



Strathmore University
Law School

**The Intersection of Digital Work and Minors' Rights in Kenya: Ensuring Fair
Compensation**

**Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School**

**By
Kristine Sally
135573**

**Prepared under the supervision of
Dr. Anne Kotonya
Claude Mwangi Kamau**

March 2024

Word Count 14,498 (excluding footnotes and bibliography)

TABLE OF CONTENTS

Acknowledgments	v
Declaration	vi
Abstract	vii
LIST OF ABBREVIATIONS	viii
LIST OF CASES	ix
LIST OF LEGAL INSTRUMENTS	x
CHAPTER ONE: INTRODUCTION	1
1.1. Background	1
1.2. Problem Statement	6
1.3. Research Objectives	6
1.4. Research Questions	6
1.5. Hypothesis.....	6
1.6. Justification	7
1.7. Theoretical Framework: Marxist Labor Theory of Justice	8
1.8. Literature Review	9
1.8.1. Why Children Work	9
1.8.2. Children Rights - Right to Fair Remuneration	11
1.8.3. On the Existence of Children in the Digital Market.....	13
1.9. Methodology	15
1.10. Chapter Breakdown.....	15
CHAPTER TWO: CONTEMPORARY PRACTICES IN CONTRACTUAL ARRANGEMENTS BETWEEN DIGITAL COMPANIES AND CHILD WORKERS IN KENYA	17
2.1. Introduction	17
2.2. Procedures for Employing Minors in Kenya	17

2.3. Contractual Requirements Regarding Minors in Kenya	19
2.4. Conclusion:.....	22
CHAPTER THREE: CURRENT LEGAL FRAMEWORK OF DIGITAL CHILD WORK IN KENYA.....	23
3.1. Introduction	23
3.2. National Framework Addressing Child Labour	23
3.2.1 Constitution of Kenya.....	23
3.2.2. Employment Act.....	25
3.2.3. The Children Act and The Children (Employment) Regulations 2020.....	26
3.3. International Legislation Addressing Child Labour.....	28
3.3.1. International Labour Organization Conventions	28
3.3.2. United Nations Convention on the Rights of the Child.....	29
3.3.3. The African Charter on the Rights and Welfare of the Child.....	29
3.4. United Nations Contemporary Approach on the Rights of Child Workers in the Digital Sphere.....	31
3.5. Conclusion:.....	33
CHAPTER FOUR: ANALYSING CHILD WORKER PROTECTION STRATEGIES: A COMPARATIVE STUDY IN THE UNITED STATES.....	34
4.1. Introduction	34
4.2. Comparative Analysis: Parallels between Child Work in the United States and Child Work in Kenya	34
4.3. The Pre-1939 California Family Code	35
4.3. The Coogan Law	36
4.4. Comparison between Child Performers and Digital Child Workers: Integrating the Coogan Law to Include Digital Child Workers.....	38
4.5. Conclusion:.....	40

CHAPTER FIVE: RESHAPING THE DIGITAL CHILD LABOUR FRAMEWORK IN KENYA	41
5.1. Introduction	41
5.2. Distinguishing Child Labour and Child Work	41
5.3. Best Interests of a Child	43
5.4. Conclusion:.....	44
CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS	45
6.1. Introduction	45
6.2. Findings Overview	45
6.3. Recommendations	47
6.3.1. Reformulating the definition of Child Labour and Child Work	47
6.3.2. Having an Enforceable Policy for Child Work	47
6.3.3. Issuing Licences to Child Workers	47
6.3.4. Protecting Children’s Earnings.....	47
6.3.5. Supervision of Children in the Digital Market	48
6.4. Conclusion	48
BIBLIOGRAPHY	49

Acknowledgments

I am deeply grateful to all those who have supported me throughout the journey of completing this dissertation. Firstly, I extend my sincere gratitude to my supervisor, Dr. Anne Kotonya for their invaluable guidance and support throughout this endeavour. Her expertise and encouragement has significantly contributed to the completion of this project.

I will forever be indebted to my friends, particularly Ivy Knight, Kauthar Abdirahman, Vivian Gikonyo, Nicole Masha and Brenda Ouma who provided me with assistance throughout this research. Your encouragement has lifted me during moments of doubt and your belief in me has fuelled my determination. I am profoundly grateful for your friendship, which has enriched not only my academic pursuits but also my life as a whole. With heartfelt appreciation, thank you for being the truest companions on this scholarly adventure. Your diverse perspectives and constructive criticisms have greatly enriched the quality of this work.

To my beloved family, my pillars of strength. Your love, and unwavering support have been the bedrock of my academic journey. Your sacrifices, understanding, and patience have sustained me through the challenges and triumphs of this dissertation. I am deeply grateful for your constant belief in me and for inspiring me to reach for the stars. This achievement is as much yours as it is mine. With heartfelt gratitude, thank you for being the foundation of my success.

Lastly, I would like to appreciate myself, for the dedication, perseverance, and hard work invested in this research endeavour. Even when everything seemed hopeless, I kept going without giving up. This journey really pushed me to the limits and is a testament to my resilience and commitment to academic excellence.

Declaration

I, **KRISTINE SALLY**, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.



04/15/2024

Signed:

(Kristine Sally)

This dissertation has been submitted for examination with my approval as University Supervisor.



Signed:

(Claude Mwangi Kamau)

Abstract

The occurrence of digital labour in the contemporary modern technology has ushered in a new discourse surrounding children's rights, particularly their entitlement to equitable compensation. Employing a qualitative approach, the study investigates the prevalence and nature of digital child labour, the factors driving its incidence, and the extent to which children should be compensated for their digital work. Drawing a qualitative analysis of digital platforms, the research will attempt to unravel the complexities surrounding children's participation in the digital economy. Key findings suggest that digital child labour is pervasive across various digital platforms, encompassing activities such as content creation, online storytelling, social media marketing, and online gaming. Despite children's meaningful contributions to the digital economy, there is a notable lack of fair compensation and recognition for their labour. Furthermore, children frequently encounter exploitation, substandard working conditions, and infringements upon their rights in digital labour environments. This study underscores the importance of upholding the rights of children to fair compensation in the digital realm and calls for the implementation of comprehensive legal frameworks and policies to protect children from exploitation and ensure their fair treatment. Recommendations put forth include the implementation of regulatory mechanisms to oversee digital labour practices, fostering awareness about children's rights among other suggestions. This research will attempt to shed light on the urgent need to address digital child labour and advocates for the safeguarding of children's rights to fair compensation and dignified working conditions in the digital age.

LIST OF ABBREVIATIONS

1. ESports Electronic Sports
2. UNCRC United Nations Convention on the Rights of the Child
3. CRC Convention of the Rights of a Child
4. CRIA Children’s Rights Impact Assessment
5. ILO International Labour Organisation
6. US The United States of America
7. ACRWC African Charter on the Rights and Welfare of the Child
8. UDHR Universal Declaration of Human Rights
9. UNICEF United Nations International Children's Emergency Fund
10. UFAA Unclaimed Financial Assets Authority

LIST OF CASES

1. The Coogan Case (1939), The Supreme Court of California.
2. Slight Communications v Davidson (1989), The Supreme Court of Canada.
3. Warner Bros. Pictures v. Brodel (1948), District Court of Appeal, Second District, Division 2, California.
4. Loew Inc. v. Elmes (1948), Supreme Court of California.
5. Wharton v Mackenzie (1844) England and Wales Court of the Queen's Bench.
6. Roberts v Gray (1913) the United Kingdom King's Bench Division.
7. Nash v Inman (1908) the United Kingdom King's Bench Division.
8. De Francesco v Barnum (1890) the United Kingdom Chancery Division.

LIST OF LEGAL INSTRUMENTS

Kenya- Domestic Statutes

1. Constitution of Kenya.
2. Children's Act (Act No. 29 of 2022).
3. Employment Act (Act No 11. of 2007).
4. Finance Act (Act No. 4 of 2023).
5. Law of Contract Act (Act No 43 of 1960).

International Statutes

1. United Nations Conventions on the Rights of the Child.
2. African Charter on the Rights and Welfare of the Child.
3. Minimum Age Convention (No. 138 of 1973).
4. Minimum Age (Non-Industrial Employment) Recommendation (No. 41 of 1932).
5. International Covenant on Economic, Social and Cultural Rights.
6. Universal Declaration of Human Rights.

United States of America

1. California Family Code

CHAPTER ONE: INTRODUCTION

1.1. Background

The gig economy is an economic system in which many short periods of work are available rather than permanent jobs.¹ On-demand employment, also known as the Gig Economy, is growing at a rapid rate along with the supply of gig-workers who provide their labour on a short-term basis via digital platform technologies.² The gig economy within the digital market has given rise to digital labour. The emergence of web-based digital labour platforms has been among the major transformations in the world of work over the past decade.³ This form of work in itself has proven to be beneficial because it can remove tedious tasks so that workers have scope to apply their own ideas in more creative tasks.⁴ Gig workers operating in the digital market are characterised as independent contractors because of their autonomy in managing their work, as opposed to traditional employees. Categorising gig workers as independent contractors has sparked debate in the field of labour law over the years. Worker classification is important for digital labour platforms' business models because 'employment' and 'independent contracting' statuses entail widely differing legal and financial obligations.⁵

Gig work has not only sparked debates over the existing legal and financial obligations of workers but has also reshaped the rights and behaviours of its users. Digital platforms channel anything and everything sitting idle into the market and monetizes it.⁶ As stated, digital platforms has brought up jobs which require authenticity and creativity as opposed to traditional work, which majorly required an individual to have specific high skills. Owing to the leniency of digital labour, there has been a multitude of individuals who have embraced gig work in the digital market to nurture their hobbies and talents, including children. Increasingly, more children spend more time

¹ Oxford Learners Dictionary 6th ed.

² Lobel O, 'The Gig Economy & the Future of Employment and Labour Law,' 51 University of San Francisco Law Review, 2017, 52.

³ Trajano JC, 'A Rights-Based Approach to Governing Online Freelance Labour: Towards Decent Work in Digital Labour Platforms,' S. Rajaratnam School of International Studies Research Paper Number 21(1), 2021, 2 <https://www.rsis.edu.sg/wp-content/uploads/2021/08/IN2101-NTS-Insight.pdf> on 5 January 2024.

⁴ Daugherty P, Wilson HJ, 'Human + Machine: Reimagining Work in the Age of AI,' Harvard Business Review Press, Boston Massachusetts 2018, 26.

⁵ Kocher E, 'Reshaping the Legal Categories of Work Digital Labor Platforms at the Borders of Labor Law,' 1 Weizenbaum Journal of the Digital Society, 1, 2021, 3.

⁶ Lobel O, 'The Gig Economy & the Future of Employment and Labour Law,' 52.

in these highly commercialised digital spaces.⁷ Children use technology for almost everything, especially to express themselves, collaborate, showcase themselves, share their creations, meet people, be entertained, study, and keep up with everything related to their interests.⁸ On account of the modernisation of technology, new job opportunities has arisen, which would not require an individual to reach a certain age, and most of this jobs are in either the media and entertainment industry, or the sports industry. Media industries have always imagined children as audiences in specific ways, but digital companies are beginning to augment this by designing spaces for child and infant engagement.⁹ Digital platforms have opened access for the users to receive income through avenues such as writing, digital influencing or sports, just to name a few. Brands have begun to depend on media and entertainment applications to advertise their products.

Due to the widespread popularity, social media platforms for instance are used by brands to market their products to the users through digital influencers. Digital influencers have become an important intermediary between brand advertisers and consumer-followers.¹⁰ They do so by providing reviews and endorsements of products online, usually communicated through social media platforms (Facebook, Instagram, Twitter, YouTube, etc) where they have built a solid following.¹¹ The influencers create and publish the content themselves and the information is normally presented as a personal endorsement rather than a direct and clearly identifiable promotion for a product.¹² Advertisers have turned to influencers to market their products to younger audiences.¹³ Recruiting child influencers is a profitable instrument for companies given

⁷ van der Hof S, Lievens E, Milkaite I, Verdoodt V, Hannema T, Liefwaard T, 'The Child's Right to Protection Against Economic Exploitation in the Digital World,' 28 *The International Journal of Children's Rights*, 2020, 851.

⁸ Tur-Viñes V, Núñez-Gómez P, González-Río MJ, 'Kid influencers on YouTube,' 73 *Revista Latina de Comunicación Social*, 1213 https://rua.ua.es/dspace/bitstream/10045/78787/1/2018_Tur_et_al_RLCS_esp.pdf on 5 January 2024.

⁹ Burroughs B, 'YouTube Kids: The App Economy and Mobile Parenting,' *Social Media + Society*, 2017, 2.

¹⁰ Verdoodt V, Feci N, 'Digital Influencers and Vlogging Advertising: Calling for Awareness, Guidance and Enforcement,' *Social Science Research Network*, 2020, 11.

¹¹ Riefa C, Clausen L, 'Towards Fairness in Digital influencers,' 8 *Journal of European Consumer and Market Law*, 2019, 1.

