

NOTE

FREEDOM TO TRAUMATIZE CHILDREN?: UNREASONABLE PUBLICITY AND NON- CELEBRITY CHILDREN'S RIGHT TO PRIVACY

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This Note examines the significant privacy risks faced by children of celebrities, referred to as “non-celebrity children,” who are often subjected to invasive scrutiny and exploitation by the media and paparazzi due to their parents’ fame. The publication of these children’s personal identifying information—such as their names, photographs, and other private details—without consent arguably constitutes unreasonable publicity, as it exposes non-celebrity children to harm without any justifiable public interest. The Note critiques the inadequacies of current U.S. privacy laws, which fail to sufficiently protect these vulnerable children from nonconsensual disclosure of their private information. It calls for extending legal protections, specifically the privacy-based tort of unreasonable publicity, to prevent the publication of non-celebrity children’s personal information while still allowing other types of publication, advocating for a balance between the freedom of the press and the right to privacy. This would allow the media to continue reporting on public figures while safeguarding the well-being

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of non-celebrity children, ultimately reducing children's exposure to harmful paparazzi behaviors and the various harms posed by public exposure.

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INTRODUCTION

Attempting to escape the wall of adults with cameras blindly flashing in her face, Suri yells, “[s]top it,” and “[g]et out of the way,” as she urgently pulls her mom towards their car.¹ A paparazzo responds by calling seven-year-old Suri a “little brat” and a “bitch.”² Suri Cruise, the daughter of celebrities Tom Cruise and Katie Holmes, had this encounter with the paparazzi in 2013.³ Willfully oblivious to Suri’s requests to stop, paparazzi took a flurry of photographs and quickly posted a video of the encounter to YouTube.⁴ With a single upload, Suri’s sense of privacy was destroyed.⁵ Her reactions during a vulnerable moment were broadcast for all to see and comment.⁶ While some viewers were appalled, others excused the paparazzi’s behavior arguing that Suri was “known for being a brat.”⁷ Sadly, as paparazzi encounters go, Suri’s was tame in comparison to the experiences of other celebrities including harassment, assault and battery, and even death.⁸

Suri’s paparazzi encounter and resulting public backlash represent one of the many interactions children of celebrities experience,

1. HighlightsCelebrity, *Suri Cruise Verbally Attacked by Paparazzi!*, YOUTUBE (July 13, 2013), <https://www.youtube.com/watch?v=XNPreZLlZfg> [<https://perma.cc/ARQ6-7VBM>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *See id.*

6. *Id.*

7. *Id.*

8. *See, e.g.,* Bonnie Stiernberg, *The Britney Spears Doc Reveals the Staggering Profitability of the Paparazzi*, INSIDEHOOK (Feb. 10, 2021, 9:01 AM), <https://www.insidehook.com/article/arts-entertainment/britney-spears-doc-reveals-staggering-profitability-paparazzi-culture> [<https://perma.cc/G8EM-GFXV>] (exposing paparazzi harassing Spears “about her breasts” and “if she’s still a virgin”); *Photographer Charged in Witherspoon Incident*, TODAY (Oct. 8, 2005, 5:29 PM), <https://www.today.com/popculture/photographer-charged-witherspoon-incident-1C9482865> [<https://perma.cc/9DA8-RJ3P>] (revealing a paparazzo charged with battering a five-year-old while trying to photograph Reese Witherspoon); Warren Hoge, *Diana, Princess of Wales, 36, Dies in a Crash in Paris*, N.Y. TIMES (Aug. 31, 1997), <https://www.nytimes.com/1997/08/31/world/diana-princess-of-wales-36-dies-in-a-crash-in-paris.html> (detailing Princess Diana’s deadly car crash after paparazzi gave chase).

regardless of their own celebrity status.⁹ The approving commenters pose a disheartening reality for the lack of sympathy extended to celebrities' children. Aside from the rude nature of the paparazzi's words, it would be very jarring to have a stranger yelling at anyone, let alone a crowd of strangers. Then, one would think, Suri's reaction was understandable, not bratty. In reality, the media and paparazzi disregard that children, celebrities or not, are more susceptible to exploitation and manipulation because of their developing cognitive capacities and vulnerable nature.¹⁰ Further, while the United States provides unique protections for children at various levels of the law, existing privacy protections do not adequately shield children from the nonconsensual disclosure of their private information.¹¹

Following the death of Princess Diana—a death caused by injuries sustained in a fatal car crash while being pursued by paparazzi¹²—legislators were compelled to consider celebrity privacy rights and tried to take action.¹³ However, current “anti-paparazzi legislation” only protects celebrities from intrusion in private spaces, does not address intrusions in public spaces, and does not protect the families of celebrities.¹⁴ Specifically, the current laws do not even address the privacy concerns of celebrities' children or the abuse of their private information for media profit. This Note addresses that gap in protection, considering the privacy concerns of children who are not

9. See Kara Alaimo, *The Unconscionable Truth About Celebrity Kid Paparazzi Photos*, CNN (Nov. 7, 2021, 7:15 PM), <https://www.cnn.com/2021/11/07/opinions/clooney-celebrity-kids-paparazzi-alaimo/index.html> [https://perma.cc/9YFK-Q2ZB] (discussing the ferocity of paparazzi toward celebrities' children).

10. See *infra* Section I.A.2 (identifying the unique dangers posed to children posted online).

11. See *infra* Section I.C (detailing the United States' efforts to protect children).

12. Hoge, *supra* note 8.

13. Congress attempted to pass a bill sanctioning anyone who chases another to photograph and sell their image; however, the bill died in Committee. H.R. 3224, 105th Cong. (2d Sess. 1998).

14. See CAL. CIV. CODE § 1708.8 (West 2016) (prohibiting paparazzi from intruding upon celebrities' privacy, including through drones or telephoto lenses to photograph or record them); CAL. PENAL CODE § 11414 (West 2016) (prohibiting paparazzi from “intentionally harass[ing] the child or ward of any other person because of that person's employment”).

celebrities but who receive celebrity status because of a parent's status—referred to as “non-celebrity children” moving forward.¹⁵

Lacking legal protections, celebrity parents are left to confront the paparazzi for stalking and harassing their non-celebrity children and to call out tabloids for publishing and profiting off nonconsensual publications of their children.¹⁶ Some celebrities have requested that the media not post photographs of their non-celebrity children or in the alternative, blur their faces, and many celebrities hide their non-celebrity children's faces in their own social media posts.¹⁷ A handful of publications have recognized the error of their ways and made the editorial decision to only publish non-celebrity children with parental consent; however, many still willfully profit off nonconsensual publications of non-celebrity children's private information.¹⁸ Such tabloids and paparazzi actively endanger non-celebrity children through

15. For a more thorough discussion of the three categories of celebrities and the development of the term “non-celebrity children” see *infra* Section I.A.1. Children who have willfully ascended to celebrity status or who have been promoted to celebrity status by their parents are not the focus of this argument. “Non-celebrity children” specifically refers to children who are not celebrities and who have, themselves or through their parents or legal guardians, actively not consented to the publicity of their information. See *infra* notes 16–18 and accompanying text.

16. Actresses Halle Berry and Jennifer Garner testified before California's Assembly Judiciary Committee about paparazzi stalking their minor children. *Jennifer Garner, Halle Berry Urge Support for Calif. Paparazzi Bill*, CBS NEWS (Aug. 13, 2013, 5:34 PM), <https://www.cbsnews.com/news/jennifer-garner-halle-berry-urge-support-for-calif-paparazzi-bill> [<https://perma.cc/2S3L-SRQC>].

