents advice—there are some shocking stories of how moms and dads put the prospect of Facebook 'likes' ahead of being present with their child, the VitalSmarts study found."); Wayman Gresham, FACEBOOK (May 27, 2015), <https://www.facebook.com/wayman.gresham/videos/845152372206246> (posting a video ridiculing public shaming discipline against children, which received 23 million views and was shared 578,323 times); Anne Italie, *Public Shaming: Parents Give Kids Bad Haircuts as Punishment*, GADSDEN TIMES (June 11, 2015, 9:54 PM), <http://www.gadsdentimes.com/article/20150611/wire/150619959> ("Fredrick and his son are success stories in a social media trend: parents taking electric razors to the heads of their misbehaving teens to create ugly cuts as a form of punishment, then posting the handiwork on YouTube, Facebook and elsewhere.").

punishment, these parents are creating an indelible digital footprint that will likely follow many of these children into adulthood.⁹⁷

B. Legal and Safety Risks Posed by Parental Oversharing

Some parents have found that even just posting a picture could create a privacy risk to their child. One mother, Paris, posted a picture of her daughter on Facebook.⁹⁸ She received a like from a user whose name she did not recognize.⁹⁹ “The stranger had made the toddler’s image her homepage photo and was presenting Paris’ son as *her* own child.”¹⁰⁰

Paris is not alone; another mother, Ashley, experienced a similar form of “digital kidnapping.”¹⁰¹ After posting a picture of her two daughters, Ashley found it was shared by another Facebook page that seemed to share many pictures of little girls.¹⁰² As Ashley looked closer at the link of her children provided on the page, she realized that any of the thousands of followers could not only see the image of her children, but could also follow the link back to her own Facebook page and track down more information about her daughters, including where they lived.¹⁰³

Parental disclosures on social media have also caused some children to be bullied by children as a result of embarrassing pictures and stories shared by

⁹⁷ See *The Dark Side of Public Shaming Parenting*, VALENTIN & BLACKSTOCK PSYCHOL. (June 16, 2015), <http://www.vbpsychology.com/the-dark-side-of-public-shaming-parenting/> (“Shaming as a form behavioural punishment for children has been around for thousands of years. But in an increasingly online world, social networks such as Youtube and Facebook have given parents new venues in which to shame their kids’ bad behaviour. These venues are inevitably more visible and amplified, and the effects are thus more harmful and permanent. . . . From a neurodevelopmental perspective, social brain structures are critical to a teenager’s development, which is why many teenagers are more sensitive to social evaluation from their peers. . . . Not only are teenage years a time when huge neurodevelopmental changes are impacting their executive functions, this is a time when teenagers are trying to establish their own identities and independence from their parents.”).

⁹⁸ Jennifer O’Neill, *The Disturbing Facebook Trend of Stolen Kid Photos*, YAHOO! PARENTING (Mar. 3, 2015), <https://www.yahoo.com/parenting/mom-my-son-was-digitally-kidnapped-what-112545291567.html>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* (“Ashley tells Yahoo Parenting[,] ‘The page was in Chinese and I couldn’t read any of it but I saw that he had a few thousand followers and he had shared my picture. I started scrolling and noticed he had lot of pictures of little girls. I was so scared and shocked. I mean, that share linked back to my personal page so anybody could have clicked on it to see where I lived.’ Ashley immediately deleted the post, went into her privacy settings and locked them down. Until then, she admits, ‘I knew privacy settings were not locked down as much as they could be, but I wasn’t really concerned about it.’”).

their parents.¹⁰⁴ Adults also engage in this form of online bullying.¹⁰⁵ There are now public Facebook groups that make fun of pictures shared by other parents.¹⁰⁶

Former Google CEO, Eric Schmidt, highlights the prevalence of oversharing both caused by a child's own doing and by the actions of others. "Schmidt apparently believes that, as time goes on [we will] reach a point where every single person has embarrassing information and pictures from their adolescence posted on social media sites online"¹⁰⁷ In the same interview, Schmidt raised the possibility that one day all adults will be entitled to change their name to hide from the embarrassing content shared online during their teenage years.¹⁰⁸ He also opined that Google will soon know enough about a person that it will be able to help users "plan their lives."¹⁰⁹

There are many benefits to sharenting. Sharenting gives children a positive social media presence to help counteract some of the negative behaviors they might themselves engage in as teenagers. Additionally, by sharing on social media, parents offer their children positive networks by inviting supportive family members and friends into their daily lives. But these positive benefits must be carefully weighed against the dangers of sharing a child's personal information in such a public space. By understanding this complex taxonomy, scholars can better discuss children's rights online.

¹⁰⁴ "Sharenting" Trends, *supra* note 38.

¹⁰⁵ *Angry Mom Uncovers 'Toddler Bashing' Facebook Group that Makes Fun of 'Ugly' Babies*, HUFFINGTON POST (Nov. 8, 2013, 4:22 PM), http://www.huffingtonpost.com/2013/11/08/toddler-bashing-facebook-group-ugly-babies_n_4241706.html.

¹⁰⁶ *Id.*

¹⁰⁷ Jon Bershad, *Google's CEO Proposes Future Where People Will Have to Change Their Names to Escape Social Media*, MARY SUE (Aug. 18, 2010, 6:05 PM), <http://www.themarysue.com/googles-ceo-name-change/#geekosystem>; Holman W. Jenkins Jr., *Google and the Search for the Future*, WALL ST. J. (Aug. 14, 2010, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748704901104575423294099527212>.

¹⁰⁸ Jenkins, *supra* note 107.

¹⁰⁹ Murray Wardrop, *Young Will Have to Change Names to Escape 'Cyber Past' Warns Google's Eric Schmidt*, TELEGRAPH (Aug. 18, 2010, 7:00 AM), <http://www.telegraph.co.uk/technology/google/7951269/Young-will-have-to-change-names-to-escape-cyber-past-warns-Google-Eric-Schmidt.html> ("Using profiles of it [sic] customers and tracking their locations through their smart phones, it will be able to provide live updates on their surroundings and inform them of tasks they need to do."); accord Jenkins, *supra* note 107 ("[Schmidt stated.] 'I actually think most people . . . want Google to tell them what they should be doing next.' . . . [Google] knows, to within a foot, where you are. . . . [For example, i]f you need milk and there's a place nearby to get milk, Google [could] remind you to get milk.").

II. CHILDREN'S RIGHTS, PRIVACY, AND PUBLIC HEALTH

No legal scholar has yet published an article centered at the intersection of a parent's right to share online with a child's right to privacy on the Internet. Indeed, few scholars have addressed the issue of interfamilial privacy or, more specifically, a child's right to privacy from the parent.¹¹⁰ This Part situates sharenting¹¹¹ within the existing legal and public health debates.¹¹² The parental experiences discussed above, which make up the basis for sharenting disclosures, are intertwined with their minor children's personal lives.¹¹³ While many parents make these online disclosures with good intentions, the children—the standard subject of the online disclosures—rarely participate in the decisionmaking process or in framing the way the story is told.

A. *The Interfamilial Privacy Divide: When a Child and a Parent Have Differing Interests*

Courts have shown reluctance to grant children privacy rights in the context of family life.¹¹⁴ Even when a court recognizes a child's reasonable expectation of privacy, the court often places higher value on the interests of the parent, family, and the state in exercising control over the minor child.¹¹⁵ For example, when Nguon, a minor, was disciplined for engaging in Inappropriate Displays of Public Affection (IDPA), her school brought her mother into the matter, not to ensure effective discipline took place, but to ensure the child's due process rights were protected.¹¹⁶ Nguon, a female student who had engaged in sexual conduct with another female, was far more interested in keeping the same-sex relationship private from her parents.¹¹⁷ However, the court ruled that while she did have an expectation of privacy in the information, *her* right was outweighed

¹¹⁰ See, e.g., Shmueli & Blecher-Prigat, *supra* note 18. Their article attempts to “open[] up a discussion on children’s privacy from their parents and other family members.” *Id.* at 763.

¹¹¹ See sources cited *supra* note 9 (defining “sharenting”).

¹¹² Duggan, *supra* note 31 (“Social media networks are host to a wide range of human experiences; they help connect people with one another in both good times and bad. Parents—in this study defined as those with children under 18—are especially likely to try to respond to the good news others post, answer others’ questions or receive support via online networks. This is true for all kinds of personal matters they encounter—not just parenting posts.”).

¹¹³ *Id.*

¹¹⁴ David D. Meyer, *The Modest Promise of Children’s Relationship Rights*, 11 WM. & MARY BILL RTS. J. 1117, 1118 (2003) (“[C]ourts have not categorically rejected children’s privacy rights, but have proceeded haltingly.”).

¹¹⁵ See *id.* at 1117–18.

¹¹⁶ Nguon v. Wolf, 517 F. Supp. 2d 1177, 1183, 1193–94 (C.D. Cal. 2007).

¹¹⁷ *Id.* at 1191.

by the school's need to involve her mother for Nguon's own protection.¹¹⁸ Since the incident took place on school grounds, the administrators were obligated to notify the parents.¹¹⁹

Despite being warned multiple times to cease engaging in IDPA on school grounds, Nguon ignored the warnings, and after six instances, Nguon was suspended from school for three days.¹²⁰ In accordance with the state's law requiring parental notification upon the suspension of a child (to provide children due process upon receiving a suspension), the school administrator called Nguon's mother and provided her with details regarding the suspension and the instances of IDPA.¹²¹ The school informed the mother that both students were of the same sex; again, information Nguon did not want disclosed to her mother.¹²²

In evaluating Nguon's privacy claim, the court found that since Nguon never brought her girlfriend to her house and her mother rarely came to campus, she had a reasonable expectation that the school would not share her sexual orientation with her parents.¹²³ However, the court also recognized that the school's interest in following state law was legitimate.¹²⁴ The court concluded that the school's interest in affording suspended children due process of law outweighed Nguon's privacy right.¹²⁵ It is interesting to note that while Nguon's mother was contacted under the guise of Nguon's "best interests" (ensuring her right to due process), the actual result of the decision was opposite to Nguon's expressed interest in the matter. As is often the case, this paternalistic view of state action often gives little value to a child's own voice.

