

MAKING PUBLIC POLICY IN THE DIGITAL AGE: THE SEX INDUSTRY AS A POLITICAL ACTOR

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Significant shifts in the media over the past two decades have had global impact on the industrial and cultural context within which pornography operates. The shifts involve the privatisation of communication infrastructures, followed by re-regulation, aggressive market mergers, and domination leading to ownership concentration, inter-industrial alliances and technological convergence (Chakravartty and Sarikakis 2006; McChesney 2004; Kamalipour 2003). Media and culture industries have developed into political actors, organised across two core political economic activities: market management and policy management. A political actor is understood to demonstrate an “observable *action* that is *purposive* (...) and sufficiently *unified* so that it makes sense to speak of a single actor” (Page, 1996:20). Two parallel phenomena in the governance of pornography emerge: the sociocultural integration of pornographic imagery in everyday life, work and “leisure” through new production, distribution processes and consumption cultures; and the integration of pornography’s economic interests into public life and policy. Across these two axes the sex industry seeks to manage the market and the regulations that affect its long-term profit potential.

Pornography has long been at the centre of extensive politicisation and polarisation of views with respect to agency, choice and freedom, silencing, degradation and harm, inter alia. Among the varied groups participating in pornography debates,

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feminists have played a key role. Yet, my premise is that contemporary pornography¹ is significantly distinct from the object of both the anti-pornography and self-censorship strands of feminist scholarship and activism in the 1970s and 1980s. In this era, pornography was critiqued strongly by anti-porn feminists for its degrading treatment of women workers, the representation of the female body and its objectification and for causing harm through the sexualisation of violence. Anti-censorship feminism feared an attack on all material around sexuality would derive from banning pornography, leading to the restriction of women's free speech. Moreover, it held that some pornography can have a subversive function and that women-made pornography can be liberating. Today's pornography also eludes the turn to "porn studies" that has been in vogue since the 1990s and which focused on the pleasures women derive from its consumption, as well as feminist uses of pornography (Kipnis 1996; Williams 2004). It is distinct in terms of the scale of its technological advancement, degree of availability, normalisation and social acceptability, as well as in the broader political economic and legislative context within which it operates. Directly deriving from the pursuit of greater profit, its end-product is also more diversified, specialised, exaggerated in the "genres" it produces, and the contexts within which these are consumed.

This chapter argues that pornography's presence today cannot be viewed as a simple outcome of changes in culture, economics and politics but rather as a major cultural product and an organised political actor. It analyses the ways in which the regularization and normalization of pornography and the sex industry is facilitated through developments, which embed sex, culture, and media industries in the new global

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political economy. Ultimately within the current context, sex and pornography industries have become quite adept in influencing public policy to serve their particular interests.

Power Synergies: market, technology and culture

The pornography industry today operates panoramically, through a highly sophisticated technological and financial infrastructure; it is seamlessly integrated into the macro-level global system of production, distribution, marketing and consumption of media and culture products even while it operates at the micro-level of the consumer (Sarikakis and Shaukat 2008). As far as the availability of the pornographic product is concerned, the transcendence of space and time is similar to, and dependent on, the same functions of financial capital and commerce as other “products.” The match between availability, “immediate” gratification and the (false) sense of privacy and anonymity are powerful factors in this. The financial gains of the industry worldwide, from which mainstream industries benefit as well, are enormous, although difficult to pinpoint. Still, an informed estimate of the consumption trade brings pornographic content to 14% of all video purchases and rentals in the US, accounting for 3.35 billion USD in 2006 (Covenant Eyes 2013). Moreover, 1.55 billion USD is spent annually for on-demand services through cable or satellite broadcasting. Hotels are among the major beneficiaries of this consumption: pornography accounts for 70% of their in-rooms profits (Covenant Eyes 2013). Digital delivery is the main source of increased revenue, as consumption rates increased by 25% from 2005 to 2006 to 1.25 billion USD. Delivery via mobile phones is estimated at 40 million USD in the United States (Covenant Eyes 2013).² As a global and

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powerful industry integrated into the wider world industrial complex, pornography has been widely heralded as a bullet-proof industry.