17. See Claudia Willen, *Celebrity Parents Who Don't Post Photos of Their Kids Online*, BUS. INSIDER (June 29, 2020, 5:49 PM), <https://www.insider.com/celebrity-parents-kids-no-photos-social-media-online-2020-6> [<https://perma.cc/K6LG-LEWE>] (discussing celebrities who explicitly do not post photographs of their children or consent to tabloids publishing their photographs); Emily Yahr, *The Latest 'Paparazzi Versus Celebrity Kids' Fight Has Been Raging for Nearly a Decade. And It's Still Complicated.*, WASH. POST (July 29, 2021, 6:00 AM), <https://www.washingtonpost.com/arts-entertainment/2021/07/29/paparazzi-kids-celebrities-blake-lively-gigi-hadid> (relaying Gigi Hadid's Instagram story begging media to blur out her newborn's face from photographs).

18. Actress Kristen Bell launched a “No-Kids” photo campaign calling on the media to stop publishing photographs of children without consent, and several outlets like *People* and *The Today Show* followed suit; however, litigious news sources like *TMZ* still participate in these publications. Nardine Saad, *E!, 'Today' Show Stand with Kristen Bell's No-Kids Photo Policy*, L.A. TIMES (Feb. 26, 2014, 6:25 PM), <https://www.latimes.com/entertainment/la-xpm-2014-feb-26-la-et-mg-e-entertainment-no-kids-policy-kristen-bell-child-photos-20140226-story.html> [<https://perma.cc/7C5H-V3LC>].

their unfettered behavior, and they frequently expose these children's personal information without consent.¹⁹

This Note argues that the publication of non-celebrity children's personal identifying information—names, photographs, and personal information—constitutes unreasonable publicity because the publication of such personal information is offensive and damaging to the child, and the harms caused by the publication outweigh the “newsworthiness” of the information. Part I provides background on the right to privacy, unreasonable publicity, and the defense of “newsworthiness,” as well as defines celebrities, identifies the dangers posed by publicizing a minor's information, and considers the various ways the United States currently adapts laws for children's protection. Part II details how the publication of a non-celebrity child's name, photograph, and identifying information constitutes unreasonable publicity. The Conclusion calls on courts to acknowledge that because children have unique vulnerabilities, the publication of non-celebrity children's personal identifying information without consent constitutes unreasonable publicity.

I. BACKGROUND

A. Who Is a Celebrity and What Are the Dangers of Publication?

In understanding non-celebrity children's “celebrity status” and the dangers posed to them through media exposure, it is crucial to first understand who constitutes a celebrity. This Section considers the three categories of celebrities, who falls into these categories, and how those individuals have found themselves in these categories.²⁰ Secondary to categorizing celebrities, it is necessary to recognize the various physical, mental, and emotional dangers that paparazzi presence and media exposure poses to any person—especially children associated with fame, whether or not that association with fame is willful.²¹

19. Consent is the “voluntary yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose, esp[ecially] given voluntarily by a competent person; legally affective assent.” *Consent*, BLACK'S LAW DICTIONARY (12th ed. 2024).

20. See *infra* Section I.A.1.

21. See *infra* Section I.A.2.

1. *Identifying and defining the categories of celebrities*

A celebrity or public figure refers to one of three categories of individuals: (1) political celebrities, (2) non-political celebrities, and (3) involuntary celebrities.²²

Political celebrities include politicians, public officials, and those whose work affects public affairs.²³ Children engaged in political activities, such as activism or running campaigns, are considered political celebrities.²⁴ Consider Greta Thunberg, who promoted herself as an international climate change activist from a young age.²⁵ Regardless of her age, Greta has posed herself as a political celebrity through her policy agent activities.

Non-political celebrities include actors, musicians, athletes, vloggers, influencers, and others who are not engaged in political matters but promote themselves to the public.²⁶ This category also includes limited public figures or celebrities who have “voluntarily inject[ed

22. This Note refers to public figures as celebrities given Hollywood celebrities and their children are the main subject matter; however, the Supreme Court uses the language “public figure” where this Note uses “non-political celebrity”, “public official” where this Note uses “political celebrity,” and “involuntary public figure” where this Note uses “involuntary celebrity.” See *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 351–52 (1974); see also Keith D. Willis, Note, *Paparazzi, Tabloids, and the New Hollywood Press: Can Celebrities Claim a Defensible Publicity Right in Order to Prevent the Media from Following Their Every Move?*, 9 TEX. REV. ENT. & SPORTS L. 175, 179–80 (2007) (discussing *Gertz*’s acknowledgment of “non-political celebrities” or “public figures” as celebrities due to the public’s interest in those figures and their fame or notoriety).

23. See *Gertz*, 418 U.S. at 351 (noting political celebrities were the original public figures).

24. See 2024–2025 *Executive Board*, HIGH SCH. DEMOCRATS AM., <https://hsdems.org/national> [<https://perma.cc/7H87-TP8N>] (naming child executive board members who participate in political matters); *National Board*, HIGH SCH. REPUBLICANS, <https://www.hsreps.org/national> [<https://perma.cc/5SUV-ZZPG>] (naming the same).

25. See Oliver Harvey, *Prophet or Puppet? Fears Greta Thunberg Is Being Manipulated on Climate Change by Pushy Parents and Energy Giants*, THE SUN (Aug. 19, 2019, 11:08 PM), <https://www.thesun.co.uk/news/9756307/greta-thunberg-climate-change-fears-parents> [<https://perma.cc/FGES-779R>] (discussing child activist Greta Thunberg’s environmental political activity).

26. See Willis, *supra* note 22, at 179–80 (reasoning that courts consider celebrities to be public figures because “their talents attract public debate and commentary”). Young Sheldon’s child actor, Iain Armitage, consents to publicity by participating in the show. *Iain Armitage*, IMDB, <https://www.imdb.com/name/nm8071137> [<https://perma.cc/S45F-8L7C>].

themselves] or [have been] drawn into a particular public controversy and thereby become[] public figure[s] for a limited range of issues.”²⁷ Children who commit “newsworthy” acts, such as former President Bush’s twin daughters committing a public alcohol offense, qualify as non-political celebrities because they have participated in a matter of public concern, even if only limited to one instance of criminal activity.²⁸

Involuntary celebrities are those who “become [celebrities] through no purposeful action of [their] own.”²⁹ The Restatement of Torts discusses involuntary public figures or celebrities at length, noting,

There are other individuals who have not sought publicity or consented to it, but through their own conduct or otherwise have become a legitimate subject of public interest. They have, in other words, become “news.” . . . These persons are regarded as properly subject to the public interest, and publishers are permitted to satisfy the curiosity of the public as to its heroes, leaders, villains and victims, and those who are closely associated with them. As in the case of the voluntary public figure, the authorized publicity is not limited to the event that itself arouses the public interest, and to some reasonable extent includes publicity given to facts about the individual that would otherwise be purely private.³⁰

This category casts a wide net over private citizens who find themselves at the will of the media, and unfortunately, exposes private citizens to public scrutiny without access to their former privacy protections.³¹

27. See *Gertz*, 418 U.S. at 351 (considering the two paths to becoming a public figure, including through fame or self-insertion into a limited matter).

28. Frank Bruni, *Appeal for Privacy After Bush Twins Are Cited for Alcohol*, N.Y. TIMES (June 1, 2001), <https://www.nytimes.com/2001/06/01/us/appeal-for-privacy-after-bush-twins-are-cited-for-alcohol.html> (committing a public alcohol offense occurs within the public sphere and has the potential to impact others in the public through disorderly conduct or acts endangering others’ lives, both of which qualify the event as a matter of public concern).

29. *Gertz*, 418 U.S. at 345.