¹¹⁸ *Id.* at 1195.

¹¹⁹ *Id.* at 1193.

¹²⁰ *Id.* at 1183–34. The court explained in detail that the IDPA at issue was more than kissing, petting, and holding hands and that Nguon was punished for repeated episodes of "french kissing, making out, and groping." *Id.* at 1189. The court also analyzed Nguon's right to freedom of expression and found no violation therein. *Id.* at 1190. Lastly, the court analyzed whether the warnings and punishment were applied in the same manner to heterosexual couples and found ample evidence that the IDPA policy was enforced uniformly at the school. *Id.* at 1186–87.

¹²¹ *Id.* at 1195.

¹²² *Id.*

¹²³ *Id.* at 1196. The court noted that "[i]t does not follow that disclosure in one context necessarily relinquishes the privacy right in all contexts." *Id.* at 1191. Nguon's parents rarely came to school, and her girlfriend never came to her home for a visit; therefore, the court concluded that Nguon maintained an interest in keeping the relationship private at home. *Id.*

¹²⁴ *Id.* at 1194.

¹²⁵ *Id.* at 1195.

In the above referenced case, the court rested its decision on a constitutional right to privacy.¹²⁶ The Supreme Court has examined these competing interests as well.¹²⁷ In *Bellotti v. Baird*, the Court weighed a child's privacy interest against interests of the parents when a state statute was at issue.¹²⁸ There, the Court held that if a State is to require a child to obtain parental consent before receiving an abortion, it must also provide an alternative procedure where the child can still be authorized to receive the abortion.¹²⁹ The Court detailed two judicial bypass mechanisms: (1) the child is required to show she possessed sufficient maturity and information to make the decision on her own, or (2) even if she does not, the abortion is still in her best interest.¹³⁰

The Court recognized that the child had a right to privacy and that the parent could not block her access to abortion even if the parent did not provide consent.¹³¹ The Court first held that "the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors," then further held that "the potentially severe detriment facing a pregnant woman is not limited by her minority."¹³² *Belotti* provides a glimpse of how the courts walk the proverbial tightrope with regards to interfamilial privacy. Courts, like parents, struggle to protect children while simultaneously allowing them to grow into independent adults.

The Court has affirmed a parent's right to control the upbringing of children in a number of cases, as illustrated briefly in the following two examples.¹³³ In 1923, the Supreme Court was called upon to balance the interests of both parents and the state in the context of education in *Meyer v. Nebraska*.¹³⁴ In *Meyer*, a teacher challenged a state statute prohibiting the instruction of foreign languages in any school, public or private.¹³⁵ The Court overturned the law, holding that the act abridged upon both the parents' and the teacher's liberty interests.¹³⁶ Instead of focusing on the children's right to learn the foreign language, the

¹²⁶ *Id.* at 1191.

¹²⁷ *E.g.*, *Bellotti v. Baird*, 443 U.S. 622 (1979).

¹²⁸ *Id.* at 633-34.

¹²⁹ *Id.* at 643.

¹³⁰ *Id.* at 643-44.

¹³¹ *Id.*

¹³² *Id.* at 637, 642 (citation omitted).

¹³³ *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

¹³⁴ 262 U.S. 390 (1923).

¹³⁵ *Id.* at 396. The teacher became a criminal defendant when the state prosecuted him under this state statute. *Id.*

¹³⁶ *Id.* at 400, 403.

Court focused on the parents' right to raise their children as they saw fit and "the teachers' rights to engage in an occupation."¹³⁷

Two years later, in *Pierce v. Society of Sisters*, the Court once again addressed parental rights.¹³⁸ In that case, the Supreme Court overturned a law requiring public education for all students.¹³⁹ Resting its decision not on the child's liberty interest, but again on the parents' interest, the Court held that the statute at issue unreasonably interfered with the parents' right to control the upbringing and education of their children.¹⁴⁰ These cases highlight the rights of the state over the actions of parents and the rights of parents over the actions of the state.

While these cases balanced parental and state rights, a new series of cases focusing on children's rights emerged during a period known as "The Domestication of the Juvenile Court."¹⁴¹ These cases provided recognition that children also have rights under the U.S. Constitution.¹⁴² Addressing children accused of criminal and delinquent acts, courts started to focus on balancing a juvenile's constitutional rights with the stated intent of the juvenile court system—providing rehabilitation and treatment to young offenders.¹⁴³ For much of the twentieth century, the U.S. Supreme Court routinely examined the rights of children.¹⁴⁴ Children gained protections under both the Constitution and international law.¹⁴⁵

Few cases have addressed the issue of privacy in the context of a parent's decision to share personal information about their minor children. However, one case, *Sidis v. F-R Publishing*,¹⁴⁶ addressed privacy in a context that could have applicability to modern parental sharing practices.¹⁴⁷ Sidis, a child prodigy who

¹³⁷ Justin Witkin, Note, *A Time for Change: Reevaluating the Constitutional Status of Minors*, 47 FLA. L. REV. 113, 117 (1995).

¹³⁸ 268 U.S. 510 (1925).

¹³⁹ *Id.* at 530–31, 536.

¹⁴⁰ *Id.* at 534–35.

¹⁴¹ BARRY C. FELD, CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION 716 (4th ed. 2013).

¹⁴² *See, e.g.,* *Haley v. Ohio*, 332 U.S. 596 (1948). In *Haley*, the Court stated that "[n]either man nor child can be allowed to stand condemned by methods which flout constitutional requirements of due process of law." *Id.* at 601.

¹⁴³ *See* FELD, *supra* note 141, at 715 (discussing "the disjunctions between rehabilitative rhetoric and punitive reality," which led to "greater procedural safeguards in juvenile courts").

¹⁴⁴ *See* FELD, *supra* note 141, at 715–17.

¹⁴⁵ *Id.*; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990).

¹⁴⁶ 113 F.2d 806 (2d Cir. 1940).

¹⁴⁷ *Id.* at 807.

came of age in the early 1900s, received national public attention during his minor years.¹⁴⁸ However, when Sidis became an adult, he did not want to remain in the public eye, and he went to great lengths to live a private life.¹⁴⁹ He did not like media attention and tried to conceal his identity through his lifestyle choices.¹⁵⁰ Despite his preference, *The New Yorker* ran a story about Sidis's life, providing the reader with intimate details about his secluded existence.¹⁵¹

Sidis sued *The New Yorker*, arguing that he had a right to privacy under state law.¹⁵² However, the court disagreed.¹⁵³ The court reasoned that Sidis was a public figure as a child.¹⁵⁴ As such, the public was naturally interested in the story reported by *The New Yorker*.¹⁵⁵ Despite his wish to retreat into the private sphere and remain hidden from media attention, the court held that remaining out of the public eye was not an option for Sidis, or for any other individual who once held the public spotlight.¹⁵⁶ In its holding, the court recognized that while an individual such as Sidis had an interest in privacy, the public also had an interest in knowing about his life course.¹⁵⁷

The court ruled that since Sidis was in the public spotlight as a child, he would remain a public figure for the rest of his life.¹⁵⁸ Interestingly, the court

¹⁴⁸ *Id.* (“William James Sidis was a famous child prodigy in 1910. His name and prowess were well known to newspaper readers of the period. At the age of eleven, he lectured to distinguished mathematicians on the subject of Four-Dimensional Bodies.”).

¹⁴⁹ *Id.* (“The author [of *The New Yorker* article] describes his subject’s early accomplishments in mathematics and the wide-spread attention he received, then recounts his general breakdown and the revulsion which Sidis thereafter felt for his former life of fame and study. The unfortunate prodigy is traced over the years that followed, through his attempts to conceal his identity, through his chosen career as an insignificant clerk who would not need to employ unusual mathematical talents, and through the bizarre ways in which his genius flowered, as in his enthusiasm for collecting streetcar transfers and in his proficiency with an adding machine.”).

¹⁵⁰ *Id.* (noting the plaintiff’s “passion for privacy and the pitiable lengths to which he [went] in order to avoid public scrutiny”).

¹⁵¹ *Id.* (“The article closes with an account of an interview with Sidis at his present lodgings, ‘a hall bedroom of Boston’s shabby south end.’ The untidiness of his room, his curious laugh, his manner of speech, and other personal habits are commented upon at length, as is his present interest in the lore of the Okamakamessett [sic] Indians. The subtitle is explained by the closing sentence, quoting Sidis as saying ‘with a grin’ that it was strange, ‘but, you know, I was born on April Fool’s Day.’ Accompanying the biography is a small cartoon showing the genius of eleven years lecturing to a group of astounded professors.”).

¹⁵² *Id.* Sidis also argued that the article contained “malicious libel” and violated additional enumerated rights under New York statutory law. *Id.*

¹⁵³ *Id.* at 808.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 809 (“The article in *The New Yorker* sketched the life of an unusual personality, and it possessed considerable popular news interest.”).

