

NOTES

ENTERTAINMENT OR EXPLOITATION?: REALITY TELEVISION AND THE INADEQUATE PROTECTION OF CHILD PARTICIPANTS UNDER THE LAW

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“Fame is a powerful ruler There’s a societal structure that we’ve built, in part thanks to television, that says this is the thing you want, desire, and aim for. That’s a powerful lure for individuals in our society.”¹

I. INTRODUCTION

Reality shows have undoubtedly changed the business of television in America while also having an enormous effect on the American television-viewing experience. Considering the form’s immense success as a major—and recently crucial²—part of network programming over the last decade, reality programming has evolved past delivering content to a niche market of television viewers to now receiving mass, even global, appeal. Further, reality programs are still inexpensive to produce as compared to the production costs of scripted programs, a concept friendly to producers and to broadcasters, both nationally and internationally.³ While viewed as a natural money-maker by producers and production studios, reality television has been, and still is, a thorn in the side of the artist unions, like the Screen Actors Guild (“SAG”) and the Writers Guild of America (“WGA”),⁴ with producers of the genre continuing to dodge proper use of

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¹ Maria Elena Fernandez, *Is Child Exploitation Legal in ‘Kid Nation’? CBS Faces Barrage of Questions on a Reality Show about Children Feeding for Themselves*, L.A. TIMES, Aug. 17, 2007, at 1 [hereinafter Fernandez, *Child Exploitation*] (quoting Matthew Smith, chairman of the Department of Communication at Wittenberg University in Ohio and editor of *Survivor Lessons: Essays on Communication and Reality Television*).

² In consideration of the WGA strike (beginning November 5, 2007) and its profound effect on the production of scripted television shows.

³ Beth Seaton, *Reality Programming*, MUSEUM OF BROADCAST COMM’NS, <http://www.museum.tv/archives/etv/R/htmlR/realityprogr/realityprogr.htm> (last visited Mar. 1, 2009) (“This factor of cost is crucial for countries such as Canada, where both public and private broadcasters have always been dependent upon the availability of inexpensive American shows for their programming schedules, much to the demise of an indigenous product. It may be argued, then, that reality programs are especially attractive to countries outside of the United States. Because of their low cost, each country can create its own version of the programs, which then qualify as indigenous productions and therefore enjoy the privileges of state support.”).

⁴ Tension between the production studios and the unions came to a head in 2004 and 2005 when negative effects in employment trends of union members became noticeable. See Jesse Heistand, *SAG*:

their members, arguing that reality shows are not in need of members' skills.⁵ Demands from unions to alter their practices of hiring non-unionized talent and drafting contracts with ambiguous language as to jurisdiction have largely been ignored by producers and have not resulted in the degree of change sought by the unions.⁶ The tension between the producers of reality programming and the unions over the amount of creativity requiring talent in reality shows highlights the central paradox of "reality TV:" its realism is subjective. In other words, reality programming is not striving for factual accuracy in its presentation of the "real;"⁷ instead, bias is key, with context defined by the choices made by editors and/or producers regarding the order of events, as well as the overall structure of the presentation. But, by claiming that reality shows are unscripted and that they present actual occurrences uninfluenced by creative processes, producers are able to justify reality programming as an exception to standard rules governing television productions. Disturbing enough are the exceptions the unions have taken aim at (i.e. reduced, or in some cases, no payment of overtime, non-union hires, etc.), but the emergence of the reality show *Kid Nation* brought this debate to another level, by shifting the focus of concern away from the employment of the production crew to the recruitment and handling of participants—specifically *child participants*.

The success of a reality show is heavily dependent upon the creativity or innovativeness of the show's concept. In general, it seems, the edgier or more bizarre the subject matter, the better the program's initial ratings. Certainly, by pushing the boundaries of what is culturally acceptable in its

Reality TV Still Hurting Actors, BACK STAGE WEST, Oct. 13, 2005, available at <http://www.allbusiness.com/services/amusement-recreation-services/4393408-1.html> ("The union, which represents 120,000 performers, said 40,826 roles were cast last year. The losses mostly were concentrated in episodic television, where reality TV was blamed for a 10.2 percent decrease (3,523 roles) in roles compared with the previous year. As evidence, SAG said that prime-time reality programming had increased from an average of 15 hours per week to 22 hours per week in 2004."); Sharon Waxman, *Union Plans to File Suit for Reality TV Workers*, N.Y. TIMES, June 29, 2005, available at <http://www.nytimes.com/2005/06/29/arts/television/29real.html>; Jim Rendon, *Unions Aim to Share in the Success of Reality TV*, N.Y. TIMES, Jan. 25, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9D03E2DE1F39F936A15752C0A9629C8B63>.

⁵ Producers of reality programming, for instance, argue that since reality shows are mostly, if not entirely, unscripted, there is no writer. The WGA counters that the process of creating captivating scenarios, culling raw material, and forming it into a narrative constitutes writing and should fall under its contract. See Maria Elena Fernandez, *'Kid Nation' Puts Hollywood Labor Tension into Sharp Focus: Child Welfare Concerns Add to Union Disputes over Reality Shows*, L.A. TIMES, Aug. 29, 2007, at 1 [hereinafter Fernandez, *Hollywood Labor Tension*] ("Producers have admitted to writing scenarios that contestants are asked to carry out. And contestants have revealed that they work long hours and are often asked to do different takes of scenes to make them more interesting and controversial. For these reasons, union representatives argue that the shows have writers who should be compensated according to union guidelines and that some contestants are performers who could be covered under collective bargaining agreements.").

⁶ Jurisdiction over reality programming (i.e. exactly if and how the WGA's Minimum Basic Agreement ("MBA") should apply) was a major issue during the recent WGA strike. However, all demands for reality TV and animation jurisdiction were formally removed from the negotiations table (although organizing efforts in this area have continued). Carl DiOrio, *WGA Drops Reality Demands*, HOLLYWOOD REPORTER, Jan. 23, 2008, available at http://www.hollywoodreporter.com/hr/content_display/news/e3ia80f69a7374eff9d76cda1e8cf0aed86.

⁷ "Real" is defined in Merriam-Webster as "not artificial, fraudulent, or illusory," and "reality" is defined as "something that is neither derivative nor dependent but exists necessarily." The concept of the "real" in reality shows is purposefully contrived, by making what was once real into the unreal. In other words, the "real" is confrontational; reality television, however, has the effect of distancing viewers from that confrontation.

subject matter—and thereby bringing media attention to itself—a show can create enough of a “buzz” such that viewers who might not have originally shown interest in the show tune in to watch at least the first few episodes out of pure curiosity. Granted, going too far with a show’s subject matter can create controversy with greater negative consequences for the show than positive ones, resulting potentially in the show’s cancellation or it not even being aired.⁸ Typically, though, such controversies stem from moral criticisms formulated by those concerned more with the “message” of the show and less with the health or safety risks affecting participants in the show.⁹ However, mainly because the show’s participants were children, *Kid Nation* brought with it immense criticism about the health and safety of its participants. The criticism was not only directed at the audacity of the producers who produced the show and the carelessness of parents who signed their children up for it, but also at the failure of labor law to adequately protect these child participants, on many levels.¹⁰ For some critics, never had the exploitation of children on reality television been so clear, so apparent: *Kid Nation* became a vivid example of society’s obsession with fame, money, and being entertained even at the expense of its most innocent members.

This Note seeks to identify and critically examine the very fine line between child performers on narrative television productions and child participants on reality television shows—a line on which producers have relied to avoid certain legal ramifications of employing minors in reality programming. I use *Kid Nation* as a case study for this analysis. Section II of this Note provides a narrative of the *Kid Nation* controversy, highlighting in particular the more egregious aspects of the participant agreement signed by parents of the children in the show, as well as the various claims made by parents and officials before the release of the show. Section III details the laws already in place that address child labor in the entertainment industry, focusing on what restrictions have been set and how far they reach (i.e. limitations, if any, on jurisdiction and on exactly who is protected under these laws). This Section looks specifically at federal, California, New York, and recent New Mexico law and offers suggestions for further improvement. Section IV provides independent analysis on the

⁸ See, e.g., Kevin Young, *How Reality TV Shocked the World*, BBC NEWS, May 29, 2007, available at <http://news.bbc.co.uk/1/hi/entertainment/6700327.stm>. The controversy surrounding *Kid Nation* came to a head roughly three weeks before the show was actually scheduled to air. Discussion of the show arose a good two months prior to its air date. See, e.g., James Hibberd, *The Founding of ‘Kid Nation:’ How CBS Navigated Legal, PR and Logistical Shoals to Produce Key Show*, ELEC. MEDIA, July 16, 2007. Many critics called for CBS to pull the show before its air date. Yet, the show was not pulled and aired to mediocre ratings—ratings which were expected to be much higher due to the media blitz over its controversial elements.

⁹ Arguably, a lot of leeway is given by the media to adults who consent to participate in the more bizarre or controversial reality shows, in that, as long as their consent is informed and they do not harm others in the process, adult participants are free to do what they want. While this “pass” in the media might be justified, greater consideration should be given as to what constitutes “harm to others.”

¹⁰ Section III and IV of this Note explicitly address the inability of current laws to protect these children. My focus will primarily be on labor law and the degree to which the rights of child performers are still left unprotected. The caveat to this is that, according to CBS, the children of *Kid Nation* were not legally “working,” but rather “participating” in a filmed camp-like experience. Therefore, the labor laws protecting child workers in New Mexico—as well as California laws protecting resident child performers with contracts executed in California—did not apply. Sections II, III, and IV examine this issue in greater detail.

unique and precarious situation of child participants. I work here to define the rights of these children and the duties owed to them with regard to health and safety. I analyze the situation partly from a moral perspective, offering up as support for my arguments for enhanced legal protection the basic premises that children have extraordinary value and that both society and the law should work towards promoting greater care and respect for their rights.

II. THE *KID NATION* CONTROVERSY

Until *Kid Nation*, no reality show had focused on taking a group of children from their homes and placing them in unknown situations, forced to deal with whatever arises and recording the results.¹¹

A. THE SHOW

The premise of the reality show *Kid Nation* was to take forty children, ages eight to fifteen, place them in a New Mexico “ghost town” for forty days, and see if they could build a working society without the assistance or guidance of adults, including their parents.¹² The children were to transform the “‘completely dead . . . former mining town’ of Bonanza City, New Mexico, into a functioning community”¹³ and learn the virtues of creative thinking, collaboration, and cooperation along the way. According to the executive producer of the show, Tom Forman, *Kid Nation* was deliberately designed as a kind of social experiment to allow children to “‘prove to adults that they were capable of doing more than anyone thought they could ever do.’”¹⁴ Ghen Maynard, Executive Vice President of Alternative Programming for the Central Broadcasting System (“CBS”), characterized *Kid Nation* as a show that “‘really put young kids to the test.’”¹⁵ But what was the show actually testing? Was *Kid Nation* testing whether children could come up with an innovative, efficient way to organize and maintain a community? Or was it really testing how long the

¹¹ Edward Wyatt, *A CBS Reality Show Draws a Claim of Possible Child Abuse*, N.Y. TIMES, Aug. 18, 2007, at B7 [hereinafter Wyatt, *Draws Possible Child Abuse Claim*].

¹² Edward Wyatt, *CBS Was Warned on ‘Kid Nation,’ Documents Show*, N.Y. TIMES, Aug. 22, 2007, at A13 [hereinafter Wyatt, *CBS Was Warned*]. The show’s tagline was “‘Could they succeed where adults failed?’” Rodney Ho, *‘Kid Nation’ under Probe before Debut*, ATLANTA J. & CONST., Sept. 19, 2007, at E1.

¹³ Hibberd, *supra* note 8 (“According to the CBS preview, ‘Nation’ charges 40 kids with ‘fixing their forefathers’ mistakes’ by rebuilding [and turning] the ‘completely dead . . . former mining town’ of Bonanza City, New Mexico, into a functioning community.”). The show was actually shot at the Bonanza Creek Movie Ranch, a privately owned movie set featured in films such as *Silverado* and *All the Pretty Horses*. It was built on the ruins of the old Bonanza City, with only a few of the original structures remaining. Hibberd, *supra* note 8.

¹⁴ Cynthia Littleton, *Eye Is Standing Behind Its ‘Kid’*, DAILY VARIETY, Aug. 24, 2007.

