PROTECTED BY WHOM? CHILDREN'S FUNDAMENTAL RIGHTS IN THE AGE OF SHARENTING. A CONSTITUTIONAL PERSPECTIVE FROM ITALY

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Abstract

The protection of children's rights is a core component of both Italian and European legal traditions, and has gradually been extended to address new challenges that have emerged—among others—in the so-called Digital Era (see GDPR). Nevertheless, technological evolution continues to generate new threats to children, some of which arise from unexpected directions. One such threat is the phenomenon known as "sharenting", the rapidly growing practice of parents sharing images and information about their children online, sometimes even before birth (e.g., ultrasound images).

This trend has raised concerns and has become a subject of study for scholars in the social sciences, and more recently for legal scholars as well. The growing apprehensions stem from the many negative consequences of sharenting on children's rights. First, it directly affects multiple fundamental rights (privacy, image, identity), all of which converge in the broader right to a child's self-determination. Second, it poses severe security risks, as it exposes the children involved to threats associated with cybercrimes and the child exploitation market. Parallel to the phenomenon of sharenting, another issue has emerged with equal force—the so-called "baby influencers". While similar in nature, this phenomenon differs in legal terms, as it falls under the category of child labour yet remains largely unregulated in most European legal systems (with the notable exception of France).

This essay aims to explore these phenomena and the associated risks, not merely in terms of the recognition of children's rights but, more importantly, their actual effectiveness, with a particular focus on the Italian context. In Italy, on one hand, lower courts are increasingly faced with requests for injunctions and damages; on the other, multiple legislative proposals have been submitted to Parliament in an effort to address the issue through regulation.

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1. Introduction. The Perspective of the Analysis[1]

This paper addresses a new phenomenon, "baptised" with the name *sharenting* and explored in legal scholarship for just over a decade—both the term and the earliest studies originating in the United States[2]. Broadly defined[3], sharenting refers to the online overexposure of children—especially on social media. In other words, it describes the increasingly common practice of parents sharing images, videos, and, more broadly, personal information about their children, including very young children and, with growing frequency, even newborns[4].

[1] The present work is included in the project *Innovation and Vulnerability. Legal issues and remedies* of the Department of Law, University of Macerata (funded by the Ministry of University and Research, programme *Departments of Excellence* 2023–2027), and is the result of the research conducted at the School of Law of the University of Limerick in the context of the Mo.Doc. 2024/25 project of the University of Macerata.

[2] From the combination of *share* and *parenting*. According to the literature, the earliest use of the term—originally as *over-sharenting*—is attributed to S. Leckart, *The Facebook-Free Baby*, *The Wall Street Journal*, May 12, 2012, cited in N. Meakin, *The Pros and Cons of 'Sharenting'*, *The Guardian*, May 18, 2013.

[3] This point will be further discussed in section 3.

[4] "The digital birth phenomenon occurs in children at approximately 6 months of age, and recent data show that within a few weeks of birth, 33% of children have their photos and information posted online". Nor is this all: "More than 30% of mothers regularly post photos of their newborns and, thanks to sharenting, an increasing number of babies are born digitally even before natural birth. The phenomenon of posting pictures of ultrasound scans, recounting personal

The term and its context may suggest that this is merely an evolution of a well-known digital behaviour, and therefore primarily a topic of socio-cultural interest. This is undoubtedly true, as demonstrated by the considerable global attention the phenomenon has received, especially among social scientists[5]. If this were the full extent of the issue, it would fall within the natural evolution of society in the context of so-called new technologies—a topic of general interest, but not necessarily of greater relevance for legal scholars than any other manifestation of the sweeping changes these technologies are bringing to all sectors[6].

experiences during pregnancy and even activating email addresses and social network profiles is on the rise, and a quarter of babies are reported to have some type of online presence before birth": P. Ferrara et al., *Online "Sharenting": The Dangers of Posting Sensitive Information About Children on Social Media*, 2 *J. Pediatr.* (2023), https://www.jpeds.com/article/S0022-3476(23)00018-5/fulltext.

[5] The social science literature is rapidly expanding. Still, for an overview in sociology, particularly family sociology and parenting studies, see (full texts available online): T. Ammari, P. Kumar, C. Lampe and S. Schoenebeck, *Managing Children's Online Identities: How Parents Decide what to Disclose about their Children Online*, 33 CHI Proc. Hum. Factors Comput. Syst. 1895 (2015); T. Glatz, J. Alsarve, K. Daneback and E. Sorbring, *An examination of parents' online activities and links to demographic characteristics among parents in Sweden*, 26 J. Fam. Soc. Work 45 (2023); G. Mascheroni, D. Cino, G. Amadori and L.G. Zaffaroni, *(Non-)Sharing as a Form of Maternal Care? The Ambiguous Meanings of Sharenting for Mothers of 0- to 8-Year-Old Children*, 13 Ital. Sociol. Rev. 111 (2023); L.G. Zaffaroni, *"Privacy Is Overrated": Situating the Privacy-related Beliefs and Practices of Italian Parents with Young Children*, 22 Surveillance & Society 410 (2024). For sociology of deviance see P. Ugwudike, A. Lavorgna and M. Tartari, *Sharenting in Digital Society: Exploring the Prospects of an Emerging Moral Panic*, 45 Deviant Behav. 503 (2024). For childhood studies and digital culture within sociology see Y. Agren, *Branded childhood: Infants as digital capital on Instagram*, 30 Childhood 9 (2023). For media studies and communication sciences see R. Das, *Parents' understandings of social media algorithms in children's lives in England: Misunderstandings, parked understandings, transactional understandings and proactive understandings amidst datafication*, 17 J. Child. Media 506 (2023); R. Das, *Contexts and dimensions of algorithm literacies: Parents' algorithm literacies amidst the datafication of parenthood*, 27 Commun. Rev. 1 (2024). In Italian literature, for sociology of family and digital parenting, see D. Cino, *Sharenting. I dilemmi della condivisione e la costruzione della "buona genitorialità digitale"* (2022); for sociology of family and digital risks see G. Bonanoni, *Sharenting. Genitori e rischi della sovraesposizione dei figli online* (2020); for media studies and digital surveillance see V. Barassi, *I figli dell'algoritmo. Sorvegliati, tracciati, profilati alla nascita* (2021), and related online project, https://childdatacitizen.com/.

[6] From differing perspectives on the ethical and societal implications of digital technologies, see L. Floridi, *Ethics of Artificial Intelligence* (2019) and *The Fourth Revolution* (2017), and S. Zuboff, *The Age of Surveillance Capitalism* (2019).

In recent years, however, concern over sharenting has spread well beyond the realm of social sciences, generating increasing alarm among specialists in child health[7]. Experts in child development—both physical and psychological—are identifying the harmful effects associated with the practice and are calling for greater caution with mounting urgency. From a very different perspective, it is equally significant that some of the world's foremost digital technology experts have voiced similar concerns. Individuals who played a direct role in building the empires now known as 'Big Tech'—after distancing themselves from that small and highly secretive elite—are now issuing warnings, in virtually every public forum, about the risks the digital environment poses to children[8].

The risk, in short, is real—and only recently has the legal field begun to take notice[9]. The first comprehensive legal study specifically dedicated to the issue, authored by Stacey Steinberg, dates back to 2017[10]. In the following years, further research began

[7] In addition to P. Ferrara et al., *Online "Sharenting"*, cit. at 3, see also (full texts available online): L. Berg et al., *Young Children and the Creation of a Digital Identity on Social Networking Sites: Scoping Review*, 7 JMIR Pediatr. Parent. (2024); I. Cataldo et al., *From the Cradle to the Web: The Growth of "Sharenting" – A Scientometric Perspective*, HBET (2022); I. Cataldo, B. Lepri, M.J.Y. Neoh and G. Esposito, *Social Media Usage and Development of Psychiatric Disorders in Childhood and Adolescence: A Review*, 11 Front. Psychiatry (2021).

