

Japan: Coerced filming of Adult Pornographic videos

Human Rights Violations against Women and Girls Manifesting from the Adult Pornographic Film Industry in Japan



Note: The original report is in Japanese, and while this tentative English translation has been prepared in good faith, we do not accept responsibility for the accuracy of the translations. Reference should be made to the original Japanese language texts.



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Summary of the Report

■ There have been a number of cases in which Japanese women were coerced to appear in adult pornographic videos.

It has been frequently reported that many young women who were scouted and had agreed to work as a “talent” or “model” in the entertainment industry were forced to appear in pornographic videos.

Human Rights Now, an international human rights NGO based in Japan, conducted an investigation into the damage caused by the use of force and coercion in pornographic videos by interviewing both victim-support groups and the victims themselves.

Our investigation revealed that there have been a number of cases in which young women, who never intended to appear in pornographic videos, were forced participate in the industry after signing contracts with their production companies. These companies would threaten them with remarks such as “you can’t refuse the work since it’s required under contract,” “if you refuse the work, you have to pay penalty charges for defaulting,” or “we’ll inform your parents about your work (if you don’t take the job).”

It is a grave human rights violation to take advantage of young women who are uninformed of the responsibilities and risks entailed in their contracts and/or in financial difficulties, by coercing them into performing unconsented sexual acts in public display (in front of the filming crew) and to later circulate these pornographic videos on the internet. Furthermore, it is common practice in the pornographic film industry to portray young women experiencing hostility and violence, such as assigning them roles similar to slavery or “debt bondage” accompanied by threats of penalties for refusal.

■ No relevant legal provisions or regulatory agency exist to regulate the pornographic film industry.

No relevant regulatory agency exists to regulate production companies and persons involved in the making of pornographic videos. Further, provisions from the “Act on Control and Improvement of Amusement Business, etc.” do not apply to such activities, thus unlawful practices are unrestrained and victims are unable to seek protection or remedy.

While there are some seemingly relevant laws for protection, unlawful practices in the pornographic film industry often slip through the legal net. For example, the “Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children”, only applies to persons under 18 years old. Also, in many cases, pornographic videos do not fall under “indecent acts” under the Criminal Code.

Additionally, even though many women have been forced to have brutal sexual intercourse which result in injuries as a result of physical abuse during the filming of the pornographic video, cases for rape, compulsion, injury or battery are rarely brought against production companies, their producers or other relevant parties. This is because the women had given their “consent” to “perform” in the film. The Anti-Prostitution Law is also not applicable because the women are “performing” in the film.

As appearance in pornographic videos falls under work which is “harmful to public health or morals” under the Employment Security Act and Worker Dispatching Act, a production company’s recruitment of pornographic actresses and its subsequent dispatch of such actresses to film producers are subject to punishment under the Employment Security Act and the Worker Dispatching Act, respectively.

However, many production companies circumvent the laws by signing service contracts rather than employment agreements with the women and by pretending that women are not working under the direction of the production company.

Moreover, human rights violations manifesting from pornographic videos do not fall within the scope of protection of general consumer protections laws, the Consumer Contract Act, the Act on Specified Commercial Transactions, or the Consumer Safety Act. Therefore, as it stands there is no prospect for implementation of protective and preventative measures such as regulation on inappropriate solicitation, consultation and settlement through consumer centers, or issuance of strong administrative measures such as suspension of businesses.

■ **Desirable legislation**

To improve this situation, Human Rights Now calls for legislative measures to both resolve the problem and request the Government and the Diet to take necessary steps as soon as possible. Though we make detailed recommendations at the end of this report, we especially request that relevant parties seriously consider the following measures:

1. Immediate Relief Plan

To propose an amendment to the Act on Specified Commercial Transactions which expands its application to include damages related to women appearing in adult pornographic videos by adding the use of a continuous service contract in which the employee is the service provider to one of the transactions protected under the Act.

To expand the application of the Consumer Safety Act to include the pornographic video problems previously discussed within the definition of the term “Instances of Harm from Circumstances That Are Financially Damaging to a Great Number of Consumers ” in order to request the relevant Minister to take necessary measures when required.