¹² European Commission, 'Behavioural Study on Advertising and Marketing Practices in Online Social Media,' Final Draft, 2018 https://commission.europa.eu/publications/behavioural-study-advertising-and-marketing-practices-social-media_en#:~:text=1%20October%202018-,Description.for%20any%20problematic%20practices%20identified on 5 January 2024.

¹³ Campbell AJ, 'Rethinking Children's Advertising Policies for the Digital Age,' 29(1) *Loyola Consumer Law Review*, 2016, 5.

that these children can gain the trust and interest of other children because they are able to identify with or want to feel connected to the influencer.¹⁴

The surge in popularity of story-telling platforms such as Wattpad serves as another instance highlighting the emergence of a new generation of influential and innovative writers in the publishing realm. Housing a community of 97 million users who collectively invest over 26 billion minutes each month in the consumption of original stories, this storytelling platform has effectively democratised the art form for a new generation of diverse Gen Z writers and their respective enthusiasts whose minimum age requirement to write and read stories in the platform is thirteen years old. Since its inception, the company has established programs such as Wattpad Originals and the Wattpad Creators Program, along with forging brand partnerships, serving as sources of income for writers.

ESports has become increasingly popular amongst the younger audiences and consequently has turned into a lucrative business.¹⁵ Esports is as an area of sport activities in which people develop and train mental or physical abilities in the use of information and communication technologies.¹⁶ The primary aspects of the sport are facilitated by electronic systems; the input of players and teams as well as the output of the esports system are mediated by human-computer interfaces.¹⁷ It is often coordinated by different leagues, ladders and tournaments, where players customarily belong to teams or other 'sporting' organisations who are sponsored by various business organisations."¹⁸ The global acknowledgment of esports as a legitimate sporting endeavour has expanded over the recent times. Participants are not confined by considerations of physical prowess. This allows talented children as young as thirteen years to engage into the sport. The winners of these tournaments are gifted with a prize, to which mostly is monetary. The training

¹⁴ van der Hof S *et al*, *The Child's Right to Protection Against Economic Exploitation in the Digital World* 846.

¹⁵ van der Hof S *et al*, *The Child's Right to Protection Against Economic Exploitation in the Digital World* 847.

¹⁶ Wagner M, 'On the Scientific Relevance of eSports' Proceedings of the International Conference on Internet Computing & Conference on Computer Games Development Organised by the Las Vegas, Nevada, USA, June 26 2006, 3.

¹⁷ Juho H, Sjoblom M, 'What Is eSports and Why Do People Watch It?' Social Science Research Network, 2020, 2 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686182 on 6 January 2024.

¹⁸ Juho H *et al*, *What Is eSports and Why Do People Watch It?* 2 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686182 on 6 January 2024.

and commitment that this sport requires however, is beginning to shift the sport from being a means of personal enjoyment to a monetised form of play.

The use of digital devices and services provides children with many opportunities to effectively realise a number of rights, such as the right to freedom of expression, the right to association and the right to engage in play.¹⁹ However, these opportunities have been progressively commercialised. The commercial aspects of the playful and social activities that children engage in when they access the digital environment are largely and often deliberately concealed from them (and often also from their parents).²⁰ It is fair to claim, child influencer work – depending on the age of the child – is often arranged and encouraged by parents.²¹ Some children have even become an important source of income for their families by becoming (social media) influencers, or professional eSports players.²²

As mentioned previously, given the prevalent characterization of gig work in the digital market as an independent contractual arrangement, companies would typically establish a contractual relationship with the parents or guardians of the child, as they possess the legal capacity to enter into contracts. This would therefore mean when it comes to terms of payment, the parent would receive all the earnings paid by the digital companies.

Work that characterises the new digital era is highly casualized.²³ Especially when it comes to children who have creatively taken advantage of the digital platforms to earn an income in the market. As such, there is a need to ensure that their work is valued, fairly compensated and privy to basic protections.²⁴ Child work in the digital world, such as children working as vloggers and influencers, or children engaging in eSports, may not always fit within the legal frameworks that

¹⁹ Lievens E, 'The Rights of the Child in the Digital Environment,' 5 Rights Foundation, 2020, <https://freedomreport.5rightsfoundation.com/the-rights-of-the-child-in-the-digital-environment-from-empowerment-to-de-responsibilisation> on 6 January 2024.

²⁰ van der Hof S *et al*, *The Child's Right to Protection Against Economic Exploitation in the Digital World*, 835.

²¹ van der Hof S, Verdoodt V, Leiser M, 'Child Labour and Online Protection in a World of Influencers,' Social Science Research Network, 2019, 6 <https://ssrn.com/abstract=3458379> on 6 January 2024.

²² Bush R, 'Protecting Children and Young People in Esports,' The Esports Observer, 21 August 2017 <https://archive.esportsobserver.com/protecting-children-young-people-esports/> on 7 January 2024.

²³ Berg J, 'Protecting Workers in the Digital Age,' Technology, Outsourcing and the Growing Precariousness of Work, Social Science Research Network, 2019,86 <https://ssrn.com/abstract=3413740> on 6 January 2024.

²⁴ Berg J, 'Protecting Workers in the Digital Age,' 86.

were once developed for the analogue world.²⁵ Owing to the yet-unrealized state of their rights in the digital market, children are rendered vulnerable to financial exploitation by their parents and guardians.

In the Kenyan jurisdiction, the digital market has been recognised as a source of income for its citizens. Digital influencers, for example, are acknowledged to generate earnings ranging from three hundred to four hundred thousand Kenyan shillings, attributable to the significant size of their follower base.²⁶ The platforms have provided avenues and opportunities for Kenyan youths to earn a living, especially those who can create content.²⁷ In fact, the government actively champions the expansion of digital platforms, striving to amplify opportunities for young people who secure a decent livelihood through them.²⁸ As of 2023, the recent Finance Act has implemented a five percent tax on income derived from payments linked to digital content monetization.²⁹ In addressing the involvement of children on digital platforms, the legislature has noted on the need to regulate the content that young people or underage children view, and how they can use digital apps.³⁰

The Employment Act 2007 and the Children's Act 2022 protect children from work which is exploitative, hazardous or otherwise inappropriate for a person of that age; and places that may risk the child's well-being, education, physical, mental health, spiritual, moral, emotional or social development.³¹ Section 52 of the Employment Act nonetheless allows children to engage in work under a contract of service, provided that the service provider is a child and is safeguarded against the worst forms of child labour. Both statutes specify that individuals between the ages of thirteen and sixteen may be employed in light work.³² Over time, the concept of play in the digital market has evolved into a new form of work as children receive monetary benefits from participating.

²⁵ van der Hof S *et al*, *The Child's Right to Protection Against Economic Exploitation in the Digital World*, 852.

²⁶ National Assembly Hansard Report, 15 August 2023, 3.

²⁷ National Assembly Hansard Report, 15 August 2023, 3.

²⁸ National Assembly Hansard Report, 15 August 2023, 3.

²⁹ Section 26(m) of the Finance Act, (Act No. 4 of 2023).

³⁰ National Assembly Hansard Report, 15 August 2023, 3.

³¹ Section 18, Children's Act (Act No 29. of 2022), Section 53, Employment Act (Act No 11. of 2007).

³² Section 18 (4), Children's Act (Act No 29. of 2022), Section 56(2), Employment Act (Act No 11. of 2007).

1.2. Problem Statement

In light of the transformative impact of digital technology on labour, there's a pressing need for Kenya's laws to adapt to the digital age. Specifically, there is a significant gap in recognizing the involvement of children in digital platforms and ensuring that they receive equitable compensation. Bridging this loophole necessitates a nuanced legal approach that upholds children's rights while safeguarding them against potential exploitation in the digital labour market.

1.3. Research Objectives

- a. Whether the current framework on employment of children adequately provides for the fair remuneration of children.
- b. Whether the legal framework fails to adequately provide for remuneration by not including the rights of children in the digital space.
- c. The approach the United States has taken in releasing a child's right to fair compensation within the sports and entertainment industry.
- d. Should the laws governing the remuneration of children be amended to include the remuneration of children working in the digital space.

1.4. Research Questions

- a. Is the current law in Kenya sufficient in protecting a child's labour rights within the digital market?
- b. Does the law fail to adequately protect children in the digital space by not including their right to fair compensation?
- c. What approach has the United States taken in releasing a child's right to fair compensation within the sports and entertainment industry?
- d. What is the best approach Kenya should take in safeguarding a child's right to fair compensation within the digital market?

1.5. Hypothesis

This study hypothesises as follows:

1. The vague definition of economic exploitation and light work in the current statutes, can be argued to contribute to the insufficiency of protecting child workers within the digital market.
2. It is plausible that individuals who have attained the legal age and aim to seek fair compensation for digital work they performed as minors may face potential denial of their claims due to the absence of legal obligation on parents to remunerate their children for earnings the child accrued as an influencer, writer, or an eSports athlete.
3. The lack of their recognition is what makes them vulnerable to exploitation. The changing nature of work has caused new problems to arise in the operation of the labour market, problems that call for new kinds of regulatory interventions.³³

1.6. Justification

Individuals who have provided their labour in the digital realm by becoming influencers, athletes and writers have gained access to employment opportunities. The workers derive satisfaction from their work as it does not demand technical skills but instead allows them to cultivate their inherent talents, serving as a source of income for themselves and their families. Influencer work has many aspects that tie in with development and participation rights of children by allowing children to advance various skills — creatively, technically and socially — by participating in the digital world.³⁴ They can learn from creating vlogs: developing a script, editing and uploading videos and interacting with reactions to their work.³⁵ Children discovering their talents at such a young age gives them an opportunity to expertise on their abilities and gain knowledge in a way they could enjoy. The increasing digitisation of work require a more relevant and comprehensive rights and social protection framework for digital labour that transcends national borders.³⁶ The concept of work is not limited to employment relationships, but entails all forms of work by children, including in the family environment.³⁷ Children can only obtain compensation for their work if the

³³ Stone KVV, 'A Labour Law for the Digital Era,' 152.

³⁴ van der Hof S *et al*, *Child Labour and Online Protection in a World of Influencers*, 5. <https://ssrn.com/abstract=3458379> on 7 January 2024.

³⁵ van der Hof S *et al*, *Child Labour and Online Protection in a World of Influencers*, 5. <https://ssrn.com/abstract=3458379> on 7 January 2024.

³⁶ Trajano JC, 'A Rights-Based Approach to Governing Online Freelance Labour,' 2.

³⁷ van der Hof S *et al*, 'Child Labour and Online Protection in a World of Influencers,' 7 <https://ssrn.com/abstract=3458379> on 7 January 2024.

government recognizes their presence and the necessity for their remuneration. Children's rights in the digital environment therefore deserve considerable attention.³⁸

1.7. Theoretical Framework: Marxist Labor Theory of Justice

Karl Marx theorised that labour is intrinsically linked to the worker, and that it should not be treated as a commodity. He argued that the commodification of labour not only estranges the worker from the fruits of their own labour but also the worker from conscious, and creative work, as well as alienating them from fellow human beings. One of the fundamental bases of labour law is to be a countervailing force to counteract the inequality of bargaining power which is inherent and must be inherent in the employment relationship.³⁹ It is therefore vitally important to see the particular nerve which 'inequality of bargaining power' and 'labour is not a commodity' hit and how they are thus linked in thinking.⁴⁰

According to Marx, the magnitude of value expresses a relation of social production and expresses the connexion that necessarily exists between a certain commodity and the portion of the total labour-time of society required to produce it.⁴¹ In parallel with a commodity, labour exhibits both quantitative and qualitative dimensions. The quantitative characteristic pertains to labour-time, signifying the extent of basic average labour invested in crafting a commodity. On the other hand, the qualitative characteristic involves the effectiveness of labour in the production process. Consequently, his conclusion is that the exchange value of a commodity is established by the requisite amount of socially necessary labour time indispensable for its production.

Stuart White concurred with Marx's train of thought, and additionally contended that, owing to this theory of value, the acknowledgment of workers' rights is essential, given their integral significance in both the final commodity and to the market. Workers therefore, have a collective

³⁸ Lievens E, 'A Children's Rights Perspective on the Responsibility of Social Network Site Providers,' The 25th International Telecommunications Society European Regional Conference Organised by iMinds and Vrije Universiteit, Brussels, 22-25 June 2014 <https://www.econstor.eu/bitstream/10419/101441/1/795276834.pdf>.

³⁹ Slight Communications v Davidson (1989), The Supreme Court of Canada.

⁴⁰ Langille B, 'Labour Law's Theory of Justice' in Davidov G and Langille B *The Idea of Labour Law* Oxford University Press, New York, 2011, 105.

⁴¹ Marx K, 'Das Kapital: A Critique of Political Economy,' Volume I Book One: The Process of Production of Capital, 1887, 70.