The advent of the Internet has transformed the capacity of the industry for expansion – both in production and consumption. At first glance, free online pornography would seem to challenge the profitability of the industry in hard copy or commercial online content. In fact, the opposite is true: overall, it is the business model of pornography that is changing, effectively pushing older business forms to adapt to new methods. Modern business strategies for online enterprises exploit the culture of the Internet, as a space for free content, to their own benefit, while utilising modern day technology to gain control over consumers. The Internet operates as a gigantic, ever expanding archive of material, some of which is “free” at the point of delivery. At this point, however, where material has been accessed, the consumer is faced with various – predetermined– options demanding use of a credit card number, such as: watch the full length product; watch it in advanced quality (high definition); gain access to other similar products (gain a “pass”) on the same site; gain access to products in “affiliated” sites; “upgrade” membership through affiliate “services” that include other aspects of the sex industry, and so forth.

Still, the industry’s commercial strategy does not end here. If such techniques target the intentional viewer, others target the casual surfer. Johnson (2010) candidly discusses how the sophisticated network of sex industry companies collaborates in various forms to transform a “curious clicker” into a paying customer. “The online commercial pornography industry has a very active core which functions to diversify

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product development, production and distribution processes. The core is surrounded by marketing tentacles designed to infiltrate and cultivate niche areas of the market”

(Johnson 2010: 153). In her study of the US based pornography industry, Johnson found that the core of the industry can be located in two mainstream corporations that coordinate most of its content: *Playboy* and *Hustler*. Joining them in a coordinating role are distribution and marketing conglomerates which provide support to the network. The network is developed further by a dense population of tentacles (smaller companies) that extend their reach through content distribution through affiliate websites, affiliate programs and end-user sites. These specialize in niche content. With the elaborate use of push technologies, mousetrapping³ and affiliated programs, the industry configures users and directs them toward niche content. As Johnson argues (2010), niche content is where the most violent pornography is found; indeed, it is where violence and degradation are used as “a bait,” the means to profit-making. Pornography producers are very well aware and talk openly about the profitability of niche markets and in particular violent and degrading material (Sarikakis and Shaukat 2008; Sun 2007). Within this process, some amateur (nonprofessional) production partakes in the construction of niche pornography, mimicking the industry. The latter further pushes the boundaries by accommodating and incorporating amateur production to professional production and distribution. The vicious circle of niche content generation, non-professional production, free content and popular culture exacerbates longstanding inequalities and stereotyped masculinities (Johnson 2010; Boyle 2008).

Meanwhile, at least in the mainstream popular imaginary of the West, the sex industry has elevated its image of “dirt” or “filth” to a “respectable” and “normal” form

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

of business and cultural product, which one may --or may not—"choose" to consume and which is regarded as part of forming one's sexual identity – indeed a personal right to pleasure and choice (Brents and Hausbeck 2007). This process is achieved through the saturation of media and cultural imageries by pornographic cues and the lowering of barriers to sexually explicit and sexualised images in everyday culture, in news, advertising, broadcasting, and fashion. The emergence of "sexualisation" or "pornification" of culture (Gill 2009; APA 2006; McNair 1996, 2002; Dines and Jensen 1998) has been accompanied by the lifting of restrictions on media ownership in the US and Eastern Europe and the development of digital platforms for porn content. The outcome has been a gradual hypersexualisation of female public figures in popular culture and politics which have set new marketing and press coverage "standards" through global media and digital pornography (Levande 2007; Kronja 2006). Moreover, these "standards" are located firmly in the political economic context within which they are brought to life. The drivers for this transformation rely on broader systems of cultural values shaping understandings of femininity and masculinity, practices of self-objectification, non-professional pornographic production forms, and (self- or other-) surveillance and policing of sexual behaviour in everyday culture (Peter and Valkenburg 2006). A 2009 report on corporate sexism in the United Kingdom documents the links between workplace discrimination and the sex industry. The report shows how the proliferation of cultural practices of companies revolving around the sex industry as well as the use of pornography serves to "put women in their place," survey their behaviours, and silence potential protest (Fawcett Society 2009). A study conducted in Serbia extends the links between pornography and pornified images of women in the press to the role

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they play in national politics characterised by extreme nationalism and sexism (Kronja 2006).