2. To the Ministry of Health, Labor and Welfare

To issue, disseminate and raise awareness of a notice establishing the standard that contracts regarding appearances in pornographic videos shall be treated as employment agreements if the relationship between the production company and the women involved is in reality an employer-employee relationship, regardless of the form of the contract between them.

To take measures in supervising and penalizing production companies if necessary.

3. To the Cabinet Office

To conduct fact-finding investigations and propose necessary measures and legislation at the Gender Equality Bureau Cabinet Office and the Consumer Commission based on the core problem that pornographic videos constitute serious violence against women.

4. To the Police and Prosecutor

To actively investigate and prosecute violations of the Employment Security Act and the Worker Dispatching Act if the actresses appearing in these pornographic films are in reality treated as employees of the production company.

To actively pursue cases in court, investigate and prosecute producers or those responsible where women have been coerced into appearing in pornographic videos against their will.

5. To the Consumer Affairs Agency

To examine and prepare a necessary reform bill in order to protect the victims of unconsented appearances in pornographic videos as consumer damage under relevant laws.

6. To a Members of the Diet

To enact comprehensive relief legislation.

■ **Responsibility of relevant enterprises**

All the enterprises which deal with the production, manufacture and distribution of pornographic videos shall face up to the fact that the pornographic industry is prone to violate human rights in the production process and take the following measures:

1. To immediately stop coercing women to appear in pornographic videos against their will and halt all filming of pornographic videos that violate women's human rights by adversely affecting their mental and physical safety and health.
2. To establish a policy relating to human rights, exercise due diligence in supervising the supply chain in order to avoid human rights violations and undertake drastic reform based on the current situation.

I. Preface

Human Rights Now¹, an international human rights NGO based in Tokyo, has obtained information that many women who have been forced to appear in adult pornographic videos suffered from and continue to experience grave human rights violations.

In Japan, there is an expansion in the size of the pornographic film industry due to an increase in women appearing as pornographic actresses. There is a vast number of pornographic videos released into the market every month.

Although there is a controversy about propriety of the pornographic video industry, we believe that it is essential to take effective measures against the process of producing pornographic videos in which women are placed in vulnerable positions and often suffer from human rights violations, violence, and sexual exploitation. In particular, forcing women to appear in adult pornographic videos against their will is a clear violation of human rights.

Recently, many young women have brought complaints about having been “forced to appear in videos against their will”, “required to pay a huge amount of money in penalty for resignation” or “forced to appear in videos because they could not pay the penalty charge for resignation.” Although such cases have long been established, they have never been brought to the forefront until recent years, as the internet is gradually offering an easily accessible platform for victims to find organizations that can support them and hear their claims.²

The act of filming itself constitutes a sex crime where women are forced to appear in pornographic videos against their will. Moreover, these women suffer a tremendous degree of mental distress due to the large number of pornographic videos produced and sold in the market, all of which reveal their sexual acts to a great extent and remain almost permanently on the internet.

Despite the serious situation mentioned above, it is likely that many complaints remain unreported and many victims have not received their rightful remedies. This is because no relevant legal provisions or regulatory agencies exist to directly address problems related to production of pornographic videos and no remedial measures are fully implemented by courts or law enforcement authorities.

This investigation is pursued with the aim to reveal the current suffering caused by pornographic videos, and to provide recommendations on how to provide adequate remedies for the victims.

II. Investigation by Human Rights Now

Since May 2015, we formed a research team and conducted fact-finding investigations and legal research as follows:

(1) Investigation into the reality of harm

We conducted case studies and interviewed victims to assess the level of harms experienced. With the help of organizations that support such victims, we analyzed cases brought to the organization by victims in order to assess trends and formulate an overall picture of the problem.

(2) Analysis of industry structure

¹ An international human rights NGO based in Japan with UN consultative status, <http://hrn.or.jp/eng>

² PAPS (People Against Pornography and Sexual Violence), <http://www.paps-jp.org/aboutus/coerce>, Lighthouse: Center for Human Trafficking Victims, <http://lhj.jp/english>

We conducted research into the structure of the pornographic video industry.

(3) We conducted research on court precedents, regulations and international standards for legal remedies related to this topic.

We would like to point out that although we recognize there are cases where women appear in pornographic videos based on their genuine free will, the aim of this investigation is to focus on reported cases of human rights violations which occur during the process of filming pornographic videos and to make recommendations to address such violations.