[8] To name just the most prominent voices: Tristan Harris (former design ethicist at Google; co-founder of the Center for Humane Technology), *The Social Dilemma* (Netflix, 2020); Frances Haugen (former product manager at Facebook/Meta; whistleblower), *The Power of One: How I Found the Strength to Tell the Truth and Why I Blew the Whistle on Facebook* (2023). Haugen also testified before the U.S. Senate Commerce Subcommittee on Consumer Protection, Product Safety, and Data Security on October 5, 2021.

[9] Awareness of the issue has also become widespread at the institutional level, at least among organisations focused on children's rights. See: Committee on the Rights of the Child, *General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment* (2021), www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation; Save the Children, *XIV Atlante dell'infanzia (a rischio) in Italia – Tempi Digitali* (2023), https://www.savethechildren.it/cosa-facciamo/pubblicazioni/14-atlante-dell-infanzia-a-rischio-tempi-digitali.

[10] See S. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, 66 Emory L.J. 839 (2017). For an overview of earlier literature, see A.E. Marwick, D. Murgia-Diaz, J.G. Palfrey, *Youth, Privacy and Reputation (Literature Review)*, Berkman Center Research Publication No. 2010-5, Harvard Public Law Working Paper No. 10-29.

to appear[11], and in the past two years the phenomenon has also gained traction in the Italian legal system[12], primarily through the work of private law scholars, prompted by rulings handed down by ordinary courts. The legal recognition of the risk with its origins in the United States, and nationally its emergence through case law, are two factors essential to framing the problem from the perspective of Italian constitutional law, a line of inquiry still in its early stages and one that this paper aims to develop.

A comparative legal analysis falls outside both the scope of this paper and the author's area of expertise, and would in any case be of limited relevance to the present contribution. The focus here is rather on the early stage of legal scholarship on the subject, which has inevitably shaped the way in which the issue has been framed. Accordingly, only a few brief references will be provided; for more detailed theoretical discussion, readers are referred to the original works[13], which offer a wealth of insight.

From this perspective, U.S. legal scholarship deserves credit not only for bringing the issue to light, but also for framing it from the outset in terms of children's fundamental rights[14]. These

[11] See (full texts available online): S. Livingstone, *Children: a Special Case for Privacy?*, 46 *Intermedia* 18 (2018); S. Sorensen, *Protecting Children's Right to Privacy in the Digital Age: Parents as Trustees of Children's Rights*, 36 Child. Legal Rts. *J.* 156 (2020). On the same topic, but from a different perspective, see C. Yates, *Influencing "Kidfluencing": Protecting Children by Limiting the Right to Profit From "Sharenting"*, 25 Vand. J. Ent. & Tech. L. 845 (2023), and T. Lockett, *Smile for the Camera: Balancing Parental Rights and Children's Privacy in the Age of Family Influencers*, 119 Nw. U. L. Rev. 355 (2025).

[12] N. Matta, *Sharenting e tutela della persona minore di età (nota a Trib. Trani 2021)*, 1 Tecn. dir. 185 (2022); M. Foglia, *Sharenting e riservatezza del minore in rete*, 16-bis Actualidad Jurídica Iberoamericana 3550 (2022); E. Morotti, *Il dissenso del minore alla pubblicazione delle proprie immagini in rete*, 19/01/2023 Familia 1 (2023); I. Garaci, *The Child's Right to Privacy in the Family Context*, 1 Eur. J. Priv. L. & Tech. 84 (2023); C. Murgo, *L'identità personale dei minori, tra responsabilità genitoriale e capacità di autodeterminarsi*, 2 Eur. J. Priv. L. & Tech. 1 (2024); L. Miglietti, *La sovraesposizione digitale dei minori ed i suoi effetti. Note comparative sul fenomeno del cd. sharenting negli ordinamenti francese e italiano*, Riv. dir. comp. – Anteprima 2024 1 (2024); D. Caccioppo, *Sharenting e tutela dei dati personali del minore: profili giuridici di un fenomeno interdisciplinare*, 2 Riv. it. inf. dir. 385 (2024); A. Maceratini, *Sharenting e tutela dei minori, riflessioni informatico-giuridiche tra diritto alla privacy e diritto all'immagine*, 2024 Tigor 120 (2024); B. Rabai, *Problemi e prospettive dell'Influencer Marketing nell'ecosistema digitale*, 1 NAD 12 (2025).

[13] See the contributions cit. at 9, 10, and. 16.

[14] On this point, and for further bibliographic references, see B. Shmueli and A. Belecher-Prigat, *Privacy for Children*, 42 Colum. Hum. Rts. L. Rev. 759 (2011).

reflections are rooted in a critical tradition that questions the treatment of vulnerable subjects in both U.S. legislation and case law[15]. The core focus is on violations of minors' privacy, understood not only as the right to confidentiality, but also as the right to anonymity and to protection from unnecessary public exposure[16]. Building on this foundation, legal scholars have progressively broadened the range of children's rights potentially compromised by sharenting. Further developments concern the rights to personal identity and informational self-determination. In particular, Sorensen has shown how the creation of a digital footprint by parents—often starting in early childhood—may obstruct this process, affecting both the development of identity and the child's reputation[17].

This evolving body of legal literature has thus underscored the multifaceted nature of the rights at stake and the need to balance children's privacy with parental roles. However, efforts to regulate sharenting in U.S. legal scholarship encounter two significant obstacles. The first relates to how the parent-child relationship is interpreted in that legal system, which makes it difficult to impose external limits on parental sharing practices[18]. The second obstacle stems from the constitutional protection of parents' freedom of expression under the First Amendment. Parental sharing is indeed

[15] See the paradigmatic contribution by B. Bennett Woodhouse, *Hatching the Egg: A Child-Centered Perspective on Parents' Rights*, 14 Cardozo L. Rev. 1747 (1993).

[16] Along these lines, Steinberg examines how parental sharing of digital content may interfere with a child's right to retain control over their image and personal information—well captured in her observation: "There is no 'opt-out' link for children". See S. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, cit. at 9, 844; see also 846, 848.

[17] S. Sorensen, *Protecting Children's Right to Privacy in the Digital Age*, cit. at 10. This view aligns with broader concerns about children's online exposure, as discussed by Marwick, Murgia-Diaz and Palfrey, who highlight the reputational, social and psychological risks arising from the involuntary digital disclosure of minors: A.E. Marwick, D. Murgia-Diaz, J.G. Palfrey, *Youth, Privacy and Reputation (Literature Review)*, 5 Berkman Ctr. Res. Publ. (2010).

[18] Shmueli and Belecher-Prigat emphasise this delicate balance, acknowledging the traditional authority of parents in family matters, while at the same time highlighting the growing recognition of children's right to privacy in this context: B. Shmueli and A. Belecher-Prigat, *Privacy for Children*, cit. at 12. Both Steinberg and Sorensen acknowledge the tension between parental responsibilities and the child's evolving autonomy, stressing the need to protect the best interests of the child without excessively compromising family relationships: S. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, cit., at 9; S. Sorensen, *Protecting Children's Right to Privacy in the Digital Age*, cit. at 10.

considered a form of free speech, leaving very little—if any—room for regulatory intervention, at least at the federal level. For present purposes, the key point is that while the first obstacle may be circumvented—albeit at the cost of adopting a strong stance on the nature of the parent-child relationship[19]—the second appears truly insurmountable. As a result, in order to bypass the First Amendment barrier, the proposed legal solutions either resort to tort law, or gravitate toward the theoretical appeal of the European right to be forgotten[20]. Alternatively, and with commendable pragmatism, some propose a nudge-based approach, suggesting that sharenting be addressed as a public health issue, following the model of awareness campaigns against second hand smoking or parental education on safe infant sleep practices[21].