As Jacobson argues in her study of gender bias in the media and effects on young people, “there is a strong commercial interest in maintaining a conservative gender ideology. Commercialization and femininity are closely tied together” (2005: 39). This sexual economy has at its heart the sexualized female body, which serves a legitimating function. In mainstream pornography and everyday pornified imagery the body becomes the site for compartmentalization and objectification, even a site for the experimentation of physical boundaries. This experimentation occurs without involving the actual subject, except to testify to willingness or enjoyment for the benefit of the viewer.⁴ In the public discourse it is “dressed up” with a feminist vocabulary of “pleasure,” “empowerment,” and “choice” (Walters 2009). While the very same vocabulary functions to normalise the sexual economy at large and pornography in particular, it claims a postfeminist status for self-commodification and self-sexualisation as exclusively individual acts (McRobbie 2009; Paul 2006). Moreover, “the use of pornography for sex is better understood as a reiterative, irreducibly bodily practice than [...] the contemplation of ideas expressed in words and images or [...] an illocutionary speech act” (Mason-Grant 2004: 114).

Pornography constitutes a body of specific knowledge about human sexuality and social relations. As such, questioning the conditions under which dominant representations (and documentations) of sexuality and sexual social relations are produced, legitimized and ultimately governed is important. The conflict of interests and negotiating power between the industry and its workforce is glaring: the industry has the capability to use all

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available technological, economic and political means to extend itself, diversify and profit. Its workers have not been the drivers of change but the objects upon which changes have imposed: not only has their financial situation but also their conditions of work have worsened in comparison to previous decades, precisely due to the industry's focus on niche market coverage and consumer demand for (Sarikakis and Shaukat 2008; Grudzen and Kerndt 2007).

Adult film workers, especially women, are exposed to many risks to their physical, mental, and social health. Not only are they vulnerable to physical health injuries while at work, but they also reported serious mental health problems and high rates of physical and sexual violence; although a legal industry, the various health risks performers face are similar to sex workers in illegal industries, for example, street prostitutes (Grudzen et al 1998; Grudzen et al. 2011). Grudzen et al. (1998) found that certain health risks are so common that they called for immediate access to substance abuse and mental health services, as well as financial and legal assistance.

While the conditions of labour exacerbate ongoing exploitative social and economic relations, workers' unionisation efforts have been hindered. Many reasons explain why this is largely still the case, including: cultural factors, expressed in the lack of solidarity or motivation for association by mainstream unions; legal factors, as in the question of the legal definition of the nature of sex work as performed by self contractors, as well as the paucity of sex worker union activists and the difficulty in maintaining unions due to workers' short career spans (Wilmet, 1998; Gall 2006; Schaffauser 2010). In the UK, as recently as in 2003 the Trade Union Congress (TUC) extended its membership to sex workers; in the US, three different attempts for unionization failed in

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

1993, 1998 and 2003. The consequence of this is that those directly (bodily and mentally) involved in and affected by the production of pornography have very little control over its content, conditions, economic benefits or health protection. Under such conditions the kinds of worker agency involved in the production of pornography are severely limited.

The politics of porn: governed or governing?