¹⁵ Fernandez, *Child Exploitation*, *supra* note 1 (“CBS Executive Vice President of Alternative Programming Ghen Maynard attempted to ‘wake up the attention’ of children with a program that allowed them to ‘identify with people of their own age,’ he said in an interview. ‘I thought it could be a way to try to get some attention on a broadcast level for a new kind of show, one that really put young kids to the test.’”).

children could subsist in an environment with no adults and no modern amenities: how long before they “break” and want to go home?¹⁶

The children ultimately had very little say about the actual structure of their “community-building” experience.¹⁷ The kids were divided into four color-coded districts by the show’s producers, and, every three days, the districts competed against each other on a physical or mental challenge, or a “showdown,” the outcome of which determined their work and corresponding compensation for that episode.¹⁸ “Upper class” status was earned by the first-place team, and they received \$1 in “buffalo nickels,” the town’s currency.¹⁹ The upper class team members were not required to work and could do whatever they wanted.²⁰ The second-place team earned “merchant” status and earned fifty cents for running the stores.²¹ “Cooks” were third-place team members and earned twenty-five cents for cooking all meals and washing dishes.²² The last team received “laborer” status and earned ten cents for cleaning the entire town,²³ including the portable toilets shared by all forty children. The laborers also had to haul in drinking water for the town from a distant well, care for the town’s farm animals, and do a number of other unpleasant, often unsanitary, chores.²⁴ Then, “[i]f every resident of Bonanza City completed the challenge, the town would get a reward—a choice between something they needed and something they wanted.”²⁵ This reward was chosen by the Town Council, or “kid government,” which was made up of one representative from each of the four districts.²⁶ The Council also got to choose at the end of every three-day cycle which child deserved to win a gold star worth \$20,000.²⁷ The final episode of the show dissolved all four districts and featured a final “showdown” that the town had to successfully complete in order to earn the right to give away three additional gold stars, each worth \$50,000, to also be awarded by the Council to the most deserving participants.²⁸

¹⁶ The emotional reactions to other contestants and to being away from home for an extended period of time, the feelings of stress and disappointment when “showdowns” are unsuccessful, and the torment experienced when the children are forced to do unpleasant, unsanitary chores are all part of the drama or “entertainment factor” of the show. See James Bone, *Drinking Bleach and Being Bullied on ‘Lord of the Flies’ Reality Show*, TIMES (U.K.), Aug. 25, 2007.

¹⁷ See Ellen Goodman, *Barbarians at the ‘Kid Nation’ Gate*, BOSTON GLOBE, Sept. 28, 2007, at 15A (“But the real founding fathers of ‘Kid Nation’ leave little to chance or choice. It’s the producers, not the so-called pioneers, who determine the structure of the town called Bonanza. It’s the adults who lay the cultural grid down the main street.”); see also Marilyn Elias, *One ‘Kid Nation’ Under Fire: TV Reality Show Could Do Damage, Critics Say*, USA TODAY, Sept. 26, 2007, at 7D (“It’s not really a ‘kid nation’ at all because adults quickly move in to structure the society and set rules, adds Michael Brody, a Washington, D.C., child psychiatrist who teaches about kids and media at the University of Maryland.”).

¹⁸ Fernandez, *Child Exploitation*, *supra* note 1.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Littleton, *supra* note 14.

²⁵ Fernandez, *Child Exploitation*, *supra* note 1.

²⁶ *Id.*

²⁷ *Id.* The winners of gold stars were given the opportunity to call home from a special locked building in town.

²⁸ Kid Nation on CBS, *Recap: Episode 113*, CBS.COM, http://www.cbs.com/primetime/kid_nation/shows/ep13/index.php (last visited Mar. 1, 2009).

Thus, for forty days, beginning in April 2007, the children lived in Bonanza City “on the show,” with cameras recording their every move, whether they were talking, eating, working, playing, fighting, or crying.²⁹ “We would wake the kids at 7 a.m. and were shooting them until sometimes midnight,” related a member of the show’s production crew.³⁰ Days were undoubtedly long for these children. There were also always some children kept extremely busy for many hours each day completing the chores that had been assigned to them.³¹ The nature and the amount of chores the children had to complete, as determined by their class status for each three-day period, dictated how long the kids would have to “work” per day (i.e. what time they would be forced to begin their chores and what time they would actually finish them).³² This rigorous structure for a reality show that young children were missing over a month of school to participate in began to draw concerns from watchdog groups during the summer after the show was produced. Once the concerns of these groups were validated by claims of child injuries during filming, reports of the deliberate skirting of child labor laws by producers, and release into the public domain of the egregious agreement signed by parents of the child participants, it was only a matter of time before controversy over *Kid Nation* erupted onto the national stage.

B. THE AGREEMENT

Before participation was granted to child applicants by the producers of *Kid Nation*, the parents or legal guardians of the minors were required to sign, along with the children, a twenty-two page participant agreement.³³ According to the agreement, the children were required to do basically whatever producers instructed them to do, twenty-four hours a day, seven days a week, or risk being expelled from the show.³⁴ Producers were given the option of providing participants with a stipend, but solely for the purpose of covering a child’s incidental expenses and not as compensation for employment.³⁵ In fact, the contract directly states that participation in the show would not be employment and that the children would not be entitled to wages, salary, or other compensation.³⁶ When information was

²⁹ Hibberd, *supra* note 8.

³⁰ *Id.*

³¹ Wyatt, *CBS Was Warned*, *supra* note 12 (“[M]ost of the children were required to work 14 hours or longer per day.”).

³² The producers of the show claimed the children “set their own hours.” See Wyatt, *Draws Possible Child Abuse Claim*, *supra* note 11. Clearly, however, the hours the children worked depended on the chores they were assigned to do as a result of their class status. Hours were undoubtedly the harshest for the laborers.

³³ Participant Agreement between Minor and Producers for “The Manhattan Project.” *No Human Rights in “Kid Nation”*, THE SMOKING GUN, Aug. 23, 2007,

<http://www.thesmokinggun.com/archive/years/2007/0823071kidnation1.html>.

³⁴ Edward Wyatt, ‘*Kid Nation*’ Parents Gave Show Free Rein, N.Y. TIMES, Aug. 23, 2007, at E1 [hereinafter Wyatt, *Parents Gave Show Free Rein*].

³⁵ Participant Agreement, *supra* note 33, at 1 (“Producer may award stipends to participants who have been selected to participate, and who do participate, in the Program. I acknowledge and agree that such stipend is being provided, if at all, solely for the purpose of covering the Minor’s incidental expenses and is not, in any way whatsoever, a wage, salary or other indicia of employment.”).

³⁶ *Id.* at 10 (“I agree that, if the Minor is selected by the Producers to be a participant, the Minor’s appearance as a participant in the Program is not employment and is not subject to any union or guild

publicly disclosed about the living conditions on-set, the number of hours the children did chores, and the kinds of chores they were asked to do, producers pointed to this provision to show that both parents and children were on notice of the fact that participation in *Kid Nation* would not constitute employment and that, therefore, there should have been no expectancy on the part of either parents or children that the production or process would be subject to state or federal labor regulations.³⁷

Parents were also technically on notice that their children might be exposed to a variety of hazards and conditions that could cause the children serious injury, illness, or even death.³⁸ By signing the contract, parents assumed these risks on behalf of their children and waived any right to sue CBS and/or the producers of the show on related claims:³⁹

I understand that the Program may take place in inherently dangerous travel areas that may expose the Minor and other participants to a variety of unmarked and uncontrolled hazards and conditions that may cause the minor *serious bodily injury, illness, or death*, including, without limitation: general exposure to extremes of heat and cold; crime; water hazards; floods; drowning; treacherous terrain; collision with objects, including those submerged below water surfaces; [etc.] . . . I voluntarily and fully accept and assume these risks on behalf of the Minor and myself and understand and acknowledge that the waivers, releases and indemnities in this Participant Agreement expressly apply to these risks.⁴⁰

Parents also waived the right to assert any claim based on the producers' failure to conduct background checks or investigations, including physical or mental examinations, on other participants.⁴¹ Further, they assumed the risk of their child getting pregnant and/or contracting an illness, a sexually transmitted disease, or HIV as a result of an "intimate relationship" with another participant or person:

I understand that if the Minor chooses to enter into an intimate relationship of any nature with another participant or any other person, the Minor does so without any influence by the Producers and the Minor and I hereby assume any and all risks that may be associated with any relationship, including, without limitation, *emotional distress, illness, sexually transmitted diseases, HIV, and pregnancy*, if applicable. Without in any way limiting the scope of this Participant Agreement, I hereby

collective bargaining agreement or any state or federal labor regulations, and does not entitle the Minor to wages, salary or other compensation under any such collective bargaining agreement or otherwise.").

³⁷ See Wyatt, *Parents Gave Show Free Rein*, *supra* note 34 ("The 22-page agreement leaves little room for parents to argue that they did not know what their children might encounter.").

³⁸ Polly Summar, *Signing Their Lives Away: 'Kid Nation' Contract Absolves CBS of Pretty Much Everything*, ALBUQUERQUE J., Aug. 30, 2007, at A1 ("By the sixth page of the 22-page document, the word 'killed' or 'death'—in terms of conditions that 'may' arise during production—had been mentioned five times.").

³⁹ *Id.*

⁴⁰ Participant Agreement, *supra* note 33, at 3 (emphasis added). The contract goes on to release producers and CBS from any claim in connection with the minor being killed, injured, or harmed during the transportation to or from any location (including during the application process, selection process, the production of the show, and the promotion of the show following production), while in or around any housing accommodation on-set, and when using equipment or taking advantage of services (including food and water, emergency and rescue services, and medical and first aid services) provided by independent contractors.

⁴¹ *Id.*

release, on behalf of the Minor and myself, the Producers, MMP [Magic Molehill Productions, Inc.] and CBS from any and all claims associated therewith, including, without limitation, divorce (as applicable) or those of an emotional, physical, or financial nature.⁴²

The contract seems to provide a legal waiver for just about anything that could occur before, during, or after production, if at all related to the show.⁴³ And, if any of the children should require medical treatment as a result of these occurrences, there would be no guarantee that their caretakers would be qualified.⁴⁴ Parents not only waived any physician-patient privilege that might arise between the child, guardians, and/or caretakers⁴⁵ as well as released to the show's producers all past medical records and information,⁴⁶ but also authorized the potentially unqualified medical personnel to make all treatment decisions on their child's behalf.⁴⁷

Parents also granted producers the right to film and record their child and his/her actions, voice, and sound effects for up to twenty-four hours a day, seven days a week, during the forty day period, whether the child was aware he/she was being filmed.⁴⁸ The agreement also makes clear that participants would have almost no privacy during this process:⁴⁹

I understand and agree that, if selected, the Minor's actions and conversations during the course of participating in the Program will be observable by and audible to others and that *the Minor will have no privacy*, and I hereby *waive any privacy rights*, in the context of the Minor's participation, and during the course of participating, in the Program, regardless of whether the Minor is aware that recording of the Minor's actions and conversations is taking place. Producers will not film the Minor while the Minor is in the bathroom, provided the Minor is in the process of showering, bathing, urinating or defecating. In addition, Producers will provide "changing rooms" in which the Minor may change

⁴² *Id.* at 18 (emphasis added).

⁴³ Summar, *supra* note 38.

⁴⁴ Participant Agreement, *supra* note 33, at 4 ("I acknowledge and agree that any medical procedures offered to the Minor in connection with the Minor's participation (if any) in the Program may involve calculated risks of complications, infections, disfigurement, injury, or even death, from both known and unknown causes, and no warranty or guarantee has been made as to the result of such procedures . . . I also acknowledge and agree that no warranty, representation or guarantee has been made as to the qualifications or credentials of the medical professionals performing such procedures.").

⁴⁵ *Id.* at 11 ("I hereby waive any physician-patient privilege the Minor and/or I may have or that may arise with any physicians, psychologists, health care providers (including both physical and mental health care providers), social workers, health care institutions, insurers, and other individuals or entities as a result of the Minor's participation in the participant selection process and/or the Program.").

⁴⁶ *Id.* ("I authorize the release to the Producers and MMP of all records and information, written, verbal, electronic or otherwise, from any of the above persons and/or entities.").

⁴⁷ *Id.* at 12 ("If the Minor is incapacitated or unable to assist in the Minor's own care, I authorize Program-affiliated medical personnel to make treatment decisions on the Minor's behalf and I understand and agree such treatment may include surgery and/or the administration of medication or any other treatment.").

⁴⁸ *Id.* ("I irrevocably grant to the Producers the right . . . to videotape, film, portray and photograph the Minor and the Minor's actions and record the Minor's voice and other sound effects by means of cameras and microphones (including, without limitation, by requiring the Minor to wear a microphone) further in connection with the production of the Program on an up to 24-hour-a-day, 7-days-a-week basis, whether the Minor is aware or unaware of such videotaping.").