This kind of conclusion may seem inevitable within a legal system such as that of the U.S. What I wish to emphasize, however, is that it is by no means so from an Italian perspective, within the broader context of the European legal order. On this point, much of the scholarship that has addressed the issue so far appears overly cautious—especially when it asserts that legislative intervention should be ruled out *a priori* as "authoritarian" or "paternalistic". More generally, the prevailing tendency still seems to be one of reluctance to interfere with parents' freedom of expression. I will return to this point in greater detail below[22], but for now, it is worth stating clearly: in the Italian tradition—which is well-known for not recognising a hierarchy among fundamental rights—nothing prevents a balancing exercise from being framed (or re-framed) in

[19] For example, Sorensen proposes a fiduciary approach to parental duties, whereby parents do not enjoy discretionary authority over their children's image, but must act as trustees of their rights and interests.

[20] See S. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, cit. at 9, 866. From a European perspective, see S. Donovan, *"Sharenting": The Forgotten Children of the GDPR*, 4 PHRG 35 (2020), 37, who critically examines the GDPR, arguing that it not only fails to provide adequate safeguards for children's data privacy, but also that "the GDPR's reliance on responsible parents is counterproductive"; she also asks "whether or not the GDPR has, in fact, contributed to the vulnerabilities of minors". In short, while there is a broad convergence in the literature regarding the risks that sharenting poses to children, Donovan's contribution is distinctive for its specific emphasis on the shortcomings of the GDPR, rather than for introducing a fundamentally different analytical perspective.

[21] See S. Steinberg, *Sharenting: Children's Privacy in the Age of Social Media*, cit. at 9, 865–868.

[22] Infra, Section 4.

such a way that no path is foreclosed to the legislature. If one starts from this premise, the analytical perspective shifts radically, requiring a move from mere description to a systemic reflection—one that begins with a precise definition of the terms of the problem. In short, it becomes necessary to bring conceptual clarity to the debate. On this front, constitutional law can offer a valuable contribution — culturally accustomed as it is to working with principles and structural elements of the legal system, beyond single legal institutions[23].

From a broader perspective, it becomes clear that there are essentially two starting points for a constitutional analysis. On the one hand, as already noted, sharenting has had a direct impact on the Italian legal system in practice in the courts, which have necessarily operated within the existing legal framework[24]. On the other hand, there is the robust protection the Italian legal system affords to minors, grounded in Articles 2, 3, 31 (and, as will be seen, 37)[25] of the Constitution[26]. Between these two poles, in order to accurately capture the impact of the phenomenon on the Italian legal order, it is appropriate to adopt an approach that departs slightly from the traditional deductive method, which typically proceeds from abstract theory. The structure of this paper reflects this choice. The discussion therefore begins with the 2017 court rulings (Section 2); it then briefly outlines the current Italian legal framework allowing for a clearer identification of the rights of the child at stake (Section 2.1); based on insights drawn from judicial practice, it then puts forward the need for a fundamental distinction (Section 3) and seeks to highlight the underlying theoretical issues (Section 4); finally, it analyses the legislative proposals currently pending before the Italian Parliament (Section 5).

[23] This is not the place to explore in depth the role of constitutionalism in the digital age, a subject currently under scholarly debate. By "constitutional reasoning," I refer here to an approach to the theoretical problem that focuses on the protection of fundamental rights as enshrined first and foremost in the Italian Constitution (though in many respects, as will be seen, such rights are shared at the European and supranational levels).

[24] As will be shown, this has influenced the identification of the rights at stake or, to use an expression by Roberto Bin, the delineation of the playing field.

[25] Infra, Section 3.

[26] See G. Matucci, *Lo statuto costituzionale del minore d'età* 4 (2015).

2. The Rise of Sharenting in Italy: Case Law from the Lower Courts

It is worth noting that the issue of sharenting emerged in Italian judicial practice in the same year that Steinberg published her article. The first ruling by a domestic court on the matter—issued by the *Tribunale di Mantova*—is dated 19 September 2017. With that order, the judge upheld a father's petition against his ex-wife, the mother of his children, seeking "modification of the conditions governing parent–child relations in light of alleged serious educationally detrimental behaviour by the mother"[27]. In essence, the father had requested—and obtained—a court order requiring the mother to remove images of the children and refrain from publishing new content on her social media accounts, in accordance with the terms of their separation (which she had evidently violated). Although brief, the reasoning proved particularly compelling. In just a few lines, after citing various national provisions protecting children's rights to image, privacy, and safety[28], the judge grounded the decision on the consideration that "*harm to the child* is therefore *inherent in the dissemination of their image on social networks*" (emphasis added). The systematic citation—almost copy-paste—of this observation in subsequent rulings[29] has made this decision the leading case in the Italian approach to sharenting, one based precisely on the assumption of the *inherent harmfulness* of children's online exposure. The cases vary in nature, but they all share one common element: the conduct of an adult who, by virtue of their close relationship with the child concerned, had access to moments of their daily life, and subsequently posted them online. Another recurring feature is the very young age of the children involved (often under the age of ten), and the absence of consent from the other parent—who is, in fact, the one initiating legal action.

Among these cases[30], one stands out in particular. It dates to just a few months after the leading case from the *Tribunale di*

[27] *Tribunale di Mantova*, ordinanza 19 settembre 2017, 1 (which also contains the quotation cited in the text).
[28] See Section 2.1.
[29] Cf. Tribunale di Rieti, 7 marzo 2019; Tribunale di Trani, 20 agosto 2018; Corte d'Appello de L'Aquila, judgment no. 1307 of 13 settembre 2021; Tribunale di Rieti, judgment no. 443 of 17 ottobre 2022. The risks associated with the context are also emphasised—albeit in a different case involving cyberbullying—by the Tribunale per i minori di Caltanissetta, 8 ottobre 2019.
[30] See L. Miglietti, *La sovraesposizione digitale dei minori e i suoi effetti*, cit. at 11.

Mantova. On 23 December 2017, Section I of the *Tribunale di Roma* ordered the mother of a sixteen-year-old to pay a substantial sum of money[31] and to remove all content related to her son from her social media profiles. The court also issued an injunction prohibiting the woman from publishing any further information (of any kind) concerning the minor, and authorised the minor's legal guardian both to issue cease-and-desist warnings to third parties, and to exercise the right to deindexation on the boy's behalf.

Initially, beyond the case itself[32], the attention of civil law scholars and practitioners focused on the use of a relatively new legal instrument in the Italian system (the *astreinte*), which became the subject of extensive commentary. What matters here, however, is the account of the facts, which reveals in detail just how harmful a parent's conduct of this kind can be for the affected minor. The twelve-page order contains numerous excerpts from reports by social services and the psychotherapist treating the boy. Taken together, they describe a minor who was quite literally forced to relocate overseas in order to escape the image that his mother's posts had created of him in his social and school environment.

The social identity crafted and imposed by the mother was, in other words, not only different from the one the boy recognised as his own, but also so oppressive as to become psychologically pathogenic—so much so that it was not only unbearable in the present, but also likely to shape his future life prospects. This stems from a now well-known feature of the digital environment: the web does not forget[33].

There are three aspects of particular interest. First, the parties involved: on one side, the request was submitted (through the court-appointed guardian) directly by the minor concerned[34]; on the other, it was directed against the online behaviour of one of the very individuals legally entrusted with his protection—his mother. Second, the grounds for the boy's request: his social and school life in his hometown had become unbearable precisely because of his

[31] Ten thousand euros, according to reports published on specialised legal websites.

[32] As this was the first known case—and likely also due to the amount of compensation awarded—the news received considerable attention and was picked up not only by nearly all specialised legal websites, but also by national newspapers such as *Il Sole 24 Ore* and *La Stampa*.

[33] See V. Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* (2009).

[34] See infra, Section 4.

mother's constant sharing of personal details about his life on social media—so frequent, detailed, and harmful that it was described as "harassing conduct". Third, the so-called remedial dimension. In addition to empowering the guardian to issue cease-and-desist warnings to third parties and request deindexation from search engines, the court also ordered the mother not only to remove all existing posts, but to refrain from future sharing "in order to prevent the dissemination of information even within the new social environment to which the boy now belongs" —despite the considerable geographical distance (the United States). It is worth noting that this last element points to another feature of online practices, namely the potentially global reach of their effects, a direct consequence of the de-territorialised nature of the internet.