‘right to their labour product’.⁴² Workers will only be free from exploitation if they are granted, as a group, exclusive right to their collective labour product (subject to the usual exception for those unable to work).⁴³ Labour law should seek to protect human beings who suffer from lack of bargaining power in the negotiation of terms and conditions of employment.⁴⁴ Amidst the ongoing revolution in labour spurred by the digital age, it is crucial to recognize and actualize the rights of the workers integral to the production of this evolving form of labour. The bargaining power of digital workers can be argued to be as similar as to employees existing within the traditional employer-employee relationship. The idea of employees as agents or participants, are not merely recipients of the law’s largesse.⁴⁵ If the workers are not sufficiently protected, it does imply that non-workers who share in total labour product are taking unfair advantage of those who produce it.⁴⁶

The basic idea is that each person performs some socially-defined reasonable quantum of work, and is correspondingly entitled to a share in final output in proportion to his/her needs⁴⁷ Despite their lack of legal capacity to contract, children inherently own their labour and, as a result, should be entitled to the rights arising from the labour product. If the traditional practices of labour law are inadequate in protecting the rights of children in the current digital age, then the scope of labour law should be expanded beyond the traditional forms of employment. For there is no wealth other than human beings, and that an economy which ill-treats them has no future.⁴⁸

1.8. Literature Review

1.8.1. Why Children Work

There is a general assumption that poverty is the main reason that children work, and the implication is that families are seeking resources beyond those they have.⁴⁹ In developing nations, the labour of children often escapes criticism due to the prevailing argument that many engage in

⁴² White S, ‘Needs, Labour, and Marx’s Conception of Justice,’ 44 *Political Studies*, 1996, 100.

⁴³ White S, ‘Needs, Labour, and Marx’s Conception of Justice,’ 100.

⁴⁴ Langille B, ‘Labour Law’s Theory of Justice,’ 110.

⁴⁵ Langille B, ‘Labour Law’s Theory of Justice,’ 110.

⁴⁶ White S, ‘Needs, labour, and Marx’s Conception of Justice,’ 100.

⁴⁷ White S, ‘Needs, labour, and Marx’s Conception of Justice,’ 100.

⁴⁸ Supiot A, ‘Possible Europes.’ <https://newleftreview.org/issues/ii57/articles/alain-supiot-possible-europes>.

⁴⁹ Celek BM, ‘The International Response to Child Labor in the Developing World: Why Are We Ineffective,’ XI *Georgetown Journal on Poverty Law & Policy* 1, 2004, 96.

productive work out of sheer dire necessity.⁵⁰ According to Celek, children work because their sustenance depends on it; without work, they cannot eat.⁵¹

Bourdillon disagrees with the aforementioned perspective, arguing that it is inaccurate to assert that all children who are in low-income households work because they are poor as it is a generalisation that disregards individual circumstances. Even though children's work is statistically related to poverty, and is particularly likely in response to crisis, not all poor children work.⁵² While it is true that in some cases, children from impoverished backgrounds may need to work to help support their families, it's not universally true for all children living in poverty. Many factors influence a child's engagement in labour, including their family's financial situation, cultural norms, access to education, and legal regulations concerning child labour.

Bourdillon also applied the test of causation. According to him, even though there is a correlation between two variables (poverty and child work), they cannot on its own indicate a causal relationship between them, and consideration of further variables may sometimes allow reasonable inferences about causality.⁵³ Assuming that all poor children work can perpetuate harmful stereotypes and overlook the diverse experiences within impoverished communities. It is important to recognize the complexity of poverty and its impact on individuals and families without making sweeping oversimplifications. Moreover, economic researches have been able to prove from statistics children living in developed countries are more likely to work than children in low-income countries.⁵⁴ This is because children living in areas where economies are thriving have access to more economic opportunities.⁵⁵ Children usually cannot work in the labour market unless some adult is willing to employ them as paid or unpaid labour.⁵⁶

Ultimately, understanding child work necessitates comprehensive approaches that address the root causes. Children engage in work for a wide range of reasons that extend beyond economic

⁵⁰ Celek BM, 'The International Response to Child Labor in the Developing World,' 97.

⁵¹ Celek BM, 'The International Response to Child Labor in the Developing World,' 97.

⁵² Bourdillon MFC, Levison D, Myers W and White B, 'Rights and Wrongs of Children's Work,' Rutgers University Press, New Brunswick, 2010, 83.

⁵³ Bourdillon MFC *et al*, *Rights and Wrongs of Children's Work*, 123.

⁵⁴ Bourdillon MFC *et al*, *Rights and Wrongs of Children's Work*, 70.

⁵⁵ Bourdillon MFC *et al*, *Rights and Wrongs of Children's Work*, 70.

⁵⁶ Bourdillon MFC *et al*, *Rights and Wrongs of Children's Work*, 86.

necessity. Recognizing the diverse motivations behind child work helps to advance a more holistic understanding of their experiences and contributions within families, communities, and societies.

1.8.2. Children Rights - Right to Fair Remuneration

According to Freeman, gaining insight into children's rights regarding work necessitates examining them from a sociological standpoint. Children's rights may gain from studies in the sociology of childhood and understanding children as social actors.⁵⁷ Freeman highlights the importance of understanding what relates to a child, knowing their needs, wants and why they choose to work to enhance the effectiveness of safeguarding their rights. In terms of remuneration of children, children are limited and he further argues that the law of children's rights has failed to grapple with this perspective.⁵⁸ Children right to remuneration are limited due to various reasons.

Firstly, international statutes concerning the rights of children were only drawn up by adults, whilst failing to engage with children. Freeman suggests that due to this dynamic, the law encodes a set of rights which takes an image of childhood from the perspective of the adult world looking in almost as an external observer on the world(s) of children.⁵⁹ Children are as much as social beings as adults and Freeman believes that their participation in law making is equally as important.

Secondly, there is minimal consideration given to the matter of child consent.⁶⁰ Lack of consent disregards a child's autonomy and agency, depriving them of the ability to make informed choices about their own lives. This not only undermines their sense of self-determination but renders them more susceptible to manipulation or coercion into exploitative labour arrangements. This lack of agency allows their employers or other actors to dictate unfair terms, such as little to no wages. All these factors limit a child from existing as a social being in the society.

⁵⁷ Freeman M, 'The Sociology of Childhood and Children's Rights,' 6 *The International Journal of Children's Rights*, 4, 1998,438.

⁵⁸ Freeman M, 'The Sociology of Childhood and Children's Rights,' 438.

⁵⁹ Freeman M, 'The Sociology of Childhood and Children's Rights,' 439.

⁶⁰ Freeman M, 'The Sociology of Childhood and Children's Rights,' 439.

For effective protection of children's rights, Freeman advocates for children to be given an opportunity to challenge, air their grievances, articulate the wrongs they perceive themselves as suffering and the losses they feel.⁶¹ The understanding of children as agents will increase if they are given a voice.⁶² This requires us to gain a better understanding of the lives of children, of what is important to them and how they perceive and construct their social worlds.⁶³

The involvement of children in the legislative process concerning their rights has inherent limitations. There should be a balance between child participation and their right to development. Involving children directly in legal decisions can potentially limit their right to development in several ways. Firstly, such discussions of human rights often involve complex and emotionally charged issues that may be overwhelming for children to comprehend and navigate, hindering their cognitive and emotional development. A child still needs to be a child. Their focus should be their education, social relationships, and personal interests. Rather than direct child involvement in advocating for their rights, it may be more efficacious to have young adults who have recently transitioned from childhood take on this role, as they can speak from their own experiences of childhood deficiencies and suggest governmental interventions needed to protect children.

Ben White took a distinct approach to addressing economic exploitation of children compared to Freeman. According to him, working children and young people occupy a relatively weak and easily exploitable position in work relations and in the labour market.⁶⁴ Working children is a global reality, which should not be ignored. It is certainly not limited to the poor countries of the world.⁶⁵ Children can help their parent earn income as they gain pride and satisfaction from it. This unfortunately according to White only applies to children whose parents own a family enterprise, and not propertyless wage-workers.⁶⁶

⁶¹ Freeman M, 'The Sociology of Childhood and Children's Rights,' 443.

⁶² Freeman M, 'The Sociology of Childhood and Children's Rights,' 443.

⁶³ Freeman M, 'The Sociology of Childhood and Children's Rights,' 443.

⁶⁴ White B, 'Child Work and Child Labour: Changing Responses to the Employment of Children, Development and Change' 25 International Institute of Social Studies ,4, 1994, 849.

⁶⁵ White B, 'Children, Work and Child Labour,' 850.

⁶⁶ White B, 'Children, Work and Child Labour,' 873.

White believes it is contradictory and unjust for society on one hand to bombard children with all the messages of global and national consumer culture, underlining the importance of having money and of spending it certain ways, and on the other hand to deny the same children the right to earn money.⁶⁷ The law should not ignore that some children may wish to work in support of their parents or even in support of social, political or environmental causes, which is also their right.⁶⁸ The definition and measurement of children's participation in the labour force therefore needs to be reevaluated.⁶⁹

1.8.3. On the Existence of Children in the Digital Market

Lievens and van der Hof, distinguished scholars in the field, contend that the participation of children in the digital market is conducive to the infringement of their fundamental human rights. Children are easily exposed to exploitative data collection, processing and profiling activities in commercial environments.⁷⁰ Both contend that children are vulnerable persons, who can be easily exploited due to the lack of regulation of children within the digital market. Furthermore, the activities children partake in such as being influencers, writers or Esports players do not satisfy the definition of play within the UNCRC. Particularly now with the monetization of digital media platforms, parents are exerting pressure on their children to engage in online activities for the parents' personal gain. They would require their children to dress up on a daily basis, follow scripts, and act in videos recorded by their parents while (knowingly or not) promoting products or services to their peers.⁷¹

In such an instance, the definition of 'play' is insufficient as intended by the UNCRC; on the contrary, it bears more resemblance to work (e.g. child performers) and could constitute a new form of child labour.⁷² Brands have also targeted children in helping them advertise their products just for their profit. Verdoot shares their perspective, opining that manipulating children by hiding

⁶⁷ White B, 'Children, Work and Child Labour,' 874.

⁶⁸ White B, 'Children, Work and Child Labour,' 874.

⁶⁹ Bourdillon MFC *et al*, *Rights and Wrongs of Children's Work*, 68.

⁷⁰ Lievens E, 'The Rights of the Child in the Digital Environment,' <https://freedomreport.5rightsfoundation.com/the-rights-of-the-child-in-the-digital-environment-from-empowerment-to-de-responsibilisation>

⁷¹ van der Hof S *et al*, *Child Labour and Online Protection in a World of Influencers* 6 <https://ssrn.com/abstract=3458379> on 8 January 2024.

⁷² van der Hof S *et al*, *Child Labour and Online Protection in a World of Influencers* 6 <https://ssrn.com/abstract=3458379> on 8 January 2024.

advertisements in games or nudging them towards gambling or buying goods without them noticing calls into question children's ability to make informed commercial decisions, which may have long-lasting effects on their development and thereby affects their rights to development, play and freedom of thought.⁷³

Lievens, Verdoodt, and van der Hof advocate for the necessity of approaching child labour in the digital market from a global standpoint. They argue for the recognition of children's presence in this digital landscape by the UNCRC, urging the implementation of protective measures to safeguard their well-being. The rights of children would require to be scrutinised using a comprehensive, rights-based approach towards the protection of children from economic exploitation.⁷⁴ The scholars suggest on the introduction of CRIAs on a domestic level, to ensure that states are able to effectively supervise digital platforms children have access to. Prior to making a digital platform available to citizens, the legislature must assess potential concerns regarding the scale and risks that the digital application might pose to children. The onus is then on organisations to prove that their practices are safe to a reasonable level.⁷⁵

Personal Contribution

I align with the viewpoint of the three scholars, acknowledging the existence of potential risks to children in the digital market. There is a shared understanding that legislation is crucial to protect their data and uphold their right to development. Nevertheless, I respectfully express a differing perspective on their argument concerning economic exploitation. My view is that a child can still provide their work as long as they are protected efficiently by the law. Economic exploitation is not only limited to coercion, manipulation and deceit, but it should extend to not being fairly compensated as well. It is true, that the monetisation of play if not regulated may exploit a child's vulnerability, but if the efficient mechanisms are put in place, the digital market can be a useful tool to children as they use it to expound their interests and hobbies and are able to gain access to many other of their agemates globally, while still earning profit from doing so. This is especially

⁷³ Verdoodt V, 'Children's Rights and Advertising Literacy in the Digital Era : Towards an Empowering Regulatory Framework for Commercial Communication,' Unpublished LLM Thesis, Ghent University, Belgium, 2018, 54.

⁷⁴ van der Hof S *et al*, 'The Child's Right to Protection Against Economic Exploitation in the Digital World,' 849.

⁷⁵ van der Hof S *et al*, Verdoodt V and Leiser M, 'Child Labour and Online Protection in a World of Influencers,' 7. <https://ssrn.com/abstract=3458379> on 9 January 2024.

in an instance where a child is not exploited to offer their labour, but are participants within the digital market because they are participating in activities they enjoy doing. Child protection and child participation for commercial purposes can co-exist.