¹⁵⁶ *See id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

noted that there was a possibility that even as a child, Sidis loathed the public attention.¹⁵⁹ However, the court held that “his uncommon achievements and personality would have made the attention permissible.”¹⁶⁰ The article in *The New Yorker* answered the question of whether Sidis met the expectations of his young brilliance.¹⁶¹ The court ruled that his current life was indeed “a matter of public concern.”¹⁶²

While Sidis's case was decided over seventy years ago, and the court's reasoning drew from the text of Justice Warren and Justice Brandeis's famous 1890 article, *The Right to Privacy*,¹⁶³ it might provide scholars with guidance today.¹⁶⁴ If a parent leads his or her child to Internet fame during their minor years, the case suggests that the child would always remain subject to privacy laws governing public figures.¹⁶⁵ However, unlike generations who came of age before social media, today's sharing practices offer an ever-expanding array of options for parents looking to place their child in the public eye. These young public figures might enter adulthood with little recourse, as Sidis found out over seventy-five years ago.

Taken together, these cases suggest that courts are sympathetic to a child's interest in privacy but nonetheless give substantial deference to parents' rights to control their child's upbringing and the limitations of the right to privacy.¹⁶⁶ These cases offer limited guidance with respect to how children's privacy interests might intersect with parents' rights to share their child's personal information online, as today's parental online sharing practices are novel in the legal sphere.

Current laws protecting children's privacy reflect the strong tradition of parental rights to control and shape the lives of their children.¹⁶⁷ Many laws aimed at protecting children's privacy are written from the paternalistic viewpoint that the parent has exclusive control over the disclosure of a child's

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶³ Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890).

¹⁶⁴ *See Sidis*, 113 F.2d at 808.

¹⁶⁵ *See id.* at 808.

¹⁶⁶ *See Meyer*, *supra* note 114, at 1131–32 (discussing the importance of children's rights while maintaining the necessity of “balanc[ing] the child's claim against the competing claims of her parents” in certain instances).

¹⁶⁷ *See* 15 U.S.C. § 6502(a) (2012) (prohibiting the collection of personal data from children by website operators, and making an exception to liability when personal data is requested by the parent).

personal information.¹⁶⁸ Privacy laws provide little guidance, prohibitions, or remedial measures for children needing privacy protection from their parents' online disclosures. This reality is partly based on the idea that society generally accepts the notion that parents will always do what is best for their children.¹⁶⁹ In addition, these laws are designed to protect information about children generated outside the home, primarily in school and healthcare settings.¹⁷⁰ In the context of these settings, parents are presumed to be the best guardians to insure protection of their children's private information. These frameworks do not include social media sharing, nor do they consider a parent as a potential source of harmful disclosure.

B. Approaches to Children's Privacy Interests and Rights

In her article, *Hatching the Egg: A Child-Centered Perspective on Parent's Rights*, Barbara Bennett Woodhouse critiques commonly held beliefs regarding the role of parents in the upbringing of children.¹⁷¹ She suggests that parents should act as stewards rather than as owners with respect to their children.¹⁷² As such, one can imagine a system that values *children's* rights to be free from parents' public disclosures on subjects that may one day prove disadvantageous to children as at least equal to *parents'* rights to publicly share about their child.

Children's privacy scholars Professors Benjamin Shmueli and Ayelet Blecher-Prigat argue that "children should have an individual right for privacy against their parents" but that this right "should be qualified according to the child's age and evolving capacities."¹⁷³ The scholars assert that, after years of media attention aimed at the risks posed by third parties online, society, acting

¹⁶⁸ See, e.g., *id.*; see also sources cited *supra* note 13 and accompanying text.

¹⁶⁹ Shmueli & Blecher-Prigat, *supra* note 18, at 771–72 ("In all these contexts, children's interest in and right to privacy is considered to be best protected by their parents. After all, it is parents who are obliged by law and by nature to provide for their children's needs, and who are considered to be in the best position to do so.")

¹⁷⁰ *Id.* ("The fact that children need privacy from individuals and entities external to the family is well recognized, both in law and academic literature."); see also sources cited *supra* note 13 and accompanying text.

¹⁷¹ Barbara Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parent's Rights*, 14 CARDOZO L. REV. 1747 (1993).

¹⁷² *Id.* at 1755. Woodhouse states, "[i]t should not surprise us, given children's outsider status, that children are marginalized or even damaged by a system that claims to serve them but in which they are powerless and voiceless." *Id.* at 1756; see also Bartels, *supra* note 17, at 64 ("For this to occur, parents must balance the use of their children as subject in their online self-presentation with their responsibility to serve as stewards of their children's digital footprint Achieving this balance is key to modeling authenticity for our children and respecting our children's individual right to authentic self-authorship." (citation omitted)); Priya Kumar & Sarita Schoenbeck, *The Modern Day Baby Book: Enacting Good Mothering and Stewarding Privacy on Facebook*, 18 PROCEEDINGS ACM CONF. ON COMPUT. SUPPORTED COOPERATIVE WORK & SOC. COMPUTING 1302 (2015).

¹⁷³ Shmueli & Blecher-Prigat, *supra* note 18, at 763.

under the guise of protecting children, often minimizes its recognition of a child's privacy interest in online activities.¹⁷⁴

Their article states that “extensive scholarly engagement with conceptualizing privacy has been written almost entirely with the adult rights-bearer in mind and has paid no special attention to the application of the concept to children in general, and vis-à-vis their parents in particular.”¹⁷⁵ Through their discussion of the importance of privacy for children in the family unit,¹⁷⁶ the scholars opened the door to conversations centered at interfamilial privacy and its implications for children's rights online. However, the article limited its discussion to children's rights to privacy generally and left open the question of how these rights might interplay with a parent's right to share the child's story online.¹⁷⁷

One state offers additional protections to children to protect their privacy in the online context.¹⁷⁸ For example, California is often recognized as being a leader in digital privacy protection¹⁷⁹ and provides minors with the right to delete posts from online forums.¹⁸⁰ “Kids and teenagers often self-reveal before they self-reflect,”¹⁸¹ so these laws protect children from information they post and provides them the right to later change their mind and delete the information.¹⁸²

Furthermore, the international community has recognized that children have privacy rights.¹⁸³ The United Nations Convention on the Rights of the Child

¹⁷⁴ *Id.* at 760–61.

¹⁷⁵ *Id.* at 766.

¹⁷⁶ *Id.* at 792–93.

¹⁷⁷ *See id.* at 792–93. (“In this article we have focused mainly on surveillance, but it should be noted that the issue of children's privacy vis-à-vis their parents surfaces in other contexts as well, where children's safety is of no concern. Thus for example, parents may blog about their children . . . and publicly reveal and expose intimate information about their children—information that, if given the chance, the children themselves might prefer to keep private. This issue, however, is beyond the scope of the current article and merits a separate discussion.” (footnotes omitted)).

¹⁷⁸ CAL. BUS. & PROF. CODE § 22581 (West 2016) (“Minor registered users; removal of posted content or information; permission by operator; notice that minor may remove posted content or information; instructions; exceptions regarding elimination of content; authority of law enforcement agency to obtain content; compliance”).

¹⁷⁹ Somini Sengupta, *Sharing, with a Safety Net*, N.Y. TIMES (Sept. 19, 2013), <http://www.nytimes.com/2013/09/20/technology/bill-provides-reset-button-for-youngsters-online-posts.html>.

¹⁸⁰ CAL. BUS. & PROF. CODE § 22581(a)

¹⁸¹ Sengupta, *supra* note 179.

¹⁸² *Id.* (calling it the “right-to-delete or eraser provision”).

¹⁸³ Sarah Banks, *Can Today's Networked Kids Protect Their Right to Privacy?*, CONTRIBUTORIA (May 2015), <http://www.contributoria.com/issue/2015-05/54f59102d077e7c21b000096.html> (discussing the involvement of the European Union and the European Court of Human Rights in debating children's privacy).

(UNCRC) specifically enumerates the child's right to privacy.¹⁸⁴ While the United States is now the only United Nations member country yet to sign onto the UNCRC,¹⁸⁵ it suggests that amongst children's rights and family law experts, a general consensus exists internationally recognizing that states should afford children the right to privacy.¹⁸⁶ While children are still in need of protection from the state and their parents, the international community recognizes that their autonomous nature can be recognized at a young age.¹⁸⁷ Interfamilial rights can be provided to children consistent with their evolving ability to appreciate and assert these rights.¹⁸⁸

One intriguing doctrine in European courts regarding online privacy is the doctrine recognized in 2014 known as the "right to be forgotten."¹⁸⁹ This doctrine effectively allows individuals to change their digital footprint.¹⁹⁰ In a landmark ruling, based on the interpretation of the Data Privacy Directive (a European Union law), an individual (adult) filed a complaint against Google.¹⁹¹ He brought his complaint because he believed that the information retrieved by Google following an Internet search was not favorable or relevant to his current lifestyle—the information pertained to a debt that he had subsequently paid.¹⁹² The individual believed that he had a right to have the information removed from

¹⁸⁴ Convention on the Rights of the Child, *supra* note 145, art. 16 ("No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.").

¹⁸⁵ *UN Lauds South Sudan as Country Ratifies Landmark Children's Rights Treaty*, UN NEWS CTR. (May 4, 2015), <http://www.un.org/apps/news/story.asp?NewsID=50759>. There are complicated and oftentimes competing explanations as to why the United States has not yet ratified this documents. For a comprehensive analysis as to this issue, see Don S. Browning, *The United Nations Convention on the Rights of the Child: Should It Be Ratified and Why?*, 20 EMORY INT'L L. REV. 157 (2006).

¹⁸⁶ Convention on the Rights of the Child, *supra* note 145, art. 16 ("No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.").

¹⁸⁷ *Id.*

¹⁸⁸ See generally Linda D. Elrod, *Client-Directed Lawyers for Children: It Is the "Right" Thing to Do*, 27 PACE L. REV. 869, 913 (2007) ("[F]or children, capacity is an evolving process and is contextual. It is not an all or nothing proposition. It is true that it is [sic] easier to be the client-directed lawyer for a client who can actually direct the representation. It is more difficult to be a client-directed lawyer for an infant or a pre-verbal child. The lawyer's responsibilities with respect to the child client will vary depending on whether the child has the capacity to direct each aspect of the representation.").