⁴⁹ Summar, *supra* note 38.

his or her clothes, and Producers will not film the Minor when the Minor is in the ‘changing room’ while actually changing his or her clothes.⁵⁰

Extensive confidentiality requirements covering media contacts and the disclosure of anything learned during production were also imposed on the participants and their parents.⁵¹ The agreement keeps the conditions of confidentiality in place for three years beyond the end of the show.⁵² If any of these conditions are violated, the parents and children would be liable under the contract to CBS for five million dollars in liquidated damages.⁵³

While the terms of an agreement like this might not be quite so objectionable if agreed to by adults for their own participation in a reality show,⁵⁴ they become deeply troubling when they are agreed to by adults for their *children’s* participation. It is highly doubtful that these children or even their parents received adequate representation in negotiating these terms with the other parties (assuming that any form of negotiation actually took place). Certainly, the majority of these children were not represented by agents or managers at the time of signing, and the likelihood that their parents fully understood what they were agreeing to in signing the contract is small. Thus, with hardly enough information or proper advice, parents gave the show’s producers close to full responsibility over the health and safety of their children and essentially left themselves with no available legal remedy, signing away much, if not all, of their children’s—and their own—legal rights.⁵⁵

C. THE CLAIMS

Early concern with *Kid Nation* arose over the show’s structure and whether the conditions of participation were such that the children had actually been employed by producers. By characterizing the show as a “summer camp,” CBS had hoped to avoid complaints that the children had been overworked.⁵⁶ However, when it became known that these children had been up and “working” for as many as fourteen hours a day, the show

⁵⁰ Participant Agreement, *supra* note 33, at 8–9 (emphasis added).

⁵¹ Summar, *supra* note 38.

⁵² Participant Agreement, *supra* note 33, at 13–14 (“[T]he Minor and I will not use or discuss or disclose to any party any information or trade secrets obtained or learned as a result of the Minor having applied to be a contestant on the Program, or in the event the Minor is selected to be a contestant in the Program, any information related to the Minor’s participation in the Program . . . for a period from the date of this agreement until three (3) years after the initial broadcast of the last episode of the Program series (i.e. the last episode of the entire series of the Program as a whole, as distinct from the cycle of the Program for which the Minor is applying to be a contestant, or which the Minor participates if selected, regardless of whether or not the Minor has appeared in the last cycle, a previous cycle, or no cycle at all of the Program).”).

⁵³ *Id.* at 14. According to the contract, the five million dollars “represents the result of a reasonable endeavor by CBS and [the signing parties] to ascertain the fair average compensation for any harm that CBS [would] sustain as the result of [a breach of confidentiality].” *Id.*

⁵⁴ See Littleton, *supra* note 14 (“[S]uch broad-based waivers have become standard operating procedure for reality TV productions.”).

⁵⁵ See Wyatt, *Parents Gave Show Free Rein*, *supra* note 34. “‘From the standpoint of being a parent, and I do have eight children, . . . I can’t imagine allowing our child – any of them – to participate in something like this.’” *Id.* (quoting Professor Frederick Hart, a contract law professor at the University of New Mexico).

⁵⁶ Hibberd, *supra* note 8.

quickly came under fire from the media.⁵⁷ In a news conference held soon after this information was revealed, television writers and critics hammered creator Tom Forman with questions about the legal issues arising from his production.⁵⁸ Forman reemphasized CBS's stance that the children were not, in any way, employees of the network, but rather participants in a camp-like experience where their hours were not predetermined.⁵⁹ Jonathan Anshell, who oversaw CBS's West Coast legal office at the time, later said to the New York Times that "[t]he children were not employed under the legal definition They were not receiving set wages for performing specific tasks or working specific hours."⁶⁰ Further, the gold stars worth \$20,000 and \$50,000 were "not wages and did not create an employee relationship."⁶¹

Claims also arose concerning the health and safety of the children during production. Complaints of cramped, unclean housing for the children, no adult supervision over potentially hazardous tasks, and physical injuries suffered by a few of the children while on-set were made to New Mexico state officials.⁶² According to the complaints, several children had required medical attention after drinking bleach left in an unmarked soda bottle, and one girl burned her face with splattered grease while cooking.⁶³ These complaints caused concern among officials that procedural requirements, put in place to ensure the safety of certain environments for children, had been ignored by producers.⁶⁴ A New Mexico official whose department oversees the licensing of congregant childcare settings said that the show "almost assuredly violated state laws requiring facilities that house children be reviewed and licensed."⁶⁵ Also, the New Mexico Children, Youth, and Families Department ("NM-CYFD") said that CBS never even contacted the agency to inform them of on-set conditions.⁶⁶ The New Mexico Department of Workforce Solutions

⁵⁷ Most of the kids received a \$5,000 stipend to cover any incidental costs associated with their participation. Taking only this stipend into consideration, "if [the kids] did [indeed] work 14-hour days for 40 days[,] . . . [they] got less than \$9 an hour." Maureen Ryan, *What Were 'Kid Nation' Parents Thinking?*, CHI. TRIBUNE, Sept. 4, 2007; see also Jeanne Jackson DeVoe, *CAUTION: Children At Work*, TIMES (TRENTON, NJ), Oct. 16, 2007, at B1 ("When you consider these kids were on the job 24 hours a day for 40 days, that's 960 hours, so they were making about \$5.20 an hour.").

⁵⁸ Fernandez, *Child Exploitation*, *supra* note 1.

⁵⁹ *Id.* ("Forman . . . likens the experience to 'going to summer camp' and says the children, like all reality show stars, 'were not working; they were participating' and set their own hours. None was eliminated, and all were free to leave at any time.")

⁶⁰ Wyatt, *Draws Possible Child Abuse Claim*, *supra* note 11.

⁶¹ *Id.*

⁶² See *id.* ("Just days after the shooting of 'Kid Nation' ended, an anonymous letter was sent to the New Mexico governor's office, the attorney general's office and the sheriff of Santa Fe County, spelling out the bleach-drinking incident and other potentially harmful circumstances. That was followed three weeks later by a letter from Ms. Miles, the parent of Divad[, a child participant burned by hot grease,] that detailed many of the same incidents and injuries.")

⁶³ *Id.* ("Divad, an 11-year-old girl from Fayetteville, Ga. . . . who was burned with hot grease while cooking, said she would not repeat the experience. She said there was no adult supervision of the cooking operation when she was hurt[.]"). As many as four children were reported to have accidentally drunk bleach. Wyatt, *CBS Was Warned*, *supra* note 12.

⁶⁴ See Wyatt, *Draws Possible Child Abuse Claim*, *supra* note 11 ("[Romaine] Serna[, a public information officer for the New Mexico Children, Youth and Families Department, said,] . . . 'This type of setting, with 40 kids away from their parents for an extended time, would have required some notice and work prior to actually bringing the children into the state[.]'").

⁶⁵ *Id.*

⁶⁶ *Id.*

(“NMDWS”) had sent out an inspector to visit the set of the show, but producers purportedly refused to allow him onto the site.⁶⁷ This allegedly happened more than once.⁶⁸

Anschell said, in response to all of these claims, that CBS contacted the attorney general’s office about the show, but did not receive any notice of incompliance with the law.⁶⁹ Yet, in a letter addressed to CBS’s lawyers, Andrea Buzzard, a New Mexico assistant attorney general, warned the network about potential non-compliance.⁷⁰ The letter affirmed the state’s position of disagreement with the network’s interpretation of state labor law, stating that a child’s frequent presence at a work site is prima facie evidence that he/she is unlawfully engaged in labor.⁷¹ The NMDWS also recognized that, even if the show was to be considered a “summer camp,” the *Kid Nation* producers were still in the wrong, as they failed to apply for a special permit that waives the child labor laws and minimum wage rights for camps.⁷² The attorney general’s office eventually launched an official investigation into the permit process, the participant agreement, and whether the producers illegally refused to allow NMDWS inspectors onto the site for routine inspections.⁷³ Child activists also called for individual states to investigate whether the parents violated truancy laws by removing their children from school for a long period of time.⁷⁴

The investigation by the attorney general’s office was ultimately dropped, however.⁷⁵ According to a statement, “[i]t . . . [was] determined that absent any formal complaints to this office or request for investigation by any state agency, the Attorney General’s Office . . . [was] not [going to] pursue any further inquiry into the *Kid Nation* production in New Mexico.”⁷⁶ The NMDWS also dropped plans to investigate further into the matter.⁷⁷ CBS stands firm in its contention that the show was produced in a

⁶⁷ *Id.*

⁶⁸ Maria Fernandez, ‘*Kid Nation*’ Labor Law Dispute Intensifies, L.A. TIMES, Aug. 22, 2007, at 11 [hereinafter Fernandez, *Dispute Intensifies*].

⁶⁹ Wyatt, *Draws Possible Child Abuse Claim*, supra note 11; see also Wyatt, *CBS Was Warned*, supra note 34 (“No one from that office . . . ever raised an issue whether licensing was required,” Mr. Anschell said.); Fernandez, *Dispute Intensifies*, supra note 68 (“Anschell added that in correspondence with the attorney general’s office, ‘there was no indication that we were in violation of labor laws.’”).

⁷⁰ Wyatt, *CBS Was Warned*, supra note 12.

⁷¹ *Id.* (“We are not certain that . . . [the state’s labor] laws are limited to traditional ‘employment’ relationships,” Ms. Buzzard wrote, citing part of the state child-labor statutes that say that a child’s frequent presence at a work site ‘shall be prima facie evidence that such child is unlawfully engaged in labor.’”). The letter also requested a copy of the participant agreement, which was later provided to The New York Times by the attorney general’s office under an open records act request. *Id.*; Wyatt, *Parents Gave Show Free Rein*, supra note 34.

⁷² Wyatt, *CBS Was Warned*, supra note 12 (“New Mexico frequently issues exemptions to its child-labor statutes to Boy Scout camps, Boys and Girls Clubs and similar groups to allow minor members of those groups to participate [in] what would otherwise be considered work.”).

⁷³ Maria Elena Fernandez, *A New Mexico Official Wants to Know Whether Producers Lawfully Avoided Obtaining Work Permits for Children and Shut Out Inspection*, L.A. TIMES, Aug. 24, 2007 [hereinafter Fernandez, *New Mexico Wants to Know*].

⁷⁴ *Id.* (“Because no tutors were on location, as is customary when children are hired for TV shows or movies, parents had to arrange with their children’s schools to make up missed work . . . [A] 12-year old girl from Boston said she missed 19 days of school and had ‘to un-enroll from school and then re-enroll, so I didn’t have to make up any work, which was awesome.’”).

⁷⁵ Maria Elena Fernandez, *Kids’ Reality Show Fizzles Out: No “Nation” and No Investigation*, L.A. TIMES, Dec. 5, 2007, at E5 [hereinafter Fernandez, *Fizzles Out*].

⁷⁶ *Id.*

⁷⁷ *Id.*

“legal and ethical manner,”⁷⁸ now able to point to the dropped investigations as proof. The decisions of the attorney general’s office and the NMDWS to drop their respective investigations beg the question of whether concerns—legal, ethical, psychological, and social concerns—over *Kid Nation* were “much ado about nothing.”⁷⁹ Presumably, the investigations were dropped because the claims lacked either evidentiary or legal support. (Given both the amount of effort the producers exerted to keep parents, children, and employees silent about the goings-on surrounding the show and the degree to which the law left the children unprotected,⁸⁰ neither of these reasons for dropping the investigations is far-fetched.) So, while it might be contended that the CBS producers did nothing illegal and abided by the law before, during, and after the production process, it is arguable that the law was unfair to begin with. Thanks to the inadequacy of the law and the *naiveté* of parents, CBS was able to dodge a legal firestorm, all at the expense of children.

In July 2007, after production for *Kid Nation* was complete, the New Mexico legislature revised its child labor provisions to include the film industry.⁸¹ Supposedly, the changes were not prompted by *Kid Nation*, but they shall likely prevent a second season or even a similarly premised show attempting to avoid paying children for their work from shooting in New Mexico in the future.⁸² A second season has, however, been in the works, even though the show has not been officially renewed by CBS.⁸³ Because producers are having a difficult time finding a location in the United States that is willing to host the production, the show will likely move production to another country.⁸⁴ If any indication of the producers’ intentions, the new participant application requires children and parents to have passports.⁸⁵ Supposedly, more than 2,000 applications have been submitted.⁸⁶

III. LAWS PROTECTING CHILD PERFORMERS

[C]hildhood can become very complicated for a young person involved in the entertainment industry. State and federal law regarding children

⁷⁸ *Id.* (“CBS issued the following statement: ‘Throughout the preseason controversy, we said the true story of ‘Kid Nation’ would be told through the episodes on the air and the voices of the 40 kids who participated. We remain confident that ‘Kid Nation’ was produced in a legal and ethical manner, and we stand behind the quality of what is on the screen.’”).