1.9. Methodology

This study will be qualitative in nature and the main sources for this research will be from books, case law, reports, and academic articles. The primary sources utilised for this research is the Constitution, Children's Act and Employment Act, and international statutes such as the ILO Conventions, the CRC and other relevant law. The approach to the solution would be deductive in nature as I proceed to the solution. First, I aim to look at how children are employed in Kenya, and how they contract with digital companies before offering their services. Secondly, I will do a critical analysis of the existing legal framework in Kenya, assessing its effectiveness in safeguarding the rights of child workers in the digital market. I additionally make reference to international statutes and investigate whether the current international regime has recognised children in the digital realm and their provision of labour. Thirdly, I aim to perform a comparative analysis and investigate how the US has attempted to protect the rights of children who are regarded as child performers in the sports and entertainment industry. I will highlight if there are any similarities between child performers and child workers. Lastly, I will utilise the findings from my comparative analysis to demonstrate their applicability in a Kenyan context.

1.10. Chapter Breakdown

Chapter One serves as the introductory section of this study, providing an overarching view of the principal assertions intended for analysis throughout the research. This chapter encompasses the problem statement, the research objectives and questions, and incorporates a literature review. Chapter Two will look at the procedure of employing minors in Kenya, and the nature of contract of minors who exist in independent contracts. This chapter will analyse if the current policies undermine a child's right to fair remuneration for their work. Chapter Three will examine the existing domestic statutes in Kenya concerning the digital market and the rights of children engaged in its labour. Subsequently, it will examine international law and discuss the advancements made in realising children's rights within the digital landscape. Chapter Four will undertake an analysis of how child performers have been safeguarded within the regulatory

frameworks of the United States. In this chapter, an attempt will be made to assess the similarities between child performers and digital child workers to determine if they are both entitled to similar protections. Chapter Five explores potential avenues that Kenyan legislation might pursue to protect children's rights to fair compensation, leveraging the analysis from the preceding chapters in conjunction with the international framework. Finally, Chapter Six will offer recommendations on factors to consider when formulating legislation within the digital law framework to safeguard children's rights to fair compensation.

CHAPTER TWO: CONTEMPORARY PRACTICES IN CONTRACTUAL ARRANGEMENTS BETWEEN DIGITAL COMPANIES AND CHILD WORKERS IN KENYA

2.1. Introduction

This chapter aims to examine the first research question on the existing practice of employing children for work in Kenya. Following that, it will explore the prerequisites mandated by the existing legislation for minors to engage in contractual agreements. In light of this examination, the chapter endeavours to ascertain whether the current approach in Kenya may pose challenges in ensuring children receive fair compensation.

2.2. Procedure for Employing Minors in Kenya

The position and procedures regarding child work are crucial for ensuring that children engage in activities that are safe, age-appropriate, and conducive to their overall growth. To ensure that child work in Kenya remains beneficial and protective of children's rights, the government implemented the Employment Act of 2007 to guide its practice.

One crucial step includes establishing age-appropriate limits regarding the types of tasks suitable for children to engage in. Although acknowledging the existence of working children in society, the Act specifies that the minimum allowable age for a child to enter the workforce is thirteen years.⁷⁶ Nevertheless, it's important to note that if children aged thirteen to sixteen are engaged in work, it should be of a light nature.⁷⁷ The Act does not provide a clear definition of what constitutes 'light work'.

Moreover, a child is only permitted to work under a contract for service and not a contract of service.⁷⁸⁷⁹ Both contracts confer distinct rights not only upon the child but also upon the entity for whom the child is working. 'A contract of service' refers to an employment agreement wherein an employer engages an employee to carry out work typically in exchange for a salary, wages, or

⁷⁶ Section 56(1), Employment Act (Act No 11. of 2007).

⁷⁷ Section 56(3), Employment Act (Act No 11. of 2007).

⁷⁸ Section 52(c), Employment Act (Act No 11. of 2007).

⁷⁹ Section 57, Employment Act (Act No 11. of 2007).

other associated benefits. In this type of contracts, employers have greater control over the work performed by the employee, including how, when, and where the work is done. The employee is typically subject to the employer's direction and supervision. Additionally, the employees are entitled to certain rights and benefits, such as statutory protections, leave entitlements and collective bargaining.

A 'contract for service' on the other hand is one in which one party (the service provider) agrees to perform a specific task or provide a service for another party (a recipient), usually in exchange for payment. The service provider typically maintains a degree of independence and autonomy in how the service is delivered. They are not considered employees of the recipient but rather independent contractors. The terms and conditions the agreement in a contract for service may include details about the scope of work, payment terms, deliverables, timelines, and any other relevant provisions governing the relationship between the parties.

A contract for service can offer certain protections for a child that may not be present in a contract of service, particularly in terms of providing a safer and more flexible working arrangement. The child enjoys more autonomy and control over their work compared to a contract of service, being under the direct supervision of their parents or guardians rather than an employer. This setup reduces the likelihood of the child being exposed to harsh working conditions or environments that may be present in some traditional employment settings. Lastly, before children commence work, they must obtain permission from an authorised officer, and this consent is typically required to be renewed annually.⁸⁰

As previously mentioned, digital gig work generally consists of independent contractual arrangements. This classification would define gig work as a contract of service. Hence, in accordance with the acceptable type of contracts for child work outlined in the Employment Act, it would permit a digital company and a child to have a contractual relationship. However, since minors between the ages of thirteen and seventeen have not reached the legal age, there are certain qualifications that needs to be satisfied before entering into a contract with a minor. There is no

⁸⁰ Legal Notice 3, Employment Act (Act No 11. of 2007).

domestic statute which provides guidelines or procedures for entering into contracts with minors, hence the qualifications for such contracts are derived from the English Common Law.

2.3. Contractual Requirements Regarding Minors in Kenya

The Law of Contract Act stipulates that contracts in Kenya are to be governed by the common law of England concerning contracts, as amended by the principles of equity.⁸¹ According to the English law of contract, a contract is comprised of five primary principles: an agreement (offer and acceptance), consideration, intention to create a legal relation, contractual capacity, and certainty to the terms of the agreement.⁸² Individuals who possess contractual capacity are those who have reached the age of majority.⁸³ In Kenya, Article 260 of the Constitution provides that the age of majority is eighteen years.

In contrast, the law asserts that young children lack the mental capacity to enter contracts.⁸⁴ Minors are deemed too young to understand the nature and implications of contracts, thereby lacking legal capacity to bind either party.⁸⁵ Nonetheless, common law sought to find a balance between protecting minors and commercial interests of the other party.⁸⁶ Due to the emergence of young professional entertainers and athletes, there are circumstances in which contracts can be valid, legal and binding to minors. A contract may be enforceable against a minor if it is either an agreement to provide necessities or a beneficial agreement of service (such as an apprenticeship, education, or employment).^{87 88}

An example of a common law case which further expounds on the contract of necessities is *Nash v Inman*. In this case, a tailor supplied to a university student with fancy waistcoats at two guineas each. When the student failed to pay for the clothes, the tailor took the matter to Court, suing for payment. The student contended that the contract could not be enforced against him, citing his

⁸¹ Section 2, Law of Contract Act (Act No 43 of 1960).

⁸² Quinn F, Elliott C, 'Contract Law,' 12 ed, Pearson Education Limited, Edinburgh Gate, 2019, 9.

⁸³ Peel E, 'Treitel: The Law of Contract,' 13 ed, Sweet & Maxwell Limited, London, 2011, 567.

⁸⁴ Peel E, 'Treitel: The Law of Contract,' 567.

⁸⁵ Star S and Dhankar D, 'Major differences in Minors' Contracts: A Comparative Analysis Into The Validity of Contracts with Minors in the Sport and Entertainment Industry,' 43 *Liverpool Law Review* 2, 2022, 205.

⁸⁶ Star S *et al* *Major differences in Minors' Contracts*, 204.

⁸⁷ *Wharton v Mackenzie* (1844) England and Wales Court of the Queen's Bench.

⁸⁸ *Roberts v Gray* (1913) The United Kingdom King's Bench Division.

status as a minor (during that period, individuals were regarded as minors until the age of 21). The case was taken to the Court of Appeal which had to determine whether the contract can be exempted from the general rules of contract and become a contract of necessities.

The Court defined a contract for necessities as one whose the goods are fundamental to a minor's reasonable existence (such as food and drink, clothing accommodation and medicine), or to the other person concerned and to the minor's actual requirements at the time of sale and delivery.⁸⁹ Although the coat was appropriate for the young man's 'condition in life', the contract did not meet the second requirement of the statutory definition.⁹⁰ The contract could not be regarded as suitable to his actual requirements at the time, as the student's father had presented to the court evidence that the student already had a sufficient wardrobe of clothes.⁹¹ Therefore the contract was not binding.

On the other hand, a beneficial agreement of service is one which a minor gain some training, experience or instruction for an occupation.⁹² Such agreements are those pertinent to children within the context of employment. The definition of beneficial contracts was expounded in the case of *De Francesco v Barnum*. In this case, De Francesco and a 14-year-old were stage performers for the defendant and had entered into a stage-dancing contract with Barnum circus in which the agreement was considerably more favourable to De Francesco than to the child. Some of the stipulations to that contract was that the child was not to marry during the seven years she worked at the Circus, she could not take on professional engagements without De Francesco's written consent and was to be completely subject to all of his commands.⁹³

De Francesco contended that he made no commitment to employ her, and stated that if he did do so it would be at a very low rate of pay.⁹⁴ The agreement also allowed him to send her abroad, and to put an end to the agreement at any time. The Court concluded that such provisions are of an

⁸⁹ *Nash v Inman* (1908) the United Kingdom King's Bench Division.

⁹⁰ *Nash v Inman* (1908) the United Kingdom King's Bench Division.

⁹¹ *Nash v Inman* (1908) the United Kingdom King's Bench Division.

⁹² Quinn F, Elliott C, 'Contract Law,' 72.

⁹³ *De Francesco v Barnum* (1890) the United Kingdom Chancery Division.

⁹⁴ *De Francesco v Barnum* (1890) the United Kingdom Chancery Division.

extraordinary and unusual nature, which grant, or seem to grant, excessive power to the master without any corresponding obligation.⁹⁵ Consequently, the court concluded that the contents of the contract was not the benefit the minor, therefore the contract could not be enforced against her.

Minors' contracts are guided by two fundamental concepts.⁹⁶ The first concept is that the law should not impose undue burden on adults who deal fairly with minors.⁹⁷ Adults are to maintain integrity in their interactions with minors, fostering trust and promoting fair exchanges. By ensuring that the law does not unfairly penalise well-intentioned adults, a balanced approach is maintained, encouraging responsible behaviour without hindering legitimate transactions. In the context of children in the sport and entertainment industry, a child may fail to perform their duties that has been assigned to them in a contract. Once it is proven that the minor's contract fits into the criteria of the two exceptions, the doctrine of restitution would apply. Where an adult has entered into an unenforceable contract with a minor, or a contract which the minor has terminated, the courts may give any property acquired by the minor under the contract back to the adult, provided it is 'just and equitable' to do so.⁹⁸ This provision goes further than the equitable remedy, in that it may be used even if the minor has not acted fraudulently.⁹⁹ In the case of media companies hiring children to work in their company, this remedy ensures children are able to perform the duties of the contract as was initially agreed.

The second consideration is the necessity to safeguard minors due to their restricted legal capacity, which may expose them to unfair exploitation by adults or result in them entering into contracts that, although initially fair, are ultimately imprudent.¹⁰⁰ Protecting minors is essential as they lack the cognitive maturity to comprehend complex contracts fully. In Kenya, the term 'parental responsibility' is defined in the Children's Act as the parent's direct relation to the child and the child's property in a manner consistent with the evolving capacities of the child.¹⁰¹ The Act further asserts that as part and parcel of their duties, parents are responsible for receiving, recovering, and

⁹⁵ *De Francesco v Barnum* (1890) the United Kingdom Chancery Division.

⁹⁶ Peel E, 'Treitel: The Law of Contract,' 567.

⁹⁷ Peel E, 'Treitel: The Law of Contract,' 567.

⁹⁸ Quinn F, Elliott C, 'Contract Law,' 74.

⁹⁹ Quinn F, Elliott C, 'Contract Law,' 74.

¹⁰⁰ Peel E, 'Treitel: The Law of Contract,' 567.

¹⁰¹ Section 31 (1), Children's Act (Act No 29 of 2022).

otherwise managing the property of the child for the benefit and in the best interests of the child.¹⁰² Therefore, in contractual agreements, parents having the contractual capacity and overall duty over the child, have a duty from the Children's Act to act according to the child's best interest. In common law, the earnings and services of children belong to their parents while the children are living and being supported by their parents.¹⁰³ This because the duty of responsibility is granted immediately to the parents, including not only the child but their entirety of their property and labour.

2.4. Conclusion:

The examination of contractual arrangements between digital companies and child workers in Kenya reveals a nuanced landscape governed by legal statutes and common law principles. The Employment Act of 2007 outlines age requirements and contract distinctions, setting the stage for minors' engagement in contractual relationships. However, the Law of Contract Act, guided by English common law, underscores minors' limited capacity to enter into contracts, with exceptions for agreements deemed necessary or beneficial to the minor.

Legal precedents further delineate enforceable contracts involving minors, emphasising the delicate balance between commercial interests and the protection of minors' rights. The doctrine of restitution ensures fairness by allowing the return of property acquired under unenforceable contracts. Additionally, the Children's Act places parental responsibility at the forefront of safeguarding minors' best interests in contractual matters. These responsibilities, from the common law of contract and the Children's Act, entails a parent full custody over their child's remuneration.