2.1. The Legal Framework Applied by the Courts and the Rights of the Children Involved

Faced with unprecedented cases, Italian judges worked with the legal instruments available to them. The first sources to be invoked concerned, unsurprisingly, national legislation: the 1942 *Codice civile*, which under Article 10 addresses cases of misuse of another person's image[35], and the so-called *Codice della Privacy*[36], interpreted in light of constitutional principles concerning fundamental rights (Article 2), equality (Article 3), and the protection of minors both as children (Article 30) and as individuals in their own right (Article 31). In this area, moreover, national references are significantly reinforced by the supranational legal framework. The first and most important document is the 1989 Convention on the Rights of the Child (CRC), whose Article 16 reads: "1. No child shall be subjected to arbitrary or unlawful

[35] Article 10 of the *Codice civile* (Misuse of another person's image) provides: "If the image of a person, or of their parents, spouse or children, has been exhibited or published outside the cases in which such exhibition or publication is permitted by law, or with prejudice to the dignity or reputation of that person or of those relatives, the judicial authority, upon request of the interested party, may order the cessation of the abuse, without prejudice to compensation for damages" (unofficial translation). This provision is complemented by the protection established in the *Legge sul diritto d'autore* (Copyright Law) dating from the same period (Law No. 633/1941), which prohibits the publication and commercial use of a person's image without the consent of the portrayed person (Articles 96 and 97): cf. *Corte d'Appello de L'Aquila*, judgment no. 1307 of 13 September 2021.

[36] Legislative Decree No. 196/2003, subsequently amended by Legislative Decree No. 101/2018 to ensure compliance with the GDPR.

interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks". Also relevant is Article 8: "1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity". In addition, the European Convention on Human Rights (ECHR) is also relevant, particularly the general provision on the right to respect for private and family life laid down in Article 8, as developed in the case law of the European Court of Human Rights[37].

At the European level, the right to the protection of personal data is enshrined both in Article 16 of the Treaty on the Functioning of the European Union[38] and in Article 8 of the Charter of Fundamental Rights of the European Union[39]. In this context, a crucial role is obviously played by the General Data Protection Regulation (GDPR)—specifically by Article 8—which, for the first

[37] On this specific topic, see R. Greco, *Children's Right to Privacy in the Digital Age: Is the ECtHR's Current Approach up to the New Challenges?*, 3 *Dir. um. dir. Int.* (2024), 573.

[38] TFEU, Art. 16.1: "Everyone has the right to the protection of personal data concerning them".

[39] Charter of Fundamental Rights of the European Union, Art. 8 (Protection of personal data): "1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with these rules shall be subject to control by an independent authority".

time[40], identified minors as a category of data subjects deserving of special protection[41].

This overview makes it clear that, even when faced with novel claims for protection, the courts were able to rely on a multi-level system for the protection of minors—one that recognises children as full holders of all fundamental rights[42]. Indeed, as early as the 1980s, the Italian Constitutional Court grounded the full entitlement of minors to fundamental rights in Articles 2, 3, 30, and 31 of the Constitution, elevating the "promotion of the personality of the developing human being" to the status of a "primary value"[43]. The exercise of such rights is, of course, conditioned by age, but their protection must be ensured progressively as the child grows. The role of parents is to accompany their children in this process, exercising parental responsibility as a function instrumental to the realisation of their rights. Following the 2012–

[40] Giving effect to the principles already set out in the Treaty on European Union (Art. 3(3)) and in the 2000 Charter of Fundamental Rights, Art. 24(1). On this topic, from different perspectives, see A. Thiene, *Segretezza e riappropriazione di informazioni di carattere personale: riserbo e oblio nel nuovo regolamento europeo*, 2 *Nuove leggi civili commentate* 410 (2017); A. Mantelero, *I dati del minore tra protezione e circolazione: per una lettura non retorica del fenomeno*, 1 *Europa e diritto privato* 251 (2020).

[41] GDPR, Recital 38: "Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data. Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child". Italy chose to derogate from the general rule of 16 years of age by setting the threshold for digital consent at 14 (Legislative Decree No. 196/2003, Art. 2-quinquies). See also infra, Section 4.

[42] The irrelevance of age with respect to the entitlement to fundamental rights has deep roots in Italian legal scholarship: see P. Barile, *Le libertà nella Costituzione. Lezioni* (1966). Today, the literature on this point is vast, but A. C. Moro, *Manuale di diritto minorile* (2019) remains a leading work. From a constitutional perspective, see the extensive analysis by G. Matucci, *Lo statuto costituzionale del minore di età* cit. at 25, and the more recent C. Di Costanzo, *La tutela costituzionale del minore: identità, salute e relazioni* (2023).

[43] Corte costituzionale, judgment no. 11/1981. On the evolution of constitutional case law and its relationship with scholarly debate, see also C. Di Costanzo, *La tutela costituzionale del minore*, cit. at 38, 56-67.

2013 reforms on parenthood[44], the Italian legal system now leaves no ambiguity in affirming the primacy of the child's interests over those of the parents, and has progressively refined all available legal instruments to ensure that this principle is upheld across all areas. This has enabled the courts to address claims for injunctions and/or damages with a clear reference to the principle of *favor minoris*[45].

Further analysis of the reasoning underlying judicial decisions reveals a catalogue of children's rights directly affected by practices of online overexposure. Intuitively, when one considers the conduct in question, everything stems from a violation of the right to one's image, which—like the root of a tree—leads to two sets of consequences. First, photos, videos, and all the information they contain implicate the right to privacy, which the Italian Constitutional Court has long recognised as an "inviolable and constitutionally protected"[46] right. Image and privacy, taken together, contribute to the construction of personal identity, including digital identity[47]. And that is not all. Although this is not the place to elaborate on the connections between

[44] Law No. 219/2012 and the subsequent Legislative Decree No. 154/2013, on which see A. C. Moro, *Manuale di diritto minorile*, cit. at 40, 21, and, with reference to "the family relationship between parents and children," 213.

[45] Here I prefer the expression consolidated in Italian constitutional scholarship, even though the more widely used term is *the best interest of the child*, first expressed in the 1989 CRC. I am aware that the best interest principle is considered one of the four general principles which provide "a lens through which the implementation of all other rights under the Convention should be viewed", and "should serve as a guide for determining the measures needed to guarantee the realization of children's rights in relation to the digital environment" (Committee on the Rights of the Child, General Comment No. 25, cit., at 2). On this point, however, I share the definitional concerns expressed by E. Lamarque, *Prima i bambini. Il principio del best interest of the child nella prospettiva costituzionale* (2016). Also still relevant are the remarks by G. Ferrando, *Diritti e interesse del minore tra principi e clausole generali*, in 1 Pol. dir. 167 (1998).

[46] Corte costituzionale, judgment no. 38/1973. See, in English and from the Italian perspective, I. Garaci, *The Child's Right to Privacy in the Family Context*, 1 EJPLT 84 (2023).

[47] On this point, the literature is now extensive, but see (also for further references) S. Scagliarini, *La tutela della privacy e dell'identità personale nel quadro dell'evoluzione tecnologica*, 2 Consulta Online 564 (2021). From a philosophical perspective (in addition to L. Floridi, cit. at 46), see G. Pino, *L'identità personale*, in S. Rodotà, M. Tollecchini (eds.), *Trattato di Biodiritto* (2010). On the evolution of the concept, see G. Resta, *Identità personale e identità digitale*, 1 Dir. Inf. 511 (2007).

privacy, identity, and human dignity in the digital ecosystem[48], it is worth recalling that, according to a widely accepted interpretation, all these dimensions converge in the right to self-determination[49]. It hardly needs to be said that the case under discussion is rendered even more sensitive by the fact that it concerns individuals whose personalities are still developing[50].