We would like to express our appreciation for all the people who supported our investigations, including those who suffered human rights violations, as well as support groups.

III. Background

1. Pornographic Video Industry

(1) Market Size

There is no accurate data regarding the market size of the pornographic video industry in Japan, but it has been reported that it reaches approximately 400 to 500 billion JPY per annum.³ It is also estimated that approximately 20,000 videos are released every year.⁴

However, it is important to note that a number of pornographic videos that are not reviewed by the ethical review associations⁵ are available under the titles of “indies” or “underground videos” on the market. In addition, there are large amounts of unexpurgated pornographic videos circulated on offshore servers as well as illegal distribution via file sharing software that allows users to download videos. For these reasons, the actual size of the market is likely to be much larger than stated above.

(2) Distribution

The pornographic video industry is said to have been developed around 1981, when video recorders became widely available for general households. Although direct sales and renting of videos were the main forms of distribution in the beginning, watching pornographic videos by downloading or streaming them online has become popular with the growing availability of the internet. Recently, videos are often viewed in the form of DVDs that are sold at online stores, such as DMM.com and Amazon.co.jp, or by downloading and online streaming.

2. Related Parties in Pornographic Video Industry

The related parties that produce, distribute, promote and obtain profits from the pornographic videos are as follows:

(1) Companies that produce and sell pornographic videos (hereinafter referred to as a maker)

³ Comments made by the director general of Contents Soft Association:
http://internet.watch.impress.co.jp/docs/news/20100401_358238.html

⁴ Yoji Igawa “Sealed Pornographic Video” Saizusha Corporation, 2012

⁵ Ethical review associations such as Nihon Ethics of Video Association (NEVA) and Ethics Organization of Computer Software (EOCS) review and check whether contents of pornographic videos meet ethical standards.

A company producing and selling pornographic videos is often referred to as a “maker” in the pornographic video industry. A production company, as discussed below, dispatches actresses to a maker, and a maker produces and sells the pornographic videos. It is said that the three companies listed below collectively have 70 to 80 percent of the market share:

- **CA Corporation (DMM.com group)**⁶ (so-called “Out-Vision”; the major labels are MOODYZ, S1 and MUTEKI);

Sales: 12.9 billion JPY (as of July 2013)

Business Description: Overall producer of videos including the planning, filming, marketing of the videos

Main Customers: So-net (from December 12, 2005 to January 30, 2009), BIGLOBE (from October 1, 2003), Nifty (from September 1, 2003) are listed as business related to distribution of adult contents according to the information at DMM.com⁷

- **Soft on Demand Corporation (Soft on Demand Group)**⁸ (the major labels are s“SOD Create” and “Deeps”);

Sales: 14.3 billion JPY (as of March 2014)

Business Description: Production and wholesale of original video software, procurement and wholesale of video software and entertainment related products, distribution of video contents and sales of license, internet mail order business (mobile, broadband and CS) and store operation

Main Customers: TSUTAYA Co., Ltd., GEO Supply, Multi-Package Distribution Co., Ltd., HAPPINET Corporation, Seikodo Co., Ltd., Roi Electric Appliance Ltd. (Lammtarra stores), Amazon Japan K.K., Electric Ishimura, Sofmap Co., Ltd., Yamagiwa Soft, PONY CANYON INC., KDDI Corporation, Footnote inc., USEN Corporation, Don Quijote Co., Ltd., about 3,600 video shops, 4,000 rental video shops and electronics retail stores across Japan

- **PRESTIGE Co.Ltd.**⁹

Sales: Not disclosed at the company’s website

Business Description: Production and sale of video software, other media business

Main Customers: Not disclosed on the company’s website

Other than these three companies, it is reported that TOPMARSHAL Co., Ltd is one of the prominent makers in the retail of pornographic videos and K.M. Produce is one of the prominent makers in the planning, producing and selling of these videos. Main customers of TOPMARSHAL Co., Ltd are Culture Convenience Club Co., Ltd., Amazon Japan K.K., HAPPINET PM and Yodobashi Camera Co., Ltd.¹⁰

⁶ <https://www.ca-ca.jp/info/>

⁷ <http://www.dmm.co.jp/provider/provider.html>

⁸ <http://corporate.sod.co.jp/company/data.html>

⁹ <http://prestige-av.com/prestige/company.php>

¹⁰ <http://www.t-marshall.jp/company.html>

(2) Management Companies (hereinafter referred to as a production company)

A management company, often called “production”, recruits an actress who will appear in a pornographic video and dispatches her to a maker. Unlike makers, with regard to productions, there is no oligopolization by a few major companies.