⁷⁹ Walt Belcher, *Spotlight Shines on Some Bad Mother and a ‘Nation’ of Enlightening Children*, TAMPA TRIBUNE, Dec. 12, 2007. According to Belcher, “[t]he kids were not overworked. There were adults around at all times to offer comfort and care, if needed. Only three homesick kids left the group. Setting up their own government and education system, cooking meals and doing chores turned out to be an eye-opening learning experience for the children—and viewers.”

⁸⁰ Section III and Section IV of this Note address this point specifically.

⁸¹ 2007 N.M. Laws Ch. 257 (S.B. 175).

⁸² Hibberd, *supra* note 8.

⁸³ Don Kaplan, *New ‘Nation’ Home*, N.Y. POST, Oct. 4, 2007; Fernandez, *Fizzles Out*, *supra* note 75 (“A CBS spokesman said the network has not decided if it will produce another season but ‘there has been casting and other pre-production activity so the show would be ready in the event of a pick up.’”).

⁸⁴ Kaplan, *supra* note 83.

⁸⁵ Fernandez, *Fizzles Out*, *supra* note 75.

⁸⁶ Elias, *supra* note 17.

working in this industry have interacted and developed in such a way as to leave children with less protection than is necessary.⁸⁷

A. FEDERAL LAW

The Fair Labor Standards Act (“FLSA”), enacted in 1938, regulates the employment of minors in the United States and applies to all aspects of employment.⁸⁸ The statute bans child labor for those under sixteen years of age⁸⁹ and generally prohibits the employment of children under eighteen years of age in any occupation detrimental to their health or well-being.⁹⁰ Section 13(c) of the Act, however, provides an *exemption* from the child labor provisions for “any child employed as an actor or performer in motion picture or theatrical productions, or in radio or television productions.”⁹¹ Therefore, the FLSA’s rules on total allowable number of work hours in one day and allowable times of day to work do not apply;⁹² rather, states are left to their own devices in regulating the employment of minors in the entertainment industry. While states such as California and New York, both of which are major producers of entertainment, have laws favorable to minors working in the industry, the large majority of states provide little to no protection for child actors or performers. In fact, production companies in states with lax labor laws for children in the entertainment industry often boast about this fact in order to attract

⁸⁷ Jessica Krieg, Comment, *There’s No Business like Show Business: Child Entertainers and the Law*, 6 U. PA. J. LAB. & EMP. L. 429, 429 (2004).

⁸⁸ *Id.* at 431.

⁸⁹ Erica Siegal, Note, *When Parental Interference Goes Too Far: The Need for Adequate Protection of Child Entertainers and Athletes*, 18 CARDOZO ARTS & ENT. L.J. 427, 428 (2000).

⁹⁰ *Id.* at 442 & n.101 (citing 29 U.S.C. § 212(c) (2000): “No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce.”).

⁹¹ 29 U.S.C. § 213(c)(3) (2007); Actors and Performers, 29 C.F.R. § 570.125 (2007). In determining whether a minor is employed as a “performer . . . in radio or television productions,” the Secretary follows a definition of “performer” provided by the Administrator of the Wage and Hour Division in regulations issued pursuant to section 7(d)(3) of the FLSA:

The term “performer” shall mean a person who performs a distinctive, personalized service as a part of an actual broadcast or telecast including an actor, singer, dancer, musician, comedian, or any person who entertains, affords amusement to, or occupies the interest of a radio or television audience by acting, singing, dancing, reading, narrating, performing feats of skill, or announcing, or describing or relating facts, events and other matters of interest, and who actively participates in such capacity in the actual presentation of a radio or television program. It shall not include such persons as script writers, stand-ins, or directors who are neither seen nor heard by the radio or television audience; nor shall it include persons who participate in the broadcast or telecast purely as technicians such as engineers, electricians and stage hands.

29 C.F.R. § 570.125 (2007) (citing 29 C.F.R. § 550.2(b)).

⁹² U.S. Dep’t of Labor, Youth & Labor: Entertainment Industry Employment, available at <http://www.dol.gov/dol/topic/youthlabor/entertainmentemployment.htm> (last visited Mar. 1, 2009) (“Minors employed as actors or performers in motion pictures or theatrical productions, or in radio or television productions are exempt from Fair Labor Standards Act (FLSA) coverage. Therefore, FLSA rules regarding total allowable number of work hours in one day and allowable times of day to work do not apply.”).

filmmakers.⁹³ Thus, a state's interest in revenue can outweigh its interest in protecting these children from unsafe or unfair working conditions.⁹⁴

In response, many legal commentators have called for the standardization of child performer laws throughout the United States.⁹⁵ A number of ideas have been offered by these commentators as ways to achieve this enhanced uniformity, such as the development of a Model Code (one which states could adapt and then adopt),⁹⁶ or the enactment of federal legislation creating a federal oversight board to monitor the employment of minors in the entertainment industry and requiring each state to submit to this board a specific welfare plan for each child entertainer.⁹⁷ Because so few states have even attempted to address child labor issues in the entertainment industry, it seems valid to argue for the federal government to set minimum standards on allowable times of day and the total allowable number of hours in one day a child can work, in hopes that states will ultimately follow suit in establishing their own regulations.⁹⁸

B. CALIFORNIA

California has the most specific and stringent statutory scheme of any state regulating the employment of minors in the entertainment industry.⁹⁹ Minors—children under eighteen years of age¹⁰⁰—must have or obtain a valid work permit before employment in the industry can be granted.¹⁰¹

⁹³ Krieg, *supra* note 87, at 431–32 (quoting Siegel, *supra* note 89, at 448: “Many of these unregulated state are in the South east, and they often compete with each other for film production. In order to solicit filmmakers, many of the production companies in the Southeast boast about their lack of labor laws for children in the entertainment industry.”).

⁹⁴ Krieg, *supra* note 87, at 432.

⁹⁵ See, e.g., Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS B. ASS'N J. 21, 30 (1997) (“There is a compelling need for standardization of child actor laws throughout the United States. The current mix of statutes applying to child performers is complex, inconsistent and invites such unwelcome activities as forum shopping, excessive travel, and family relocation as parents and studios vie for access to laws that suit their own financial interests. . . . The disparate range and content of statutes affecting child performers begs for legislative intervention. In some states, talented child performers are apparently not permitted to ply their craft, while in most others, they are vulnerable to exploitation due to the lack of effective statutes. Many of the statutes date back well into the first half of this century and have not been redrawn to reflect the realities of the modern entertainment industry.”).

⁹⁶ *Id.* at 31 (“The areas that need to be addressed in such a Model Code include the following: educational requirements, psychological and emotional counseling, appropriate working conditions and safety, financial management and control, compensation for parents and income tax reform.”).

⁹⁷ Krieg, *supra* note 87, at 444 (“The federal legislation proposed would have the dual effect of requiring each state to take responsibility for the child entertainers working within its borders, while leaving the states discretion to determine how to best organize such protection within that state.”).

⁹⁸ See Heather Hruby, Comment, *That's Show Business Kid: An Overview of Contract Law in the Entertainment Industry*, 27 J. JUV. L. 47, 54–55 (2006). “[F]ederal legislation setting minimum standards that apply to all states is likely necessary to adequately protect the minor's best interests. Presently, the states have been left with the task of setting their own standards. The legislation that has resulted, while a step in the right direction, leaves much to be desired.” *Id.* at 55.

⁹⁹ Siegel, *supra* note 89, at 443. Hruby notes, however, that “[t]he entertainment industry in California brings tremendous amounts of revenue to the state. Thus, an argument can be made that protecting the minor may possibly take a back seat to the state's monetary interests.” Hruby, *supra* note 98, at 48–49.

¹⁰⁰ “‘Minor’ means any person under the age of 18 years who is required to attend school . . . and any person under the age of six years.” CAL. LAB. CODE § 1286 (2008).

¹⁰¹ The California Code of Regulations also requires verification from the minor's school of his/her school record and attendance and allows for the California Division of Labor Standards Enforcement to require the minor to undergo a physical examination in appropriate cases:

Industry employers desiring to hire minors must also obtain a permit from the Division of Labor Standards Enforcement (“DLSE”).¹⁰² Further, California requires that minors under the age of sixteen seeking to invoke the entertainment industry exception to the FLSA’s prohibition on the employment of children, obtain written consent and a permit issued by the California Labor Commission.¹⁰³ Consent will only be granted by the Labor Commissioner if the work environment is deemed proper, the conditions of employment are not detrimental to the minor’s health, and the minor’s education would not be neglected or hampered by such employment.¹⁰⁴ Once both the permit and consent are granted, the child is only permitted to work under the regulation and conditions prescribed by the California Labor Code.¹⁰⁵

Parents or guardians of minors under sixteen must be present on-set and within sight or sound of the minor at all times.¹⁰⁶ Tutors, or studio teachers, are also required to be on-set.¹⁰⁷ If the minor has not graduated

A minor desiring to be employed in the entertainment industry must obtain an Entertainment Work Permit. . . . [The] minor must obtain verification in writing from the appropriate school district of the minor’s school record and attendance, and must satisfactorily meet the requirements of that school district with respect to age, school record, attendance and health. . . . The [California] Division [of Labor Standards Enforcement] may require in appropriate cases a physical examination of the minor to ensure that the minor’s physical condition permits the minor to perform the work or activity called for by the Permit to Employ Minor and Entertainment Work Permit. . . . Upon the filing by a minor with the Division of a completed Application for Entertainment Work Permit satisfying the requirements of this Section, the Division shall issue an Entertainment Work Permit to such minor. Such permit shall permit the minor to work only under the conditions prescribed by these regulations and in conformity with all provisions of law governing the working hours, health, safety, morals and other conditions of employment of minors. The permit shall be for a period not to exceed six (6) months, and application for renewal must be made in the same manner and under the same conditions as the original permit.

CAL. CODE REGS. tit. 8, § 11753(a)–(b) (2008).

¹⁰² “The Division of Labor Standards Enforcement . . . shall issue a ‘Permit to Employ Minors’ if the conditions as to permissible work or activity . . . are satisfied.” *Id.* § 11752.

¹⁰³ Siegel, *supra* note 89, at 443–44. The California Labor Code states that “[t]he written consent of the Labor Commissioner is required for any minor [under the age of sixteen], not otherwise exempted[,] . . . for any of the following: (1) [t]he employment of any minor, in the presentation of any drama, legitimate play, or in any radio broadcasting or television studio[:]; (2) [t]he employment of any minor 12 years of age or over in any other performance, concert, or entertainment[:]; (3) [t]he appearance of any minor over the age of eight years in any performance, concert, or entertainment during the public school vacation.” CAL. LAB. CODE § 1308.5(a)(1)–(3).

¹⁰⁴ Siegel, *supra* note 89, at 444. “No consent shall be given at any time unless the officer giving it is satisfied that all of the following conditions are met: (a) [t]he environment in which the performance, concert, or entertainment is to be produced is proper for the minor[:]; (b) [t]he conditions of employment are not detrimental to the health of the minor[:]; (c) [t]he minor’s education will not be neglected or hampered by his or her participation in the performance, concert, or entertainment.” CAL. LAB. CODE. § 1308.6.

¹⁰⁵ CAL. CODE REGS. tit. 8, § 11753(b). See Siegel, *supra* note 89, at 444.

¹⁰⁶ CAL. CODE REGS. tit. 8, § 11757 (“A parent or guardian of a minor under sixteen (16) years of age must be present with, and accompany, such minor on the set or location and be within sight or sound of said minor at all times.”).