¹⁰² Section 31(1) Children's Act (Act No 29 of 2022).

¹⁰³ Checkley TW, 'Handbook on the Law of Persons and Domestic Relations,' 3 ed, West Publishing Company, Eagan, 1921, 276.

CHAPTER THREE: CURRENT LEGAL FRAMEWORK OF DIGITAL CHILD WORK IN KENYA

3.1. Introduction

This chapter will delve into the second research question. It explores the legal framework for children's rights within the digital space. It will assess whether the domestic and international regulatory framework has hindered a child's right to fair remuneration by their lack of recognition in the digital market.

3.2. National Framework Addressing Child Labour

3.2.1 Constitution of Kenya

The Constitution designates children as vulnerable individuals, and the State has a duty to ensure their protection.¹⁰⁴ The State is responsible in putting in place affirmative action programmes designed to ensure that marginalised groups are able to participate and are represented in governance and other spheres of life and provided special opportunities in educational and economic fields.¹⁰⁵ In matters pertaining to labour, all persons have the fundamental right to be protected from slavery, servitude and forced labour.¹⁰⁶ It is further provided under Article 41 that all workers have the right to fair labour practices, including fair remuneration.¹⁰⁷

During the 1990s and early 2000s in Kenya, societal challenges including the devastating impact of the HIV/AIDS pandemic led to a rise in orphaned children, increased child labour, heightened rates of school dropouts, and a growing population of street children.¹⁰⁸ Children, especially those directly impacted by the HIV/AIDS epidemic were forced to into the workplace, often into hazardous jobs.¹⁰⁹ A significant percentage of children working in the labour market was estimated to 3.5 million.¹¹⁰ Children had no alternative but to resort to any available work no matter how iniquitous in order to secure their basic necessities for survival. The traditional forms of paid work

¹⁰⁴ Article 21(3), Constitution of Kenya (2010).

¹⁰⁵ Article 56, Constitution of Kenya (2010).

¹⁰⁶ Article 30, Constitution of Kenya (2010).

¹⁰⁷ Article 41(2)(a), Constitution of Kenya (2010).

¹⁰⁸ Joanne C, 'In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya,' Human Rights Watch, 2001.

¹⁰⁹ Joanne C, 'In the Shadow of Death,' 10.

¹¹⁰ Joanne C, 'In the Shadow of Death,' 14.

existing at the time had a profound negative impact on the long-term human development of the child.

Additionally, it is worth noting that before 2010, the law only mandated free and compulsory primary education, resulting in a higher rate of dropouts at the high school level. The working class in Kenya therefore consisted of individuals as young as thirteen years of age. In order to curb this issue, the current Constitution provides that every child has the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.¹¹¹ Exploitative labour is associated with it being hazardous, and children have a right to be protected from such.

Putting the youth at the forefront, the Constitution has acknowledged their vital importance in the economic development of the country. The State thus has been obligated to take measures, including affirmative action programmes, ensure that they have opportunities to associate, be represented and participate in political, social, economic and other spheres of life, access employment and are protected from harmful cultural practices and exploitation.¹¹² The youth are collectively individuals who have attained the age of eighteen years but have not attained the age of thirty-five years.¹¹³

The Kenya Youth Development Policy of 2019 however, suggested extending the classification of youth to include children between the ages of fifteen and seventeen in order to ensure a comprehensive approach is taken in addressing youth issues. It defines youthhood as the specific stage between childhood and adulthood; when people have to negotiate a complex interplay of both personal and socio-economic and cultural changes to manoeuvre the transition from dependence to independence, take effective control of their lives and assume social commitments.¹¹⁴ The policy also acknowledges that the youth are vulnerable as they undergo learning and transition to work.¹¹⁵ Success in this period of transition consequently requires

¹¹¹ Article 53(1)(d), Constitution of Kenya (2010).

¹¹² Article 53(1)(d), Constitution of Kenya (2010).

¹¹³ Article 260, Constitution of Kenya (2010).

¹¹⁴ The Kenya Youth Development Policy of 2019, xi.

¹¹⁵ The Kenya Youth Development Policy of 2019, xi.

development of human capital of the youth, empowering the youth to productively contribute to sustainable development both nationally and internationally; take up leadership roles, make informed and competent choices, and develop a sense of wellbeing.¹¹⁶ In the realm of digital child labour, this adaptation could prove advantageous, as it would entail government support in educating and guiding minors on making informed financial decisions, that does not disfavour them.

3.2.2. Employment Act

The Act classifies an employment of a child is a situation in which;

- a) the child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;
- b) the child's labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and
- c) there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.¹¹⁷

From this provision, it is crucial to observe that child employment in Kenya is understood as work undertaken for the benefit of the person the child is working under, with no mention of any benefits accruing to the child. Consequently, this provision exempts children from the right to receive remuneration for their labour, as any payment given as specified under section 53(a) is directed to the individual overseeing the child's work. Children between the ages of thirteen and sixteen are only expected to perform light work.¹¹⁸ The work must not endanger the child's health and development, nor hinder the child's attendance at school or any participation in vocational orientation or training programs approved by the Minister.¹¹⁹

It is also worth noting that child work in Kenya is only recognised under a contract for service and not in a contract of service. The law prohibits any person from employing a child of between

¹¹⁶ The Kenya Youth Development Policy of 2019, xi.

¹¹⁷ Section 52, Employment Act (Act No 11. of 2007).

¹¹⁸ Section 56(2), Employment Act (Act No 11. of 2007).

¹¹⁹ Section 56(2), Employment Act (Act No 11. of 2007).

thirteen and sixteen years of age under a contract of service.¹²⁰ Within the digital economy, gig work predominantly operates under independent contracts. As a result, children within the digital market are lawfully permitted to work under a contract for service.

In efforts to safeguard children working under a contract for service, the Act prohibits any person from allowing a child to engage in any activity that constitutes the worst form of child labour.¹²¹

The worst forms of child labour include: -

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.¹²²

3.2.3. The Children Act and The Children (Employment) Regulations 2020

As stated earlier, children are vulnerable persons and the law has a duty to safeguard their protection. In all matters concerning children, their best interests must take precedence. The provisions outlining a child's best interest are primarily addressed in Section 2, 8, and the First Schedule of the Children Act. The primary interests are a child's survival, protection, participation and development.

The Children Act explores the concept of child labour differently as opposed to the Employment Act. Child labour is defined as work done by a child which is exploitative, hazardous or otherwise inappropriate for a person of that age, or places the child's well-being, education, physical, mental, spiritual, moral, emotional or social development at risk.¹²³ Section 18 protects all children from

¹²⁰ Section 57, Employment Act (Act No 11. of 2007).

¹²¹ Section 53 (1), Employment Act (Act No 11. of 2007).

¹²² Section 2, Employment Act (Act No 11. of 2007).

¹²³ Section 2, Children's Act (Act No 29 of 2022).

child labour, domestic servitude or economic exploitation. Children working under a contract for service however, are still acknowledged by the Act, with reference being made to section 52 of the Employment Act and the provisions of Part VII of the Employment Act.¹²⁴ Child labour and domestic servitude are recognized as forms of economic exploitation of children. Economic exploitation according to the Act is unfairly taking advantage of another person because of their vulnerability, by grossly underpaying them for their work in comparison to average market rates payable for similar work.

Economic exploitation is closely linked with impeding a child's development, as traditional work that involves payment often exceeds a child's physical, mental or psychological capacity. Therefore, from the traditional understanding of child work, it remains ambiguous whether the appropriate response to a child's economic exploitation is to cease their labour or to ensure compensation for their efforts.

Under the Act, the Cabinet Secretary had been assigned the responsibility of formulating guidelines for children aged between thirteen and sixteen years regarding their employment conditions.¹²⁵ For this reason, the Children's Employment Regulation was drafted, detailing the types of work children are permitted to engage in. The Regulations has realised children within the audio-visual entertainment and sporting industry and classifies them as artists, and their form of employment is authorised.¹²⁶ They may only work under certain conditions the Cabinet Secretary has provided.¹²⁷ The Regulations, although drafted, are awaiting government approval to become enforceable.

Lastly, according to Article 31 of the Children's Act, on the extensiveness of a parent on financial responsibilities over their children, parents are to ensure children have access to all essential basic needs crucial for their development. The only circumstance where parents are obligated to act on behalf of their children for the child's financial benefit as a trustee is in matters pertaining to succession and inheritance.

¹²⁴ Section 18 (2), Children's Act (Act No 29 of 2022).

¹²⁵ Section 18 (4), Children's Act (Act No 29 of 2022).

¹²⁶ Section 5(a), Children (Employment) Regulations, 2020.

¹²⁷ Section 5(2)(b), Children (Employment) Regulations, 2020.

3.3. International Legislation Addressing Child Labour

The Constitution of Kenya acknowledges international law as a source of law in Kenya under Article 2(5) therefore any treaty or convention ratified by Kenya are part and parcel of the laws of Kenya.¹²⁸ On laws relating to protection of children in the workplace, Kenya has ratified the ACRWC, UNCRC and the ILO Conventions.

3.3.1. International Labour Organization Conventions

According to the objectives set out in the International Labour Conventions, child labour is viewed as a factor impeding children's access to educational opportunities and hinders their physical and mental development. Therefore, the Conventions advocates for the complete abolition of child labour.¹²⁹ The ILO Conventions mainly approach child labour in terms of minimum ages of employment.¹³⁰ The minimum age specified in Article 2 of the Minimum Age Convention for children is 15 years, applying not only to employment but also to any form of work, provided that the child has completed their compulsory education. Any work which would likely jeopardise with the safety, morality or health of the child is strictly prohibited.¹³¹

It would seem that the Minimum Age Convention was motivated by an assumption that, if the minimum age were raised, the physical and mental development of children would be enhanced since they would not be allowed to work until mid-adolescence.¹³² These minimum age standards therefore express an ideal of childhood as ‘a privileged phase of life, properly dedicated only to play and schooling, and with an extended period of dependence during which economic activity is discouraged or actually denied’.¹³³

When assessing whether a task qualifies as ‘light work’ suitable for children, the International Labour Organization (ILO) takes into account factors such as the duration and conditions of the work, parental consent, and its impact on the child’s education.¹³⁴ For children working in the

¹²⁸ Article 2(6), Constitution of Kenya (2010).

¹²⁹ Article 1, Minimum Age Convention (No 138 of 1973).

¹³⁰ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in an African Context,’ 10 African Human Rights Law Journal, 1, 2010, 179.

¹³¹ Article 3, Minimum Age Convention, 1973 (No. 138).

¹³² Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 163.

¹³³ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 184.

¹³⁴ Section I, Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41).

entertainment industry, the minimum age requirement is typically twelve years old, although exceptions may be made for certain fields within the industry based on specific considerations.¹³⁵ Some countries like the UK has gone to the extent that children whose work might impede with the education must have a licence which is issued by the government after a thorough investigation that the work is legally and morally suitable for the child.

3.3.2. United Nations Convention on the Rights of the Child

The requirements for a child to perform work under article 32 of the UNCRC is as similar to that of the ILO Conventions, including the age requirement, duration of the work and school attendance. However as opposed to the ILO Conventions, the CRC broadens the prohibition of economic exploitation concerning child labour.¹³⁶ It assesses the impact of the activity on the child as opposed to the nature of the activity itself.¹³⁷ Any labour is considered unacceptable if it hinders the child's development, irrespective of whether it occurs in a formal workplace or within the home environment.¹³⁸

3.3.3. The African Charter on the Rights and Welfare of the Child

After the enactment of the CRC and the ILO Conventions, African scholars contended that the statutes overlooked the important socio-cultural and economic realities of work in Africa.¹³⁹ The ACRWC thus takes pride in its distinctively African perspective on human rights, acknowledging the virtues of African cultural heritage and the values inherent in African civilization.¹⁴⁰ These elements are intended to serve as sources of inspiration and to shape the African understanding of children's rights and welfare. In African culture, work is considered essential for the collective well-being of society, hence everyone is obliged to work so as to promote not only their own livelihood but also the prosperity of the community.

¹³⁵ Section II(5), Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41).

¹³⁶ Article 10(3), International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.

¹³⁷ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 179.

¹³⁸ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 179.

¹³⁹ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 165.

¹⁴⁰ Lloyd A, 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet,' 10 International Journal of Human Rights, 2002, 180.

Children according to Article 15 of the ACRWC are to be protected from all forms of economic exploitation with and work which interferes with their development. However, under Article 31 of the ACRWC, taking into account of the age and the ability of the child, all children have a duty to:

- a. to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- b. to serve his national community by placing his physical and intellectual abilities at its service;
- c. to preserve and strengthen social and national solidarity;
- d. to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- e. to preserve and strengthen the independence and the integrity of his country;
- f. to contribute to the best of his abilities at all times and at all levels, to the promotion and achievement of African unity.¹⁴¹

Activists for children's rights assert that such a provision of duties reinforces a conservative stance on human rights.¹⁴² As a result, activists argue that the preservation of African cultural norms could inadvertently promote child labour.¹⁴³ Therefore, the Charter's inclusion of duties is frequently perceived as nothing more than the establishment, consolidation, and legitimization of adult and state rights and privileges over children.¹⁴⁴

The UDHR nonetheless provide Member States with have an obligation to their community, for it is within in community where one can achieve the freedom and complete development of their personalities.¹⁴⁵ According to the provision, Article 31 of the ACRWC is a necessary provision in

¹⁴¹ Article 31, African Charter on the Rights and Welfare of the Child, 11 July 1990.