(3) Provider

Internet service of major internet providers such as OCN, Yahoo BB, Plala, So-net, BIGLOBE, nifty, Asahi Net, and KDDI is used in the internet distribution of pornographic contents. Depending on the content of pornographic videos, the service provider can take measures in blocking a user’s access to the pornographic contents.

(4) Shops (online/store)

The major retailers selling pornographic videos online and in stores are Amazon Japan K.K (Amazon.com), Culture Convenience Club Co., Ltd., which makes deals with TSUTAYA Co., Ltd., DMM.com, Yodobashi Camera Co., Ltd (Yodobashi.com), HAPPINET PM (HMV), GEO Supply, Sofmap Co. which belong to BICCAMERA INC. group, Don Quijote Co., Ltd. etc. Other than the direct sales to retail stores by a maker, distributors which distribute pornographic videos to DVD rental shops, such as Multi-Package Distribution Co., Ltd. and Seikodo Co., Ltd.. sometimes act as intermediary dealers between makers and retail stores.

(5) Servers and Platforms

The servers that deal with adult contents such as pornographic videos, are FC2 rental server, FUTOKA rental server, KAGOYA shared server, Drive Network, POPWONDER, Anaheim Electronics and others.

The websites that deal with unexpurgated videos are Xvideos¹¹ and others.

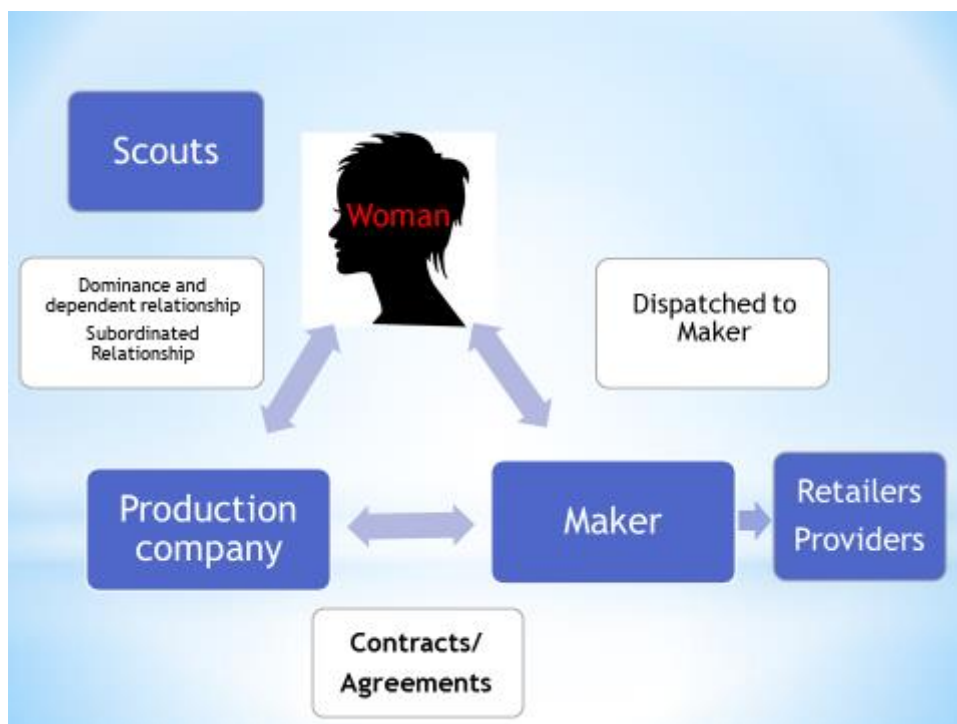
The websites that deal with illegal content in Japan, such as unexpurgated videos, usually use offshore servers.