¹⁰⁷ *Id.* § 11755.2 (“Employers shall provide a studio teacher on each call for minors from age fifteen (15) days to their sixteenth (16th) birthday (age sixteen (16)), and for minors from age sixteen (16) to age eighteen (18) when required for the education of the minor. One (1) studio teacher must be provided for each group of ten (10) minors or fraction thereof. With respect to minors age fifteen (15) days to age sixteen (16), one (1) studio teacher must be provided for each group of twenty (20) minors or fraction thereof on Saturdays, Sundays, holidays, or during school vacation periods.”). See also *id.* § 11762 (“No minor under the age of sixteen (16) may be sent to wardrobe, make-up, hairdressing or employed in any manner unless under the general supervision of a studio teacher. If any such minor is not called to the set but is called for a period up to one (1) hour into wardrobe, make-up, hairdressing, promotional

high school, the minor must be provided with continuous education and be taught at least three hours a day by a studio teacher when school is in session.¹⁰⁸ Studio teachers are also responsible for caring for and attending to the welfare of minors under sixteen years of age.¹⁰⁹ Part of this responsibility includes the submission of reports describing a minor's general activities and demeanor.¹¹⁰ If a studio teacher determines that a situation is detrimental to the minor, the teacher may remove the minor from the location.¹¹¹ Any action by a studio teacher can be appealed to the Labor Commissioner, who may either affirm or countermand the action.¹¹²

The amount of time children can work in the entertainment industry is also limited by California law.¹¹³ Minors—under the age of eighteen—cannot work for more than eight hours a day or more than forty-eight hours in one week.¹¹⁴ The Labor Commission set up specific per-day hour restrictions for minors based on their age:¹¹⁵ no more than twenty minutes of work for an infant under six months of age, two hours for a minor under two years of age, three hours for a minor under six years of age, four hours for a minor under nine years of age, five hours for a minor under sixteen years of age, and six hours for a minor under eighteen years of age.¹¹⁶ For permission for the minor to work earlier or later than the hours prescribed, written request must be made to the Labor Commissioner.¹¹⁷

California law not only applies to work done in California by minors from out-of-state, but also may apply to work done out-of-state by minors from California:

When minors resident in the State of California and employed by an employer in the entertainment industry located in the State of California, are taken from the State of California to work on location in another state, as part of, and pursuant to, contractual arrangements made in the State of California for their employment in the entertainment industry, the child labor laws of California and the regulations based thereon shall be applicable, including, but not limited to, the requirement that a studio teacher must be provided for such minor.¹¹⁸

publicity, personal appearances, or for audio recording, when such minor's school is not in session, a studio teacher need not be present but the minor must be accompanied by a parent or guardian.”).

¹⁰⁸ *Id.* § 11760(d)–(f). See Siegel, *supra* note 89, at 445–46.

¹⁰⁹ CAL. CODE REGS. tit. 8, § 11755.3 (“The studio teacher, in addition to teaching, shall also have responsibility for caring and attending to the health, safety and morals of minors under sixteen (16) years of age for whom they have been provided by the employer, while such minors are engaged or employed in any activity pertaining to the entertainment industry and subject to these regulations.”).

¹¹⁰ Siegel, *supra* note 89, at 445.

¹¹¹ CAL. CODE REGS. tit. 8, § 11755.3 (“The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor.”).

¹¹² *Id.*

¹¹³ Siegel, *supra* note 89, at 446.

¹¹⁴ CAL. LAB. CODE § 1308.7(a).

¹¹⁵ See *id.* (The limitations listed here apply when the minor is working while his/her school is in session. When the minor's school is not in session, maximum permitted work hours for minors increase).

¹¹⁶ Siegel, *supra* note 89, at 446, n.119; CAL. CODE REGS. tit. 8, § 11760(a)–(f).

¹¹⁷ CAL. CODE REGS. tit. 8, § 11760(g) (“If emergency situations arise.”).

¹¹⁸ *Id.* § 11756.

The fact that a minor executed an employment contract in California is not enough for California law to follow the minor out-of-state for on-location filming. Minors also need to be residents of the state of California. California law, thus, does not apply to the child participants in *Kid Nation*, because, even though many of the participants executed agreements in the state, none of them were California residents.¹¹⁹ If *Kid Nation* had been filmed in California, and the children were deemed to have been employed by producers,¹²⁰ all of California's regulations on child employment in the entertainment industry would apply, and *Kid Nation* would have clearly violated many of them. For instance, despite the fact that all child participants were under sixteen, parents and guardians were not allowed on-set.¹²¹ And, even though the children of *Kid Nation* spent close to six weeks away from school while it was in session, no tutors were present on-set.¹²² So, while the laws of California are indeed favorable to child performers, for child participants in reality television they seem to be useless.

C. NEW YORK

New York is another state with a relatively comprehensive statutory scheme regulating child employment in the entertainment industry. In 2003, the state passed the Child Performer Education and Trust Act.¹²³ This legislation, which went into effect on March 28, 2004, amended the law with regard to obtaining permits, establishing trust accounts, and providing education for child performers.¹²⁴ Like in California, child performers are required to have work permits, and, in New York, these work permits remain valid for only six months after the date of issuance before they need to be renewed.¹²⁵ Permits, however, will not be granted for work that is "harmful to the welfare, development or proper education of . . . [a] child."¹²⁶ As another means of preventing children from being placed in harmful situations, employers are required to apply for a certificate of eligibility to employ child performers.¹²⁷ Failure by employers to produce either a performer's permit or their own certificate of eligibility upon request by the state's Department of Labor is prima facie evidence of

¹¹⁹ See Fernandez, *Hollywood Labor Tension*, *supra* note 5.

¹²⁰ Section IV, Subsection A of this Note specifically examines this issue.

¹²¹ Wyatt, *Draws Possible Child Abuse Claim*, *supra* note 11.

¹²² *Id.*

¹²³ S. 4696-B, Reg. Sess. (N.Y. 2003), available at <http://www.labor.state.ny.us/workerprotection/laborstandards/PDFs/Child%20Performer%20law%204696-B.pdf>.

¹²⁴ *Id.* ("It is the intention of this legislature to ensure that child performers who work in the state of New York are provided with adequate education, and that a portion of the child performers' earnings are kept in trust until the age of majority. Through the comprehensive permit requirements of child performers, and certification of employers, the department of labor will be able to monitor and enforce violations of child performers' rights to education provided under the laws of the state of New York. Additionally, the department of labor will enforce the requirement of a child performer trust account to be established pursuant to this act for the purpose of protecting child performers' earnings.")

¹²⁵ N.Y. LAB. LAW § 151(1)(b) (2008).

¹²⁶ *Id.* § 151(1)(e) ("No permit shall allow a child to participate in an exhibition, rehearsal or performance which is harmful to the welfare, development or proper education of such child. A permit may be revoked by the department for good cause.")

¹²⁷ *Id.* § 151(2).

illegal employment.¹²⁸ The Act also requires employers to set aside fifteen percent of a child performer's gross earnings to be placed in a trust account in that child's name¹²⁹ and to provide a child performer with a qualified teacher if the child's employment schedule prevents the child from receiving educational instruction.¹³⁰

Like California law, New York law seems to apply both to work done in New York by minors from out-of-state and in-state as well as to work done out-of-state by minors from New York.¹³¹ While New York residency seems to be a requirement for state law to apply to out-of-state work, there is no mention about whether contractual arrangements regarding the child's employment have to have been made in New York or not. State residency might be enough for New York law to follow the child performer wherever she goes to work. Despite the fact that New York's jurisdictional hurdles might be easier to traverse than California's, New York's laws protecting children in the entertainment industry are not nearly as comprehensive as California's. Further, the question of whether or not New York's laws cover child participants in a reality television show like *Kid Nation* remains unanswered.

D. NEW MEXICO

Before the summer of 2007, New Mexico was considered a state with some of the most lenient labor laws in the country regarding children in the entertainment industry.¹³² The presumption for a long time was that productions were handled with the best interests of children in mind and that regulation on the state level was not necessary.¹³³ In July 2007, however, the New Mexico Legislature enacted both new and revised sections of the state's Child Labor Act, bringing New Mexico's laws much closer to California's laws in terms of the amount of protection that is offered to children in entertainment.¹³⁴ There are now strict limits, for instance, on the number of hours that child performers can work on a production per day:¹³⁵ children over six but under nine years of age cannot work more than eight hours a day, and children over nine but under sixteen years of age cannot work more than nine hours a day.¹³⁶ Also, if a child performer works on a school day, a teacher with credentials appropriate to the child's level of education must be provided by her employer.¹³⁷ Child performers must also have work permits, which are not issued in New

¹²⁸ *Id.* § 151(5).

¹²⁹ N.Y. EST. POWERS & TRUSTS LAW §§ 7-7.1 (2008).

¹³⁰ *See* N.Y. LAB. LAW § 152.

¹³¹ *See id.* § 150(2) ("Child performer" shall mean any child under the age of eighteen who (a) resides in the state of New York and who agrees to render artistic or creative services; or (b) agrees to render artistic or creative services in the state of New York.).

¹³² Hibberd, *supra* note 8.

¹³³ *Id.* ("We didn't have anything in our statutes that said they can't work a child 10 hours a day, so we had hoped that [productions] would operate in the best interests and do what's best for the children," said Tiffany Starr-Salcido, who specializes in child workplace rights at the New Mexico Department of Labor.)

¹³⁴ *See* 2007 N.M. Laws Ch. 257 (S.B. 175).

¹³⁵ Hibberd, *supra* note 8.

¹³⁶ 2007 N.M. Laws Ch. 257 (S.B. 175).

¹³⁷ *Id.*

Mexico until satisfactory proof is furnished that the work in which the child is to engage will not be dangerous to the child or hazardous to her health or well-being.¹³⁸ While these changes in the law were not prompted by the *Kid Nation* controversy,¹³⁹ it is interesting to note that *had* they been in place when *Kid Nation* was being produced, they certainly would have had some effect on how the whole saga played out. (Note that the recent laws almost certainly would have covered children's participation in *Kid Nation*. The definition of "performer" in the Act is very broad and easily includes a person who participates in reality shows: "a person employed to act or otherwise participate in the performing arts, including motion picture, theatrical, radio or television products."¹⁴⁰). Had these changes to the law been enacted earlier, then, the investigations into the parents' allegations concerning conditions on-set might have continued, and charges might have eventually been brought by the state against the producers of the show for violating these regulations.

IV. THE PREDICAMENT OF CHILD PARTICIPANTS

"We don't want to see one production break every rule in the book, whether it's a real law or an industry standard, and see them get away with it[,] because we know it's a slippery slope and our kids will be hurt in the end."¹⁴¹

A. ARE THEY WORKING?

Due to the FLSA exemption for minors employed as actors or performers in the entertainment industry, states are left to determine their own statutory schemes regulating children in entertainment.¹⁴² However, only a handful of states, such as California, New York, and recently New Mexico, have sought to specifically address the issues facing these children with comprehensive independent statutes.¹⁴³ Further, even in states that have addressed these issues, the question of whether the state's laws regulating child performers apply to child *participants* in reality television is still up in the air. This has drawn concern not only from child performers' rights advocacy groups like the BizParentz Foundation and A Minor Consideration, but also from talent unions like SAG and the American Federation of Television and Radio Artists ("AFTRA"), which have long contended that contestants on reality television be covered by union

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Fernandez, *New Mexico Wants to Know*, *supra* note 73 (quoting Anne Henry, co-founder of BizParentz, a nonprofit organization that assists child actors and their families).

¹⁴² Krieg, *supra* note 87, at 431.

¹⁴³ Staenberg & Stuart, *supra* note 95, at 30 ("Virtually all states have statutes designed to protect child laborers from exploitation. Incredibly, a majority of states have granted specific exemptions to the entertainment industry so that child labor laws do not apply to them. Some of these states require permits or administrative authorization in order for the exemption to be exercised. However, in many states, the exemption is unconditional!").

contracts.¹⁴⁴ This Section looks to how California has specifically dealt with this question.

1. *Interpretation of California Law*

The California Labor Commissioner has recognized that “a child filmed in a reality-based show is . . . subject to all of the rules and regulations governing minors in the entertainment industry.”¹⁴⁵ In a letter sent out by the Labor Commissioner’s office in February 2003, David L. Gurley, then staff attorney for the Labor Commissioner, responded to the concerns of a production company over the application of California labor laws regarding minors in the entertainment industry to minors in a reality-based production.¹⁴⁶ The production company was uncertain whether defining a program as a reality show would affect the coverage of child participants who were not performers (i.e. not members of AFTRA and/or SAG). Gurley states in the letter that “[w]hether or not . . . [a] production is described as a reality show is irrelevant The real question is whether [the production company] is acting as an employer, and whether the minors involved in [the show] are employees of [the company].”¹⁴⁷ Gurley concludes that the production company would be considered an employer of the child participants:¹⁴⁸

You indicate you will be shooting for ten continuous days. As with any reality show, the participants—to a certain extent—will be subject to the direction and control of the director, producers and other crew members. The constant presence of cameras, lighting equipment, and crew . . . do not allow a child to conduct his/her normal routine. While we understand the intent is to disrupt the minor’s routine as little as possible, we are unable to discern how the constant presence of a camera crew could possibly achieve this goal. In short, *the control of the directors and producers may not rise to the level of a typical situation-comedy, but would nevertheless exercise enough control to create an employer/employee relationship.*¹⁴⁹

Given this interpretation, if *Kid Nation* had been filmed in California, the production would have certainly been subject to the state’s labor laws. (It therefore makes sense that producers of the show purposefully sought

¹⁴⁴ Maria Elena Fernandez, ‘*Kid Nation*’ Parents Speak Out: Though Bound by a Confidentiality Pact, They Tell Advocacy Groups of Concerns that Children Were Fed Lines, L.A. TIMES, Aug. 31, 2007 [hereinafter Fernandez, *Parents Speak Out*].