30. RESTATEMENT (SECOND) OF TORTS § 652D, cmt. f (AM. L. INST. 1997).

31. Consider the case of Olive Sipple, an involuntary public figure who saved President Gerald Ford from an assassination attempt. *Sipple v. Chronicle Publ’g Co.*, 201 Cal. Rptr. 665, 666 (Ct. App. 1984). Sipple, a private citizen, was suddenly a national

Non-celebrity children fall into this category as they are only well-known because of their parent's celebrity status, not because of their own actions. As such, they are non-celebrities, and, yet, they have involuntarily been granted a celebrity status. The involuntariness of this status is what sets non-celebrity children apart from the other two categories of celebrities.³²

2. *Dangers posed by paparazzi and tabloids on children's physical and mental well-being*

Numerous celebrities and former celebrities' children have come forward to expose invasive paparazzi and tabloid behaviors and discuss the effects these had on them.³³ Media exposure in itself poses a danger to children, whether related to a celebrity or not.³⁴ An estimated 92% of American children over the age of two have been posted online, and those publicly available photographs are sometimes tragically found on child pornography sites or are the basis of cyber

hero, and unfortunately, several national and local publications reporting on Sipple's heroic feat outed him as homosexual and caused him great personal distress. *Id.* at 667. Sipple filed a claim of unreasonable publicity against several publications, arguing his sexual identity fell outside the public's interest in his heroic acts. *Id.* at 667, 670. However, the court found Sipple was an involuntary public figure because of his heroic acts, his sexuality was already known to people in his community, and his public figure status exposed other aspects of his private life to the limelight because his very person was of public interest. *Id.* at 670. Following his public exposure, Sipple became very depressed and struggled with alcoholism and schizophrenia before his untimely death at the age of forty-seven. Jesus Rangel, *O.W. Sipple, 47, Who Blocked an Attempt to Kill Ford in 1975*, N.Y. TIMES (Feb. 4, 1989), <https://www.nytimes.com/1989/02/04/obituaries/ow-sipple-47-who-blocked-an-attempt-to-kill-ford-in-1975.html>.

32. See *Gertz*, 418 U.S. at 345 (noting these positions are "exceedingly rare" because a status as a public figure necessitates assuming some role of public concern by choice).

33. See *The Negative Effects of the Media on Celebrities*, GLASSVISAGE, <https://discover.hubpages.com/entertainment/The-negative-effects-of-the-media-on-celebrities> (Feb. 5, 2012) (discussing the long-term health impacts on celebrities after unwanted media coverage and stalking, including a loss of coveted privacy, over-exaggeration of personal situations, and induced anxiety and depression); Stiernberg, *supra* note 8 (discussing harassment by paparazzi); Alaimo, *supra* note 9 (discussing the harms inflicted on children followed by paparazzi or publicized by tabloids).

34. See *Digital Birth: Welcome to the Online World*, BUS. WIRE (Oct. 6, 2010, 1:02 PM), https://web.archive.org/web/20190220201731/https://www.businesswire.com/news/home/20101006006722/en/Digital-Birth-Online-World#.VJPGosAAJ** (discussing the increase in digital profiles for children across the globe).

identity theft cases.³⁵ Predators discover these children and target them through internet bullying, harassment, grooming, blackmail, and other harmful conduct.³⁶ Children's photographs are used by stalkers and predators to learn private information about the child, to start an online conversation with an unsuspecting child, or to find a child's live location.³⁷ This information poses a serious threat to a child's well-being and can become an imminent physical risk if the online predator confronts the child in person or convinces the child to behave in ways adverse to the child's welfare. As celebrities are already the focus of mass attention, including stalkers and obsessed fans, their children face heightened risks.³⁸

Aside from the physical dangers imposed by media exposure, there are also emotional and mental health concerns.³⁹ Actress Jennifer Garner has stated that the constant presence of paparazzi following her and her family around has caused them great harm by invading their privacy and by interfering with, or in certain instances, preventing their

35. *Id.*; *Kids for Privacy Campaign*, CHILD RESCUE COAL., <https://childrescuecoalition.org/kids-privacy-campaign> [<https://perma.cc/Z6M4-3L9E>] (last visited Sept. 21, 2024); see Vanessa Cezarita Cordeiro, *Children's Rights and Digital Technologies: Children's Privacy in the Age of Social Media—The Perils of "Sharenting"*, HUMANIUM (Jan. 26, 2021), <https://www.humanium.org/en/childrens-rights-and-digital-technologies-childrens-privacy-in-the-age-of-social-media-the-perils-of-sharenting> [<https://perma.cc/DW8X-Z45K>] (predicting that "sharenting" will result in \$867 million lost in fraudulent information by 2030).

36. Cordeiro, *supra* note 35; *IWF Research on Child Sex Abuse Live-Streaming Reveals 98% of Victims Are 13 or Under*, INTERNET WATCH FOUND. (May 14, 2018) [hereinafter *IWF Research*], <https://www.iwf.org.uk/news-media/news/iwf-research-on-child-sex-abuse-live-streaming-reveals-98-of-victims-are-13-or-under> [<https://perma.cc/8VHW-BCYF>].

37. *IWF Research*, *supra* note 36.

38. See *The Negative Effects of the Media on Celebrities*, *supra* note 33 (discussing extreme media coverage and the increase in stalking already impacting celebrities and their mindsets). Consider also the real physical dangers posed to celebrities and their families by crazed fans and money-motivated paparazzi. *Supra* note 8 and accompanying text.

39. See *The Negative Effects of the Media on Celebrities*, *supra* note 33. Although an adult when he became an involuntary public figure, Oliver Sipple's story articulates the dangers posed by nonconsensual media exposure; Sipple's private life, including his homosexuality, was mass published without his consent despite his public notoriety revolving around heroic acts unrelated to his sexual identity. See *supra* note 31. The publicity led to his untimely death following disastrous mental health issues. *Id.*

ability to engage in childhood activities.⁴⁰ Garner explained that paparazzi were always hiding in bushes or outside her house, her children's school, and her children's pediatrician's office.⁴¹ The paparazzi's photographs would reveal these private locations to crazed fans, putting the family at risk.⁴² Further, the paparazzi's presence turned her daughter's soccer games into a "zoo" of grown men photographing her daughter, which caused the team to ask Garner's daughter to quit.⁴³

Paris Jackson, daughter of Michael Jackson, described how being followed by paparazzi and stalkers as a child in her father's spotlight negatively affected her mental health.⁴⁴ Jackson discussed her battle with post-traumatic stress disorder (PTSD), explaining that she developed "auditory hallucinations . . . [involving] camera clicks and severe paranoia" from years of harassment and negative media attention.⁴⁵

In a more extreme case, famous aviator Charles Lindbergh's twenty-month-old son was kidnapped, held for ransom, and then murdered based on the recognition he gained as a child to his celebrity father.⁴⁶ These instances of negative media attention, aggressive paparazzi encounters, and general nonconsensual media presence present physical and mental concerns for these children both now and in their future adult lives.⁴⁷

Now with an understanding of celebrity status and the harms of media exposure, let us consider the available privacy protections and the development of the common law right to privacy.

40. Georgia Slater, *Jennifer Garner Talks Harrowing Impact the Paparazzi Has Had on Her Life and Kids*, PEOPLE (Oct. 21, 2020, 11:13 AM), <https://people.com/movies/jennifer-garner-talks-impact-paparazzi-life-and-kids> [<https://perma.cc/T9EE-D9LX>].

41. *Id.*

42. *Id.*

43. *Id.*

44. *Paris Jackson Says She Suffers from PTSD Because of the Paparazzi*, ASSOCIATED PRESS (June 14, 2021, 10:10 AM), <https://www.nbcnews.com/pop-culture/pop-culture-news/paris-jackson-says-she-suffers-ptsd-because-paparazzi-n1270665>.