3. Relationship among the Parties related to Pornographic Videos

The following chart describes the relationship among the parties related to pornographic videos. A production company which hires a woman as an actress (introduced by a scout) would advertise and eventually dispatch her to a maker in the pornographic film industry, based upon an agreement between the production company and the maker.

A woman would first sign a contract with a production company and would be later dispatched to a maker to comply with the agreement entered into between the production company and the maker. At the site of the maker, the filming is conducted according to the instructions of its director(s) or staff(s).

¹¹ <http://www.xvideos.com>



This employment pattern is the same as that of worker dispatch. However, as will be explained below, since there are many cases in which appearing in a pornographic video is regarded as “work which is harmful to public health or morals” under the Worker Dispatching Act, it is reported that in many cases the production companies enter into model management contracts or service agreements instead of employment agreements with the actresses. This is despite the fact that there is a hierarchical relationship of a superior-subordinate nature established between the production companies and the actresses who engage in filming for the makers.

At the time of filming of the pornographic videos, women usually submit a written consent of appearance to the maker or sign an agreement with the maker in which they agree to transfer their portrait rights and neighboring rights in such videos.

4. Laws and Regulations in Japan

In Japan, pornographic videos are basically deemed to be lawful and there is no relevant regulatory agency that directly regulates the pornographic video industry. Therefore, there are no sufficient arrangements for protecting actresses who appear in pornographic videos from exploitation, violence, or intimidation. This section describes laws and regulations in Japan that regulate pornographic videos.

(1) Anti-Prostitution Act

The Anti-Prostitution Act defines “prostitution” as “having sexual intercourse with unspecified persons for compensation or promise to compensate” (Article 2)¹², and prohibits prostitution stating, “No person may either engage in prostitution or become a customer of it ”

¹² Translation by Human Rights Now

(Article 3)¹³.

To crack down on pornographic videos based on this act, it is necessary to assume that pornographic videos are included in the definition of “prostitution”. However, such a presumption has to overcome problems arising from different interpretations of the act, such as the question of whether a fee for pornographic videos is considered as compensation for sexual intercourse—it might be compensation for the “acting performance” and “filming”, rather than “sexual intercourse”—and whether the other party is “unspecified persons”—it might be specific persons assigned by the maker. Therefore, we could not find any cases of arrests made on the basis of violation of the Anti-Prostitution Act.

(2)Criminal Code

a. Distribution of Obscene Objects

Pornographic videos that are distributed through proper channels usually have images of genitals pixelated or mosaicked, and are sold after a screening conducted by ethical review associations¹⁴. Therefore, there are few cases in which such pornographic videos have been detected and labeled by the governing bodies as “obscene objects”.

However, pornographic videos which have passed the screening of the ethical review association could still be considered as “obscene objects” if they fail to eliminate all obscene scenes. In fact, there is a case in which a former jury of an ethical review association was charged as an “accessory to selling obscene objects” for not properly pixelating or mosaicking pornographic videos.¹⁵

b. Rape; Forcible Indecency; Rape and Forcible Indecency Causing Injury; Compulsion; and Battery Causing Injury

In the event that the actress is forced to appear in a pornographic video against her will and forced to have sexual intercourse by breaking down her resistance through assault or intimidation, the person(s) responsible for the act should be charged with “rape” or “forcible indecency causing injury.” In the event that the actress gets injured during the filming of the video, the person(s) responsible for the injury should be charged with “battery causing injury”.

One case has been reported regarding a pornographic video filmed by a maker called Bakky Visual Planning which shows the violent rape of a young woman. Despite the woman’s appeal to stop filming, a number of male actors assaulted her violently and raped her a few dozen times over a long period. They also submerged her in water and made her drink large amounts of water, which prevented her from breathing. The woman was injured and spent one month in recovery from these violent acts. The owner of the maker of the video was sentenced to 18 years in prison as a co-principal by reason of conspiracy of rape causing injury and battery causing injury.¹⁶

However, such cases of prosecution are rare and makers are not often held liable for their actions. In many cases, since filming is conducted behind closed doors with the presumption that the actress has given her consent, it is difficult to prove that such filming was in fact conducted against her will.

¹³ Translation by Human Rights Now

¹⁴ Ethical review associations such as Nihon Ethics of Video Association (NEVA) and Ethics Organization of Computer Software (EOCS) review and check whether contents of pornographic videos meet ethical standards.