Second—less theoretical but perhaps even more dangerous in terms of immediate practical consequences—the right to safety comes into play, in both of its aspects. The more data about children are shared, the higher the risk in terms of cybersecurity[51]. Yet what clearly escapes the vast majority of adults is that children's safety is also endangered in the *real* world: they are made trackable and easily locatable by *anyone*. The now widespread habit of tagging or geolocating oneself everywhere—from home to holiday destinations, from schools to restaurants, gyms, and so on—makes it possible to pinpoint with extreme precision the places where children regularly or occasionally are, and to effortlessly trace the habits and routines of an entire family. It is like placing one's children on display in the worst imaginable marketplace, offering all the information needed to know where they are (or will be), how

[48] See L. Floridi, *The Ontological Interpretation of Informational Privacy* (January 02, 2005); Id., *Four Challenges for a Theory of Informational Privacy*, 8 *Ethics and Information Technology* 109 (2006); and Id., *On Human Dignity as a Foundation for the Right to Privacy*, 29 *Philosophy & Technology* 307 (2016).

[49] For an overview of the Italian literature, see C. Irti, *Persona minore d'età e libertà di autodeterminazione*, 3 *Giustizia Civile* 617 (2019). An entire Part (Part III, 137) of G. Matucci's *Lo statuto costituzionale del minore d'età*, cit. at 25, is about the minor and self-determination. From a different perspective, see S.G. Verhulst, *Operationalizing digital self-determination*, 5 Data & Policy 1 (2023).

[50] This was already acknowledged during the debates of the Italian Constituent Assembly: "When considering the human person in childhood, a constitution can only express its recognition of human autonomy by attributing to the person-in-becoming the right to become fully human. A constitution which, after affirming that the guiding principle and ultimate measure of all power and social activity is the human being, failed to guarantee the achievement of responsible freedom by a person aware of themselves and the world, would be inconsistent with itself". A. Moro, Assemblea Costituente, *Relazione sui principi dei rapporti sociali* (1946), 45. (Unofficial translation. Original Italian version available at www.nascitacostituzione.it).

[51] "Known risks include identity theft, financial exploitation, digital kidnapping, exposure to child predators, psychological harm, cyberbullying, and social isolation": K. Yates, *Influencing "Kidfluencing": Protecting Children by Limiting the Right to Profit From "Sharenting"*, cit. at 10, 852.

long they stay in each place (familiar or not), and when they will be in the company of adults (or not) —and therefore, ultimately, when they are most vulnerable, thereby putting even their physical safety at risk.

A purely civil law response—whether from family law or tort law—cannot be satisfactory. Not only because it remains limited to such a specific legal domain, while the phenomenon is far more pervasive. But above all because it is a contingent, *ex post* reaction: it may, at best, limit or redress the harm, but it cannot prevent it. And since fundamental rights are at stake—especially those of highly vulnerable individuals—such a solution cannot be considered acceptable, particularly within the European legal and constitutional tradition.

From a theoretical standpoint, it must also be noted that the apt expression "*inherent harmfulness*" has the merit of clearly identifying the overarching problem and has enabled the development of a consistent line of case law. The unescapable downside, however—also due to the brevity of the courts' reasoning—is a certain vagueness in the identification of the rights at stake, which tends to increase the further one moves away from the original rulings. The risk is that this will lead either to growing indeterminacy or, conversely, to the problem being reduced each time to a single right—such as the right to one's image—or to the protection of vaguely defined "sensitive data"[52] (which the GDPR does in fact define and regulate in detail)[53].

[52] See *Tribunale di Rieti*, judgment no. 443/2022.

[53] Special categories of personal data (sensitive data) are governed by Article 9 of the GDPR, which establishes a general prohibition on their processing (prohibition principle), with the exceptions provided for in Article 9(2). These sensitive data include "personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation". It should be noted that, when it comes to sharenting, the range of rights affected is not limited to these, but includes all of the child's personal data, as broadly defined in Article 4(1) of the GDPR.

3. A Clarification, a Fundamental Distinction, and Another Violated Right of the Child. The Case of the So-Called Baby Influencers

Starting from case law has made it possible to situate Italian developments clearly within the broader phenomenon of sharenting and to highlight its risks. The next step, still grounded in practice, was to identify the rights of children that are violated by such conduct. It is now appropriate to move to a theoretical level and pause to consider the need for a more refined definition of the practice under analysis. Sharenting is generally understood as referring to a range of behaviours carried out by adults in a child's life (usually parents[54]), consisting in the online sharing—via their personal social media accounts—of images, videos, and similar content concerning their minor children.

This definition is certainly useful, for at least two reasons. First, it draws the boundaries of the phenomenon, thereby excluding the use of images of minors by individuals who do not bear legal responsibility for them[55]. Second—and in some respects even more importantly—it emphasises that the online sharing of content concerning children is, in itself, something that warrants attention from the legal system. In this regard, the notion of *inherent harmfulness* employed by the *Tribunale di Mantova* captures the core of the issue with precision[56].

At the same time, however, this definition is overly broad—too all-encompassing. A closer look reveals that within this macro-category it is not only possible, but legally necessary, to distinguish more specific cases. The assessment of adult behaviour

[54] The vast majority of sharenting cases involve parents, but the same applies to other adults within or closely connected to the family environment. For instance, in *Tribunale di Rieti*, judgment no. 443/2022, the images had been shared by an aunt; in another order issued by the same court on 7 March 2019, the mother of two minors had requested a restrictive measure against the father's new partner. From a theoretical perspective, the same reasoning could apply to legal guardians, although no such cases have been reported so far.

[55] In these cases also, the conduct has legal significance, although it falls within different legal categories. Broadly speaking, these involve either the commercial exploitation of images or the extensive range of criminal offences that in various ways involve the use of images and/or information about minors—including identity theft, so-called digital kidnapping, child pornography, and child sexual abuse.

[56] Provided that, as noted above, the assessment refers to the conduct itself and not only to its consequences in the digital environment.

should in fact vary based on two factors: the frequency of the sharing and whether or not it results in financial gain.

The first element serves to address a fundamental and unavoidable question in the digital age: would it be reasonable to argue that *any* online sharing by parents concerning their minor children qualifies as sharenting and therefore requires a legal response? The intuitive answer is no, but this remains one of the key theoretical issues that must be addressed in order to properly frame the problem, including from a legislative standpoint. As a preliminary approximation, one might say that sporadic sharing of photos or videos of children does not, in itself, raise significant concerns[57]. The problem is rather the opposite: the alarm surrounding the phenomenon arises precisely from its scale[58]. According to the most recent studies, on average, 81% of children living in Western countries have some form of online presence before the age of two—92% in the United States and 73% in Europe[59].

Returning to the proposed classification, and bearing in mind that we are dealing—at the definitional level—with practices that are enormous (or even excessive) in both volume and frequency, the other decisive factor is whether or not there is a financial return for the parents[60]. Where profit is involved, we speak today of "baby influencers" (or, in the American version, "kidfluencing"). Another seemingly glamorous and relatively harmless expression, which must not obscure the fact that we are talking about a multibillion-dollar industry involving thousands of children around the world. In some cases—though it remains statistically unclear how many, which is itself part of the problem—it is known to have degenerated into actual abuse, some

[57] Of course, the quantity of shared content cannot be the only criterion for assessment; even a few images may still pose risks, for example if they portray children partially undressed or in intimate family contexts. These are, however, specific cases that require individual assessment.

[58] For an analysis of the Italian situation, see Save the Children, *XIV Atlante dell'infanzia (a rischio) in Italia - Tempi Digitali* (2023), cit. at 8, 30.

[59] P. Ferrara et al., *Online "Sharenting"*, cit. at 1.

[60] Economic return may take various forms: direct or indirect marketing, sponsorships, or the provision of products and/or services by brands. For an overview of influencer compensation models, see C. Yates, *Influencing "Kidfluencing": Protecting Children by Limiting the Right to Profit From "Sharenting"*, cit. at 10, p. 864.

instances of which have gained public attention, especially so far in the United States[61].