¹⁸⁹ Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos*, 2014 EUR-Lex 62012CJ0131 (May 13, 2014), <http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=TEXT&ancre=>.

¹⁹⁰ See Chelsea E. Carbone, *To Be or Not to Be Forgotten: Balancing the Right to Know with the Right to Privacy in the Digital Age*, 22 VA. J. SOC. POL'Y & L. 525 (2015) (referring to *Google Spain* as a "landmark ruling" and describing the implementation of the right to be forgotten following the decision).

¹⁹¹ Case C-131/12, *Google Spain*, ¶ 14.

¹⁹² *Id.*

the Internet, because it was harmful to his reputation. He wanted it removed from or concealed within the newspaper stories and Google searches.¹⁹³ The court agreed, stating that the information served to “compromise the fundamental right to data protection and the dignity of persons in the broad sense, and this would also encompass the mere wish of the person concerned that such data not be known to third parties.”¹⁹⁴ Google appealed;¹⁹⁵ however, the appellate court agreed with the lower court. The appellate court required Google to remove the contested information from its search results, but the court did not require the newspaper to remove the information from the Internet.¹⁹⁶

One commentator, Allyson Haynes Stuart, notes that the United States views public information such as the content at issue in the above referenced case as “speech,”¹⁹⁷ and therefore the information is protected under First Amendment principles.¹⁹⁸ European courts view the same information as data and afford individuals the right to request removal of such information “if the processing or storing of that information is no longer necessary.”¹⁹⁹

If parental social media sharing about their children is viewed as speech, courts are unlikely to afford a child relief under a model similar to the right to be forgotten unless the court also recognizes a child's right to privacy in the sharenting context.²⁰⁰ The First Amendment issues raised by such a case, applied to parental social media disclosures, are significant.²⁰¹ While this Article does not examine those issues in detail here, it is important to note that robust speech protections may well insulate parental online sharing of information about their children in addition to parental claims of exercising their parental rights.

¹⁹³ *Id.* at ¶ 15.

¹⁹⁴ *Id.* at ¶ 17.

¹⁹⁵ *Id.* at ¶ 18.

¹⁹⁶ *Id.* at ¶ 94. This result offered the plaintiff some protection from future online discovery of the sensitive information at issue.

¹⁹⁷ Allyson Haynes Stuart, *Google Search Results: Buried If Not Forgotten*, 15 N.C. J.L. & TECH. 463, 466 (2014).

¹⁹⁸ *Id.* at 466; *see also* *Martin v. Hearst Corp.*, 777 F.3d 546, 553 (2d Cir. 2015) (holding that newspapers do not have to take-down expunged criminal records).

¹⁹⁹ Stuart, *supra* note 197, at 465–66; *see also* Meg Leta Ambrose, *A Digital Dark Age and the Right to Be Forgotten*, 17 J. INTERNET L., Sept. 2013, at 1, 11 (“[T]he right to be forgotten has been described as ‘the right to silence on past events in life that are no longer occurring.’” (quoting Gorgio Pino, *The Right to Personal Identity in Italian Private Law: Constitutional Interpretation and Judge-Made Rights*, in *THE HARMONIZATION OF PRIVATE LAW IN EUROPE* 225, 237 (M. Van Hoecke & F. Ost eds., 2000))).

²⁰⁰ *See* Stuart, *supra* note 197, at 465.

²⁰¹ *Id.* at 466.

Perhaps a strong argument could be made that by the time a child reaches maturity, disclosures made by parents about a child should instead be viewed as data. Under the right to be forgotten, young adults would be able to argue that information shared by their parents is no longer necessary and that the disclosures are potentially harmful to their overall well-being. If American courts were to recognize such a doctrine, the disclosures would warrant deletion at the child's request.

C. A Public Health Model of Child Protection

Legal and medical professionals have offered protections to children not only through legal reform, but also via a public health model of child protection. The public health model attempts to effectuate change by educating professionals, the public, and parents about potential dangers facing children. A solutions-based approach offers safety through advocacy and is often an effective method of changing opinions and behavior. For example, when doctors learned of the risk stomach sleeping posed to newborn infants, the health community launched the "Back to Sleep Campaign" educating parents on the common stomach sleeping practice that increased the risk of SIDS in young babies.²⁰² The campaign resulted in the dramatic dropping of SIDS rates.²⁰³

Similarly, when doctors learned of the risk posed by secondhand smoke, pediatricians encouraged parents not to smoke around their children.²⁰⁴ Many parents followed the recommendation and adjusted their behaviors.²⁰⁵ Others failed to heed the warnings and continued to smoke around their children.²⁰⁶ In response, some states enacted laws prohibiting parents from smoking in their cars when children were present.²⁰⁷ In those states, policy makers likely

²⁰² *Safe to Sleep: Public Education Campaign*, *supra* note 25 ("Since the start of the campaign, SIDS rates in the United States have decreased by almost 50%, both overall and within various racial/ethnic groups."); *see, e.g.,* Marsha Garrison, *Reforming Child Protection: A Public Health Perspective*, 12 VA. J. SOC. POL'Y & L. 590, 595 (2005) ("Perhaps most importantly, both federal law and local practice have relied on the wrong medical model: law and practice reflect an 'acute care' treatment paradigm that aims at rapid cure and exit, while all the evidence suggests that child maltreatment—for both the maltreating parent and the victimized child—is a chronic condition which requires ongoing treatment and services."). While most forms of sharenting are certainly not "chronic condition which requires ongoing treatment," this example offers support for the notion that public health models offer a unique tool for improving outcomes in various childhood well-being contexts.

²⁰³ *Safe to Sleep: Public Education Campaign*, *supra* note 25

²⁰⁴ *Cf. Jarvie & Malone*, *supra* note 26; *Health Effects of Second Hand Smoke*, *supra* note 26.

²⁰⁵ *Cf. Jarvie & Malone*, *supra* note 26, at 2144.

²⁰⁶ *See id.* at 2140.

²⁰⁷ *See Smokefree Cars*, AMS. FOR NONSMOKERS' RTS., <http://www.no-smoke.org/learnmore.php?id=616> (last visited Sept. 6, 2016). Arkansas, California, Louisiana, Maine, Oregon, Utah, Vermont, and Virginia have smoke-free car laws. *Id.*; *see, e.g.,* ARK. CODE ANN. § 20-27-1903 (2016).

determined that public discourse was insufficient to protect children from the significant harm caused by secondhand smoke.

A public health model could likewise work to educate parents about their use of social media consistent with the recognized need to protect children's privacy. Child advocates in both the medical and behavioral arenas recognize that childhood well-being is not limited to traditional notions of health. Indeed, children who grow up with a sense of privacy, coupled with supportive and less controlling parents, fare better in life.²⁰⁸ Studies report these children have a greater sense of overall well-being and report greater life satisfaction than children who enter adulthood having experienced less autonomy in childhood.²⁰⁹ Children must be able to form their own identity and create their own sense of both private and public self to thrive as young people and eventually as adults. Through a public health model, parents can gain important knowledge as to how to share their own life stories online while also protecting their children's privacy.

III. LEGAL AND PUBLIC HEALTH APPROACHES TO CHILDREN'S PRIVACY

While there are laws in place that protect an individual's privacy in some circumstances, laws do little to protect children from parental oversharing. Due to the legal pitfalls discussed below, this Article recommends the dissemination of best practices in accord with a public health model of child protection.

The vast majority of parents who share personal information about their children on the Internet do not intend to ignore their children's well-being.²¹⁰ They do so not because they care any less deeply about their children's development and future opportunities, nor because they are malicious.²¹¹ Instead, parents often intrude on a child's digital identity because they simply have not yet considered its importance.²¹²

²⁰⁸ *Children of More Caring, Less Controlling Parents Live Happier Lives*, UCL NEWS (Sept. 4, 2015), <https://www.ucl.ac.uk/news/news-articles/0915/040915-caring-parents-happier-lives>.

²⁰⁹ *Id.*

²¹⁰ See Maeve Duggan et al., *Parents and Social Media*, PEW RES. CTR. (July 16, 2015), <http://www.pewinternet.org/2015/07/16/parents-and-social-media/> (suggesting that parents use social media to optimize their parenting skills).

²¹¹ See Aisha Sultan & Jon Miller, *'Facebook Parenting' Is Destroying Our Children's Privacy*, CNN (May 25, 2012, 2:55 PM), <http://www.cnn.com/2012/05/25/opinion/sultan-miller-facebook-parenting/>.

²¹² *Id.*

Children have little to no recourse against parental oversharing for many reasons. First, children are expected to abide by the will of their parents.²¹³ Second, children might lack opportunity to express their disdain or other feelings, such as embarrassment, humiliation, anger, or hurt. Finally, children might lack an understanding of the implications of their parents' online conduct. As stated above, in this uniquely original circumstance, society is only now ready to receive, analyze, and understand data from the great social media experiment.

As children reach adulthood, parents often hope that their children will share similar values to their own.²¹⁴ Parents may believe that their children will appreciate their detailed childhood online biography and likely assume that any disclosures were harmless. However, as Jeffrey Shulman states, "the expressive liberty of parents becomes despotic when the child is given no real opportunity to embrace other values and to believe other beliefs."²¹⁵ Children who grow up as the subject of their parents' online disclosures will often have a Google search result that reflects the publicly shared identity of the child created by the parent.²¹⁶ Childhood data could remain in Google's search algorithm for years to come, and it could reveal itself in embarrassing ways during the course of a child's lifetime.²¹⁷

As today's children of social media reach adulthood, social scientists and childhood development experts will learn more about the perils of growing up under the watchful eye of a parent's newsfeed.²¹⁸ Society's newfound knowledge will help advance the conversation and will perhaps encourage courts to recognize the unique privacy interest children surely have with regard to preserving their digital footprint.²¹⁹ While the solution might indeed lie in court action, many scholars warn that conferring constitutional rights to children in

²¹³ See generally James G. Dwyer, *Parental Entitlement and Corporal Punishment*, 73 LAW & CONTEMP. PROBS., Spring 2010, at 189 (exploring parental norms in the context of exercising control over children).