¹⁵ October 6, 2014, Supreme Court <http://www.asahi.com/articles/DA3S11390963.html>

¹⁶ December 19, 2007, Tokyo Dist. Ct.

(3) Employment Security Act and Worker Dispatching Act

a. License from the Minister of Health, Labor and Welfare

If the relationship between a production company and an actress is an employer-employee relationship based on an employment agreement, the act of dispatching an actress to a maker by the production company is considered a worker dispatch, for which a license from the Minister of Health, Labor and Welfare is required.

b. Work that is Harmful to Public Health or Morals

Appearing in a pornographic video is regarded as “work which is harmful to public health or morals” under the Employment Security Act and Worker Dispatching Act. “Recruiting” (Item 2, Article 63 of the Employment Security Act) and “dispatching” (Article 58 of the Worker Dispatching Act) are subject to punishment. There have been many cases in which employers were convicted for such acts.¹⁷¹⁸

¹⁷ Cases of convictions for violations of the Employment Security Act (judgments are translated by Human Rights Now)

- October 7, 1993, Tokyo Dist. Ct. (this judgment is not listed in a casebook)
“For production of obscene videos, having an actress engage in sexual activities, such as masturbation and sexual intercourse” is regarded as “work which is harmful to public health or morals” under Item 2, Article 63 of the Employment Security Act.
- July 8, 1994, Tokyo Dist. Ct.
The owner of the company participating in the entertainment management business in Tokyo and the manager working for that company introduced women at the ages of 18 and 21 to the director of a company producing pornographic videos, and had the director employ women as actresses. These acts of the owner and the manager were considered as engaging in job placement with an intention of having workers do harmful work, and they were found guilty (imprisonment of 2 years/1 year suspended sentences for 4 years/3 years).
- October 5, 1995, Tokyo Dist. Ct.
A person producing and selling pornographic videos had an interview with a 17-year-old woman who responded to a job advertisement posted via SMS by the interviewer. The interviewer told the woman that the video would not be openly sold and that therefore her parents would not know about it. He promised to pay her a remuneration of 25,000 JPY and persuaded/recruited her to work as a pornographic actress. He was found guilty of such acts (imprisonment of 1 year, suspended for 3 years).
- November 26, 1996, Tokyo Dist. Ct. (Hanrei Times vol. 942 at 261, Keisatsu Koron vol. 52-4 at 107)
A person producing and selling pornographic videos had an interview with a 15-year-old woman and told her that she did not have to worry, as he would make sure that her parents and friends would not know about her appearances in such videos. This act of persuading and recruiting a woman to work as an actress in an obscene video led to a judgment of guilt (imprisonment of 2 and half years without suspension).

¹⁸ Cases of convictions for violation of the Worker Dispatching Act

- November 17, 1988 Tokyo Dist. Ct. (*Keisatsu-jitsumu Jyuyo Hanrei*, 1990 ver. at 228)
A female talent signed a contract with a production company, under which she agreed to follow the instructions of that production and not to work for other production companies without their approval. The production company dispatched and/or introduced her as an actress to the filming company of pornographic videos with the knowledge that she would be required to do sexual activities such as sexual intercourse and oral sex. The act of the owner of this production was found to be job placement of harmful work and dispatch of workers for harmful work.
This judgment also found the following: even though the same exclusivity contracts were signed in both cases, the case in which the production company received compensation from the filming company for each occasion of the dispatching and paid such compensation to the actress after the deduction of the production company’s fees was considered as a job placement with an intention of having workers do harmful work, and the case in which the production company paid fixed compensation to the actress regardless of whether the job was assigned to her or not was considered as a dispatch of workers for harmful work. However, there is an opinion that both cases should be considered as dispatch of workers.
- September 27, 1990 Tokyo Dist. Ct.
The defendant, in conspiracy with the owner of a model management company, dispatched a 17-year-old girl employed by the management company to work as an actress in a pornographic video. The defendant was found guilty of the act (imprisonment of 1 and half year, suspended for 3 years).

c. Current Situation

However, following these precedents, production companies tend to enter into model management agreements or service agreements instead of employment agreements with the actresses. It is suspected that production companies take these measures to avoid being subject to the Employment Security Act and Worker Dispatching Act, despite the fact that the actresses engage in filming for the makers under the instruction of the production companies. As a result, the production companies are avoiding supervision by regulatory agencies under the labor laws and women are placed in an increasingly vulnerable position.