¹⁴⁵ Letter from David L. Gurley, Attorney for Labor Commissioner, to production company (Feb. 25, 2003) (on file with author). Gurley points to California Code of Regulations, Title 8, Section 11751(a), which defines the entertainment industry as such:

The Entertainment Industry, hereinafter referred to as the employer, shall be defined as any organization, or individual, using the services of any minor in: Motion picture of any type (e.g. film, videotape, etc.), using any format (theatrical film, commercial, documentary, television program, etc.) by any medium (e.g. theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances where minors perform to entertain the public.

CAL. CODE REGS. tit. 8, § 11751(a) (2008).

¹⁴⁶ Letter from David L. Gurley to production company, *supra* note 145.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* (emphasis added).

out another state to film in. Notice, too, that producers did not use any children from California—or New York—in the show. Doing so would have made the production subject to laws of a state actually favorable to children.¹⁵⁰) The conditions of the show easily meet the criteria laid out by the Labor Commissioner for establishing an employer-employee relationship. Participants were filmed for forty continuous days, and the camera crew was always present. Also, the children were undoubtedly under the control of the show's producers, physically—by request of the parents¹⁵¹—as well as creatively. According to some of the parents of the show's participants, who spoke confidentially to the BizParentz Foundation and A Minor Consideration, they were told by their children that, during the show, producers often gave kids lines to say or asked them to re-cast dialogue or repeat scenes.¹⁵² Also, when parents watched the last day of filming in May 2007, they supposedly saw some of the children being prompted to utter lines and to review, on camera, things that happened earlier during the production.¹⁵³ Such direction might be routine for reality or documentary-style productions,¹⁵⁴ but consider the great amount of control producers held over the children's housing, the show's structure, and the avenues of communication at the participants' disposal. These dispel the notion that the children had any real influence over decisions on the direction of the show. By having the final say on essentially every element of production, producers held enough control over participants to create a legitimate employer-employee relationship.

Control, however, should not be the only aspect that is examined in order to determine whether an employer-employee relationship exists. Child contestants on a thirty-minute television game show are certainly controlled by the decisions of the show's director and producers, but subjecting these types of productions to child labor laws would not only be impractical, but unnecessary. Can we draw a line between reality shows and game shows in such a way as to justify the application of labor restrictions to one but not the other?¹⁵⁵ What criteria can we use to properly

¹⁵⁰ “The participants, ages 8 to 15, hailed from 15 states, excluding California and New York, which have some of the strictest labor laws in the country. In an interview August 9, [2007,] Forman said he avoided children from those states because, ‘as we looked at the labor issues, there were some issues there.’” Fernandez, *Hollywood Labor Tension*, *supra* note 5.

¹⁵¹ See Participant Agreement, *supra* note 33. In general, the contractual agreements between the producers and participants on reality television can tell us a lot about how much control producers had over participants; see Michelle Tsai, *Are Reality-TV Actors Professional?: Do the Contestants on a Show like Survivor Count as Working Actors?*, SLATE, Aug. 23, 2007, <http://www.slate.com/id/2172697/> (“[R]eality-TV contracts are especially strict and designed to protect the producers. In many cases, people sign away practically all their rights just to appear on camera.”).

¹⁵² Fernandez, *Parents Speak Out*, *supra* note 144.

¹⁵³ *Id.*

¹⁵⁴ *Id.* (Forman, in response to these claims that producers directed children to say or do certain things at certain times, said that all of this is routine for reality television productions: participants repeat dialogue missed because of technical difficulties or cameras not correctly positioned, and participants give interviews during which they are asked to recall moments from earlier in the production.)

¹⁵⁵ Whether an employer-employee relationship exists should not be determined by the simple categorization of a show as either a reality show or a game show. Rather, the determination should be made by applying a specific set of criteria that gets to the heart of why participation in one show is “work,” while, in another, it is not. Failingly, producers of *Kid Nation* argued that the show was like any other game show and that the children were mere contestants competing for prize money. See Wayne Friedman, ‘*Kid Nation*’ Plays in the Adult Nation, MEDIAPOST, Aug. 30, 2007,

differentiate between reality-based shows in deciding to which shows child labor laws should apply?¹⁵⁶ A basic difference between game shows and reality shows is the nature and amount of the contestants' participation: the type of activities contestants are asked to perform and the hours they invest performing them. *Kid Nation*, for instance, required that participants who lost a competition, or a "showdown," perform physical labor for three days, sometimes fourteen hours a day.¹⁵⁷ Participants, in general, had to perform—to be present on-set and in front of cameras—for forty days straight. Clearly, the demands made on child participants in *Kid Nation* surpass the demands made on child contestants in a typical game show, which may only require, for example, that contestants be on-set for an hour and a half.¹⁵⁸ The more stringent and severe a show's demands, the greater need there is for the children involved to be protected.¹⁵⁹ The amount of time cameras are present, the nature of the tasks participants are asked to perform, and the length of time participants are engaged in those tasks are all good indicators of when demands on participants are great enough to warrant application of the rights and restrictions that come along with the establishment of an employer-employee relationship.

2. Union Agreements

Unions like SAG and AFTRA have been fighting incessantly for the enhanced protection of reality show participants. Producers of reality programs and the networks that broadcast them have continued to maintain, however, that participants are not actors and that, therefore, they are not subject to union rules dictating work conditions on television productions.¹⁶⁰ During the *Kid Nation* controversy, both SAG and AFTRA raised major concerns about the treatment of the children on the show, with producers having seriously dodged union guidelines and regulations on work hours, supervision, education, and safety—a practice which has become all too common in the production of reality television.¹⁶¹ However,

http://blogs.mediapost.com/tv_watch/?p=768. Clearly, however, *Kid Nation* was not like a typical game show, and treating it as such would be absurd.

¹⁵⁶ The term "reality-based shows" here is referring to all real-time/live and/or documentary-styled shows involving "real people" or non-actors.

¹⁵⁷ Tasks included hauling in drinking water for the town from a distant well, caring for the town's farm animals, cleaning the town's latrines, and doing everyone's laundry.

¹⁵⁸ While physical demands on child contestants may not be as harsh as they are for child participants in reality shows, the psychological demands can be just as bad. Section IV, Subsection B, details some of the potential psychological effects these demands can have on children.

¹⁵⁹ The more that is asked of child participants, the more we should ask of the producers making those demands.

¹⁶⁰ Edward Wyatt, 'Kid Nation' Lesson: Be Careful What You Pitch, N.Y. TIMES, Aug. 25, 2007, at B7 [hereinafter Wyatt, *Careful What You Pitch*] ("Since their beginning, reality shows, known in the trade as unscripted programming, have danced around the idea that any of the action they present is predetermined. Reality-show producers have long employed writers to invent scenarios, suggest story lines and even feed dialogue to participants. At the same time, the producers and the networks have maintained that the participants are not actors and the people working on the show are not writers, and that therefore they are not subject to union rules dictating work conditions on television productions.")

¹⁶¹ See Fernandez, *Hollywood Labor Tension*, *supra* note 5. The *Kid Nation* controversy also shined light on another common practice unions are opposed to: networks creating subsidiary companies to contract with production companies not bound by union labor laws. "The purpose of using these companies is to distance themselves from any liability for labor practices or lawsuits of any kind But it's an insidious practice . . . because when you look at who is deriving the benefit . . . it leads right to the network's door." *Id.* (quoting Jeff Hermanson, assistant executive director of the WGA at the

the producers of reality television have a point: reality show participants do *not* have to be members of SAG or AFTRA. In fact, most may not even be *eligible* for membership¹⁶² and, therefore, not privy to the benefits of collective bargaining. Even if participants were members, it is unclear whether the provisions of the unions' agreements would cover their participation in a reality show. The terms of the AFTRA agreement, entitled the National Code of Fair Practices for Network Television Broadcasting, cover the host, announcer, reporters, and other professional performers on reality television shows, but do not cover amateur contestants or participants.¹⁶³ SAG's collective bargaining agreement ("CBA") covers professional television performance, but does not mention whether its terms apply to competition by participants on reality programs.¹⁶⁴

SAG does impose a number of additional regulations on producers whenever minors are employed.¹⁶⁵ These regulations would therefore apply to SAG signatory producers who have been found by the state of production to have employed minors. If *Kid Nation* had been filmed in California and the producers subject to SAG's CBA, then, undoubtedly, the CBA's restrictions on the employment of minors would apply. Only when production moves to another state does this issue become more complex:

It is recognized that when minors are employed in the State of California or taken from the State of California pursuant to a contractual arrangement made in the State of California, the applicable California laws and regulation shall regulate such employment. When minors are hired and employed within states other than California, the Producer shall be required to determine and comply with the prevailing law governing and defining minors. In addition to these legal requirements for minors not employed in the State of California or not taken from the State of California pursuant to a contractual arrangement made in the State of California, the Producer and the Union agree to the following provisions of Section 50 herein for the employment of minors. [Section 50 includes provisions on education, supervision, working hours, and medical care and safety requirements.]¹⁶⁶

time of the *Kid Nation* controversy). Magic Molehill Productions, Inc., a non-union entity and subsidiary company of CBS, held the copyright to *Kid Nation*.

¹⁶² SAG requires that performers render services as principal performer in a film, television program, or commercial for a signatory company or render a minimum of three days of "extra" work on a SAG signatory production. AFTRA requires merely that performers pay a registration fee. See DIANA APPLETON & DANIEL YANKELEVITS, *HOLLYWOOD DEALMAKING: NEGOTIATING TALENT AGREEMENTS* 128 (2002) ("[A] performer can [also] join SAG if he has been a member in good standing of a sister union (such as AFTRA, AEA, ACTRA) for at least one year, has worked at least one as a principal performer in that union's jurisdiction, and is current in dues.").

¹⁶³ Maria Elena Fernandez, '*Kid Nation*': *Questions and Investigations*, L.A. TIMES, Aug. 27, 2007 [hereinafter Fernandez, *Questions and Investigations*].

¹⁶⁴ SAG members are not permitted to work for non-guild companies (except in limited circumstances) and are subject to disciplinary action for doing so. APPLETON & YANKELEVITS, *supra* note 162, at 9. However, because participation in certain reality programs may not be considered "work" or employment, SAG members might be able to participate, without reprimand, in shows produced by producers or studios not guild signatories.

¹⁶⁵ See SAG Regulations, from Section 50 of the 2005 Screen Actors Guild Theatrical Motion Pictures and Television Contract with Producers (July 1, 2005–June 30, 2008), available at <http://www.onlocationeducation.com/sagregs.asp>.

¹⁶⁶ *Id.*

The CBA seems to differ from California law on this point. While California law seems to require that, in order for California law to apply to a minor's engagement in production in states other than California, the minor be a resident of California and his/her contract be executed in California, the CBA makes no mention of a residency requirement. This suggests that, under the CBA, it might be enough—for California law to follow the minor outside the state—as long as the contract for employment was executed in California. According to the CBA, in areas of conflict between its provisions and the law of the relevant jurisdiction, the CBA is deemed modified to comply with the law, but only where the provisions of the CBA are “less restrictive” than the law.¹⁶⁷ It would follow that because the CBA is less restrictive on the matter of jurisdiction than California law, the CBA should be deemed modified to include a requirement of the minor's residency. However, such a modification seems antithetical to the clear intent of the provision and all of the other provisions of the CBA regulating minors' employment: to ensure the protection of children from dangerous situations and legal exploitation.¹⁶⁸ Limiting the jurisdiction of a regulatory scheme favorable to children goes against the best interests of these children and puts their welfare in jeopardy. But, at what point does broadening the application of California law begin to step on the toes of other states and their freedom to legislate according to their own needs and/or interests with regard to children and the entertainment industry? Arguably, states do and should continue to have this freedom, but, without minimal requirements set federally, such as the FLSA provides for child laborers *not* employed in the entertainment industry, states can continue to completely disregard the interests of minors working in the entertainment industry and provide them with little to no protection, not only to their detriment, but to the detriment of *other states'* interests in these children. Ultimately, we need to recognize that states should share a common objective here: to protect *all* minors that work within their borders.