The significance of this distinction does not yet appear to have been fully acknowledged in the collective debate[62]. On the contrary, this difference ought to be placed at the very beginning of any reasoning on the topic, as it is decisive when it comes to potential regulation and, more generally, to the remedial framework. Even if parental conduct may appear similar, for the children involved the production of content for profit is far from being the mere documentation of spontaneous activity and everyday moments. It typically involves hours of preparation, scripts, and multiple takes to achieve the desired result. Most importantly, the presence of earnings generated from a child's online exposure is an objective indicator that shifts the entire discussion firmly into the realm of labour law.

In other words, there is—and must be—no doubt that the case of the so-called baby influencers amounts either to child labour exploitation (if the child, as is often the case, actively participates in the production), or to commercial exploitation of the child's image (when the child is too young to participate, as frequently occurs with infants or toddlers).

This also implies that the list of rights being violated must include the child's right not to work—a principle so deeply embedded in the Italian legal system that it has translated into a general prohibition on child labour. Admittedly, there are exceptional cases in which minors are allowed to work; but these are subject to specific regulations under Article 37 of the Constitution[63], which has repeatedly been reviewed by the

[61] The most well-known case is probably that of Ruby Franke—a former family influencer behind the YouTube channel "8 Passengers"—whose eldest daughter, Shari Franke, testified before Utah lawmakers in 2024 about the dangers of "kidfluencing". Ruby was arrested in August 2023 and later convicted in early 2024 for aggravated child abuse. A video of Shari Franke's testimony is available at https://le.utah.gov/av/committeeArchive.jsp?mtgID=19498.

[62] The distinction is also gaining traction in U.S. legal scholarship. Among the most recent contributions, see C. Yates, *Influencing "Kidfluencing"* and T. Lockett, *Smile for the Camera: Balancing Parental Rights and Children's Privacy in the Age of Family Influencers*, cit. at 10.

[63] Italian Constitution, Art. 37, paragraphs 2 and 3: "2. The law establishes the minimum age for paid labour. 3. The Republic protects the work of minors by means of special provisions and guarantees them the right to equal pay for equal work." In Italy, the two main applicable legislative instruments are: Law No. 977 of 1967, which sets out the general principles on child labour, including

Constitutional Court in light of the broader constitutional principles protecting minors[64]. This aspect has so far been overlooked by the case-based approach—rooted in family law—and this perhaps explains why scientific and institutional analyses alike tend to group it together with non-profit sharenting.

Framing the issue this way may seem to complicate the discussion by introducing an entirely new legal domain: labour law. While this expansion is undeniable, it actually allows the theoretical framework to be simplified in at least one respect. Specifically, it allows us to assign marginal relevance to elements that, when viewed through the lens of children's rights, are ultimately secondary—such as who owns the social media profile or whether the parent is already an influencer (or otherwise a public figure)[65]. In short, analysing cases of children's online overexposure by first distinguishing between profit and non-profit activities helps clarify the rights at stake—and, as a consequence, the types of remedies a legal system may choose to adopt[66].

4. A Constitutional Reading: Effectiveness and Consent

In light of the foregoing, some methodological conclusions can now be drawn. We are dealing with something new, a product of the Digital Age that is likely to become more acute over time, involving a category of inherently vulnerable individuals—namely, minors—and potentially putting *all* their fundamental rights at risk.

minimum age requirements, limits on working hours, and safety standards—generally requiring that working conditions be appropriate to the age of the minor; and Legislative Decree No. 208 of 2021, which includes the Unified Text on Audiovisual Media Services (known as TUSMA) and governs the protection of minors working in the entertainment industry. See Ministero della Giustizia, *Relazione finale del Tavolo tecnico sulla tutela dei diritti dei minori nel contesto dei social networks, dei servizi e dei prodotti digitali in rete* (2022), 19.

[64] See A.C. Moro, *Manuale di diritto minorile*, cit. at 40, 410.

[65] This is the main focus of draft bill No. 1800 submitted to the Chamber of Deputies: see infra, par. 5. On this point, see D. Caccioppo, *Sharenting e tutela dei dati personali del minore: profili giuridici di un fenomeno interdisciplinare*, cit. at 11, 388.

[66] "Once the law recognizes that family influencing is different than sharenting, family influencers could be addressed by legislatures and courts": T. Lockett, *Smile for the Camera*, cit. at 10, 374. While the author places perhaps too much emphasis on the distinction between the two practices, her argumentative strategy is understandable in the U.S. context (supra, par. 1), as a means of supporting at least some form of legal intervention targeting baby influencers.

That such a statement may seem hyperbolic or overly alarmist is likely due to the novelty of the phenomenon, which—combined with the normalisation of the pervasiveness of digital devices—blurs perception of both the conduct itself and the risks it entails After all, the first fully datafied generation is now coming of age, and only now are the harms beginning to manifest. From a legal standpoint, it is worth emphasising that the level of protection afforded to minors—at least in Italy (and more broadly in Europe) — has attained such breadth that virtually every aspect of their lives appears regulated. The Constitution, international charters, statutes, oversight bodies, and specialised court sections together create a legal framework that may appear comprehensive, thereby understandably veiling the existence of the problem.

The issue, however, is not the degree of advancement of the existing protection system, but rather the fact that the achievements secured in the analogue world are crumbling in the digital one. In short, the problem today is not the affirmation of children's rights, but their *effectiveness*[67]—understood, in line with Article 3(2) of the Constitution, as the requirement that rights must translate into concrete guarantees in people's lives, shielding them from real-world threats[68]. Anticipating protection so that harm does not occur is the objective of constitutional rights provisions, and the entire system has been built on these premises.

When we look at the issue of children's digital overexposure, it becomes clear that the preventive effect of constitutional rights protection has been lost. The courts—though they have commendably fulfilled their role when called upon—have only been able to provide responses that are *ex post* and partial. Cease-and-desist letters between former spouses, awarded compensation, even the much-discussed right to be forgotten are reactive tools, not

[67] Without attempting to explore a topic that has occupied legal and philosophical scholarship for over a century, I will here adopt the term in its most commonly used sense: the correspondence between a legal (in this case, constitutional) norm and concrete reality. See L. D'Andrea, *Effettività*, in S. Cassese (ed.), *Dizionario di Diritto pubblico* (2006). For an overview of its origins and the many related theoretical issues, see P. Piovani, *Effettività (principio di)*, in *Enc. Dir.* XIV (1965).

[68] As N. Irti has observed, the question of effectiveness "reverses the usual approach: it does not rise from facts to law, but descends from law to facts; it does not ask facts to reveal a legal meaning, but demands that law engage with facts": N. Irti, *Significato giuridico dell'effettività*, 9 (2009) (unofficial translation).

preventive ones. And in any case, they are "too little, too late"[69], because the harm to the children has already been done.

To reintegrate this overlooked dimension, it seems necessary to revisit the theoretical and interpretative premises that guide the analysis. The first step is to draw a clear distinction between the case of minors as active subjects on the internet and that of minors as passive subjects. These are fundamentally different situations, involving distinct sets of risks and benefits, and, more importantly, different rights.

When we consider minors' social media activity, we are dealing with the exercise of rights by the very individuals who also bear the associated risks (and harms). It is widely accepted that digital technologies not only bring numerous benefits but have become essential—especially for adolescents. The legal challenge, then, is to identify the frameworks and conditions that enable such use while minimising potential harms, which are both real and increasingly well-documented. Therefore, two main issues emerge: the minimum age for direct access to the internet (including the introduction of a so-called digital age of majority), and, as a result, the implementation of age verification tools. This topic has already received considerable scholarly[70] and institutional[71] attention, dating back to the early debates on new technologies. It is also addressed by the GDPR, which recognises minors as requiring specific protection when accessing information society services. On this basis, the regulation introduces special rules on consent and (at least in principle) restrictions on the collection and use of personal data.

The situation is entirely different when it is others who share content on social media. In this case, minors become mere passive subjects: they are not exercising any rights, but are instead exposed to the consequences of someone else's actions. The problem, therefore, is not addressed—let alone resolved—by existing

[69] C. Yates, *Influencing "Kidfluencing"*, cit. at 10, 863.