(4) Nuisance Prevention Ordinance

In many local governments, the scouting of pornographic video actresses is prohibited under the Nuisance Prevention Ordinances.¹⁹

IV. Overview of Damage

Firstly, we conducted interviews with organizations²⁰ which support the victims of pornographic video exploitation regarding the reality of the damage.

1. Characteristic of Damage reported by supporting organizations

We conducted an interview with Ms. Setsuko Miyamoto, a representative of People Against Pornography and Sexual Violence (“PAPS”), about the overview and characteristic of damage as follows:

(1) With the dissemination of cyber pornography (pornography on the Internet), the pornographic video industry always need to have new young women appear in pornographic videos and secure women for such purposes with false explanations, blatant flattery, and intimidation. Several parties take each role and share the responsibility.

First, there is a company called “(model) production” that scouts women with a false explanation and flattery, and hires them as exclusive models of the production. The other company involved is referred to as the “maker”, which actually produces and sells pornographic videos by having women dispatched by the production company appeared in such video.

· March 7, 1994 Tokyo Dist. Ct. (*Hanrei-jihō* vol. 1530 at 144)
An entertainment management company dispatched its female employee to a company producing pornographic videos. In this case, having sexual intercourse and other sexual acts in a pornographic video was regarded as “work injurious to public health or public morals” under Article 58 of the Workers Dispatching Act. In this judgment, the court held that the purpose of Article 59 of this Act is “to make the business of dispatching workers for harmful work impracticable and to protect dispatched workers in general by prohibiting such worker dispatch.” The court further stated that whether it is considered as “work injurious to public health or public morals” should be determined based on the contents of the work to be conducted by the dispatched worker, not based on the outcome of work (video/movie). The court finally held that the “work of a dispatched actress is to appear in pornographic videos as a pornographic actress, to perform scenes of sexual activities such as sexual intercourse and oral sex with male actor(s) assigned, and to allow the company to film pornographic videos. This work substantially impairs sexual morality, which should be maintained in social life and community, and further impairs the welfare of dispatched workers in general. Therefore, there is no doubt that this work is regarded as ‘work injurious to public health or public morals’”.

¹⁹ In Tokyo: http://www.keishicho.metro.tokyo.jp/kouhoushi/no53/column_koho53.htm

In Chiba: http://www.police.pref.chiba.jp/legal/prevent_trouble/

²⁰ PAPS (People Against Pornography and Sexual Violence) <http://www.paps-jp.org/aboutus/coerce>, Lighthouse: Center for Human Trafficking Victims <http://lhj.jp/english>

Some women do not know what a “pornographic video” refers to but regard them as merely “sexy videos.” They give consent to appear in such videos without knowing the need to engage in sexual intercourse with male actor(s) and that they will be filmed and sold to the market.

Also, some women provide consent to appear in pornographic videos because they were almost brainwashed by persistent persuasion with lies that famous talents had also appeared in pornographic videos in the beginning of their careers.

(2) Women who were persuaded to appear in pornographic videos under false pretenses or intimidation sign several contracts with a production company and maker.

Such contracts often state that when women refuse to appear in pornographic videos after signing agreements with a production company, or refuse to release or distribute such videos after these videos were filmed, they have to pay a “penalty.” The amount of the penalty is not described in the agreements. However, it is not a rare case that the women are asked to pay a penalty of several million yen even though they just signed the contracts and filming had not started yet, and more than 10 million yen if filming of several videos has already been completed. This penalty system often force the women, who signed contracts prior to fully understanding the content of the agreements, to appear in the videos or give their consent to sell the videos against their will.