The pornography industry couples its production activities with a systematic approach to public policy and debate that aims to legitimise its claims in the policy domain and normalise its practices in the public sphere. In the past decade, the industry has adopted the strategies of other businesses that aim to influence policymakers: cultivating relationships with politicians, making donations to political parties or social causes, making alliances with other groups over policy issues, and presenting a unified and respectable front to the public. It has organised itself in official representative bodies and lobbies such as the Adult Industry Trade Association in the UK, the Free Speech Coalition (FSC) in the USA or Eros Association in Australia. In previous decades, this side of the industry was less sophisticated, with the exception perhaps of the Adult Film Association of America (AFAA), the forerunner of FSC. Legal and public representations were mostly left in the hands of a few powerful international porn media corporations, which include in their corporate portfolios publications such as *Penthouse* or *Playboy*. Over the past decade, however, the industry lobby developed to emulate other actors and enlisted prominent figures in politics and law. For example, the Executive Director of FSC, Bill Lyon, is a former defense lobbyist, while one of the organization's officers is First Amendment attorney Jon Katz. While the industry now does its own lobbying, it

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

formerly hired the services of the Raben Group, a professional lobbying firm in Washington, D. C. (Goldstein 2009).

Governments have not been idle observers of the industry's pursuit of political influence. The relationship between political elites and the pornography industry takes on a more complex form than simply one actor pressuring another or a power struggle between two or more actors. In an interview on CBS's 60 minutes, Bill Lyon said, "[Politicians] realise that it's votes and money that we're talking about" (Kroft 2006). This is certainly the case when donations are involved. UK's Labour Party has been known to have accepted donations from Richard Desmond, the UK "Porn Baron," in 2002. More recent news stories describe government laxity⁵ in monitoring these kinds of donations. In 2006, on the other side of the Atlantic, it transpired that the Republican National Committee is "a regular recipient" of donations by the pornography industry – including regular contributions from Nicholas T Boyias, the owner and CEO of the largest gay porn distributor in the US, and Marina Pacific Distributions (Marshall 2006). In January 2009, Larry Flynt, the owner of *Hustler*, and Joe Francis, the owner of Wicked Pictures, two of the most powerful porn barons in the US, if not in the world, lobbied the government for a US \$5billion bailout to counteract profit losses due to the financial crisis. This effort failed. Nonetheless, the industry managed to occupy mainstream financial press coverage and reemphasized the message that this is "business as usual." Such transactional relations allow the pornography industry to present itself in public in the professional attire of a "respectable" conglomerate.

The "habitats" within which the pornography sex industries operate certainly have national differences, and the level of political organisation varies. In some cases,

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pornography workers have run for office, albeit almost invariably without success.⁶ In Australia in 2008, the sex industry successfully formed a political party titled the Australian Sex Party (ASP). The ASP, launched at the annual sex exhibition Sexpo in Melbourne, describes itself as the “political response to the sexual needs of Australia in the 21st century” (ASP 2010). The party has the specific agenda to intervene in public policy especially related to the Australian government’s proposals for Internet filtering. The party head, Fiona Patten, is also the CEO of the Australian sex industry lobby Eros Association and had been its founder and president since the early 2000s. The ASP’s agenda to promote the interests of the sex industry is clearly framed within a rhetoric of positive attitudes about sex, the interests of the individual, personal choice, and liberty. The ASP policies are, unsurprisingly, focus on sexual policies, rights and politics. The issue here is that the close relation between politics and sex industry raises many questions with regards to the representation of *private* interests, especially in such a highly politicised area as pornography, as well as in *public* policy and the extent to which issues of societal importance are reduced to privatised behaviour. It is also of particular importance when *organised* private interests in the form of lobbies (or even political parties in this case) find their way into the design of policy.

As such, the industry has been successful in shifting, blocking and opposing regulatory proposals that affect its interests and has not been shy about allying with actors traditionally opposed to porn, such as the Church, Conservative parties, and “family values” organisations, as in the case of the introduction of the “.xxx” domain (foxnews 2007) Not only systematic interaction with politicians, but also “unholy” alliances with opposing groups have been used as tools to affect the policy game. In the US, the

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

pornography lobby has managed to oppose “sin” taxes on pornographic materials (taxes similar to tobacco, for example) or intervention with its distribution systems, such as through cable or subscription in hotels. It has successfully pressured Congress to allow the sale of pornography on military bases and has fended off not only attempts to regulate content on the basis of obscenity law, but it also has effectively made pornographic content ungovernable (Kroft 2004).