45. *Id.*

46. Michael Ray, *Lindbergh Baby Kidnapping*, BRITANNICA (Aug. 12, 2024), <https://www.britannica.com/event/Lindbergh-baby-kidnapping/The-trial-of-the-century> [<https://perma.cc/B8NQ-PL8W>].

47. See *supra* notes 33–46 and accompanying text.

B. The Common Law Right to Privacy

The right to privacy exists in two spheres: (1) the general right to privacy, which includes unlawful invasion of privacy by the public and non-government entities, and (2) the constitutional right to privacy, which includes unlawful invasion of privacy by the government and government entities.⁴⁸ The latter is outside the scope of this Note.

While we understand these spheres of privacy today and are perhaps hyperaware of invasions of our privacy in the evolving technology world, this idea did not always exist—or necessarily need to exist like it does today—in the legal discussion. In 1890, Samuel Warren and Louis Brandeis catalyzed modern privacy laws with *The Right to Privacy*, advocating for a concrete right to privacy and, relevant to this discussion, increased media accountability regarding news reported on celebrities.⁴⁹ As celebrity status expanded from rulers and preachers to artists, poets, and musicians during the eighteenth and nineteenth centuries, growing literacy rates and printing capabilities made celebrity news more widespread.⁵⁰ Concerned by the erosion of journalism, Warren and Brandeis argued against publishing details of a celebrity’s “private life, habits, acts, and relations[,]” emphasizing that such matters were unrelated to their public positions.⁵¹

By 1960, twenty-seven states had accepted some form and degree of the right to privacy.⁵² In *Privacy*, William Prosser dissected the state statutes and identified four common privacy-based torts: (1) “unreasonable intrusion upon the seclusion of another,” (2) “appropriation of the other’s name or likeness,” (3) “unreasonable publicity given to the other’s private life,” and (4) “publicity that unreasonably places the other in a

48. 16B AM. JUR. 2D *Constitutional Law* § 648 (2024).

49. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 214–16 (1891).

50. Sharon Marcus, *On the 18th-Century Origins of Celebrity Worship*, LITERARY HUB (June 10, 2019), <https://lithub.com/on-the-18th-century-origins-of-celebrity-worship>.

51. Warren & Brandeis, *supra* note 49, at 216.

52. *See, e.g.*, *Flake v. Greensboro News Co.*, 195 S.E. 55, 63–64 (N.C. 1938) (providing nominal damages to a plaintiff whose image was published in a non-libelous manner but otherwise seemed to violate her right to privacy); *Peay v. Curtis Publ’g Co.*, 78 F. Supp. 305, 307–08 (D.D.C. 1948) (identifying the right to privacy as “the right to be let alone”).

false light before the public.”⁵³ These torts are the basis for the general right to privacy and continue to be debated and adopted to this day.⁵⁴ Of these torts, unreasonable publicity is most applicable to the publication of minors’ images and personal information without consent, as discussed *infra*.⁵⁵

1. *Unreasonable publicity and the “newsworthiness” exception*

Unreasonable publicity prohibits the publication of private facts that harm one’s reputation, extending the tort of defamation without a requirement that the published information be false.⁵⁶ This tort requires a plaintiff to prove (1) that the defendant published private facts about the plaintiff that would be highly offensive to a reasonable man, and (2) those facts are not of public concern.⁵⁷ Information is “highly offensive to the ordinary reasonable [person] . . . when the publicity given to [them] is such that a reasonable person would feel justified in feeling seriously aggrieved by it,” and the information touches the personal life of the targeted individual.⁵⁸ Matters of public

53. RESTATEMENT (SECOND) OF TORTS § 652A (AM. L. INST. 1977). Prosser outlined and analyzed the privacy laws that had developed in the seventy years since Warren and Brandeis. William L. Prosser, *Privacy*, 48 CALIF. L. REV. 383, 389–90 (1960). These four privacy-based torts identified by Prosser were later adopted by the RESTATEMENT (SECOND) OF TORTS § 652A (AM. L. INST. 1977).

54. Federal and state courts acknowledge these four privacy-based torts. *See, e.g.*, *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 493–95 (1975) (utilizing section 652A and section 652D to discuss unreasonable publicity); *Newkirk v. GKN Armstrong Wheels, Inc.*, 168 F. Supp. 3d 1174, 1201 (N.D. Iowa 2016) (noting Iowa adopted § 652A in whole and applying false light publicity); *Ignat v. Yum! Brands, Inc.*, 154 Cal. Rptr. 3d 275, 279–80 (Ct. App. 2013) (adopting the four torts).

55. The impacts of the other privacy-based torts fall outside the scope of this Note.

56. Prosser, *supra* note 53, at 392–98; RESTATEMENT (SECOND) OF TORTS § 652D (AM. L. INST. 1977). However, “courts have recognized a broad privilege cloaking the truthful publication of all newsworthy matters” even when considering unreasonable publicity of private information, so a successful claim under this tort is certainly an uphill battle. *E.g.*, *Sipple v. Chronicle Publ’g Co.*, 201 Cal. Rptr. 665, 669–70 (Ct. App. 1984).

57. *Paige v. U.S. Drug Enf’t Admin.*, 818 F. Supp. 2d 4, 15 (D.D.C. 2010), *aff’d*, 665 F.3d 1355 (D.C. Cir. 2012); *Cape Publ’ns, Inc. v. Hitchner*, 549 So. 2d 1374, 1377 (Fla. 1989).

58. RESTATEMENT (SECOND) OF TORTS § 652D, cmt. c (AM. L. INST. 1997).

concern involve “newsworthy” matters of general public interest.⁵⁹ Courts emphasize the “newsworthiness” element because of the First Amendment’s strong free speech and free press protections.⁶⁰

Unsurprisingly, California—home to Hollywood and, thus, many celebrities—has grappled with privacy rights more than most states. In 1969, California adopted a clear balancing test for newsworthiness in *Kapellas v. Kofman*.⁶¹ A local paper published personal information about a city council candidate and her minor children.⁶² The candidate sued for invasion of privacy of her minor children, claiming the information was personal and not a matter of public interest.⁶³ The California Supreme Court applied a “newsworthiness” balancing test considering (1) the social value of the facts published, (2) the depth of the article’s intrusion into private affairs, and (3) the voluntariness of accession to public notoriety.⁶⁴ The court found that although the information was normally private, the candidate had opened up herself and those closest to her to public scrutiny, and the public could consider her children’s actions as a reflection of her qualification for city council, so the social value was greater than the intrusion.⁶⁵

In contrast, federal courts have not been so clear in their adoption of newsworthiness balancing tests but consider similar factors to *Kapellas*. For example, in *Galella v. Onassis*,⁶⁶ the Second Circuit found for political celebrity Jacqueline Onassis, the widow of the late

59. *Paige*, 818 F. Supp. 2d at 15; see also *Public Interest*, BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “public interest” as “1. The general welfare of a populace considered as warranting recognition and protection. 2. Something in which the public as a whole has a stake”).

60. U.S. CONST. amend. I; see, e.g., *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 272–73 (1964) (holding the public’s right to know and the freedom of the press to report on a celebrity outweighs a celebrity’s claim of defamation, thus heightening the requirements for celebrities to bring defamation lawsuits as compared to the public); *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979) (holding a statute forbidding the publication of a juvenile’s name in the press is invalid where the press obtains the name of the juvenile through legal means, prioritizing the freedom of the press over the privacy of non-political celebrities’ children).

61. 459 P.2d 912 (Cal. 1969) (en banc).

62. *Id.* at 914–15.

63. *Id.*

64. *Id.* at 922 (utilizing the “newsworthiness” balancing test from *Gill v. Curtis Publ’g Co.*, 239 P.2d 630 (Cal. 1952)).