¹⁴² Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 166.

¹⁴³ Evans M, Murray R (eds), 'The African Charter on Human and Peoples' Rights: The System in Practice,' Cambridge University Press, United Kingdom, 2002, 229.

¹⁴⁴ wa Mutua M, 'The African Human Rights System: A Critical Evaluation,' United Nations Development Programme, Human Development Report, 2000, 12
https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1015&context=other_scholarship on 22 February 2024.

¹⁴⁵ Article 29(1) Universal Declaration of Human Rights, 10 December 1948.

order to preserve the cultural norms of a specific community provided that the essential human rights of all persons are protected.

3.4. United Nations Contemporary Approach on the Rights of Child Workers in the Digital Sphere

UNICEF which is governed by the UNCRC, conversely noted that different Member States are unable to distinguish between ‘child labour’ and ‘child work’ in their domestic legislations and attempted so the UNICEF attempted to redefine both terms. According to UNICEF, child labour constitutes of dangerous and exploitative work while child work is deemed to be beneficial.¹⁴⁶ Exploitative work is characterised by several factors, including full-time engagement at a young age, excessively long working hours, inadequate working conditions, it is not sufficiently paid, excessive responsibilities, and it detrimentally affects the child's dignity and self-esteem.¹⁴⁷ Beneficial work on the other hand refers to work that fosters the holistic development of the child, encompassing of physical, cognitive, and social aspects, while ensuring it doesn't impede a child's education, recreational activities, or their rest.¹⁴⁸ This type of work aids in children's socialisation, granting them a chance to engage in tasks that instil feelings of competence and independence, crucial for shaping their self-concept and self-esteem in a healthy manner.¹⁴⁹

Human rights activists and professionals in health and education share a perspective aligned with the analysis made by UNICEF, describing child labour as abusive.¹⁵⁰ They hold a firm belief that child labour entails working long hours under conditions deemed 'dangerous' and 'unhealthy', lacking adequate physical and social security, and receiving minimal remuneration.¹⁵¹ Children involved in labour are denied the freedom to engage in play or rest, let alone allocate time for their education.¹⁵² Such conditions can result in 'irreparable physical and psychological harm' to a child, and in severe cases, may cause death.¹⁵³

¹⁴⁶ UNICEF Report on the World State of Childhood, *final draft*, 1997, 24.

¹⁴⁷ UNICEF Report on the World State of Childhood, *final draft*, 1997, 24.

¹⁴⁸ UNICEF Report on the World State of Childhood, *final draft*, 1997, 24.

¹⁴⁹ UNICEF Report on the World State of Childhood, *final draft*, 1997, 24.

¹⁵⁰ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 162.

¹⁵¹ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 162.

¹⁵² Human Rights Watch ‘Child Labour,’ <https://www.hrw.org/topic/childrens-rights/child-labor> on 12 February 2024.

¹⁵³ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 162.

In 2021, the Committee acknowledged the rising importance of the digital environment in numerous aspects of children's lives, especially during critical times and societal functions like education, government services, and commerce, as most often children rely on digital technologies.¹⁵⁴ As a matter of fact, the Committee advocates for children to take full advantage of the digital realm, as it provides easier access of children to realise their civil, political, cultural, economic and social right rights at an early age.¹⁵⁵

As more new opportunities are realised, more risks become prominent as well.¹⁵⁶ Supervision of children therefore is highly emphasised, in order to ensure their right to privacy is protected. According to the Committee, as long as the principles of non-discrimination, the best interests of the child, the right to life survival and development and respecting the child's views are upheld, it is permissible for a child to actively participate in the digital environment. To enable children to benefit from it, parents bear a responsibility to monitor their children and ensure that their engagement with digital platforms do not in any way violate with their right to privacy, freedom of thought and opinion or any other of their rights.

Over the years, there has been a gradual concession of the increasing involvement of children in commercial activities within the digital environment. Prioritisation on children's privacy is paramount, particularly when they are engaged in commercial activities, ensuring that their sensitive and personal information remains protected and undisclosed.¹⁵⁷ When it comes to exploitation of children, it was agreed that such exploitation may occur in many forms, including economic exploitation and child labour.¹⁵⁸ Hence, Member States are obligated to review their domestic legislation to safeguard children from economic exploitation and ensure the protection of their rights concerning work in the digital sphere and related opportunities, including provisions for fair remuneration.¹⁵⁹

¹⁵⁴ CRC General Comment No 25, On children's rights in relation to the digital environment, 2 March 2021, 3.

¹⁵⁵ CRC General Comment 25, 4.

¹⁵⁶ CRC General Comment 25, 3.

¹⁵⁷ CRC General Comment 25, 42.

¹⁵⁸ CRC General Comment 25, 112.

¹⁵⁹ CRC General Comment 25, 113.

3.5. Conclusion:

Participation in cultural life online contributes to creativity, identity, social cohesiveness and cultural diversity.¹⁶⁰ Kenya has recognized children's presence in the digital market, and it deems it permissible for children to be employed for audiovisual, entertainment, and sporting purposes. Child employment is acceptable but it is for the employer's benefit. However, in domestic legislation, there is a nexus between child labour and child work, with both terms being used interchangeably. Yet, from an international perspective, child labour is deemed harmful while 'child work' is considered acceptable.

All children are to be protected from economic exploitation but it is unclear whether this stipulates that a child if in their work they are economically exploited they should be refrained from doing the work or that they should be remunerated since economic exploitation is intrinsically connected to hazardous work in the Constitution and the Children's Act. There is no single international instrument that explicitly defines child labour or delineates what constitutes economic exploitation. Commonly recurring phrases include: 'too young an age', 'hazardous to morality and health', 'too much work', 'harmful to development', 'exploitation' and 'interference with education'.¹⁶¹ Nevertheless, these concepts can be interpreted in different ways.¹⁶² Digital work needs to be clearly defined in order to correctly articulate what implications it has on not only the child but on their parents, guardians, their employers and the state as well.

¹⁶⁰ CRC General Comment 25, 107.

¹⁶¹ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 179.

¹⁶² Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 179.

CHAPTER FOUR: ANALYSING CHILD WORKER PROTECTION STRATEGIES: A COMPARATIVE STUDY IN THE UNITED STATES

4.1. Introduction

This chapter will be addressing the third research question which aims to provide a comprehensive analysis of United States laws focusing on the financial protection of children, particularly those involved in the sports and entertainment industry. The analysis will interpret the results to reveal similarities between child workers safeguarded by United States law and children working in the digital market. This investigation seeks to ascertain whether children engaged in digital work should receive similar protections and explore their potential integration within this regulatory framework.

4.2. Comparative Analysis: Parallels between Child Work in the United States and Child Work in Kenya

In the 20th century, there were emerging cases in the United States, particularly in the state of California, within the sports and entertainment industry, concerning the rights of child entertainers spotlighting concerns of contractual capacity and fair compensation to child performers. Similar to Kenya, contractual capacity is one of the principles that needs to be satisfied in order for parties to enter into a legal agreement. In the United States, particularly within the entertainment and sports industry, parents and guardians' contract on behalf of minors.

The State of California established laws that delineate the procedure for protecting children within a contract for service. The legislation grants children the right to receive a portion of their earnings, with both entertainment companies and parents of the child having a responsibility to ensure the safeguarding of the child's remuneration. Presently, the law, while capable of shielding children from economic exploitation, encounters challenges, notably regarding the supervision of parents to ensure compliance with the provisions outlined in the California Code. As of 2024, the law remains enforceable. In Kenya, the lack of the guidelines and statutory protections not only distances the child from their own labour but amounts to their economic exploitation as well.

4.3. The Pre-1939 California Family Code

The United States has a federal system of government, where authority is split between the national government and local state governments. As a result, the oversight of child labour laws has been entrusted to the judgment of the states.¹⁶³ During the mid-1900s, the California legislature recognized the necessity of addressing the growing concern of children in the scope of employment.¹⁶⁴ Children became significant participants in the entertainment industry, often entering into highly profitable employment contracts and avoiding responsibility by asserting their inability to contract due to their status as minors.¹⁶⁵ In order to curb this, the California legislature in 1927 enacted laws to protect employers from child actors attempting to invalidate their contracts if they have already been deemed to be valid by a court.¹⁶⁶ Any contract made by a guardian on behalf of their child that lasts beyond the child's legal age remains valid and enforceable, and all obligations in the contract must still be fulfilled by the minor, even after they reach adulthood.¹⁶⁷

Despite the recognition of children within the entertainment industry, the California state law was still insufficient in protecting the children themselves. This was illustrated vividly in the Jackie Coogan case of 1939. Jackie Coogan was a renowned actor in the early 1900s and was the youngest child at the time to earn a revenue over a million dollars from this career.¹⁶⁸ By the time he turned eighteen, Coogan claimed to the court that he had received only two thousand dollars from his earnings, alleging that all the rest had been spent by his mother and stepfather.¹⁶⁹ The defendant in this case, who was Coogan's mother, argued that there were no promises or agreements between her and the petitioner to provide him with anything, and further asserted that all earnings made by a child before reaching twenty-one rightfully belong to the parents.¹⁷⁰ The defendant believed that she had no financial obligation to give the complainant any money. The Court concluded that denying any compensation to the petitioner amounted to financial exploitation.¹⁷¹ While the

¹⁶³ Guzman JD, 'The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Laws,' 8.1 Child and Family Law Journal, 2020, 87.

¹⁶⁴ Staenberg MC, Stuart DK, 'Children as Chattels: The Disturbing Plight of Child Performers,' 1997, 24.

¹⁶⁵ Warner Bros. Pictures v. Brodel (1948), District Court of Appeal, Second District, Division 2, California.

¹⁶⁶ California Family Code Section 6710-6713.

¹⁶⁷ Loew Inc. v. Elmes (1948), Supreme Court of California (The court affirmed a contract between a filmmaker and a 14-year-old actor, allowing for an initial one-year term with the option to extend for an additional six year-long terms, thus extending the contract until the minor reaches the age of majority).

¹⁶⁸ Guzman JD, 'The Children of YouTube,' 88.

¹⁶⁹ Hibschan H, 'The Jackie Coogan Case,' 72 United States Law Review, 1938, 214.

¹⁷⁰ Hibschan H, 'The Jackie Coogan Case,' 214.

¹⁷¹ Hibschan H, 'The Jackie Coogan Case,' 214.

petitioner was not entitled to the entirety of the earnings, the court ruled that he must receive a relative portion of them.¹⁷²

Following the court ruling in this case, legislators in California came to the realisation that despite having federal laws to protect children in the workplace, the protection of child entertainers was still inadequate.¹⁷³ Economic exploitation of child performers either within the entertainment, art or sports industry became a concern for the California legislature, prompting the enactment of a law aimed at safeguarding children's assets in 1939.¹⁷⁴ This law was incorporated into the California Family Code and became known as the 'Coogan Law'. The Coogan Law mandates the establishment of a trust for the purpose of preserving, for the benefit of the minor, a portion of the minor's gross earnings.¹⁷⁵ The Coogan Law thereby established a fiduciary duty between the parent and the child.¹⁷⁶

4.3. The Coogan Law

The Coogan Law was codified under section 6752 of the California Family Code in 1939, with subsequent amendments made in 2022. It is in place to safeguard a minor's earnings from artistic or creative work without imposing extra limitations on Coogan contracts covered by the law.¹⁷⁷ Under the Code, part 3 of Division 11 delves into the regulation of minor's contracts who are working within the art, entertainment or the professional sports industry.

Individuals who enter into contracts on behalf of their children need to prove that they are in the physical custody care and control of the minor.¹⁷⁸ In order to demonstrate this, parents and guardians would be required to furnish a copy of the minor's birth certificate as evidence that the minor is indeed under their care and protection.¹⁷⁹ The court requires that fifteen percent of the child's gross earnings to be set aside by the child's employer to be held in an trust account or other

¹⁷² Hibschan H, 'The Jackie Coogan Case,' 214.

¹⁷³ Guzman JD, 'The Children of YouTube,' 87.

¹⁷⁴ Guzman JD, 'The Children of YouTube,' 89.

¹⁷⁵ Guzman JD, 'The Children of YouTube,' 89.

¹⁷⁶ Guzman JD, 'The Children of YouTube,' 89.

¹⁷⁷ Senate Judiciary Committee, Analysis of Senate Bill 1162, 2, On April 13 1999. (Highlighting the significance of safeguarding children within the entertainment sector is crucial, concurrently acknowledging their substantial contributions to the industry, often resulting in lucrative salaries).

¹⁷⁸ Subdivision a, California Family Code (Section 6752 of 2022).