3. *Duty to Promote and Protect the Best Interests of the Children*

Forman, the creator of *Kid Nation*, actively avoided choosing children for participation in the show that had performance backgrounds or were residing in California or New York.¹⁶⁹ Clearly, this was done not to find real, “all-American kids,”¹⁷⁰ but solely to avoid conflict with the unions and with the labors laws of California and New York, the only two states of the Union, with the exception of maybe Florida and now New Mexico, that have actually addressed the issues of children in entertainment. Producers

¹⁶⁷ *Id.* (“Any provision of this Section which is inconsistent and less restrictive than any child labor law or regulation in applicable state of other jurisdictions shall be deemed modified to comply with such laws or regulations.”).

¹⁶⁸ *See id.* (“The Producers and Union, recognizing the Special situation that arises when minor children are employed, have formulated the following provisions in addition to those contained in other Sections of this Agreement to ensure that: (a) The environment in which the performance is to be produced is proper for the minor; (b) The conditions of employment are not detrimental to the health, morals, and safety of the minor; and (c) The minor's education will not be neglected or hampered by his or her participation in such performance.”).

¹⁶⁹ *See* Fernandez, *Hollywood Labor Tension*, *supra* note 5.

¹⁷⁰ *Id.*

should no longer be allowed this luxury. Rather, the federal government should recognize that minors working in the entertainment industry should be just as protected under federal law as minors working in other industries. Setting minimum restrictions on how long a child can work per day and how many days they can work per week is a good first step. States, in turn, need to also recognize the need to adequately protect these children and legislate accordingly, continuing to create incentives for film/TV production in their state¹⁷¹ without disregarding the interests of children. States should, then, promote a broad interpretation of their laws, such that child participants in reality television are protected as employees of production companies when demands on them are great and conditions of production warrant application of rights and restrictions that come along with the establishment of an employer-employee relationship between participant and producer. Easy fixes to the problem of inadequate protection might be getting rid of the residency requirement in California law, relaxing the eligibility requirements for membership in actors' unions, or broadening the unions' agreements such that their terms apply to participation in reality programming. However, the implementation of any one of these would not solve the entire problem. It is time, rather, for the federal government and all states to recognize their duty to promote and protect the best interests of children in entertainment—the same duty they are called on to respect when faced with child victims of abuse, neglect, and abandonment. As a society, we must not condone the exploitation of children in any capacity. We must recognize that child participation in reality television is work and that child labor without compensation, without limits on time, and without a child's health and safety guaranteed is exploitation:

“To say that these kids aren't working is absurd This is a smooth move that reality television has been able to make, and . . . the only reason they get away with it is that they're trading on a history of documentary filmmaking. But work means submitting to conditions that are set by employers in order to generate profit for those employers. . . . [T]he only reason you can say that kids are not working is because they're not getting paid or are underpaid. In any other industry, this would be called exploitation.”¹⁷²

As Jeff Hermanson, assistant executive director of the WGA at the time of the *Kid Nation* controversy, put it, “[reality television] is the sweatshop of the entertainment industry.”¹⁷³ It is our duty to say “no more.”

¹⁷¹ Via tax incentives and state grants.

¹⁷² Fernandez, *Child Exploitation*, *supra* note 1 (quoting Mark Andrejevic, associate professor of communication studies at the University of Iowa and author of “Reality TV: The Work of Being Watched”); see Ryan, *supra* note 57 (“[I]f we learned that a corporation were using child labor—having kids work 14-hour days, without any days off, and get injured on occasion—we’d be outraged. An 8-year-old working all day and half the night, and the kid’s employer making no promises about the ‘qualifications or credentials’ of the people who might treat the child in the event of an emergency?”).

¹⁷³ Fernandez, *Hollywood Labor Tension*, *supra* note 5.

B. HOW CAN THEIR HEALTH AND SAFETY BE GUARANTEED?

“You are talking about a bunch of 10-year-olds who don’t have coping skills or social skills. Inherently, maybe, it was a positive experience in some ways, but you are playing with fire. It is physically dangerous to the kids and possibly psychologically dangerous.”¹⁷⁴

What sparked national media interest in *Kid Nation* was ultimately not the amount of hours kids worked or the degree to which producers avoided or neglected administrative procedure—such as failing to get the children work permits or not allowing inspections of the set—but the fact that *kids got hurt*. After allegations arose that some of the children drank bleach from an unmarked soda bottle and one accidentally splattered hot grease on herself, and, then, when more information was revealed about the nature of the show and the general treatment of the children on the show, concern grew that physical injury was not the only type of injury these children may have suffered. The experience may also have negatively impacted these children *psychologically*. The social situations that parents place their children in during the early years of their children’s teenage development undoubtedly affect, positively and/or negatively, their perspectives on themselves, on others, and on their place in society and in the world in general. A negative experience in a social situation can do grave damage to a child’s psyche and substantially affect the formation of that child’s own identity and the development of her social skills. Imagine, then, the subject of that child’s negative experience being subjected to viewing by thousands and thousands of strangers, with hundreds of articles and blog posts written on it. The child becomes a star, but for something that the child herself negatively responded to. The risk of psychological damage from participating in reality shows, like *Kid Nation*, that brings with it this kind of exposure is, thus, very real for children. This Section addresses these risks of injury—both physical and psychological—that children on reality shows face and what might be done to remove them.

1. General Protection for Minors

States, like California, protect children from situations where their safety or health is endangered by penalizing those that willfully cause or permit children to be placed in such situations.¹⁷⁵ Thus, parents who allow

¹⁷⁴ Tenley Woodman, *It’s Not Child’s Play: CBS’ ‘Kid Nation’ Show Sparks Controversy*, BOSTON HERALD, Aug. 23, 2007 (quoting David Gaucher, former producer of reality programs, such as *Blind Date* and *Queer Eye for the Straight Guy*, and a professor at Emerson College).

¹⁷⁵ California provides for this in its Penal Code:

(a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes

their children to participate on a film or TV production where there is a sure threat of danger should be penalized under the law.¹⁷⁶ Similarly, producers who are assigned temporary care or custody of children and who then place these children into situations where their health and safety may be compromised should also be penalized. While such protection is obviously favorable to children, it is still only *retroactive* protection. Our goal should be to *prevent* harm to a child, especially when it is harm that could have so easily been avoided.

In California, supervision of a child is required whenever she is on-set, either by the child's parents or her studio teacher.¹⁷⁷ California law specifically assigns the studio teacher the responsibility of caring for and attending to the health and safety of children engaged or employed in the entertainment industry.¹⁷⁸ If a studio teacher determines that a situation is detrimental to a child's health or safety, the teacher has the authority to remove the child from the location:¹⁷⁹

In the discharge of . . . [their] responsibilities, . . . studio teacher[s] shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor.¹⁸⁰

Such state-enforced supervision over children working on film or TV productions is crucial.¹⁸¹ It allows there to be an individual present on-set who is not controlled by the studio and always has the child's best interests in mind. It also addresses the situation where producers ask a child to do a potentially dangerous task and the child, lacking better judgment, goes along with it, unable to consult with an adult she can trust and not having a concerned adult nearby to step in and remove her from the situation. States need to ensure that *all* film or TV productions involving children—even

or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.

CAL. PENAL CODE § 273a(a)–(b) (2008).

¹⁷⁶ By consenting to their child's participation on *Kid Nation*, parents basically signed their child's life away, as the agreement states, flat out, that the show may take place in "inherently dangerous travel areas that may expose the Minor and other participants to a variety of unmarked and uncontrolled hazards and conditions that may cause the minor serious bodily injury, illness or death." Parents should not be allowed to agree to something like this.

¹⁷⁷ CAL. CODE REGS. tit. 8, §§ 11757, 11762 (2008).

¹⁷⁸ *Id.* § 11755.3.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ New Mexico's new laws on children in the entertainment industry require there be supervision by a state-certified trainer or technician when conditions may be considered dangerous or hazardous:

[C]hildren [can be] employed in a film or television production, where the set may be considered physically hazardous or special effects are used; provided that a New Mexico-certified trainer or technician accredited in a United States department of labor occupational safety and health administration-certified safety program specific to the film or television industry is present at all times that the child is exposed to the potentially hazardous condition.

2007 N.M. Laws Ch. 257 (S.B. 175).

documentaries—have state-certified individuals present to supervise over affairs.

2. *Increased Awareness of the Psychological Effects on Children*

“When producers set up a structure, they don’t create it to succeed, they want to see it break down and watch the contestants acclimate. It’s [about] how much can you [stretch] . . . contestants in reality TV[,] and it really becomes a question of where do you draw the line.”¹⁸²

Integral to viewers staying interested in a reality show are the dramatic reactions of and emotional turbulence between participants. A staple of reality shows is removing participants from their normal environments and placing them in completely new environments—ones to which participants are usually confined for a period of days, weeks, or months. The mental and emotional stress that results from this—along with the stress inherent to competition—manifests itself in the moods and attitudes of participants, making some irritable and temperamental while others grow tired and become cynical. The conflicting moods, attitudes, and personalities of participants lead to arguments, fights, and other emotional outbursts between one another. Ultimately, these outbursts are what we, as viewers, find most entertaining. However, while adults can engage in this kind of behavior and not necessarily suffer psychological damage as a result, for children it may have long-term psychological impact, including lasting emotional injury.¹⁸³

Despite *Kid Nation*’s claimed noble ambition—to change the way adults look at children—its actual goal was the same as every other reality show: mental and emotional stress created by circumstance in order for a sufficient amount of conflict and drama to arise between participants, such that the show would be entertaining enough for viewers to continue to watch.¹⁸⁴ But, for shows like *Kid Nation* that use children as participants, the implementation of this formula comes at a high cost: the mental and emotional stability of the children. Simply, the parents should have known better. They were on notice, before production even started, that conditions of the show, including participants being separated from and unable to contact any family members or friends—other than through reward, as a result of winning competitions—may cause children “severe mental stress.”¹⁸⁵ Parents might have taken comfort, though, in the fact that, if it got too bad, the children could always just leave. However, intense pressure

¹⁸² Woodman, *supra* note 174 (quoting David Gaucher, former producer of reality programs, such as *Blind Date* and *Queer Eye for the Straight Guy*, and a professor at Emerson College).

¹⁸³ Bone, *supra* note 16 (“Susan Linn, who heads the Campaign for a Commercial-free Childhood, said that the experience could have a long-term effect on the children, particularly those who had been ridiculed or broken down on camera.”); *see also* Elias, *supra* note 17.

¹⁸⁴ *See* Bone, *supra* note 16 (“The children’s torment appears to be an integral part of the drama. In a trailer for the series, one boy says: ‘I’m feeling really stressed and really worried. It’s just been really stressful and tough. I guess I’m just gonna have to keep pushin’.’ A second little boy sobs: ‘What I’m really missing is my brother.’”); *see also* Joanne Ostrow, “*Kid Nation*” Has CBS on Defensive, DENVER POST, Aug. 26, 2007, at F1 (“Tears, fears and homesickness are captured up-close[.]”).

¹⁸⁵ Participant Agreement, *supra* note 33 (“I understand that if the Minor is selected as a participant or an alternate in the Program, the Minor will be separated from and unable to contact any family (except any who are also participating in the program), friends and the Minor’s regular environment for an extensive period of time. These conditions may expose the Minor and/or me to severe mental stress.”).

was placed on these children not to, and, if one did, her departure was portrayed as a personal failure.¹⁸⁶ In the first episode, viewers watched one child have a meltdown and beg to leave the show in order to return home.¹⁸⁷ In general, children put into stressful, demanding and/or unusual situations like this one may learn things about themselves that they were not prepared to learn and which may be difficult for them to understand or internalize on their own.¹⁸⁸

The *Kid Nation* children might also ultimately regret their experience, even though most of their initial responses to participating in the show were positive:

“Any kind of television experience is fraught with potential rewards and detriments When a parent sends child into this situation, there’s a good chance that it could help the child build self-confidence, build social skills and build a network. But you don’t know that going in, because it could be that your child suffers the detriments. It could suggest deficiencies that they have. They could regret the appearance and they could regret the fame.”¹⁸⁹

Certainly, the “roles” they played in the show will come back to haunt some of them later in life:

The kid who chose to leave *Kid Nation* early on will forever be the quitter in the dramatic machination of CBS. The 10-year-old girl who broke into tears after being scolded and ridiculed by her peers will forever live with that very real humiliation in front of a national audience. The tough kid’s foulmouthed outbursts, which thankfully were largely bleeped, might not be so funny when he looks back.¹⁹⁰

The children may also not be prepared for the level of stardom that they receive, with blogs and online chat rooms devoted to comments about them and the show. Having a child return to school after being scrutinized on

¹⁸⁶ Elias, *supra* note 17 (“‘And though show spokesmen say that kids can leave, there’s intense pressure not to,’ says Jana Martin, a child psychologist in Long Beach, Calif. ‘The host tells them, ‘You can decide if you want to give up If you can’t handle all of this, you can go home.’ It’s portrayed as a personal failure.”).