[70] The literature is already extensive and still expanding. Among the most recent Italian contributions—notable for the breadth of issues they address—see C. Colapietro and A. Iannuzzi (eds.), 2 Riv. it. inf. dir., Special Section *Minori e Internet* (2024); M. Tomasi, L. Busatta, M. Fasan, C. Nardocci, S. Penasa, S. Sulmicelli (eds.), 1 BioLaw J. - Riv. BioDiritto, Special Issue 347 (2024).

[71] For the most recent example, see the *Guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28(4) of Regulation (EU) 2022/2065 on Article 28* [the so-called Digital Services Act (DSA)], by the European Commission, published on 14 July 2025.

regulations such as the GDPR, which, following a predominantly market-oriented logic, places full responsibility for protection in the hands of the very parents who, often recklessly, generate and fuel the phenomenon in the first place[72]. In this second scenario, the issue of consent plays only a marginal role. Even if one were to apply here the current legal framework concerning the obligation to hear the views of the child in matters affecting them[73], its impact would be quite limited. In the parent-child relationship, requiring a child's prior consent to the sharing of content that concerns themselves[74], it could only operate within a narrow age range—namely, those so-called *grands enfants* who are capable of forming and expressing an opinion on their parents' social media activity. The problem, however, persists—and indeed becomes more serious—for *petits enfants*; and it becomes entirely unmanageable through this mechanism when it involves very young children or even infants.

By proceeding through successive distinctions, we eventually identify a category of highly vulnerable individuals who are left entirely at the mercy of the will[75] (or lack of awareness, or even greed) of those whom the legal system entrusts with their protection[76]. From a diachronic perspective, this marks a regression in children's rights of several decades: a return to the presumption that "parents know what's best for their children", and to a model in which the effectiveness of children's rights depends entirely on

[72] See S. Donovan, *"Sharenting": The Forgotten Children of the GDPR*, cit. at. 19.

[73] See, for instance, Tribunale di Rieti, judgment no. 443/2022, discussed in L. Miglietti, *La sovraesposizione digitale dei minori ed i suoi effetti*, cit. at 11, 225.

[74] In keeping with the cultural tradition that requires children to be heard in all decisions affecting them—an approach incorporated into Italian law through the reform of parent-child relations, and in particular through the new Article 315-bis of the Civil Code.

[75] I use the term "will" here in a strictly technical sense, as the foundation of legally valid consent. The motivations that lead parents to engage in conduct such as that under discussion fall outside the scope of legal reasoning, although they have long been examined by psychology and sociology.

[76] D. Caccioppo captures the point, though in a tentative tone, in *Sharenting e tutela dei dati personali del minore*, cit. at 11, 391, where, after analysing Article 8 of the GDPR, she asks: "are there any effective safeguards for the child in a situation where a fully informed parent—aware of the risks—nonetheless decides to give consent and, as in the case of sharenting, to publicly disseminate the child's data?" (unofficial translation).

their parents[77]. Protected by whom? So far, the system has focused on shielding children's data from external threats, while ignoring those that originate within the home.

This brings us to a second conceptual step. If we accept this premise—and the idea, discussed above, that exposing a child online constitutes an inherently dangerous activity—then the reasoning leads to a clear constitutional conclusion. Such conduct, at least in principle, ought to be prohibited. This is not paternalism, nor authoritarianism, nor a violation of parental freedom of expression. Prohibiting dangerous conduct is precisely what the legal order is required to do to prevent harm; restricting the exercise of one person's right in order to safeguard the rights of another—particularly when the latter is, by definition, vulnerable—is simply the result of a balancing operation. Moreover, the limitation in question would be only partial, since it would not concern the activity as a whole, but only certain specific types of content. Agreeing on this conclusion would not only free legal reasoning from the influence of cultural traditions that are, in this respect, far removed from our own[78], but more importantly, would allow us to establish a first fixed point from which to move forward. Such a conclusion would in fact amount to nothing more than extending to the digital environment principles that are already well established in the field of children's rights[79].

Once the theoretical framework is clarified, it becomes almost obvious that the real obstacle is not legal but practical. Even assuming the approval of a law—constitutionally legitimate in

[77] This line of thought has been developing for some time, both among those working—broadly speaking—in the field of digital child protection, and among scholars who approach EU data protection law (the GDPR) from a critical perspective, highlighting its market-oriented framework and the resulting commodification of individual rights. A full account of these strands of scholarship is beyond the scope of this work, but for an overview, see: M. Macenaite, E. Kosta, *Consent for processing children's personal data in the EU: following in US footsteps?*, 26 Info. & Comm. Tech. L. 146 (2017); I.A. Caggiano, *Privacy e minori nell'era digitale. Il consenso al trattamento dei dati dei minori all'indomani del Regolamento UE n. 2016/679, tra diritto e tecno-regolamentazione*, 1 Familia 3 (2018); F. Naddeo, *Il consenso al trattamento dei dati personali del minore*, 1 Dir. Inf. 27 (2018); L. Bozzi, *I dati del minore tra protezione e circolazione: per una lettura non retorica del fenomeno*, 1 Europa Dir. priv. 252 (2020); E. Battelli, *Il trattamento dei dati nel prisma della tutela della persona minore di età*, 1 Dir. Inf. 267 (2022). See also the contributions cited at 9, 10, and 16.

[78] See supra, section 1.

[79] See supra, section 2.1.

itself—that prohibits the digital overexposure of one's children, would such a law be enforceable? What sanctions could realistically be applied?

The difficulty of enforcement remains a practical issue, but it does not justify downplaying the seriousness of the constitutional violation. Rather, it opens the way—first for research, and then for policy demands[80]—towards solutions that also address adult education, as well as all possible initiatives from both public authorities and professional associations. In short, I do not mean to suggest that a blanket ban on sharing is the solution to the problem. That would be just as simplistic as the opposite position—and arguably even less viable in terms of public perception, which instead calls for awareness and education[81].

The aim, as with the distinction between sharenting and kidfluencing, is to emphasise the need to draw some basic lines even within the category of sharenting itself. It is essential to distinguish more clearly between different practices and the risks they entail, so as to identify as precisely as possible the corresponding needs for legal protection.

5. Conclusions. The Legislative Proposals Submitted to the Italian Parliament

Such clarity, however, finds only very limited reflection in the legislative proposals currently[82] pending in the Italian Parliament. In the Chamber of Deputies, these include proposals no. 1217, 1771, 1800 and 1863, submitted separately between 2023

[80] Following the line of reasoning developed by A. Morelli, *I diritti senza legge*, 1 *Consulta Online* 10 (2015).

[81] This same consideration guided the drafters of the French law Law no. 2024/120, which regulates the use of children's images online (see Section 5). In the accompanying report, they described the measure as having primarily an educational function (*loi de pédagogie*), rather than a repressive or punitive one. The reform also provides for a graduated system of sanctions against parents. In the most serious cases, it allows the judge to delegate to a third party the exercise of the child's right to their image. See B. Studer et al., *Proposition de loi visant à garantir le respect du droit à l'image des enfants* (2023), available at www.assemblee-nationale.fr/dyn/16/dossiers/garantir_respect_droit_image.

[82] The most recent consultation of parliamentary records was carried out on 10 September 2025. Any further developments in the examination of the proposals (formally initiated on 24 June 2024) can be followed at: https://www.camera.it/leg19/126?tab=&leg=19&idDocumento=1863&sede=&tipo=.

and 2024 by various parties, and all referred to the IX Committee on Transport for examination[83].

Taken together, the proposals and their titles give the impression of a broad, somewhat all-encompassing attempt to address the general issue of minors' relationship with social media[84] in a single piece of legislation and mostly through amendments to existing laws[85]. The first proposal (no. 1217) consists of just three articles aimed at amending specific provisions of the *Codice della Privacy*. In particular, it seeks to raise the minimum age for digital consent to 15[86]; to assign responsibility for age verification to a trusted service provider designated by the government[87]; and to require digital devices to be equipped with parental control systems. The increase in the minimum age for digital consent is also proposed in two other bills: no. 1771 and no. 1863, which set the threshold at 16 and 15 years respectively. Both proposals also call for additional safeguards for minors: no. 1771 introduces an "integrated action plan for the prevention of cyberbullying", while no. 1863 proposes requiring platforms to implement an added feature "enabling minors under the age of 15 to instantly activate a voice and text communication channel with the child emergency number '144'.".

