

# *Legal aspects of cyber-porn in Japan*

**Dr. Makoto Ibusuki** Associate Prof. at Kagoshima Univ., Japan

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## **1. Introduction**

The purpose of this paper is to discuss various issues regarding pornography on the Internet in Japan. Internet pornography, in Japan, is considered as being an obscene image on the Internet. We will begin by focussing on the legal definition and aspects of obscenity in Japan. Then we will briefly describe the first Internet cyber-porn case in Japanese legal history. Finally, we will discuss the current on going legal debate that deals with dissemination of obscene material over the Internet. This debate has arisen in many countries. This paper aims to contribute to this on-going discussion.

## **2. Obscene images and the case for government control**

### **2-1. Japanese law and obscenity**

Section 175 of the Japanese Criminal Code prohibits the distribution and exhibition of obscene "pictures" and "documents" in public. A violation of this section can be punished by prison terms of up to two years or fines of up to 2,500,000 yen (about 21,000 dollars).

There are two major issues that we are confronted with in this section. The first is that this section is out of date. The meaning of obscenity in the section does not correspond to the meaning of obscenity today. The Japanese Criminal Code was written 100 years ago and this particular section has since never been revised. What it says basically is that it prohibits the distribution of an obscene "pictures." What we see on our computer screens are "images". It is general interpretation in Japanese law that the word "picture" in this section refers to printed material and does not have the same meaning as "image."

The second major issue is the vagueness of the definition of "obscenity". The word "obscenity" is never defined. However, the Supreme Court in 1951 declared obscenity to be something that 1) stimulate or excites people's sexual desire, 2) offends their ordinary sense of shame, and 3) being against good sexual morality. The courts in applying this criteria have dealt mostly with cases concerning the publishing of novels, photographs and other printed materials not digital materials.

### **2-2. Police control and self-control of movies**

As mentioned above, Japan has adopted a strict standard for obscene material. Although freedom of expression is guaranteed by constitutional law and the fact that censoring publications is prohibited, control over pornography has been enforced to this very.

However, police do not always strictly control such materials and the criteria of their regulation are changing. For example, people can now purchase photographs that were prohibited ten years ago. There is no doubt that the policy for controlling obscene material has changed. On the other hand, we have a self-control system for obscene material. Since 1949, the "Eirin" (Commission of ethics in movies), non-governmental committee, rates all movies before they can be shown. For example minors are not allowed to see the movies classified as "adult only". It is well known in the movie industry that the committee sometimes requires a company to cut out particular scenes or black out particular parts in scenes even in the "adult only" movie to avoid police control. People who distribute underground films and videotapes without receiving a rating by the committee are arrested frequently. Such a self-control system is not required for other forms of publication and distribution in Japan.

### **2-3. Bekkoame case**

The Bekkoame case is the first guilty verdict dealing with Internet pornography in this country. In April 1996, the court found the defendant guilty of contravening to section 175 for distributing obscene images to the public through his home page on the Internet. The case is called "Bekkoame case." Bekkoame is the name of the provider that the defendant used. The defendant, a twenty-eight year old businessman, distributed many obscene images through his home page since December 1995. He gathered the original images from other foreign sites and newsgroups in the Internet and re-produced them in his home page. He showed three hundreds images that contained sexual intercourse scenes prohibited in printed materials. It is reported that more than 100,000 users have looked at the images since his home page had opened.

### **2-4. Legal problems**

Two legal questions arise from this case. The first involves criminal law, the second information law. As it has been pointed out, it is hard to know whether people can be punished for distributing obscene digital information by the current Japanese Criminal Code statute. Prof. Satoshi Sonoda of Criminal law, Kansai University, criticizes the court decision. He claims that the court cannot find the defendant guilty for distributing digital images and information, because the code only prohibits the distribution and exhibition of obscene "pictures." In the code the term "picture" is adopted. This term is considered to be a tangible substance according to the case law. However, digital "information" is not a substance but just data. We cannot interpret the code as prohibiting the distribution of "information." Some opposition may arise in this interpretation: as other local courts did, we may interpret the code to restrict any form of distribution of obscene information by extending the meaning of "picture"; because at the time of enacting the code, the law makers did not know the modern digital technology, thus we have no way other than to interpret it so. However, counter-arguments can be raised. One is that it is not plausible to think that a digital image or piece of information could be regarded as a "picture". The other is that it is better to enact a new obscenity law to fit the digital technology, if the public wishes to punish the distributors of obscene digital information.

Although there are such difficulties in interpreting this code, in 1991 Osaka District Court ruled that the distribution of obscene messages through telephone lines were illegal. The court decided that the tape-recorder that played back the obscene messages was of obscene substance because case law requires that a prohibited object be a substance. The question that we must consider next is whether the police investigation in the cyber-space may be accepted or not on the basis of the current information law. Prof. Masao Horibe of Information law, Hitotsubashi University, argues that because the Electronic Information Business Law prohibits the government or official organizations from censoring information in a network system and the Constitutional law article 21 guarantees the freedom of expression, the police cannot investigate the contents

in a computer network forcibly. The reason for requiring such restriction is that the freedom of expression is the utmost important fundamental right.

Although police searches are restricted by such law, the police can freely monitor the contents of each home pages. Since no one can prevent their reviewing of home pages except the sites requiring membership, they do not need a search warrant to check the content.

### **3. The Situation of other Asian countries' and the future of Japanese**

Internet control In Singapore, the government strengthened control over the Internet from September 1996. They introduced a licensing system for providers and prohibited such information as pornography, defense-related information and immoral information.

In China, it is a rule that all internet users report themselves to the police(!) as a user. In September 1996 the Chinese government started restricting specific information in the Internet. They require the providers to shut out pornography, antisocial and anti governmental information from the Internet.

Compared with the European countries, the Asian governments tend to taken a control policy. Some Japanese non governmental organizations in electronic information have already pressed an ethical code on internet users. Since this February the Japanese media frequently reported that the Internet has a lot of antisocial information giving the Bekkoame case for an example. The public in Japan may well support government control over the content of internet. There is a possibility that in the future some official control will be required also in Japan.

However, some scholars argue that a hasty made regulation on the information in the Internet is improper without defining the terms the "Internet," "obscene" and "information" (The reason is that it is harmful for the people to control information in a computer network, because cyberspace is a new space that law makers did not know.

It seems that a reasonable choice would be to enact a new rule for cyberspace with due consideration for the respect of freedom of expression.

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