65. *Id.* at 922–24.

66. 487 F.2d 986 (2d Cir. 1973).

President Kennedy, when she sued notorious paparazzo Ron Galella for violating her and her children's privacy.⁶⁷ Galella followed Ms. Onassis and her two minor children and endangered the children in his attempts to photograph them by jumping out in front of them when they were riding bicycles.⁶⁸ The Second Circuit held that, although Ms. Onassis was a celebrity, when weighing the "*de minimis* public importance" of her family's daily activities against the actions Galella took and the information gained, Galella's actions exceeded the "reasonable bounds of news gathering" and were not protected by a "newsworthiness" claim.⁶⁹ Under the Second Circuit's test for newsworthiness, interference in a celebrity's life can be no greater than necessary to protect the public's interests.⁷⁰

Six years later, in *Smith v. Daily Mail Publishing Co.*,⁷¹ the *Daily Mail* obtained and published the name of a fourteen-year-old defendant who killed another student at school.⁷² The trial court found the *Daily Mail's* actions in violation of a statute forbidding the publication of juvenile defendants' names without court permission, holding the published information was offensive due to the defendant's age, and publication of the name did not constitute a public matter.⁷³ The U.S. Supreme Court reversed, holding that a school shooting is "newsworthy" and "if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order."⁷⁴

Comparatively, the Supreme Court, in *Globe Newspaper Co. v. Superior Court*,⁷⁵ overturned a Massachusetts statute that protected minor sex crime victims by excluding news media from criminal trials in which

67. *Id.* at 992.

68. *Id.*

69. *See id.* at 995.

70. *Id.*

71. 443 U.S. 97 (1979).

72. *Id.* at 99–100.

73. *Id.* at 98–100 (describing procedural history in which defendants violated a West Virginia statute making it unlawful to publish the name of a juvenile offender).

74. *Id.* at 103; *see also* *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 471–75, 494–96 (1975) (holding publication of a deceased rape victim's name already within public sphere did not constitute unreasonable publicity regardless of how offensive or private the information was).

75. 457 U.S. 596 (1982).

such victims were involved.⁷⁶ In considering the “newsworthiness” of the minor victims’ testimony, the Court noted:

[T]he circumstances under which the press and public can be barred from a criminal trial are limited; the State’s justification in denying access must be a weighty one. . . . [I]t must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.⁷⁷

The Court found the statute was not narrowly tailored in that while “safeguarding the physical and psychological well-being of a minor—is a compelling one[,] . . . it does not justify a *mandatory* closure rule. . . . A trial court can determine on a case-by-case basis whether closure is necessary to protect the welfare of a minor victim.”⁷⁸

Consequently, unreasonable publicity claims are successful when a plaintiff can demonstrate the information published is of a private nature that touches their personal life or is offensive to a reasonable man.⁷⁹ However, information already within the public sphere and “newsworthy” information are exceptions if the public’s interest outweighs the individual’s privacy interest.⁸⁰ These factors create a murky balancing test, of which the onus to clarify and apply rests on the courts.

76. *Id.* at 599–601, 610–11.

77. *Id.* at 606–07 (citations omitted). In contrast, Chief Justice Burger dissented, arguing:

The law need not be precisely tailored so long as the state’s interest overrides the law’s impact on First Amendment rights and the restrictions imposed further that interest. Certainly this law, which excludes the press and public only during the actual testimony of the child victim of a sex crime, rationally serves the Commonwealth’s overriding interest in protecting the child from the severe—possibly permanent—psychological damage.

Id. at 616–17 (Burger, C.J. joined by Rehnquist, J., dissenting).

78. *Id.* at 607–08 (majority opinion).

79. RESTATEMENT (SECOND) OF TORTS § 652D (AM. L. INST. 1997); *Cox Broad. Corp.*, 420 U.S. at 494–96; *Paige v. U.S. Drug Enf’t Admin.*, 818 F. Supp. 2d 4, 15 (D.D.C. 2010).

80. *Smith v. Daily Mail Publ’g Co.*, 443 U.S. 97, 103 (1979); *Galella v. Onassis*, 487 F.2d 986, 994–95 (2d Cir. 1973).

C. The U.S. Precedent of Protecting Children

Notwithstanding its fragmented attempts to safeguard children's privacy rights, the United States has a history of adapting existing laws or adopting new laws to protect minors, driven by a compelling state interest in fostering their development into productive citizens.⁸¹ The Supreme Court has ruled in favor of protecting minors, including establishing distinct standards for obscenity in child pornography and categorizing it as non-protected speech due to children's inability to consent.⁸² Further, the arrest of a minor necessitates a more comprehensive application of Miranda rights, recognizing that a child's age affects behavior and their "susceptib[ility] to influence" and "outside pressures."⁸³

In 1998, Congress enacted the Children's Online Privacy Protection Act⁸⁴ (COPPA), imposing specific obligations on websites targeting children under thirteen.⁸⁵ The Protecting the Information of Our Vulnerable Children and Youth Act⁸⁶ seeks to extend COPPA's safeguards to encompass children until the age of eighteen.⁸⁷ It mandates explicit consent for collecting personal information from any child, emphasizing the need to protect children's vulnerable status and personal identifying information.⁸⁸

Even juvenile defendants, who have arguably committed "newsworthy" acts as presumptive criminal defendants, receive special

81. See *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) ("A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens."); see also Fair Labor Standards Act of 1938, 29 U.S.C. § 212 (strengthening child labor laws because of children's vulnerability and the state's interest in cultivating them as members of society, which requires allowing space for education and healthy development).

82. *New York v. Ferber*, 458 U.S. 747, 763 (1982); see also *Devine v. Bethesda Softworks, LLC*, 636 F. Supp. 3d 564, 573 (D. Md. 2022) (noting that any contracts entered into by minors are voidable because of their inability to consent, except contracting for "necessities"); *supra* note 19 and accompanying text discussing the definition of consent.

83. *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 275 (2011) (first quoting *Eddings v. Oklahoma*, 455 U.S. 105, 115 (1982); and then quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005)).

84. 15 U.S.C. §§ 6501–05.

85. *Id.*

86. H.R. 4801, 117th Cong. (2021).

87. *Id.*

88. *Id.*

protections for the non-disclosure of their name, photo, and identifying details, as the state prioritizes their rehabilitation and well-being.⁸⁹ In 1978, the Supreme Court ruled media access to court documents should be determined case by case.⁹⁰ In *United States v. A.D.*,⁹¹ the Third Circuit held that if the court provides specific factual findings supporting the closure of a hearing based on the juveniles' best interest, it is permissible to exclude the public and media from the courtroom.⁹² In another case, *United States v. Three Juveniles*,⁹³ the First Circuit affirmed that safeguarding children's best interests is a compelling state interest, allowing measures like banning cameras from the courtroom, using initials in public court documents, and redacting personal information from any public court documents to protect the privacy interests of juveniles.⁹⁴ In both cases, the courts prioritized the privacy interests of juvenile defendants over the First Amendment interests of the media.

The United States has a well-documented history of adapting laws or adopting new laws to provide children more protection than adults, ranging from contract and labor protections due to children's inability to consent to the protection of children's data and information whether a child is online or a defendant in juvenile court. Yet, there

89. *Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 607, 609 (1982); see also *In re Sealed Case (Juv. Transfer)*, 893 F.2d 363, 367 (D.C. Cir. 1990) (referencing S. Rep. No. 93-1011, at 22 (1974), as reprinted in 1974 U.S.C.C.A.N. 5283, 5320-21) (noting juvenile justice system is meant to encourage rehabilitation rather than punishment of minors). Many jurisdictions prioritize this rehabilitation. See, e.g., 18 U.S.C. §§ 5031-42 (prohibiting publication of a juvenile's name or image); CONN. R. SUP. CT. § 1-10B(2) (prohibiting electronic coverage of juvenile proceedings); MASS. SUP. JUD. CT. R. 1:19(2)(c) (prohibiting photography of minors and sexual assault victims without judicial consent); S.C. CODE ANN. § 63-19-2040 (2024) (prohibiting publication of a juvenile's name or picture unless they have committed a qualifying offense).