Three other proposals are pending before the 8th Committee of the Italian Senate, submitted between May and June 2024 and

[83] For an overview of the Italian legislative process, see most recently D. Tega, G. Repetto, G. Piccirilli, S. Ninatti (eds.), *Italian Constitutional Law in the European Context* (2023), at 34.

[84] The following information is summarised in the *Dossier* of the Servizio Studi (Research Service) of the Chamber of Deputies, no. 309 of 18 June 2024, available at: https://documenti.camera.it/leg19/dossier/Pdf/TR0109.pdf.

[85] The term *amendment* is used here to translate the Italian legal concept of *novellazione*, a legislative technique increasingly employed in the Italian legal system over the last few decades. It refers to the explicit modification, integration, or repeal of existing legal provisions. This growing reliance on such a technique has often resulted in fragmented and poorly coordinated normative texts, leading to significant interpretative and practical difficulties.

[86] This proposal also reaffirms the prohibition—already provided by the GDPR—on granting minors under the age of 13 access to electronic communication services identified by decree of the Prime Minister as posing greater risks to their physical and mental health, safety, and well-being (AC 1217, Art. 1).

[87] Under proposal no. 1863, the implementation of age verification is delegated to measures adopted by the two competent authorities on the matter: the Italian Communications Authority (AGCOM) and the Italian Data Protection Authority (*Garante per la Privacy*).

numbered 1136, 1158, and 1160[88]. In this branch of Parliament as well, the bills aim to cover the full range of issues concerning minors and the digital environment. They provide for raising the age for digital consent[89], address the matter of age verification[90], and amend the regime governing the validity of contracts concluded by minors with providers of information society services[91]. These proposals also refer to strengthening both parental control measures and the child emergency number ("114") already mentioned.

These brief remarks are enough to convey the approach of Italian policymakers, who, in the proposals on sharenting, show the awareness of the risks and the willingness to address them. This is especially evident in the Senate, where the Committee has indeed begun its work, holding a series of hearings with experts from different backgrounds[92]. In the main proposal, no. 1160, there is also the statement that "the minor has the right to privacy, and it is *prohibited for anyone* to disseminate multimedia content relating to minors unless this is in the minor's primary and objective interest"[93] (emphasis added).

The main problem, however, remains the all-encompassing approach. Bringing together all risk factors means attempting to address, simultaneously, a range of issues—some primarily technical, such as age verification—that require assessment and solutions on different levels. As a result, the discussions held so far have touched on every topic without examining any of them in depth, and the measures proposed likewise appear far from satisfactory. For the most part, the proposals codify principles already established by case law, such as the requirement that both

[88] Any further developments in the examination of the proposals (formally initiated on 18 June 2024) can be followed at: https://www.senato.it/leggi-e-documenti/disegni-di-legge/scheda-ddl?tab=datiGenerali&did=58301.

[89] Set at the age of 16 according to proposal no. 1160, and at 15 according to the other two.

[90] As provided in proposal no. 1136, Art. 2.

[91] Proposal no. 1136, Art. 3, provides that contracts concluded by minors under the age of 15 are void, but valid if concluded by "those exercising parental responsibility or acting as guardians".

[92] The hearings were held on 10 and 17 July 2024 and can be viewed via the Senate's web TV, with searches available by date or committee. Those giving evidence included individual experts, representatives of the competent authorities (*Garante della privacy* and *AGCOM*), and a representative of the leading trade association for businesses in the sector, Anitec - Assinform.

[93] Proposal no. 1160, Art. 2 (unofficial translation).

parents give consent for the publication of images of their children[94]. In other cases, they reiterate rights already provided for by the GDPR, such as the right to be forgotten[95]. Notably, the texts frequently defer to other actors—chiefly the government and independent authorities—or to subsequent actions by private parties[96]. Of course, these are only initial proposals, which could in theory be significantly improved if they were ever brought under serious examination. And it is certainly to their credit that they have at least raised the issue. Still, addressing it properly would require a much deeper and more rigorous level of analysis—one capable of fully grasping the magnitude of the underlying constitutional concerns. More generally, it is reasonable to suspect that the whole initiative was submitted with the awareness that, even though it enjoys bipartisan support, it stands little real chance of moving forward in the legislative process. Various factors weigh against its approval, starting with the opposition of lobbying groups and the concerns raised by experts about the European limits on national legislation in free-market sectors. The structural weakness of the Italian Parliament also plays a role.

The situation is somewhat different when it comes to *baby influencers*, where the task facing the Italian legislator would, in fact, be significantly simpler— for two main reasons. First, because the involvement of children and adolescents in the entertainment industry is by no means a novelty of the digital era. Legislation regulating child labour in this sector has existed for quite some time. It would therefore be sufficient to extend that legal framework to include activities carried out on online platforms. The key is to recognise these activities as a form of child labour, thereby making clear the need for such an extension[97]. But—and this is the second

[94] Considered by the courts as an act of extraordinary administration and therefore not authorizable by only one parent acting alone. See Trib. Rieti, 17 October 2022, no. 443.

[95] The minor would be permitted this directly, by lowering the digital age of majority.

[96] Two of the proposals pending in the Chamber of Deputies (no. 1771 and no. 1800) include references to self-regulatory codes adopted by media and television operators, respectively. Similar provisions are found in all the proposals pending in the Senate.

[97] Proposal no. 1160 (Senate) captures the point: "The starting point is precisely the awareness that the activity of baby influencers constitutes real work which, as such, must be regulated and remunerated; it is therefore necessary to place it

point—this recognition has already taken place elsewhere in Europe. Since 2020, the French legislator has taken a far more serious approach to the very issues discussed here[98], and in particular, Law no. 2024/120 regulates the use of children's images online. Following that model, the Italian proposals finally provide for the explicit recognition of online child labour and introduce basic protections. Three of the proposals pending before the Chamber of Deputies (nos. 1771, 1800, and 1863) contain provisions of this nature, but the most comprehensive rules are found in Senate proposal no. 1160. Article 1 covers the entire subject, providing for an extension of children's labour law to online platforms; it also specifies that any other use of minors' images falls under the pre-existing *Codice civile* provisions, "without prejudice to more serious offences". All of them require both parents to give authorisation, and the involvement of an external authority[99], at least in the form of notification[100]. Most importantly, all of the proposals include the principle that earnings received by the minor be deposited into a bank account accessible only by the child upon reaching the age of majority. According to both the rapporteur of the French legislative proposals and the legal scholarship specifically focused on the matter[101], removing the financial incentive for parents is the most effective way to curb what is a real form of child exploitation.

From a legislative-policy perspective, the adoption of a legal framework at least on this specific issue—thereby opting for a sector-specific approach and abandoning the all-encompassing one—would have the merit of formally regulating child labour in the digital environment. In the context of a time-sensitive issue of children's rights, targeted measures tailored to the existing national

within the framework of labour law" (Explanatory Report, 3, unofficial translation).

[98] See also L. Miglietti, *La sovraesposizione digitale dei minori*, cit. at 11, 228, which includes further bibliographic references.

[99] In proposals no. 1771 and 1863 (Chamber) and no. 1160 (Senate), authorisation by both parents must be accompanied by authorisation from the Labour Inspectorate.

[100] In proposal no. 1800 (Chamber), the authority involved is the Italian Communications Authority (AGCOM). Notably, Article 1 of this proposal addresses the specific case of children of influencers, treating the exposure of children as part of their parents' professional activity. For this reason, the competent authority is not the Labour Inspectorate but the AGCOM. See supra, section 3.

[101] Including U.S. scholarship: see C. Yates, *Influencing "Kidfluencing"*, cit. at 10, 863.

framework are often easier to adopt and, most importantly, can have a real and significant impact.