²¹⁴ Jeffrey Shulman, *The Parent as (Mere) Educational Trustee: Whose Education Is It, Anyway?*, 89 NEB. L. REV. 290, 297 (2010).

²¹⁵ *Id.*

²¹⁶ See Sultan & Miller, *supra* note 211.

²¹⁷ See generally Jeffrey Rosen, *The Web Means the End of Forgetting*, N.Y. TIMES MAG. (July 21, 2010), <http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?pagewanted=all> ("In the meantime, as all of us stumble over the challenges of living in a world without forgetting, we need to learn new forms of empathy, new ways of defining ourselves without reference to what others say about us and new ways of forgiving one another for the digital trails that will follow us forever.").

²¹⁸ See Sultan & Miller, *supra* note 211 ("Today's 30-somethings are the first generation whose children are coming of age alongside the social Web.").

²¹⁹ *Id.*

the family context might be self-defeating and that perhaps a more immediate solution lies in tort actions or via a public health model.²²⁰ This Part outlines the limited legal solutions and the more promising public health approach to the present context of sharenting.

A. Available Legal Protections Are Ineffective

At the heart of sharenting is the difficult task of balancing a parent's right to free expression (and parental rights generally) against a child's privacy interest. These concepts are intertwined and can conflict with each other.²²¹ This Article only intends to identify the possible legal protections available to children harmed by parental speech and to briefly outline potential remedies available to children through a right to privacy argument.

Federal privacy laws that apply broadly, and thus protect children, do exist. However, federal privacy laws typically provide exceptions so that information can be disclosed to, or even controlled by, a parent.²²² For example, the Health Insurance Portability and Accountability Act (HIPPA) prohibits medical professionals from sharing personal information about patients of any age without written consent.²²³ For minors, parents provide written consent regarding with whom to share the minor's private health information.²²⁴ The Family Educational Rights and Privacy Act of 1964 (FERPA) requires teachers and administrators to protect the privacy of a student's educational records from everyone but a minor student's parents.²²⁵ Moreover, some laws afford special

²²⁰ See, e.g., Margaret F. Brinig, *Troxel and the Limits of Community*, 32 RUTGERS L.J. 733, 765 (2001); Emily Buss, *Children's Associational Rights?: Why Less Is More*, 11 WM. & MARY BILL RTS. J. 1101, 1102 (2003); Meyer, *supra* note 114, at 1137; Elizabeth S. Scott, *Parental Autonomy and Children's Welfare*, 11 WM. & MARY BILL RTS. J. 1071, 1072 (2003). While outside the scope of this article, this suggests that perhaps only tort rights are needed. Children might already have a remedy to these disclosures through tort law; however, immunities may apply.

²²¹ John A. Humbach, *Privacy and the Right of Free Expression*, 11 FIRST AMEND. L. REV. 16, 26–27 (2012); see also Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 926 (1963).

²²² See sources cited *supra* note 13 and accompanying text.

²²³ See The Health Insurance Portability and Accountability Act of 1996 (HIPPA), Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified as amended in scattered sections of 18 U.S.C., 26 U.S.C., 29 U.S.C., and 42 U.S.C.).

²²⁴ 45 C.F.R. § 164.502(g)(3) (2017).

²²⁵ 20 U.S.C. § 1232g (2012); 34 C.F.R. § 99.30 (2014).

privacy protections for minors.²²⁶ And a handful of laws specifically distinguish privacy protections for children as unique and not applicable to adults.²²⁷

Many privacy laws prohibit third parties from disclosing a child's personal information but also give parents a right to view and disseminate information when acting on the child's behalf.²²⁸ For example, FERPA prohibits disclosure of a child's academic record to anyone except the child's parent or guardian.²²⁹ At first glance, FERPA appears to confer a privacy right on a child, but in actuality, the Act protects the child from public disclosures of educational information in all instances *except* when a parent wants to view or share the same data.²³⁰ FERPA therefore provides that the parent, not the child, owns the privacy interest in the record until the child reaches eighteen years of age, at which time the right is conferred onto the child.²³¹

The Children's Online Privacy Protection Act (COPPA) of 1998 governs the gathering and disclosure of online data pertaining to children under the age of thirteen.²³² Under COPPA, operators of websites targeted at children are prohibited from collecting personal information from a child unless the website first provides written notice of the website operator's practice for disclosing such information.²³³ Additionally, the website operator is required to obtain parental consent for such collections.²³⁴ As such, the Act places the parent in the role of

²²⁶ See, e.g., FLA. STAT. § 985.04 (2016) (“[A]ll information obtained under this chapter in the discharge of official duty by [anybody] in the assessment or treatment of a juvenile is confidential . . .”). Delinquency statutes often protect juvenile records from public disclosure. *E.g., id.*

²²⁷ For example, regardless of consent, child pornography laws prohibit the sharing of indecent materials of children. See 18 U.S.C. §§ 2251–2256 (2012) (enumerating federal child pornography laws); *Child Pornography Law*, HG.ORG, <http://www.hg.org/child-pornography.html> (last visited Sept. 7, 2016). In the adult context, an individual can share such information assuming consent is first obtained. Daniel Weiss, *Is Pornography Illegal?*, BRUSHFIRES (May 8, 2013), <http://www.brushfiresfoundation.org/is-pornography-illegal/>.

²²⁸ See sources cited *supra* note 13 and accompanying text.

²²⁹ 20 U.S.C. § 1232g(b).

²³⁰ See *id.*

²³¹ See *id.* § 1232g(d).

²³² Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 (2012).

²³³ *Id.* § 6502(b)(1)(A).

²³⁴ *Id.* However, consent is not always required:

(2) When consent not required

The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such

guardian and gatekeeper of the child's personal information.²³⁵ Injured parties can bring a suit under the Federal Trade Commission's protection against unfair or deceptive practices.²³⁶

information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection; (D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

Id. § 6502(b)(2).

²³⁵ *Id.*

²³⁶ *Id.* § 6502(c). Specifically, COPPA states,

the State, as *parens patriae*, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—(A) enjoin that practice; (B) enforce compliance with the regulation; (C) obtain damage, restitution, or other compensation on behalf of residents of the State; or (D) obtain such other relief as the court may consider to be appropriate.

Id. § 6504(a)(1). This focus on remedial measures offers an example of the government's recognition that children have unique online privacy needs separate from their parents. Additionally, COPPA allows individual states, through their attorney generals, to bring civil actions against websites appearing to violate this Act. *Id.* § 6504(c).

There are existing laws that protect children from abuse, a term that includes emotional harm.²³⁷ The state could show that the parental expression caused substantial harm to the child's well-being, and the state could intervene to protect children from harm occurring in online forums.²³⁸ A state could seek a remedy through the dependency court²³⁹ or possibly consider obtaining injunctive relief precluding the parent from posting additional harmful content online.²⁴⁰ However, the child would have little control over these suits, as it is the state actor, not the child, who would bring forth this litigation. If the state did move forward in this manner, remedies could potentially require parents to delete offensive material from Internet sites they own, but this would do little to control the information shared on sites not owned or controlled by the parent.²⁴¹ Additionally, these remedies would be ineffective in many cases where the material has been downloaded or shared by third parties and would offer little protection to a child who is already emotionally harmed by viral online disclosure.²⁴² Furthermore, once information is shared, despite its future deletion, companies might retain the previously available data.²⁴³ There is no unringing the bell.

COPPA requires third parties to obtain parental consent before websites targeting children mine their personal information.²⁴⁴ FERPA and HIPPA prohibit third parties from sharing a child's personal data without the consent of the parent until the child is eighteen and then requires the (former) child's

²³⁷ See Sana Loue, *Redefining the Emotional and Psychological Abuse and Maltreatment of Children*, 26 J. LEGAL MED. 311, 322 (2005).

²³⁸ E.g., FLA. STAT. § 39.01 (2016); see Loue, *supra* note 237, at 327.

²³⁹ See, e.g., FLA. STAT. § 39.01(30)(a) (defining "harm" as including emotional injury to the child).

²⁴⁰ For a general discussion on the limitations of tort remedies for online disclosures, see Michael L. Rustad & Thomas H. Koenig, *Rebooting Cybertort Law*, 80 WASH. L. REV. 335, 344 (2005).

²⁴¹ See *id.* at 346.

²⁴² Cf. Dan Reimold, *USA Today: Professor Explores Why Things Go Viral*, U. WASH. INFO. SCH. (Jan. 23, 2014), <https://ischool.uw.edu/news/2014/01/usa-today-professor-explores-why-things-go-viral> (describing briefly the process of information going viral as "when people share something and it blows up crazy big online"). For examples of information going viral online, see articles cited *supra* note 22. In one such instance, a post was shared over 160,000 times. *Mom's Facebook Post on 'Bill' to 13-Year-Old Son Goes Viral*, *supra* note 22.

²⁴³ Lee Jin-man, *Experts: Deleted Online Information Never Actually Goes Away*, DALLAS MORNING NEWS (Aug. 23, 2015, 8:37 PM), <http://www.dallasnews.com/business/headlines/20150823-experts-deleted-online-information-never-actually-goes-away.ece>; Zack Whittaker, *Facebook Does Not Erase User-Deleted Content*, ZDNET (Apr. 28, 2010, 7:50 PM), <http://www.zdnet.com/article/facebook-does-not-erase-user-deleted-content/>.