90. *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597-99 (1978).

91. 28 F.3d 1353 (3d Cir. 1994).

92. *Id.* at 1358, 1362. In *A.D.*, the hearings of two juveniles, charged with gang-related robbery, were closed to the public because the court believed limiting publicity of the juveniles would assist in their rehabilitation. *Id.* at 1355, 1361-62.

93. 61 F.3d 86 (1st Cir. 1995).

94. *Id.* at 91-93 (following media inquiries, the court kept the hearing of three minors charged with civil rights violations closed because the minors were not being tried as adults, were open to rehabilitation, had no prior records, and were at a high risk of stigmatization and negative social effects if the court proceedings and documents were made available to the public).

are still no effective laws or legal precedents protecting non-celebrity children from the dangers posed by unreasonable publicity. The next Part seeks to address this legal gap.

II. ANALYSIS

Publicizing a non-celebrity child's personal information—their name, image, and identifying information—purely because of the celebrity status of their parent is unreasonable publicity, irrespective of any “newsworthiness” claims. Given the United States' historical commitment to protect children and recognize their unique vulnerabilities, courts must adjust interpretations of unreasonable publicity and “newsworthiness” for publicized children.⁹⁵ The publication of non-celebrity children's information is (1) highly offensive, considering the negative impacts,⁹⁶ and (2) does not qualify as a matter of public concern, exempting these publications from the “newsworthiness” exception.⁹⁷ These arguments are broken down in turn in the next two Sections.

A. Non-Celebrity Children's Information Is Private and Its Publication Is Highly Offensive and Harmful to the Child

Publication of a non-celebrity child's name, photograph, and other identifying information exploits their private information and is highly offensive because of their age and unique vulnerabilities.⁹⁸ Generally, an adult's name, image taken in a public location, and general whereabouts are not considered highly personal information, and their publication would not be highly offensive to a reasonable person—especially adult celebrities.⁹⁹ However, children do not have

95. See *supra* Section I.C (discussing the precedential protection of children throughout the United States' legislative and judicial actions).

96. See *infra* Section II.A.

97. See *infra* Section II.B.

98. See *supra* Section I.A.2 (identifying dangers of publicizing children's information).

99. See, e.g., *Kapellas v. Kofman*, 459 P.2d 912, 923–24 (Cal. 1969) (holding name and information of a candidate for city council is not highly offensive to publish given the candidate's voluntary ascension into the public eye). *But see Galella v. Onassis*, 487 F.2d 986, 992, 998 (2d Cir. 1973) (holding photographs of and information about Jacqueline Onassis and her children was highly offensive given the intrusion posed as compared to the “newsworthiness” of the information).

the wherewithal, maturity, or understanding of an adult or the societal power of a celebrity, and non-celebrity children have not consented to public scrutiny or dissemination of their private information.¹⁰⁰

Consider Jennifer Garner's daughter, whose school location and participation in soccer were made public.¹⁰¹ The number of fans and paparazzi that attended her soccer games and their mobbish behavior caused her teammates' families to ask that she leave the team.¹⁰² Despite Garner's efforts to keep her daughter's information private, the stalking and publication of her information and frequent location persisted, putting her at risk and impacting her childhood and development.¹⁰³

Consider also Suri Cruise, who was berated by an adult man, and whose emotional reaction to the man's name-calling was posted to YouTube.¹⁰⁴ Commenters called Suri a "brat" and a "bitch," all incredibly hurtful and hateful comments for a reasonable adult to hear and read, let alone a young child who was exploited on the internet without consent and whose development was likely severely impacted by public scrutiny and hate.¹⁰⁵ Suri's reactions to paparazzi became so synonymous with celebrities' emotional or negative paparazzi interactions, that the tabloids have referred to these celebrity reactions as "pull[ing] a Suri Cruise."¹⁰⁶ Celebrities may or may not consent to

100. See, e.g., Alaimo, *supra* note 9 (discussing the naivety of children and the importance of their lack of maturity and self-awareness to face tabloids and public scrutiny); see also *supra* note 19 and accompanying text defining consent.

101. Slater, *supra* note 40.

102. *Id.*

103. See *id.* (repeating her daughter's words, namely that she was "scared of" paparazzi and that their cameras "look like guns").

104. HighlightsCelebrity, *supra* note 1.

105. *Id.*; see also Katherine S. Young, Christina F. Sandman & Michelle G. Craske, *Positive and Negative Emotion Regulation in Adolescence: Links to Anxiety and Depression*, BRAIN SCI., Mar. 29, 2019, at 13 (discussing the harms negative comments and criticism have on child development).

106. See Ann Oldenburg, *Kanye Freaks Out: 'Don't Talk to Me!'*, USA TODAY (July 12, 2013, 2:50 PM), <https://www.usatoday.com/story/life/people/2013/07/12/kanye-west-confrontation-lax-cameras-dont-talk-to-me/2513031> [<https://perma.cc/2ET2-XAWH>] (detailing Kanye West's negative paparazzi interaction, wherein he told the paparazzi not to speak with him, as "pull[ing] a Suri Cruise" referring to Suri's emotional reactions to paparazzi).

the publication of their reactions and information;¹⁰⁷ however, adults are more equipped to handle harsh negative reactions.¹⁰⁸ Conversely, children lack the mental and emotional maturity needed to navigate public hate and scrutiny, are especially vulnerable to online predators, and are otherwise at risk of physical and mental harm when their personal identifying information is made public.¹⁰⁹

The federal government and most state governments have acknowledged that children's personal information is incredibly delicate and must be protected;¹¹⁰ children are more "susceptible to influence . . . and outside pressures";¹¹¹ children are not deemed able to consent to nearly anything because of their age and immaturity;¹¹² and most pertinent, children must be allowed to healthily develop to become contributing members of society.¹¹³ Permitting publication of children's information is contrary to these values, as their personal

107. This refers to voluntary celebrities, including political and non-political celebrities who have consented to a life of publicity and public scrutiny. *See supra* Section I.B.1.

108. *See* Young et al., *supra* note 105, at 1 (discussing the "internal emotion regulation" abilities of children as opposed to adults, and the long-term effects of criticism towards children who cannot regulate and process negative feedback).

109. *See supra* Section I.A.2 (discussing the physical, mental, and emotional dangers inflicted upon children who are exposed to the public and publicized, and explaining the physical, mental, and emotional dangers to which children who are publicized are subjected).

110. COPPA and the Protecting the Information of Our Vulnerable Children and Youth Act were both responses to concerns about children's information being made available to dangerous individuals online and the need to specifically protect children's personal identifying information. 15 U.S.C. §§ 6501–05; H.R. 4801, 117th Cong. (2021).

111. *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 275 (2011).

112. *See, e.g., New York v. Ferber*, 458 U.S. 747, 763 (1982) (holding that child pornography is obscene despite the First Amendment because children are unable to consent to the behaviors required to make and disseminate such media); *Devine v. Bethesda Softworks, LLC*, 636 F. Supp. 3d 564, 573 (D. Md. 2022) (holding children incompetent to enter into contracts for anything more than bare necessities such as food and housing).