¹⁸⁷ Alessandra Stanley, *Just Like a Supervised ‘Real World,’ for Children*, N.Y. TIMES, Sept. 20, 2007, at A17 (“On every episode, Mr. Karsh[, the host,] asks the children if anyone wants to go home. There was one taker, Jimmy, . . . [an] 8-year-old. ‘I’m really homesick,’ he said. ‘I am way too young for this.’”); see Elias, *supra* note 17 (“[Jimmy] is the only child who leaves. ‘What’s it going to be like for him to go back to school after crying and being homesick on national TV?’ [Michael] Brody[, a Washington, D.C., child psychiatrist who teaches about kids and media at the University of Maryland] ‘He’s going to be perceived as a wimp.’”); See also Belcher, *supra* note 79 (“[T]hree homesick kids left the group.”).

¹⁸⁸ On psychosocial stress and the deleterious effects it has on young adults and kids, see B.E. Compas, *Coping with Stress during Childhood and Adolescence*, 101 PSYCHOL. BULL. 393, 393–403 (1987); B.E. Compas, *Stress and Life Events during Childhood and Adolescence*, 7 CLINICAL PSYCHOL. REV. 275, 275–302 (1987).

¹⁸⁹ Fernandez, *Child Exploitation*, *supra* note 1 (quoting Matthew Smith, chairman of the Department of Communication at Wittenberg University in Ohio and editor of “Survivor Lessons: Essays on Communication and Reality Television”); see Peter Sheridan, *Is This the Most Disturbing TV Show Yet?*, EXPRESS (U.K.), Sept. 22, 2007 (“‘Though they may have survived the bleach, burns and other physical calamities, the psychological scars will remain,’ warns Beverly Hills psychiatrist Dr. Carole Lieberman. ‘The show should be made to pay for the years of psychotherapy the kids will need to cope with their experience and the knowledge that their parents pimped them to be on TV for the vicarious thrill of fame.’”).

¹⁹⁰ Jeffrey M. McCall, *Thank You, America, for Despising ‘Kid Nation’*, CHI. SUN-TIMES, Nov. 4, 2007, at B5.

national television could also lead to distress and alienation from her academic and peer communities. Young children are especially not emotionally resilient enough to cope with these potentially psychologically damaging effects on their fragile psyche.

Because these children were filmed every day for forty days and were subjects of an unusual amount of attention, they may have difficulty returning to more “normalized” lives and following rules of conduct in the classroom and at home. Further, they might develop an entitlement complex after being awarded high sums of money (i.e. gold stars) for excellence in their behavior and efforts.¹⁹¹ Ages eight through fifteen encompass critical years for the development of identity, morality, and empathy, and, without proper modeling from parental figures, or a system of checks and balances to teach repercussions of ill-doing, these systems may go haywire, resulting in children becoming stunted in their development of these important systems.¹⁹² Having younger children away from their parents for so long could also result in their dysfunctional attachment to their parents. Insecure or avoidant attachment can, in turn, lead to a variety of difficulties later in life, including antisocial personality disorders, borderline personality disorders, and anxiety spectrum disorders.¹⁹³ Whether these social and developmental issues might affect any of the *Kid Nation* children—or child participants on reality television in general—is yet to be known. But, if the difficulties that child performers have had adjusting to life as adults are any indication, it does not look promising for these children. Though the law cannot fully solve such mental health issues, parents can help. Parents ultimately need to show better judgment as to what they sign their children up for: attractive offers may have unattractive consequences.

C. CAN THEY DISAFFIRM?

A final question arises as to whether a child can disaffirm, or get out of, an agreement that both she and her parents sign. In California, a contract of a minor may be disaffirmed by the minor before majority.¹⁹⁴ This is logical: “it is the policy of law to protect a minor against herself and her indiscretions and immaturity as well as against the machinations of other people and to discourage adults from contracting with an infant.”¹⁹⁵

¹⁹¹ On effects of inconsistent parenting and inconsistent rules of conduct, and the effects of such, see F. E. Gardner, *Inconsistent Parenting: Is There Evidence for a Link with Children's Conduct Problems?*, 17 J. ABNORMAL CHILD PSYCHOL. 223, 223–33 (1988).

¹⁹² See ARNOLD P. GOLDSTEIN & GERALD Y. MICHAELS, *EMPATHY: DEVELOPMENT, TRAINING, AND CONSEQUENCES* (Lawrence Erlbaum Assocs., Inc. 1985); James E. Marcia, *Identity and Self Development*, in 1 ENCYCLOPEDIA OF ADOLESCENCE 529 (Garland Publ'g, Inc. 1991); T. M. McDevitt, R. Lennon, & R. J. Kopriva, *Adolescents' Perceptions of Mothers' and Fathers' Prosocial Actions and Empathic Responses*, 22 YOUTH & SOC'Y 387, 387–409 (1991); RIGHTS AND WRONGS: HOW CHILDREN AND YOUNG ADULTS EVALUATE THE WORLD (Marta Laupa ed., Jossey-Bass Inc. 2000).

¹⁹³ On attachment and its importance, see M.D.S. Ainsworth, *Attachments Beyond Infancy*, 44 AM. PSYCHOLOGIST 709, 709–16 (1989); on dysfunctional attachment and psychopathology, see J. Bowlby, *Forty-Four Juvenile Thieves: Their Characters and Their Home Life*, 25 INT'L J. OF PSYCHOANALYSIS 19–52, 107–127 (1944).

¹⁹⁴ CAL. FAM. CODE § 6710 (2008); see also *id.* § 6700 (“[A] minor may make a contract in the same manner as an adult, subject to the power of disaffirmance[.]”).

¹⁹⁵ *Niemann v. Deverich*, 98 Cal. App. 2d 787, 793 (1950).

However, section 6751 of the Family Code provides that a contract entered into by a child performer cannot be disaffirmed for reasons of infancy if the performance contract was approved beforehand by the superior court of the county where the minor resides or is employed or where the principal office of one of the parties is located.¹⁹⁶ In other words, approval by the court of a minor contract—performance or otherwise—places a significant limitation on a minor’s ability to later disaffirm. However, in a 2007 case, *Berg v. Taylor*,¹⁹⁷ the California Court of Appeals held that Craig, a minor, was entitled to disaffirm an agreement with his manager, even though his mother also signed the contract. Here, though, Craig was a principal of a contract rather than a third party beneficiary, and the contract was not for the necessities of life for Craig or his family (which, if it was, would have resulted in the court finding “compelling reasons” for justifying binding Craig to the contract).¹⁹⁸ The court also held that the disaffirmance of the agreement by Craig did not operate to terminate contractual obligations of his mother.¹⁹⁹ She still remained subject to its terms. So, while it is still unclear whether *Berg* applies to all contracts or merely talent-manager agreements, it is important to note here that the court basically recognizes, through its holdings, that children have certain rights independent of the actions taken by their parents in contractual arrangements. Such a statement represents a significant move towards greater protection of the rights of children in contract law. However, it should also be recognized that disaffirmance is yet another *retroactive* solution, and it does not address how the harm that causes the child to seek disaffirmance should be prevented.

V. CONCLUSION

Our fascination with shows like *Kid Nation* should be a call for a new sense of community and purpose. . . . We can demand better lives for our children instead of exploiting their hardest moments for boosts in TV ratings. We just need to put down the remote control and act.²⁰⁰

While *Kid Nation* turned out to be, for many television critics, just another uninteresting reality program with lackluster ratings, given the magnitude of the pre-premiere controversy, the show represents a

¹⁹⁶ A minor’s ability to disaffirm, thus, depends on whether or not the other party sought court approval of the contract:

A contract, otherwise valid, . . . entered into during minority, cannot be disaffirmed on that ground either during the minority of the person entering into the contract or at any time thereafter, if the contract has been approved by the superior court in any county in which the minor resides or is employed or in which any party to the contract has its principal office in this state for the transaction of business.

CAL. FAM. CODE § 6751(a).

¹⁹⁷ 56 Cal. Rptr. 3d 140 (Ct. App. 2007).

¹⁹⁸ *Id.* at 147.

¹⁹⁹ *Id.* at 149–50.

²⁰⁰ Adam Searing, ‘*Kid Nation*’ Is Really Adults Behaving Badly, NEWS & OBSERVER (Raleigh, NC), Sept. 8, 2007, at A19. “On a recent hike, my son and I were attacked by a swarm of angry wasps. He was upset but persevered to get to the top of the mountain. However, his distress was not entertainment. Knowing that such moments are being filmed for millions turn us from moral adults with responsibility for helping children into self-absorbed voyeurs taking pleasure from the distress of the most vulnerable.” *Id.*

disturbing trend in reality programming: the move towards fixing children as the stars of long-form, immersive reality shows.²⁰¹ Producers, knowing at this point how to effectively skirt labor laws when producing these shows, will begin to push the limits of acceptability, while remaining focused on the sole goal of getting better ratings than those received for *Kid Nation*.²⁰² In this contest for ratings, not much concern is granted for the well-being of the children who provide the producers their stepping-stones to success.²⁰³ Viewer activism is ultimately necessary to hold network executives accountable for their actions and decisions.²⁰⁴ Viewers who oppose the practices of a network have a duty not to tune in.²⁰⁵ It is the job of society to make sure its kids are protected.

Each state also has a compelling interest in the care and welfare of its children.²⁰⁶ Undoubtedly, in many states, protection for child performers is lacking, and protection for child participants is non-existent. Even in states where laws are very favorable to child performers, the protection of child participants is inadequate. This has to change. Federal legislation imposing minimum labor standards for child performers needs to be proposed and enacted. There needs to be legislation in every state raising these standards and amending them according to the particular interests or needs of that state. Further, the laws on child performers—the ones already existing and those to come—should be broadly interpreted to cover child participants in reality television. *Kid Nation* demonstrated how little producers were legally obligated to provide as far as protection for the shows' child participants. What is frightening, however, is that things could have turned out much worse for the children than they did. Adequate legal protection of child participants is the best first step towards making sure nothing like this happens again:

The fallout from *Kid Nation* should . . . serve as a learning experience for parents who allow the allure of stardom for their children to come before their well-being. It is also time, though, for [us] . . . to step back and reestablish the line between entertainment and exploitation.²⁰⁷

²⁰¹ See Hibberd, *supra* note 8. “*Kid Nation* may mark a new chapter in the evolution of intriguing unscripted TV—greedy new low.” Ostrow, *supra* note 184.

²⁰² Consider a statement made by a rival alternative network executive when asked about the problems viewers and most television critics had with *Kid Nation*: “‘What drove people away was the conceit It’s modest. If you’re going to take the heat, there better be a payoff and the show better be entertaining. The payoff for all these shows is simply the rating. If you set a good rating, then everything’s OK.” Michael Schneider, *Unscripted Kid Craze Vexes Crix*, DAILY VARIETY, Dec. 12, 2007.

²⁰³ “‘*Kid Nation*’ is only the latest program to use kids as fodder for fun and profit, which doesn’t make the trend any less disturbing.” Brian Lowry, *The Kids Aren’t All Right: ‘Nation’ the Latest Show to Use Tykes for Profit*, VARIETY, May 25, 2007, available at <http://www.variety.com/article/VR1117965850.html?categoryid=1682&cs=1>.

²⁰⁴ McCall, *supra* note 190 (“As consumers, Americans are great at demanding better service at restaurants, but when it comes to the media, we too often fail to voice our opinions. American media can only improve when the public speaks up and gets the attention of network executives in their sheltered boardrooms.”).

²⁰⁵ See Scott Collins, *Kids in Reality TV’s Tender Care*, L.A. TIMES, Aug. 27, 2007 (“If adults want to engage in the freak-show exhibitionism that passes for much of the reality-show genre, that’s their prerogative. But this is about kids. Remember them? Kids, whom our society pays endless lip service to protecting. Remember them before you tune in to ‘*Kid Nation*.’”).

²⁰⁶ Stenberg & Stuart, *supra* note 95, at 31.

²⁰⁷ Editorial, *Kid Manipulation*, BOSTON GLOBE, Aug. 25, 2007.