²⁴⁴ 15 U.S.C. § 6501 (2012).

consent to release the same information.²⁴⁵ These federal laws recognize that children have an interest in maintaining privacy over basic information (e.g., name, address, age, grades, health and behavior records).²⁴⁶ In the context of parental sharing, the third-party actor is the parent, and therefore a conflict exists between the actor and the party authorized to give consent.

Potentially, one could set forth the legal argument that the state, in acting as *parens patriae*, should step in and enjoin parents from posting anything potentially revealing about children. However, a censorship argument of this type would likely fail as an unreasonable restraint against speech under the prior restraints doctrine.²⁴⁷ Instead, challenges to a parent's online disclosure could likely be limited only in the extreme cases that severely injure a child's emotional well-being or those instances that put a child's physical safety at risk.²⁴⁸

Tort law might provide another potential remedy to children.²⁴⁹ A review of the literature provides little guidance to children seeking a civil remedy for when parents violate their children's privacy rights, as the parent-child immunity doctrine has historically received little attention in scholarly literature.²⁵⁰ Some states have abridged the doctrine or have done away with the doctrine entirely.²⁵¹

²⁴⁵ Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (2012); Health Insurance Portability and Accountability Act (HIPPA), Pub. L. No. 104-191, 110 Stat. 1938 (1996) (codified as amended in scattered sections of 18 U.S.C., 26 U.S.C., 29 U.S.C., and 42 U.S.C.).

²⁴⁶ See sources cited *supra* note 13 and accompanying text.

²⁴⁷ See Martin H. Redish, *The Proper Role of the Prior Restraint Doctrine in First Amendment Theory*, 70 VA. L. REV. 53, 54 (1984); see also *Near v. Minnesota*, 283 U.S. 697 (1931).

²⁴⁸ Loue, *supra* note 237, at 322–23 (“It appears from a review of existing case law and newspaper accounts of abuse that relatively few children are removed from their homes and relatively few adults are prosecuted for the emotional abuse of or injury to children. This relative inattention may be a function of various factors including, but not limited to: the relatively large numbers of cases of physical and sexual abuse that demand immediate attention because of the gravity and extent of harm being inflicted; the unwieldy numbers of cases assigned to each individual caseworker; the difficulty inherent in identifying emotional abuse, due to a lack of clarity both within the field and as reflected in the relevant legal standard; and the lack of sufficient adequate placement opportunities for children should they be removed from their families.” (footnotes omitted)).

²⁴⁹ See Gail D. Hollister, *Parent-Child Immunity: A Doctrine in Search of Justification*, 50 FORDHAM L. REV. 489, 489 (1982) (“The parent-child tort immunity rule denies a minor child a cause of action for personal injuries inflicted by his parents.”); Lyrisa Barnett Lidsky, *Prying, Spying, and Lying: Intrusive Newsgathering and What the Law Should Do About It*, 73 TUL. L. REV. 173 (1998), (discussing a number of potential tort actions available to remedy invasions of privacy in the context of newsgathering); Isabel Wingerter, *Parent-Child Tort Immunity*, 50 LA. L. REV. 1131 (1990).

²⁵⁰ Elizabeth G. Porter, *Tort Liability in the Age of the Helicopter Parent*, 64 ALA. L. REV. 533, 537 (2013).

²⁵¹ See Wingerter, *supra* note 249, at 1131. In states that have abridged the immunity, the law often recognizes the following exceptions:

Some scholars are recognizing that perhaps the doctrine is overly protective of parental rights.²⁵² Herein lies perhaps the crux of the argument. Should parents have unfettered discretion to control the upbringing of children, even when such control will eventually dictate children's ability to create their own identity apart from the parent?

When an individual discloses personal information about another person, absent a legal privilege, the other person is not protected under traditional notions of American privacy laws.²⁵³ However, an individual may find recovery if the public disclosure involves information that "would be highly offensive to a reasonable person"²⁵⁴ and is "not of legitimate concern to the public."²⁵⁵

Most importantly, seeking redress through injunctive relief or civil liability leaves open the reality that digital information has the potential to be reshared

1) If the parent's misconduct is willful and wanton, the courts have reasoned that the sanction of such conduct does nothing to foster family unity and simply denies an injured child redress. 2) If the cause of the injury is "beyond the family purpose" the jurisprudence holds that the immunity will not apply. The reasoning is that the doctrine protects only that "conduct which arises from the family relationship and is directly related to family purposes and objectives." This exception encompasses those situations where the parent-child relationship is that of employer-employee. 3) Some states recognize the "public duty exception" to the immunity doctrine. This is applied when the duty the parent breaches is owed to the general public and not just to the child. 4) Death is also held to be an exception to the rule. Because the doctrine is based on the parent-child relationship and the desire to maintain the harmony of that relationship, the doctrine does not apply when a child is suing the estate of a deceased parent or the estate of a deceased child is suing the tortious parent. 5) Some states have abrogated the doctrine if the parents are divorced or separated and the non-custodial parent is the offender. 6) The courts have been forced to make an exception when a defendant third party is a negligent parent in a claim for contribution. 7) The courts in some states have refused to extend the privilege to those standing in the role of the parent (*in loco parentis*). 8) Other states have held that where the parent is protected by liability insurance, the immunity cannot be claimed; the theory is that a claim covered by insurance will not deplete the family resources or disrupt its harmony.

Id. at 1137–38 (footnote omitted).

²⁵² Porter, *supra* note 250, at 539 (indicating that scholars are recognizing that perhaps the doctrine is overly protective of parental discretion and autonomy).

²⁵³ Jaime A. Madell, Note, *The Poster's Plight: Bringing the Public Disclosure Tort Online*, 66 N.Y.U. ANN. SURV. AM. L. 895, 896 (2011); see also HELEN NISSENBAUM, *PRIVACY IN CONTEXT: TECHNOLOGY, POLICY, AND THE INTEGRITY OF SOCIAL LIFE* 141 (2010) (discussing the public-private dichotomy in privacy law that generally treats information shared with third parties as public rather than private information).

²⁵⁴ RESTATEMENT (SECOND) OF TORTS § 652B (AM. L. INST. 1977).

²⁵⁵ RESTATEMENT (SECOND) OF TORTS § 652D (AM. L. INST. 1977). A review of jurisprudence and scholarly literature fails to reveal a case wherein a child (minor or adult) has ever sued a parent for the tort of "Public Disclosure of Private Facts." This is likely because the child-parent immunity doctrine precludes such an action, and a party would have tremendous difficulty proving that the (mis)conduct—specifically, the parent's online disclosure of a child's personal information—is of the willful and wanton nature outlined in the exceptions listed above.

across various websites between the time the parent posts the information and the time the child comes of age and sees the digital trail.²⁵⁶ For while some parents only share on social media (and much of that information will not be reshared by others), some of the information will end up on social media platforms and Internet sites not controlled by the parent.²⁵⁷ In those circumstances, the children will not simply be able to ask their parent to remove the information they wish taken off the Internet.

Next, this section discusses what would happen if the United States adopted the approach of the right to be forgotten and how it may be the best approach to protect children.²⁵⁸ Indeed, as these children view the disclosures, it is likely that many will value the opportunity to keep their private information (information generally protected from third-party disclosure by COPPA, FERPA, and HIPPA²⁵⁹) out of the public domain.

Legal scholars might find that children are without tangible recourse in existing U.S. jurisprudence. However, the European Union's recognition of an individual's right to be forgotten could offer courts and scholars guidance for legal reform.²⁶⁰ In some circumstances, the content of parental disclosures in many ways resembles the data that COPPA, FERPA, and HIPPA protects. Even if a court viewed the data as parental speech, perhaps courts could balance these competing interests by, upon request of a child or adult, requiring search engines such as Google to remove childhood data (initially shared by a parent regarding a minor child) from showing up in an online search of the individual's name.

²⁵⁶ See, e.g., Jin-man, *supra* note 243 (noting the near impossibility of fully deleting private data that has been posted online); Whittaker, *supra* note 243 (proving that information that was posted online and later deleted could still be accessed).

²⁵⁷ See, e.g., *Connecticut Mom's Powerful Facebook Post to Her Son's Bullies Goes Viral*, WTVR (Jan. 14, 2016, 9:37 PM), <http://wvtvr.com/2016/01/14/connecticut-moms-powerful-facebook-post-to-her-sons-bullies-goes-viral/>; see also Tribune Media Wire, *Mom's Tough Love Letter to Her Son Goes Viral*, Q13 FOX (Sept. 23, 2015, 10:15 AM), <http://q13fox.com/2015/09/23/moms-tough-love-letter-to-her-son-goes-viral/>.

²⁵⁸ See generally Sonia Livingstone & Brian O'Neill, *Children's Rights Online: Challenges, Dilemmas and Emerging Directions*, in MINDING MINORS WANDERING THE WEB: REGULATING ONLINE CHILD SAFETY 19, 25 (Simone van der Hof, Bibi van den Berg & Bart Schermer eds., 2014), <http://www.lse.ac.uk/media@lse/WhosWho/AcademicStaff/SoniaLivingstone/pdf/9789462650046-c2.pdf>.

²⁵⁹ See sources cited *supra* note 13 and accompanying text.

²⁶⁰ See Livingstone & O'Neill, *supra* note 258, at 25 ("Whether responsibility to protect children from such online harms lies with industry, parents, child welfare or law enforcement agencies remains hotly contested. The concept of a 'right to be forgotten', as proposed in the new *Regulation for a European Data Protection Framework*, promises to tackle some of the risks to young people's reputation from online preservation of information and give them the right to have their personal data removed.").