¹⁷⁹ Subdivision a, California Family Code (Section 6752 of 2022).

savings plan, preserved for the benefit of the child till they attain the age of 18 years.¹⁸⁰ From the same provision, parents or legal guardians are appointed as trustees of the funds set aside for the minor by the court. This is however on a case-to-case basis, as the Court has discretion to appoint any other person beside the parent, as long as its satisfier's the child's best interest.¹⁸¹

The individual who is applying to be the trustee of the minor must draft a trustee's statement and provide it to the minor's employer and open a trust account within 10 days from the date the employment has commenced.¹⁸² To enhance accountability, the parent, guardian, or any appointed trustee must provide a written acknowledgment upon receiving the statement, to which thereafter the minor's employer will disburse the fifteen percent of the gross earnings to the trust account and the remaining eighty-five percent to the parents. The responsibility of overseeing the trust money is still further extended to the minor's employer. When making the initial deposit of funds, the minor's employer must provide a written notification to the financial institution or company the funds are accumulated.¹⁸³ The employer is only accountable to transact the money to the child's trust account, and once the money has been deposited, the trustee will be the only one responsible to account those funds.¹⁸⁴ The trustee statement according to the Code must be provided to the employer within 180 days after the initiation of the child's employment.¹⁸⁵

The law has also taken into consideration orphaned children who may have no legal person or guardian to represent as their trustee. The Entertainment Community Fund (previously known as the Actors' Fund of America) is a charitable organisation that was set up in 1880 and its main role is to promote the social welfare of various entertainment professionals, including children. In an instance where a child is an orphan or a parent or guardian has not provided the minor's employer with a copy of a Trustee's statement within 180 days after the commencement of the child's employment, the employer must notify the Entertainment Community Fund. They have to forward the minor's information. Including the child's name, the minor's social security number, birth date, last known address, telephone number, email address, dates of employment, and title of the project

¹⁸⁰ Subdivision b(6), California Family Code (Section 6752 of 2022).

¹⁸¹ Subdivision b(1), California Family Code (Section 6752 of 2022).

¹⁸² Subdivision b(3), California Family Code (Section 6752 of 2022).

¹⁸³ Subdivision b(5), California Family Code (Section 6752 of 2022).

¹⁸⁴ Subdivision b(9)(A), California Family Code (Section 6752 of 2022).

¹⁸⁵ Subdivision b(9)(A), California Family Code (Section 6752 of 2022).

on which the minor was employed.¹⁸⁶ Subsequently, the employer will deposit 15 percent of the child's gross earnings into the Entertainment Community Fund, which will then serve as the default trustee for the minor.¹⁸⁷ Once the funds have been deposited, the organisation must make their effort in tracing down and notifying the minor's parents or guardians and request a Trustees statement and proof that the child is under their physical custody and care from them in order to be delegated as trustees of the child.¹⁸⁸ If the child's emancipated status remains, the Entertainment Community Fund will continue to act as trustees for the child. Funds will be disbursed to the child upon reaching 18 years of age, provided that the individual can prove their beneficiary status by submitting either a certified copy of their birth certificate or United States passport, along with any other relevant documentation confirming their emancipation to the Organization.¹⁸⁹

A significant gap that was addressed in the amended was that the Coogan law only applied if the funds were deposited in California institutions.¹⁹⁰ For instance, a parent could deposit the money in an account in Ohio or Pennsylvania, and subsequently empty the entire account created in California.¹⁹¹ To solve this, the Senate Bill 1162 additionally necessitated yearly financial reporting and judicial oversight of the trust accounts, with court-endorsed agreements to remain in effect until the minor reached eighteen years of age.¹⁹² Various entertainment trade unions such as the Screen Actors Guild and the Motion Picture Association of America however contend that further improvements on the Coogan law need to made, such as additional enhancements to include the incorporation of penalties for a parent's failure to set up a Coogan account.

4.4. Comparison between Child Performers and Digital Child Workers: Integrating the Coogan Law to Include Digital Child Workers

The pervasive growth of information communication technologies has extended into businesses, as children have become the new targets in profit-seeking enterprises.¹⁹³ The utilisation and

¹⁸⁶ Subdivision b(9)(A), California Family Code (Section 6752 of 2022).

¹⁸⁷ Section b(9)(A), California Family Code (Section 6752 of 2022).

¹⁸⁸ Section b(9)(B), California Family Code (Section 6752 of 2022).

¹⁸⁹ Section e(3)(B), California Family Code (Section 6752 of 2022).

¹⁹⁰ Senate Judiciary Committee, Analysis of Senate Bill 210, 2, On April 22 2003.

¹⁹¹ Senate Judiciary Committee, Analysis of Senate Bill 210, 1, On April 22 2003.

¹⁹² Senate Judiciary Committee, Analysis of Senate Bill 210, On April 22 2003.

¹⁹³ Rosmawani CH, Dusuki FN, 'Minors and Their Incapacity to Contract: A Revisit,' 14 Universiti Utara Malaysia Journal of Legal Studies, 1, 2023, 270.

advancement of digital assets by children are increasing, and the intricacy of products or services sold by companies to minors is on the rise.¹⁹⁴ Although contracts involving children in the digital realm are distinct from employment contracts for child performers, they nevertheless exhibit similar characteristics.

Both child actors and child workers in the digital market would: require to have a certain level of skill. Esports players for instance would need to train through continuous video gaming practice or before participating in the sport tournaments. Digital influencers who are parents may occasionally require their children to read scripts and reshoot videos to ensure that the content meets the standards necessary to attract views from consumers. Children involved in storytelling platforms need to possess a certain level of language proficiency to ensure that their work can be read cohesively and enjoyed by readers.

Secondly, both child actors and digital child workers would require the children to have some sort of creativity around their performance. Some digital child workers would require them to go to a studio in order for them to publish content, or a gaming room for esports players for them to train. The viewership of their content is directly influenced by the level of creativity invested, with higher engagement leading to an increased income generation.

Moreover, in both, the parents and guardians have a significant role to play in managing their careers and their finances. Their parents handle their contractual obligations and negotiations of the said contract, leaving both of them vulnerable and having little to no bargaining power. In spite of the fact that digital content creators enjoy more freedom within their contracts due to their independent contractual agreements, children are still subject to the control of their parents or guardians, who oversee and manage the child's content.

The reasons above can be sufficient to prove that the Coogan law needs to extend to the scope of digital market. Digital child workers are not granted the same protections as traditional child actors, despite the substantial similarity in the nature of the work performed by both.¹⁹⁵ The

¹⁹⁴ Rosmawani CH *et al*, *Minors and Their Incapacity to Contract*, 288.

¹⁹⁵ Guzman JD, 'The Children of YouTube,' 100.

earnings generated by children performing digital work are typically considered the property of the parent or legal guardian, rather than belonging to the child themselves.¹⁹⁶ This further stipulates that parents of digital child are not required to maintain a separate trust account in the child's name.¹⁹⁷ This heightened risk of exploitation for children stems from the substantial potential income involved in digital work, coupled with the lack of current legal remedies available to prevent such exploitation.¹⁹⁸

4.5. Conclusion:

The Coogan law is a sufficient mechanism for child protection which needs to be expanded in the digital sphere in order to incorporate digital child workers. Coogan Protection needs to be effectively enhanced.¹⁹⁹ There needs to be more necessary amendments to the Coogan law enhance incentives for parents to establish a Coogan Trust Account.²⁰⁰ This is because the economic benefit a child receives from their work is determined by the method of payment.

¹⁹⁶ California Family Code Section 7500 (a) Both the mother of an unemancipated minor child and the father, if presumed to be the father under Section 7611, are equally entitled to the child's services and earnings.

¹⁹⁷ Guzman JD, 'The Children of YouTube,' 100.

¹⁹⁸ Guzman JD, 'The Children of YouTube,' 101,

¹⁹⁹ Rosmawani CH *et al*, 'Minors and Their Incapacity to Contract,' 270.

²⁰⁰ Letter from Melissa Gilbert, President of The Screen Actors Guild, to Senator John Burton, President Pro Tempore, California State Senate on March 24 2003.

CHAPTER FIVE: RESHAPING THE DIGITAL CHILD LABOUR FRAMEWORK IN KENYA

5.1. Introduction

This chapter will provide a summary of the findings explored in the preceding chapters and analyse the fourth research question concerning the optimal approach to digital work in Kenya.

5.2. Distinguishing Child Labour and Child Work

The terms ‘child labour’, ‘child employment’ and ‘child labour’ has been used interchangeably throughout the Kenyan and international law. These terms from the analysis, all have different meanings and implicate different rights and protections to a child.

The current legal frameworks designed to distinguish between child work and child labour may inadvertently reinforce stereotypes and biases. Both definitions often oversimplify the complex landscape of children's engagement in various forms of labour, potentially fostering prejudiced assumptions regarding the nature and impacts of their work. When specific types of tasks are categorised as acceptable (which is referred to as child work) and others as unacceptable (referred to as child labour), introduces a potential for societal stigma and broad assumptions based on the nature of the work children are involved in. This tendency depicts children engaged in particular work endeavours as inherently vulnerable or requiring safeguarding, without adequately considering the nuanced circumstances and varied reasons driving their participation in work activities. Furthermore, such categorization fails to oversee the influence of cultural, social, and economic factors on children's participation in work. It may also overlook the recognition of the positive aspects of children's involvement in certain work activities, such as the acquisition of valuable skills, contribution to their families' financial stability, or preservation of cultural traditions.

Moreover, a common criterion for categorising unpaid activities as 'work' is if the activity contributes to production or not.²⁰¹ Measuring children's productive output may seem too difficult because in some cases, their contribution is indirect.²⁰² In digital marketing, brands and

²⁰¹ Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 181.

²⁰² Nhenga-Chakarisa TC, ‘Who Does the Law Seek to Protect and from What?’ 181.

sponsorships mainly target influencers who have a high audience interaction to market their products. Same applies to storytelling platforms, which if the audience interaction is high enough, the stories are printed into physical copies which the writer will accrue profit from. ESports just like the traditional sports; athletes are awarded if they win the competitions. In my opinion, the productive output of the child in the digital realm begins once a parent enters into a contractual relationship with brands, sponsors and digital platforms on behalf of the child, then the scope of interaction the child in the internet then shifts from being a hobby, into becoming child employment.

Additionally, the distinction between work and labour suggests that any profit-driven endeavour is considered detrimental, while gratuitous are seen as harmless.²⁰³ It does not consider children who are at home and their family members rely on them so as to generate an audience. The definition of labour in the Employment Act implies that a significant portion of children's unpaid work is often non-productive. Productivity in the digital market encompasses more than just physical labour; it also involves factors such as creativity and audience engagement. Whether it is an adult or a child engaging in the digital environment for commercial gain, both of their interactions require the same amount of physical and mental effort, which inevitably become the instruments of acquiring monetary benefit. The law should take these aspects into account when interpreting the definition of digital child work.

ILO, the Children Act and the Employment Act define a child as any individual below a certain age, applying the term 'child labour' to encompass all work performed by individuals within this age bracket.²⁰⁴ Conversely, the ACRWC considers child labour within family establishments as a legitimate contribution by children of any age to the economy, deeming it perfectly acceptable.²⁰⁵ I concur with UNICEF's interpretation on child work, defining it as a form of work that is not only beneficial to the child but also facilitates the full actualization of their rights and freedoms.

²⁰³ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 181.

²⁰⁴ Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What?' 178.

²⁰⁵ Cunningham H, 'The Decline of Child Labour: Labour markets and family economies in Europe and North America since 1830,' 53 *The Economic History Review*, 2000, 3.

5.3. Best Interests of a Child

As instated under section 2 of the Children’s Act, a child’s participation and development are some of the components which constitutes as the best interest of the child. Such participation in this context would include, providing child access to the digital environment where they may freely engage in and express their views. This also entails the duty of the State to promote the awareness of, and offer training and support for children to participate on an equal basis with adults, anonymously where needed, so that they can be effective advocates for their rights, individually and as a group.²⁰⁶

Even though the digital environment wasn't initially designed for children, it now plays a crucial role in their lives.²⁰⁷ The best interests of the child under the Kenyan law should be expounded to also consider the favourable consequences brought by digital technologies. The Coogan Law set in place in California, acknowledges the unequal bargaining power in contractual agreements between child with both the employer and a parent. A child has little or no participation in such contracts, yet the revenue that is generated comes from their work. The taking into account the vulnerable position children is in contracts by setting a law to safeguard their earnings, can be regarded as an act which constitutes the best interests of a child.

Just as illustrated in the state of California, ‘fair remuneration’ involves allocating a partial amount of earnings to the child, while parents retain a larger percentage. This demonstrates that despite the child being entitled to a portion of their earnings, the fundamental principle of parental responsibility remains intact, as parents receive a greater share of the earnings, which are immediately accorded to them, unlike the child who can only access those funds upon reaching the age of majority.

²⁰⁶ CRC General Comment 25, 16.

²⁰⁷ CRC General Comment 25, 12.

5.4. Conclusion:

The examination of the digital child labour framework in Kenya highlights the need for a nuanced understanding of children's engagement in various forms of work. It is incontestable that child labour should be abolished. Child work alternatively, necessitates more rigorous and effective laws to enhance child welfare in order to protect a child's best interest especially in the digital market. There needs to exist a legal clarity between the two definitions.