Indeed, when it comes to policy initiatives to regulate content, it is noteworthy that the sex industry regularly sides with mainstream powerful industries, such as Internet service providers (ISPs), the media, or communications industries. Its position is invariably negative, irrespective of motivation, intent or rationale, whether in the US or the UK. The industry has maintained a constant anti-censorship position on the grounds of freedom of speech. This is also the meeting point for various other industries and organisations, even for “anti-anti-porn” feminists. The industry has thereby succeeded in avoiding any significant control and remained unaffected by any demands for regulation over most of its production. The pornography industry benefits from the policy vacuum and the difficulties that technology and conflicting ideas about what constitutes freedom of speech impose on legislators.

One important case of the industry’s impact on public policy is the following. The US lobby has been successful in influencing the course of the 1998 Child Online Protection Act. COPA was an Internet filtering law that derived from the Communications Decency Act (CDA 1996) that was found unconstitutional by the US Supreme Court irrevocably in 2009. COPA targeted US based commercial sites by requiring them to restrict access by minors to content “harmful to minors.” The

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

requirement involved material that by “contemporary community standards” was judged to appeal to the “prurient interest,” and contained sexual acts and nudity. COPA was immediately appealed and therefore not enforced; successive courts rendered it unconstitutional as violating the First Amendment. COPA was finally invalidated in 2009 (Electronic Privacy Information Center 2009). Early on, a commission consisting of a majority of communications industry representatives was formed to look at various possibilities for protecting children on the internet. This commission stated its opposition to legal provisions because “laws restricting distribution of or access to harmful to minors materials are Constitutionally suspect” (Commission on COPA 2000: 64). The Commission urged governments and industries to fund the enforcement of existing laws of obscenity. The FSC, a fierce opponent to COPA, stood safely on the same side with organizations such as Electronic Privacy Information Center (EPIC) and the American Civil Liberties Union (ACLU). Most notably, FSC was previously involved in a case of virtual child pornography: the Children Prevention Pornography Act (CPPA) (1996⁷), which made it illegal to produce, distribute, or consume actual *and* virtual child pornography, that is, pornography where actual children were not involved. The Act was attacked as unconstitutional and challenged in the courts over a period of time. The FSC claimed that this law infringes upon free speech, since it does not concern real children. In both cases, the efforts of government to focus on crime prevention and protection of children were defeated on the grounds of free speech (Mota 2002). The Supreme Court decided against the constitutionality of the law in 2002. In contrast, both Canada and the UK have adopted regulation to criminalise child pornography (Mota 2002).

Concluding remarks

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

The governance of pornography is complex and ridden with philosophical dilemmas. The industry itself, whether in systematic and sustained ways or on an ad hoc basis, utilises a policy vacuum, technologies and markets to extend its profitability. It is actively involved in the political and cultural domains, adopting a variety of strategies, such as political alliances, lobbying, informal transactions. These characteristics demonstrate that the industry is neither an “underground” nor a “neutral” economic actor, nor does it leave distribution and consumption merely a matter of private, personal choices. Rather it is a *political actor* that benefits from conditions of regulatory vacuums, regulatory and constitutional conflicts, as well as mistrust between the state and citizens. In that respect, it is not simply a matter of society and laws governing the pornography industry, but rather the pornography industry governing the conditions of its own regulation and overall operation. Not coincidentally, the argument around civil liberties and freedom of speech continues to be the core issue in the debate of pornography regulation. Although obscenity does not enjoy the protection of free speech law (whether in the US or UK), it effectively is the case that almost nothing in fact is considered “obscene” currently. This should be legally problematic. The reasons for this lie in the very complexity of the process of cultural legitimisation of pornography. As Mason-Grant eloquently explains:

The cultural legitimacy of the use of pornography is not so easily localisable, not so easily tracked to a singular source. Rather the force of pornography, culturally and individually, is produced and sustained through a multiplicity of repetitive practices that extend over time and are constitutively interrelated--not only practices of using pornography but other forms of sexual or sex-defined practice.