Removal of data is precisely what the European Union required in its leading right to be forgotten case.²⁶¹ Indeed, this requirement may prove to be the most promising legal solution available to remedy the harm caused by a parent's online disclosure of a child's personal information.²⁶² The right to be forgotten, if available in light of the Supreme Court's decision in *Near v. Minnesota*, could provide the child with the type of "clean slate" envisioned by Eric Schmidt.²⁶³

The right to be forgotten recognizes that as time passes, the value of the disclosure is minimized and must make way for the competing privacy interests of the child.²⁶⁴ When a parent shares information about a child online, the expressive purpose of the disclosure diminishes as the child ages. The right to be forgotten allows parents the freedom to talk about their children on social media and blogs. It also does not infringe on parental right to freely express his or her views on parenting, and it allows parents to control the dissemination of information about the child as a member of the family unit. Furthermore, it supports a parent's right to free expression.

Under current U.S. privacy laws, individuals are not required to provide blanket consent when authorizing agencies to share personal information.²⁶⁵ Instead, the laws recognize that an individuals might want to allow the release of their information for only a limited period to a limited audience.²⁶⁶ By utilizing policies such as the right to be forgotten, courts could recognize that children have an evolving ability to provide consent. Under this theory, courts could hold that young children vicariously consent to parental disclosures, but as children age, they should gain more control over their personal information. Indeed, the expressive nature of the parental disclosures become data (instead of speech) as the child reaches the age of majority. The proposed definition is consistent with the European Union's definition of online content,²⁶⁷ and it

²⁶¹ Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos*, 2014 EUR-Lex 62012CJ0131 (May 13, 2014), [http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=](http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=TXT&ancre=)

²⁶² See Livingstone & O'Neill, *supra* note 258, at 25.

²⁶³ Wardrop, *supra* note 109. However, take-down orders could be considered prior restraints, subject to *Near v. Minnesota*, 283 U.S. 697 (1931).

²⁶⁴ Shmueli & Blecher-Prigat, *supra* note 18, at 770 ("[A]utonomy rights should be granted to children in stages according to their evolving capacities. In this way, children will not be 'abandoned' to their rights.").

²⁶⁵ See, e.g., sources cited *supra* note 13 and accompanying text.

²⁶⁶ See sources cited *supra* note 13.

²⁶⁷ See Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos*, 2014 EUR-Lex 62012CJ0131, ¶¶ 25–26 (May 13, 2014), [http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=](http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=TXT&ancre=)TEXT&ancre=; EUROPEAN COMM'N, FACTSHEET ON THE "RIGHT TO BE FORGOTTEN" RULING (C-131/12), http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf.

recognizes the importance of individual autonomy. It also allows individuals to control “which information about themselves . . . [remains] disclosed, to whom and for what purpose.”²⁶⁸ This balanced-rights approach offers solutions to the conflicts that arise between children and their parents in the online world.²⁶⁹

B. Best Practices Informed by Public Health and Child Development Literature

This Article recognizes that while the law can address parental (over)sharenting at the margins, reform can also take place in a manner similar to the public health model. A public health model would proceed through health professionals disseminating best practices to parents to improve the health of their children. Below are guidelines of what these best practices may look like.

It is likely that online sharing is here to stay, and unless the next generation of young adults enter adulthood outraged en masse by their parents' choice to share personal information, it is likely that children in the future will have no protection against their parents' decision to post their personal information online. Unless public attitudes change, the few children who do take issue with their pre-formed digital footprint will likely have no recourse as a matter of law or in the court of public opinion.

Sharenting clearly has many benefits. Sharing common parenting experiences brings communities together and helps connect similarly situated individuals around the globe.²⁷⁰ Parents certainly do have an interest and right to freely express their life story, and children are often central in that story's cast of characters. However, with each parental disclosure, a bit of the child's life story is no longer left for the child to tell under her own terms. Equally important to the right of the child to one day narrate her own story, is the child's right to choose never to share the information at all.

Given the difficulties and complexities of legal solutions and their practical limitations, a proactive public health solution may be the better way forward.

²⁶⁸ Cécile de Terwangne, *Internet Privacy and the Right to Be Forgotten/Right to Oblivion*, 13 IDP 109, 110, 114 (2012), www.raco.cat/index.php/IDP/article/download/251842/337492 (“[P]ersonal data may be kept as such if it is justified to achieve the purpose of processing. It should be either anonymised or deleted once the purpose has been achieved or as soon as it is no longer necessary to keep the link with identifiable persons to achieve that purpose.”).

²⁶⁹ Shmueli & Blecher-Prigat, *supra* note 18, at 790.

²⁷⁰ Nina Criscuolo, *‘Sharenting’ Offers Benefits for Parents, Safety Concerns for Children*, WISHTV (May 11, 2015, 1:53 PM), <http://wishtv.com/2015/05/06/sharenting-offers-benefits-for-parents-safety-concerns-for-children/>.

While the law might never offer children complete protection from their parents' choice to disclose personal information online, society is beginning to recognize that there are inherent safety and moral risks involved in many of today's common parental sharing practices. In response to these risks, the following best practices should become mainstays in societal discourse.

In a manner similar to the public health models discussed above, these practices could be shared with parents, educators, pediatricians, policy makers, and the media.²⁷¹ These best practices draw upon the wisdom of child psychologists and medical professionals, as well as research from top child safety advisors, those working in the field of child abductions and sexual abuse, and social media and Internet experts.²⁷²

This Article offers the first coherent package of best practices through a legal lens. The proposed model reflects the importance of a parent's right to free expression but also encourages parents to consider sharing only after weighing the potential harm of the information. Indeed, these best practices should not be seen as rules but as suggestions for parents inclined to use the Internet in a way that will foster healthy child development.²⁷³ Parents should consider the objects of their disclosure, their children, as autonomous persons entitled to protection not only from physical harm (such as the harm posed by pedophiles and identity thieves), but also from more intangible harms such as those that may come from inviting the world into their children's lives without first obtaining informed consent.

²⁷¹ See generally Gwenn Schurgin O'Keeffe & Kathleen Clarke-Pearson, *Clinical Report—The Impact of Social Media on Children, Adolescents, and Families*, 127 PEDIATRICS 800 (2011), <http://pediatrics.aappublications.org/content/127/4/800> (noting that in similar contexts, pediatricians are in a unique position to help parents and children safely navigate the Internet).

²⁷² See generally *id.* (drawing upon medical professionals); Yalda T. Uhls & Patricia M. Greenfield, *The Value of Fame: Preadolescent Perceptions of Popular Media and Their Relationship to Future Aspirations*, 48 DEV. PSYCHOL. 315 (2012), <http://www.ncbi.nlm.nih.gov/pubmed/2218229> (noting the power to draw upon media to influence attitudes and aspirations); *A Parent's Guide to Internet Safety*, FBI, <https://www.fbi.gov/stats-services/publications/parent-guide> (last visited Jan. 22, 2017) (drawing upon FBI officials who deal with child abductions and sexual abuse); Battersby, *supra* note 43; Criscuolo, *supra* note 270; Meakin, *supra* note 9 (drawing upon advice from a cyber-security expert); *Social and Emotional Development*, PBS, <http://www.pbs.org/wholechild/abc/social.html> (last visited Jan. 22, 2017).

²⁷³ See generally John Stewart, *Ethics and Social Media: Responses to Panetta, Schlimm, and Supple Bartels*, 1 CHARACTER AND . . . SOC. MEDIA 71, 72–73 (2015) (“Panetta does not try to lay out a list of rules for ethical use of social media, because he knows there are too many variables and differences to enable any one set of standards to apply universally. Instead, he makes a case for ‘a basic orientation, a way of asking questions in any given context that can help up [sic] make good choices about our use of social media—or, at least, avoid disastrous ones.’ Why do we need this basic ethical orientation? Because although we might think that our puny contributions to social media sites are only fly-swatters, the widespread impact of these media means that ‘each of us has been given a sledge hammer.’”).

1. *Parents Should Familiarize Themselves with the Privacy Policies of the Sites with Which They Share*

Many social sharing sites offer users the ability to select the specific audience for each photo or post shared.²⁷⁴ Additionally, some social sharing sites give users the option of setting passwords and having their online content hidden from Google's search algorithm.²⁷⁵ Parents should always be cognizant of the inherent risks of website security breaches and the potential for a particular site to change or violate its policy without consent of the user. Understanding these policies is an important first step for families who wish to share with friends and family while limiting the future audience of their posts.

2. *Parents Should Set Up Notifications to Alert Them When Their Child's Name Appears in a Google Search Result*

Despite the risks, many parents will choose to blog about their children publicly. As discussed above,²⁷⁶ parents choose to share publicly for a number of reasons, and it is unlikely that these practices will end without a significant shift in the public's attitude and response to these disclosures. Once parents decide to share information online, they are unable to limit the reach and lifespan of the information.²⁷⁷ However, in many cases, parents can set up alerts to track where the information appears and monitor responses and third-party changes to their disclosures.²⁷⁸ Parents can evaluate the website and determine if the shared content is appropriate.

3. *Parents Should Consider Sometimes Sharing Anonymously*

Some organizations host websites providing advice and support networks to parents.²⁷⁹ These well-intentioned sites often invite parents to share their stories

²⁷⁴ See Jimit Bagadiya, *The Ultimate Guide on How to Manage Social Media Privacy Settings*, SOC. PILOT, <https://socialpilot.co/blog/ultimate-guide-manage-social-media-privacy-settings/> (last visited Jan. 22, 2017) (providing instructions for how to manage privacy settings on Facebook, Twitter, Pinterest, LinkedIn, and Instagram to restrict viewership to intended audiences).