Distinctions between productive and non-productive work fail to capture the nuances of children's contributions, particularly in the digital realm. Parental responsibility and fair remuneration underscore the importance of protecting children's rights in contracts. To reshape this framework, Kenya must prioritise the best interests of the child, acknowledging digital technologies' positive impacts while safeguarding children's rights. Promoting children's participation, providing support, and enacting laws that upholding the rights of children are crucial steps towards creating a fair and inclusive digital environment for Kenya's children.

CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS

6.1. Introduction

This chapter will provide an overview of the analysis presented in the previous chapters. Additionally, it will propose recommendations aimed at safeguarding the rights of children to fair compensation in the digital environment. This study concludes that the current law fails to adequately address the rights of children in the digital realm, which estranges them from acquiring equitable compensation for their labour. Chapter one laid out the foundation of the study, by highlighting the background and expounding on the statement of the problem. Chapter two was addressing the first research question, by looking at the procedures of child work in Kenya and its inefficiency in securing the rights of children in contracts between them and digital companies. Chapter three analysed the current legal framework where digital child work falls in Kenya and how it hinders a child from having a claim over their earnings. Chapter four involved a comparative examination of the US' efforts to safeguard children working under a contract for service, highlighting similarities between child performers' work and digital child work. Chapter five suggests on the reformulation of the current law in Kenya and calls for a more pragmatic approach in understanding what constitutes as the best interests of a child.

6.2. Findings Overview

Chapter one highlighted the various ways in which a child may engage in the digital realm and how they may earn an income from such interactions. It investigated whether the Kenyan law in is sufficient in protecting the children's right to fair compensation. It further set out research objectives and questions that will aid in answering the main overlying research question. The study is ought to be guided by the Marxist labour theory of justice, which articulates that individuals who provide the necessary labour to a product or service also have a right to benefit from it.

Chapter two evaluated the procedure of contracting with minors who perform work in Kenya. Adopting the Common Law of England which is the recognizable law in Kenya guiding contracts, there are two exceptions into which a child may enter into a binding contract. The chapter also discovered that according to common law and the Children Act, parental responsibility implies that a parent holds full responsibility over their child and any labour-related output produced by the child. Based on this understanding, the chapter concluded that the interpretation of parental

responsibility impedes the child's ability to assert a claim for the earnings they generate from their digital work as parents have a preceding dominant authority over their children.

Chapter three of this study performed a comprehensive analysis of the legal framework of child work in Kenya. From the research, it was discovered that terminologies such as child work and child labour have not been clearly defined in both international and domestic law. Moreover, there was a conflict of laws especially between Article 31 of the ACRWC and the ILO Conventions. It discovered that the meaning of child labour and child work implicate different legal protections to a child. The chapter finally concluded that the type of work a child engages in the digital environment falls under child work and not child labour.

Chapter four was comparative in nature and from the review, California State Laws have been able to protect the earnings of child who are involved in the sports and media industry, by obligating certain duties to not only the child's employer but also to the parent of the child. It analysed that both child actor performance contracts and gig work contracts share a similarity in which a child not only provides their services for monetary gain but also in both instances, the child is subservient in such contracts, with their voices remaining silent despite being the labourers of the work. Therefore, in both contracts, a child's fair remuneration is ought to be considered.

Chapter five of this study used the analysis from the previous chapters and discovered that there are various reasons why a child's right to fair remuneration may be hindered in Kenya, Firstly, child work in Kenya is ultimately considered as either non-productive or for the benefit of the employer. Secondly, there interchangeable use of child labour and child work in the existing laws, would make it difficult to determine a child's right in the digital sphere.

6.3. Recommendations

The study puts forth the following recommendations;

6.3.1. Reformulating the definition of Child Labour and Child Work

The domestic law in Kenya needs to be reviewed specifically in redefining what constitutes of child labour and what is child work. Additionally, if the child work would require the same necessary labour an adult gives and the adult is compensated, then economic benefit should be considered as part and parcel of a factor as the best interest of the child.

6.3.2. Having an Enforceable Policy for Child Work

As 'light work' is deemed permissible for children between the ages of thirteen and sixteen, there must be an enforceable policy that provides further clarification on what constitutes light work and clear criteria for what the Cabinet Secretary should consider before authorising a child to work.

6.3.3. Issuing Licences to Child Workers

In order to ensure the effective monitoring of children in a contract, the state can enact a law which ensures that for a child to be able to work in that particular field a parent or guardian has to acquire a licence on behalf of the child. Employers can allow a child to work only upon receiving the working licence from the child's parent or guardian. The licence is ought to be administered by the Cabinet Secretary, and is only granted once the Cabinet Secretary is satisfied that the work of this child does not in any way interfere with the child's rights and freedoms.

6.3.4. Protecting Children's Earnings

To protect the child's earnings, the State should implement a law which protects the earnings of children engaged in child work. The licence should contain a provision which obligates the parent to set up a trust account on behalf of the child and a reasonable percentage of a child's earnings are to be sent to that trust account, in which the child may access it once they have attained the legal age of 18, upon full identification to the bank that they are the true beneficiary to the earnings. What is deemed reasonable will be subject to the government's discretion and determination. In the case of orphans or children whose parents have not identified themselves yet, the UFAA would step in and act as a Trustee on behalf of the child. The employers and contractors would need to

notify the State the scope of employment and highlight the amount that was agreed to be paid in order to ensure that the child workers are not economically exploited.

6.3.5. Supervision of Children in the Digital Market

Lastly, more stringent mechanisms need to be in place to consumers, particularly on parents and guardians, regarding the media content children are exposed to. By doing so, they can ascertain that the content aligns with a child's appropriate values, morals, and age-appropriate material. This guidance aims to not only protect the scope of child work, but to also safeguard children from potentially harmful or inappropriate content and to assist parents and guardians in making informed decisions about the media consumption habits of the children under their supervision.

6.4. Conclusion

The distinction between child work and child labour is delicate, and without adequate mechanisms in place, it can pose risks to the well-being of the child. Child work needs a more thorough reevaluation to ensure that children are able to not only practise their rights but also to accrue the potential benefits from their work.

BIBLIOGRAPHY

Books

Bourdillon MFC, Levison D, Myers W and White B, 'Rights and Wrongs of Children's Work,' Rutgers University Press, New Brunswick, 2010.

Checkley TW, 'Handbook on the Law of Persons and Domestic Relations,' 3 ed, West Publishing Company, Eagan, 1921.

Daugherty P, Wilson HJ, 'Human + Machine: Reimagining Work in the Age of AI,' Harvard Business Review Press, Boston, Massachusetts, 2018.

Evans M, Murray R (eds), 'The African Charter on Human and Peoples' Rights: The System in Practice,' Cambridge University Press, United Kingdom, 2002.

Marx K, 'Das Kapital: A Critique of Political Economy,' Volume I Book One: The Process of Production of Capital, 1887.

Peel E, 'Treitel: The Law of Contract,' 13 ed, Sweet & Maxwell Limited, London, 2011.

Quinn F, Elliott C, 'Contract Law,' 12 ed, Pearson Education Limited, Edinburgh Gate, 2019.

Stenberg MC, Stuart DK, 'Children as Chattels: The Disturbing Plight of Child Performers,' 1997.

Chapter in Books

Langille B, 'Labour Law's Theory of Justice' in Davidov G and Langille B *The Idea of Labour Law* Oxford University Press, New York, 2011.

Journal Articles

Campbell AJ, 'Rethinking Children's Advertising Policies for the Digital Age,' 29(1) *Loyola Consumer Law Review*, 2016.

Celek BM, 'The International Response to Child Labor in the Developing World: Why Are We Ineffective,' XI Georgetown Journal on Poverty Law & Policy 1, 2004.

Cunningham H, 'The Decline of Child Labour: Labour markets and family economies in Europe and North America since 1830,' 53 The Economic History Review, 2000.

Freeman M, 'The Sociology of Childhood and Children's Rights,' 6 The International Journal of Children's Rights, 4, 1998.

Guzman JD, 'The Children of YouTube: How an Entertainment Industry Goes Around Child Labor Laws,' 8.1 Child and Family Law Journal, 2020.

Hibschman H, 'The Jackie Coogan Case,' 72 United States Law Review, 1938.

Kocher E, 'Reshaping the Legal Categories of Work Digital Labor Platforms at the Borders of Labor Law.' 1.1 Weizenbaum Journal of the Digital Society 1.1, 2021.

Lloyd A, 'Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet,' 10 International Journal of Human Rights, 2002.

Lobel O, 'The Gig Economy & the Future of Employment and Labour Law,' 51 University of San Francisco Law Review, 2017.

Nhenga-Chakarisa TC, 'Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in an African Context,' 10 African Human Rights Law Journal, 1, 2010.

Riefa C, Clausen L, 'Towards Fairness in Digital influencers,' 8 Journal of European Consumer and Market Law, 2019.

Rosmawani CH, Dusuki FN, 'Minors and Their Incapacity to Contract: A Revisit,' 14 Universiti Utara Malaysia Journal of Legal Studies, 1, 2023.

Star S and Dhankar D, 'Major differences in Minors' Contracts: A Comparative Analysis Into The Validity of Contracts with Minors in the Sport and Entertainment Industry,' 43 Liverpool Law Review 2, 2022.

Stone KVV, 'A Labour Law for the Digital Era," 21 Employee Responsibilities and Rights Journal 2009.

van der Hof S, Lievens E, Milkaite I, Verdoodt V, Hannema T, Liefwaard T, 'The Child's Right to Protection Against Economic Exploitation in the Digital World,' 28 The International Journal of Children's Rights, 2020.

White B, 'Children, Work and Child Labour: Changing Responses to the Employment of Children, Development and Change' 25 International Institute of Social Studies, 4, 1994.

Self- Published Articles

Berg J, 'Protecting Workers in the Digital Age,' Technology, Outsourcing and the Growing Precariousness of Work, Social Science Research Network, 2019 <https://ssrn.com/abstract=3413740>

Juho H, Sjoblom M, 'What Is eSports and Why Do People Watch It?' Social Science Research Network, 2020.

van der Hof S, Verdoodt V, Leiser M, 'Child Labour and Online Protection in a World of Influencers,' Social Science Research Network, 2019 <https://ssrn.com/abstract=3458379>

Verdoodt V, Feci N, 'Digital Influencers and Vlogging Advertising: Calling for Awareness, Guidance and Enforcement,' Social Science Research Network, 2020.

White S, 'Needs, labour, and Marx's Conception of Justice,' 44 Political Studies, 1996.

Conference Papers

Lievens E, 'A Children's Rights Perspective on the Responsibility of Social Network Site Providers,' The 25th International Telecommunications Society European Regional Conference Organised by iMinds and Vrije Universiteit, Bussel, 22-25 June 2014 <https://www.econstor.eu/bitstream/10419/101441/1/795276834.pdf>.

Wagner M, 'On the Scientific Relevance of eSports' Proceedings of the International Conference on Internet Computing & Conference on Computer Games Development Organised by the Las Vegas, Nevada, USA, June 26 2006.

Other Internet Sources

Bush R, 'Protecting Children and Young People in Esports,' The Esports Observer, 21 August 2017 <https://archive.esportsobserver.com/protecting-children-young-people-esports/>.

Human Rights Watch, 'Child Labour,' <https://www.hrw.org/topic/childrens-rights/child-labor>.

Lievens E, 'The Rights of the Child in the Digital Environment,' 5 Rights Foundation, 2020 <https://freedomreport.5rightsfoundation.com/the-rights-of-the-child-in-the-digital-environment-from-empowerment-to-de-responsibilisation>.

Supiot A, 'Possible Europes,' <https://newleftreview.org/issues/ii57/articles/alain-supiot-possible-europes>

Working Papers, Discussion Papers and Research Papers

Trajano JC, 'A Rights-Based Approach to Governing Online Freelance Labour: Towards Decent Work in Digital Labour Platforms,' S. Rajaratnam School of International Studies Research Paper Number 21(1), 2021.

Tur-Viñes V, Núñez-Gómez P, González-Río MJ, 'Kid influencers on YouTube,' 73 Revista Latina de Comunicación Social, https://rua.ua.es/dspace/bitstream/10045/78787/1/2018_Tur_etal_RLCS_esp.pdf.

Emails and Other Personal Communication

Letter from Melissa Gilbert, President of The Screen Actors Guild, to Senator John Burton, President Pro Tempore, California State Senate on March 24 2003.

Dissertations and Theses

Verdoodt V, 'Children's Rights and Advertising Literacy in the Digital Era: Towards an Empowering Regulatory Framework for Commercial Communication,' Unpublished LLM Thesis, Ghent University, Belgium, 2018.

Dictionaries

Oxford Learner's Dictionary, 6th Edition.

Reports and Institutional Authors

European Commission, 'Behavioural Study on Advertising and Marketing Practices in Online Social Media,' Final Draft, 2018.

Joanne C, 'In the Shadow of Death: HIV/AIDS and Children's Rights in Kenya,' Human Rights Watch, 2001.

UNICEF Report on the World State of Childhood, *final draft*, 1997.

wa Mutua M, 'The African Human Rights System: A Critical Evaluation,' United Nations Development Programme, Human Development Report, 2000.