113. Children are protected in several areas of the law to protect them and ensure their healthy development because they are still growing and maturing. *See, e.g., Fair Labor Standards Act of 1938*, 29 U.S.C. § 212 (legislating against child labor to promote education and normal childhood development); *Ginsberg v. New York*, 390 U.S. 629, 641–43 (1968) (protecting children from non-obscene but inappropriate literature). Even juvenile defendants are uniquely protected under the law to promote rehabilitation rather than punishment. *See supra* notes 88–94 and accompanying text.

information is blatantly publicized, their inability to consent to the publication of their information is ignored, and their ability to healthily develop and mature is stunted by behaviors encouraged by tabloid publications and dissemination of these children's private information.¹¹⁴

Given the unique dangers posed by publicizing the personal identifying information of children, such publications are highly offensive and contradict the United States' stated interest in protecting the development and well-being of children and their information.¹¹⁵ Under this well-founded government interest, courts are beholden to reconsider the personal and offensive nature of publicizing children's delicate information and to continue this history of protecting the next generation and promoting their ability to grow and mature without unwelcomed publicity. Courts that fail to do so disregard and contravene the express intent of Congress.

B. Non-Celebrity Children's Information Is not "Newsworthy" or a Matter of Public Concern

Publication of non-celebrity children's personal identifying information also does not constitute a matter of public concern or fall under the "newsworthiness" exception.¹¹⁶ When determining "newsworthiness" and matters of public interest, courts balance the public's interest in the subject matter with the privacy considerations

114. Children exposed to media and public hate struggle to process such information, which stunts their growth. Young et al., *supra* note 105, at 1–2; *see also* HighlightsCelebrity, *supra* note 1 (exposing Suri to hateful comments and negative media attention); Alaimo, *supra* note 9 (discussing the tabloid's publication of celebrities' children's vulnerable moments impacting their ability to learn, make mistakes, and grow as normal children). Further, exposing children's locations opens them up to stalking and can inhibit their ability to lead normal lives and participate in childhood activities. *See* Slater, *supra* note 40 (impacting Garner's children's ability to safely go to the doctor or attend school and develop as normal children).

115. *See supra* Section I.A.2 (discussing dangers of publicizing children's identifying information); *supra* Section I.C (identifying government interest in protecting children).

116. Defined as the public right to know or the protection of free speech and a free press, "newsworthiness" allows certain private information to be reported on because of an individual's public reputation and notoriety. *See, e.g.,* N.Y. Times Co. v. Sullivan, 376 U.S. 254, 283 (1964) (strengthening public's right to know about a celebrity under the "newsworthiness" exception as outweighing a celebrity's claim under defamation).

of the individual.¹¹⁷ Courts consider factors such as (1) the voluntariness of the individual's accession to public notoriety, (2) the social value of the facts published, (3) the depth of intrusion into the individual's private affairs, and (4) whether a prohibition against publicizing the individual's information is narrowly tailored such that there are other opportunities to express free speech that would not violate the individual's protected privacy interest.¹¹⁸ Each of these factors is considered in turn to demonstrate that non-celebrity children's personal identifying information is not "newsworthy."

1. *Non-celebrity children have not willingly ascended to public notoriety*

Non-celebrity children are by nature "involuntary public figures."¹¹⁹ They have involuntarily been forced into public notoriety because of the increased interest in celebrity families, and the paparazzi's willingness to go to extremes to publicize information about them.¹²⁰ These children have not committed an act of "newsworthiness" or volunteered their information to the public.¹²¹ In fact, many non-celebrity children explicitly deny consent to the publication of their information, and their parents explicitly deny consent to the

117. See *supra* Section I.B.1 (discussing unreasonable publicity and the "newsworthiness" tests).

118. See, e.g., *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606–08, 610 (1982) (holding that laws curbing free press and speech must meet a compelling state interest and be narrowly tailored, allowing other expressions of free speech and press that do not interfere with the compelling state interest); *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) (considering whether censorship of speech or media meets a state interest of the highest order); *Kapellas v. Kofman*, 459 P.2d 912, 922 (Cal. 1969) (utilizing the "newsworthiness" balancing test from *Gill v. Curtis Publ'g Co.*, 239 P.2d 630 (Cal. 1952)).

119. Individuals who "become [celebrities] through no purposeful action of [their] own." *Gertz v. Robert Welch Inc.*, 418 U.S. 323, 345 (1974). Cf. *supra* Section I.B.1 (defining "political celebrity" and "non-political celebrity," both requiring self-propulsion into the public eye).

120. See Ryan Linkof, *Why We Need the Tabloids*, N.Y. TIMES (July 19, 2011), <https://www.nytimes.com/2011/07/20/opinion/20linkof.html> (highlighting the growing public interest in the lives of both political and non-political celebrities).

121. The children in interest have committed a crime or publicized their personal information on a public social media platform. Cf. *Smith*, 443 U.S. at 99 (minor committed school shooting); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–96 (1975) (minor deceased rape victim's name was in the public record because of a public court case).

publication of their non-celebrity child's information.¹²² As such, these children have not voluntarily ascended to public notoriety.¹²³

2. *Non-celebrity children's personal information possesses no social value*

The personal identifying information of a non-celebrity child, such as their name, their image, their frequent locations, and other information possesses no social value within the context of "news."¹²⁴ In *Kapellas*, the court found a city council candidate's information "newsworthy" because the candidate was running for public office and should be scrutinized to determine her qualifications for the office she sought.¹²⁵ Similarly, the court argued the behavior of the candidate's children could reflect the candidate's ability to hold the public position, so her children's images and information were also exposed to public scrutiny.¹²⁶ In contrast, in *Galella*, the Second Circuit found that the publication of photographs and the location of Jacqueline Onassis and her minor children was of "*de minimis* public importance" and did not constitute news.¹²⁷ The tactics Galella used to gather information were intrusive, the information shared was not newsworthy, and that information certainly could not reveal information about whether the children's deceased father, President Kennedy, was qualified for political office after his passing.¹²⁸ A child throwing a tantrum may reflect upon a candidate's qualifications for office, but a non-celebrity child's school or recurrent location does not

122. See *supra* notes 16–19 and accompanying text (demonstrating children often ask to be left alone by paparazzi and their parents take steps to protect their identities from tabloids).

123. See, e.g., *HighlightsCelebrity*, *supra* note 1 (showing Suri explicitly not consenting to paparazzi's photographs and requesting they leave her alone).

124. News refers to a matter of public importance. See, e.g., *Smith*, 443 U.S. at 99, 101 (reporting on a school shooting); *Cox Broad. Corp.*, 420 U.S. at 471, 494–96 (reporting a heinous rape and murder case).

125. 459 P.2d 912, 922 (Cal. 1969).

126. *Id.* at 920, 922–23.

127. *Galella v. Onassis*, 487 F.2d 986, 994–95 (2d Cir. 1973).

128. *Id.* at 991, 995.

reflect anything about their parents' credentials or capabilities to hold a celebrity position.¹²⁹

Further, non-celebrity children have not committed any act of public concern.¹³⁰ Where these children's actions are not "newsworthy," they have kept their information private, and the information shared does not speak to the capabilities of their parents to hold some sort of public position of power, so the information holds no social value.¹³¹

3. *Publicizing this personal information is intrusive and offensive*

As discussed, the publication of non-celebrity children's personal identifying information is uniquely harmful because of their vulnerabilities, age, and the dangers posed by online exposure.¹³² Children are actively developing and maturing, so being thrust into the public eye, scrutinized, and berated by strangers harms a child's growth and would offend a reasonable person, let alone a young child.¹³³ There are endless examples of the intrusive and offensive nature of these publications and their effects. In *Galella*, the court found that—even disregarding the reckless and dangerous actions by Galella to photograph the children—taking photographs of Ms. Onassis' children and revealing their locations and private information to the public were intrusive acts.¹³⁴ Paris Jackson discussed the

129. It is debatable whether a child's behavior at such a young age demonstrates their parent's qualification for an elected position based on their perceived success as a parent, but the *Kapellas* court argued this was for the public to decide. *Kapellas*, 459 P.2d at 920, 922–23. In contrast, the location of a child's school or the park they frequent does not speak to their parent's capabilities as a parent or as a public official, so it has "*de minimis*" public value. *Galella*, 487 F.2d at 995, 999.