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

This means that the cultural extent of the practice--how common, pervasive, or routine it is--makes a difference in its productive, normalising effects. (2004: 114)

At the heart of the regulation of pornography lies the underlying assumption that the legal subject is the individual. At the heart of digital capitalism is the individual purchaser, the sovereign consumer; at the heart of the culture industry stands the individual laborer (performer, artist, creator). In the case of pornography, its consumption is considered a private and therefore personal (individual) matter. This also is one of the reasons that not even the “community standards--oriented” obscenity law has been effective in dealing with problematic pornographic genres. Moreover, its production process is unfriendly to acknowledging communal experiences, as labour is considered an individual matter or choice and negotiation. The choice, and right, of the pornographer to express ideas is based on the individualistic conceptual premises of expression and is at the cost of the rights of the industry laborers. Automatically equating pornography with sex, expression or choice masks the power dynamics embedded in the production, distribution and consumption mechanisms of the industry. Claims of “choice” and “expression” silence the critique of the conditions of production or the effects of consumption by focusing on the “individual”--instead of “the individual in society.” Late capitalism operates on the basis of the individual and her/his position in the production-consumption continuum. However, the fantasy and deception of individual freedom actualized through purchasing and pleasure-seeking in digital capitalism is a powerful affective and political tool.

The pornography industry as a labour space is in many ways transformed through its intensification by communication technologies and the technologies of the body. The embodied “know-how” in the practice of pornography and its labour constitute real, immediate and direct sites of action. But they interact with the social world outside them through a culturally tacit transformation: they become words, speech or expression, stripped from their practice of embodiment, not only among those making the pornographic content but also those “consuming” it. This “connection gap” is the one that leaves open significant political and cultural spaces – that lead to vacuous policies- for an organised industry to fill.

Unless we fully appreciate the power dynamics involved in pornography as a global media and culture industry, in material and symbolic terms, and its spillover into other cultural domains, the debates surrounding pornography and sexualisation will remain abstract, ridden with undertones of moral panic or absolute relativism. As we have seen, the industry is an active, articulate, flexible and networked actor that pursues its own interests in a disciplined way. These interests are not identical to those of women either in the production or consumption sectors or indeed for the men and the construction of masculinities. In other words, very much like other media and cultural industries, the profit-making machinery of pornography does not serve those members of society on whose affect, response and correspondence it depends.

Sarikakis: Sex Industry as a Political Actor In Carter, C., Steiner, L., McLaughlin, L. (eds) (2014) *The Routledge Companion to Media and Gender*. Routledge

¹ For the purposes of this discussion I do not adopt the analytical distinction between soft and hard core pornography or pornography and erotica.

² No similar reports for the European market are available. See Sarikakis and Shaukat (2008) for a discussion of the political economic ties of various companies in the porn trade and the sex industry and trends in the production and consumption of porn. Also Jeffreys's 2009 *Industrial Vagina* constitutes one of the most comprehensive sex industry analysis texts today.

³ Mousetrapping is a technical method that keeps website visitors from leaving the site.

⁴ See studies on male physical arousal associated with violent pornography, whereby depictions of rape and force have a physiological effect on viewers if the victim is presented to consent or have an involuntary orgasm. For a meta-analysis of such studies see the Rapid Evidence Assessment by Itzin et al 2007

⁵ See press reports, <http://www.dailymail.co.uk/news/article-464679/Porn-star-quizzed-cash-honours-police-probe.html>

⁶ See Huffington post for a list, which includes the only successfully elected porn 'star' Ilona Staller in Italy in 1980s. http://www.huffingtonpost.com/2010/03/02/stormy-daniels-louisiana_n_482109.html and http://www.huffingtonpost.com/2009/02/10/porn-stars-in-politics-wo_n_165730.html

⁷ COPA remains active given a revision whereby minors under 12 are protected from viewing unsuitable material without parents' consent, among others [among what kind of others?] (US Government 2009).

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