²⁷⁵ See *id.*

²⁷⁶ See *supra* Part I.

²⁷⁷ See *supra* notes 45–46 and accompanying text.

²⁷⁸ See Meakin, *supra* note 9 (providing instructions for setting up a Google Alert); see also Andbabymakes4, *supra* note 39.

²⁷⁹ See, e.g., *About ERIC*, ERIC, <https://ericuk.wordpress.com/about/> [<https://webcache.googleusercontent.com/search?q=cache:i87isfmFvDgJ:https://ericuk.wordpress.com/about/+&cd=1&hl=en&ct=clnk&gl=us>] (last visited Dec. 28, 2016) (offering “practical information and emotional support to children, teenagers and parents on bedwetting, daytime wetting, constipation and soiling and potty training”).

in the hopes of helping other parents similarly situated.²⁸⁰ As in the example of the mother raising the mentally ill child,²⁸¹ these parents are often well-intentioned when sharing their child's struggle, yet their online disclosures require them to tell their stories in a manner that necessarily revolves around the child's struggle.²⁸² However, parents can share and connect without disclosing their names or names of their children.²⁸³

4. *Parents Should Use Caution Before Sharing Their Child's Actual Location*

Parents should be mindful that their intended audience, whether public or limited in some manner, might not always act with good intention. While child abductions and stalking originating online are rare occurrences,²⁸⁴ the risk is heightened when personal information is shared and potential offenders not only have detailed information about a child's life, but also know the child's actual physical location and the family's routine.²⁸⁵ Parents should not only limit descriptively sharing the child's location in their posts, but should also shut off their phones' GPS before sharing digital information on social media and blog sites, thus avoiding the inadvertent disclosures of such data online.²⁸⁶

²⁸⁰ See, e.g., *id.*

²⁸¹ Long, *supra* note 73.

²⁸² *Id.*

²⁸³ See, e.g., *Bedwetting*, ERIC, <http://www.eric.org.uk/Pages/Category/bedwetting> (last visited Jan. 22, 2017). One organization, ERIC, "is the only charity dedicated to the bowel and bladder health of all children and teenagers in the UK." ERIC, <http://www.eric.org.uk> (last visited Mar. 14, 2017).

²⁸⁴ *Teen Internet Statistics*, ONLINE SAFETY SITE, <http://www.onlinesafetysite.com/PI/Teenstats.htm> (last visited Jan. 22, 2017) (reporting results of a study that demonstrated the relative rarity of child abductions and stalking).

²⁸⁵ See SOCIAL MEDIA GUIDE, DEP'T OF HOMELAND SECURITY, https://www.dhs.gov/sites/default/files/publications/Social%20Media%20Guide_3.pdf (last visited Jan. 22, 2017) ("Don't broadcast your location. Location or geo-tagging features on social networks is not the safest feature to activate. You could be telling a stalker exactly where to find you or telling a thief that you are not home."); *A Parent's Guide to Internet Safety*, *supra* note 272; *Social Networking Safety*, NAT'L CRIME PREVENTION COUNCIL (2017), <http://www.ncpc.org/topics/internet-safety/social-networking-safety> ("While it can be fun to share your location with friends and family, it can also increase your vulnerability, potentially opening you up to being robbed, sexually assaulted, or worse. Predators can use this tool to track your movements and determine when you are alone or when you are not at home.").

²⁸⁶ See *Is It Safe to Post Pictures of My Kid Online?*, COMMON SENSE MEDIA, <https://www.commonsensemedia.org/privacy-and-internet-safety/is-it-safe-to-post-pictures-of-my-kid-online> (last visited Dec. 1, 2015).

5. *Parents Should Give Their Child “Veto Power” over Online Disclosures, Including Images, Quotes, Accomplishments, and Challenges*²⁸⁷

By age four, children have an awareness of their sense of self.²⁸⁸ At this young age, they are able to build friendships, have the ability to reason, and begin to compare themselves with others.²⁸⁹ Parents who post regularly can talk about the Internet with their children and should ask young children if they want friends and family to know about the subject matter being shared. As is the case in many aspects of children's rights, the weight given to the child's choice should vary with respect to the age of the child and the information being disclosed.²⁹⁰ But parents should be mindful that even young children benefit from being heard and understood.²⁹¹

6. *Parents Should Consider Not Sharing Pictures That Show Their Children in Any State of Undress*

Including newborn and bath photos, parents should consider limiting the audience of naked photos and even photos of their child wearing a bathing suit or similarly scant attire. While most view these images as “cute” and innocent, these images are easy targets for pedophiles²⁹² and perhaps those wishing to profit from others seeking images of children. In fact, Australia's eSafety Commissioner reports that almost half of all images found on the pedophile image sharing site he reviewed were originally posted with a parent's innocent intent on social media and family blogs.²⁹³ Cyber-safety expert Susan McClean states, “[i]f you live your life vicariously through your kids online and you use photo-sharing sites and hashtags, you have to got to [sic] understand that that photo is worth something to someone else and it may not be for a purpose you like.”²⁹⁴

²⁸⁷ Fottrell, *supra* note 94.

²⁸⁸ *Social and Emotional Development*, *supra* note 272.

²⁸⁹ *Id.*

²⁹⁰ *See id.* (showing that the social and emotional development of children varies with respect to age).

²⁹¹ *See id.* (discussing the early stages of child development with respect to social interactions).

²⁹² *See* Battersby, *supra* note 43.

²⁹³ *Id.* The article found that many of the images were not of children in a state of undress, but that some were found in folders labeled as “kids at beach,” “nice boys play in river,” and “gymnasts.” *Id.*

²⁹⁴ *Id.*

7. *Parents Should Consider the Effect Sharing Can Have on Their Child's Current and Future Sense of Self and Well-Being*

First, parents must consider that one day their children will likely come face-to-face with their parents' past online disclosures. Even when parents limit the audience of posts, the full reach of the Internet is far greater than many users consider.²⁹⁵ Deleted posts might have been saved before deletion.²⁹⁶ Moreover, "friends" today can later intentionally or inadvertently share information with the child or third parties even when the information was originally intended for a small audience.²⁹⁷

Second, parents must consider the overall effect sharing has on a child's psychological development. Children model the behavior of their parents, and when parents constantly share milestones, monitor their social media accounts for likes and followers, and seek out recognition for what was once considered mundane daily life, children take note. One study found that by "[e]nacting the value of fame, the majority of preadolescent participants use online video sharing sites (e.g., YouTube) to seek an audience beyond their immediate community."²⁹⁸ Children absorb messages from many sources, including the media and their parents, and are likely to mimic observed behaviors in adolescence and adulthood.²⁹⁹ When children see their parents sharing personal information in the public sphere, they will likely get the message that a public approach to sharing personal details about their lives is expected and appropriate. Oversharing in adolescence can create issues for the child's reputation on into the future.

Parents have wide latitude to direct and narrate their child's story with almost unfettered control. Sharenting includes a moral obligation to act with appropriate discretion and with full regard for the child's safety and well-being. It is likely that parents will continue to carve out their children's digital footprints long before they take their first step. Parents, acting in the best interests of their

²⁹⁵ See *supra* note 22 and accompanying text.

²⁹⁶ See *supra* note 148 and accompanying text.

²⁹⁷ See generally Lauren Estacio, Protecting the User: The Necessity of Governing the Privacy Settings of Social Media Websites 10 (May 1, 2013) (unpublished comment), http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1156&context=student_scholarship.

²⁹⁸ Uhls & Greenfield, *supra* note 272 at 315.

²⁹⁹ See *id.*

children, can act as shepherds of their children's online privacy until the children assume ownership over their digital identities.

CONCLUSION

Becky, Johnny, and Emily—the children mentioned in this Article's Introduction—will likely one day learn about their parents' online disclosures. At that time, they will each form an opinion as to the digital footprint created about them during their childhood. Unlike disclosures made by third parties, the individuals responsible for sharing the children's information are the same people tasked with protecting the children's privacy: the parents. These children might have legal arguments that could offer them privacy protections from their parents' online disclosures, but it is also possible that a public health model will offer them even better protections while respecting family autonomy. Similar to the online decisions children will one day make on their own accord, the digital information has the potential to follow them throughout life. This Article encourages scholars, policy makers, and parents to reconsider the ways society views childhood and privacy in the digital age. By exploring sharenting, this Article provides the framework to do so in the children's rights, privacy, and public health contexts and ripens sharenting as an under-investigated issue ready for further discussion.

Untangling the parents' right to share about their children and children's right to enter adulthood free to create their own digital footprints is a challenging task. This task requires “[a] [c]hild-[c]entered [p]erspective on [p]arent's [r]ights.”³⁰⁰ Currently, no policy offers these children a way to address the conflict created when their parents decide to disclose personal information about them to the watchful eyes of the parents' newsfeeds. Additionally, the first children of social media are just now entering adulthood, college, and the job market. The time is now to take a hard look at sharenting. By approaching a child's right to online privacy in a child-centered manner, future generations will be able to enter adulthood unburdened by others' decisions and free to define themselves on their own terms.

³⁰⁰ Woodhouse, *supra* note 171.

AUTHOR NOTE:

A confession to those reading this: the author's interest in sharenting and desire to look deeper into the practice found its genesis in self-reflection. In addition to being a legal scholar and advocate for children, the author is a professional photographer and user of social media. In no small part, her personal experiences in sharing pictures of her children and, with the permission of their parents, sharing photographs of other children, led to a desire to reflect on the impacts of such behavior. To that end, the author set off to explore whether there exists a better way to share our stories as parents while at the same time protect our children's privacy interests. Therefore, the author hopes that what is contained in this Article is not taken as preachy or damning of other parents who, as stated herein, almost always have nothing but their children's best interests at heart.