130. An act of public concern is some matter within the public eye. *See, e.g.*, *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 105–06 (1979) (holding publication of the name of a school shooter is acceptable because a school shooting is a matter of public concern); *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 494–96 (1975) (holding publication of a rape victim's name already within the public sphere is okay because it has already been made a public matter of concern).

131. *See supra* notes 124, 129 (identifying "newsworthy" information as information regarding a matter of public concern or information already within the public sphere).

132. *See supra* Section I.A.2 (discussing the dangers of publicity for children); *supra* Section II.A (discussing the personal offensive nature of publishing children's information).

133. *See* Alaimo, *supra* note 9 (identifying the harms caused to children's development when publicized and scrutinized).

134. *Galella*, 487 F.2d at 994–95.

development of her PTSD and lack of self-confidence after years of paparazzi harassment and tabloid exposure.¹³⁵ Jennifer Garner's daughter lost the opportunity to play soccer because the publication of her location brought throngs of rowdy paparazzi and crazed fans to her games, disrupting her team's comfort and safety.¹³⁶ Suri Cruise was exposed to public hate for being a "brat" after she was verbally assaulted by a grown man.¹³⁷ Charles Lindbergh's son was murdered.¹³⁸ The information exposed in each of these cases, whether the child's image, their location, or an emotional reaction in a vulnerable moment, was deeply personal, and its exposure harmed these children—in one case, fatally.¹³⁹

4. *Media outlets have less intrusive means of publishing stories about celebrities and their children without revealing personal information*

The personal identifying information of non-celebrity children does not constitute "news"; however, if media outlets still wish to publish such stories, there are certainly less intrusive means that do not violate children's privacy rights.¹⁴⁰ Federal and state courts protect the name, image, and information of juvenile defendants while still allowing the media to access redacted information about the juveniles' cases, and the media can take a similar approach in publishing information about non-celebrity children.¹⁴¹ Instead of publicizing the child's name, use

135. *Paris Jackson Says She Suffers from PTSD Because of the Paparazzi*, *supra* note 44.

136. Slater, *supra* note 4.

137. HighlightsCelebrity, *supra* note 1. Even though the paparazzi called Suri names and crowded her, they were not punished, but the media was quick to dub Suri's emotional responses as "pull[ing] a Suri," later referencing this phrase when referring to a negative interaction between paparazzi and Kanye West. Oldenburg, *supra* note 106. Note, however, that Kanye West is an adult man and a willful celebrity.

138. Ray, *supra* note 46.

139. See *Paris Jackson Says She Suffers from PTSD Because of the Paparazzi*, *supra* note 44 (causing Paris Jackson long-term mental trauma); Slater, *supra* note 40 (stealing Jennifer Garner's daughter's opportunity to play soccer); HighlightsCelebrity, *supra* note 1 (causing Suri Cruise mental anguish); Ray, *supra* note 46 (costing a child their life).

140. See *infra* notes 142–45 (identifying alternative means to publish celebrity stories without violation of non-celebrity children's privacy rights).

141. See *supra* notes 89–94 and accompanying text (discussing the various federal and state laws and court rulings calling for the protection of juvenile defendants' information by redacting court documents, closing hearings, and using pseudonyms and nicknames to refer to the defendants).

their initials or a pseudonym.¹⁴² Instead of posting the child's picture, crop out the child and only use the photograph of their celebrity parent, or blur out the child's face if it is too involved in the photograph.¹⁴³ There is never a need to publish a child's home address, doctor's office, or school unless a situation occurs at those locations that constitutes a matter of public concern. In those cases, blur out any identifying names in photographs and do not use specific location names in the media story.¹⁴⁴ Given these alternatives, the media is still able to publish their stories, thus their First Amendment rights are not violated, they are at most limited by a higher compelling state interest—the safety and well-being of non-celebrity children.¹⁴⁵

Under this analysis, courts will find that the personal identifying information of a non-celebrity child is highly personal and its publication is offensive to the child because of the dangers posed.¹⁴⁶ Further, the information itself does not constitute news, and the media still has alternative means to publish stories about celebrities and their families without violating the privacy rights of children.¹⁴⁷ The publication of a non-celebrity child's personal identifying information constitutes unreasonable publicity and should be punished as such to protect the healthy development and privacy rights of these children.

CONCLUSION

The government's interest in protecting all children, including those of celebrities, necessitates extending the tort of unreasonable publicity to cover the nonconsensual disclosure of non-celebrity

142. See, e.g., *United States v. Three Juvs.*, 61 F.3d 86, 91–92 (1st Cir. 1995) (holding that using a minor's initials adequately protects a child's privacy rights).

143. See, e.g., *id.* at 91 (holding that juveniles are adequately protected when pictures are not included in the public record); 18 U.S.C. § 5038 (restricting a juvenile's name and picture from public access).

144. *Three Juvs.*, 61 F.3d at 91.

145. See *Smith v. Daily Mail Publ'g Co.*, 443 U.S. 97, 103 (1979) (holding that state officials can punish the publication of information despite the First Amendment if they have a "need to further a state interest of the highest order").

146. See *supra* Section I.B.2 (discussing physical and mental dangers of publicizing children's information).

147. See *supra* notes 142–45 (including leaving children out of stories, using nicknames or initials to refer to children, omitting their locations, and blurring or cropping them from photographs).

children's personal information.¹⁴⁸ The onus is on the courts to recognize this clear government interest in the well-being of children and course correct the unchecked "freedom to traumatize children" extended to paparazzi and media. Such publication causes these children irreparable and incalculable harm without meeting a public need or constituting newsworthy content.¹⁴⁹ In extending these protections to non-celebrity children, the media can still publish stories about children who have voluntarily consented to publicity.¹⁵⁰ Media can also continue to publish stories about celebrity parents while respecting their non-celebrity child's privacy by using the child's initials or nickname and blurring or cropping the non-celebrity child out of photographs.¹⁵¹ In an ideal world, limiting the monetary value of information on and exploitative photos of non-celebrity children would also decrease paparazzi's incentive to harass or confront non-celebrity children. Consequently, non-celebrity children would experience the freedom and joys of childhood without the constant fear that someone is hiding in the bushes waiting to jump out and take their picture or verbally assault them on the sidewalk.¹⁵²

148. See *supra* notes 84–85 (identifying government's interest in protecting children); *supra* notes 56–60 (discussing tort of unreasonable publicity as requiring publication of offensive facts that do not constitute matters of public concern).

149. See *supra* Section I.A.2 (identifying various physical, mental, and emotional dangers posed to children by publicizing their information).

150. By posting their photographs and sharing their information publicly, children would be consenting to publicity, and by becoming celebrities, children would be subject to the same publicity as other celebrities. See *supra* Section I.A.1.

151. See, e.g., *United States v. Three Juvs.*, 61 F.3d 86, 91–92 (1st Cir. 1995) (identifying methods to protect children's identities while still reporting the story, including using their initials or a nickname, and blurring the children from any photographs).

152. See Slater, *supra* note 40 (reporting on an incident in which paparazzi hid outside Jennifer Garner's home and in bushes, popped out, and photographed her and her children); HighlightsCelebrity, *supra* note 1 (depicting a scene in which paparazzi verbally assaulted Suri Cruise as she walked to her mother's car).