(3) Beside the penalty system, such contracts often include provisions stating that the women would permanently waive all their rights, including copyrights, to the pornographic videos in which they appear. Therefore, if a maker releases these videos for a second or third time, the women who appeared in the films cannot receive any remuneration for such extended uses other than the performance fee for the initial filming. Also, these women are at risk of becoming pregnant or contracting venereal diseases in the filming of such videos in which they have to engage in sexual intercourse with male actors. However, under the contracts, it is the woman’s responsibility to take preventive measures for such risks and a maker who controls the filming does not bear any responsibility. Since the content of the filming is often not fully explained to the women beforehand, they only realize what they have signed up to on the shooting day. Thus they are forced to have sexual intercourse against their will for a long period of time, and are not allowed to refuse or escape from the scene.

(4) It never happens to “ordinary” actresses or actors that they waive almost all their rights in the films in which they play the lead but bear all the negative obligations. There is a system of exploitation in which makers and production companies obtain enormous profits from the sale of these videos in the global market and the women who appeared in such videos are left without any entitlement to basic human rights in such videos other than getting a performance fee.

2. Increasing Request for Consultation

PAPS, established in 2009, has been supporting and providing consultation services to victims of pornography and sexual violence since 2012, the year PAPS received its first complaint regarding forced appearances in pornographic videos. The tables below show the fluctuations with regards to the number of requests for consultation.

[The Number of the Requests for Consultation]

Year	Number	Total
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2012	1	1
2013	1	2
2014	32	35
2015*	59	93

* As of September 28, 2015

[The Number of the Requests in 2015]

Month	1	2	3	4	5	6	7	8	9*
Number	3	6	6	8	4	11	8	9	4

* As of September 28, 2015

[Content of Consultation]

Content of Consultation	Number	Notes
Forced to appear in pornographic videos	13	
Forced to pay the penalty for work related to pornographic videos	12	
Deceived and appeared in pornographic videos	21	-Could not refuse but appeared in the videos -Different from what women heard beforehand
Want to stop appearing in pornographic videos	4	Want to refuse to appear in pornographic videos after signing agreements or filming
Want to delete the prior pornographic videos	9	Acquaintances recognized them
	7	Scared that somebody will find out about their appearances in pornographic videos in the past
	4	Scared to be recognized by somebody in an appearance in a gay pornographic videos in the past
Other cases related to pornographic videos	2	Consultations brought by families or schools (complaint is not clear)
Revenge porn	1	
Others	20	Including victims of child prostitution, child pornography, and gay pornography

V. Situation of Damages Revealed by this Investigation

In the investigation for this report, we conducted direct interviews with victims as well as supporting organizations²¹²². Among the 93 cases listed above, we can disclose only 10 cases in order to protect personal information of the victims. These are serious cases as described below but only the tip of the iceberg of the victims of pornographic and sexual violence. For practical reasons, in all cases, we refer to the victims, the productions, and the makers as “V”, “X”, “Y”, respectively.

[Overview of the cases]

	Coerced to appear in the videos	Malicious solicitations or solicitations using false information	Threats of penalty/Compelled to pay penalty	Filming with violent/cruel scenes	Problems in Distribution	Others
1		Scouted as photo model	A production filed a lawsuit claiming for the penalty			V was minor when scouted
2		Told that job was photo model			-Unexpurgated pornographic videos -Secondary and third use of videos	V suffers from Serious PTSD and other after-effects
3		Convinced behind closed doors while surrounded (by several people)				
4		Convinced by being surrounded by several people			Suicide due to the sales of videos she appeared in	Driven to suicide
5	Refused to appear	Scouted on the street and hired as a talent	Requested to pay penalty and refund other fees, such as administrative fees, rent, plastic surgery etc.			

²¹PAPS (People Against Pornography and Sexual Violence), <http://www.paps-jp.org/aboutus/coerce>, Lighthouse: Center for Human Trafficking Victims, <http://lhj.jp/english>

²² The number of cases reported to the supporting organizations from September 2012 to September 2015 is 93, and about 80% of the cases are related to appearance in pornographic videos.

6	○	Deceived into believing it was a TV contract				
7		advertised as a “well-paid job”	Paid extortionate penalty			
8					Unexpurgated pornographic videos	V was minor when appeared in the videos
9					False explanation about distribution	
10		Solicited by false statement that V could become an idol				V continues to appear in pornographic videos

1. Required to Pay Penalties and Coerced to Appear in the Video

(1) Required to pay extortionate penalties and coerced to appear in the video

[Scouted when A was a minor]

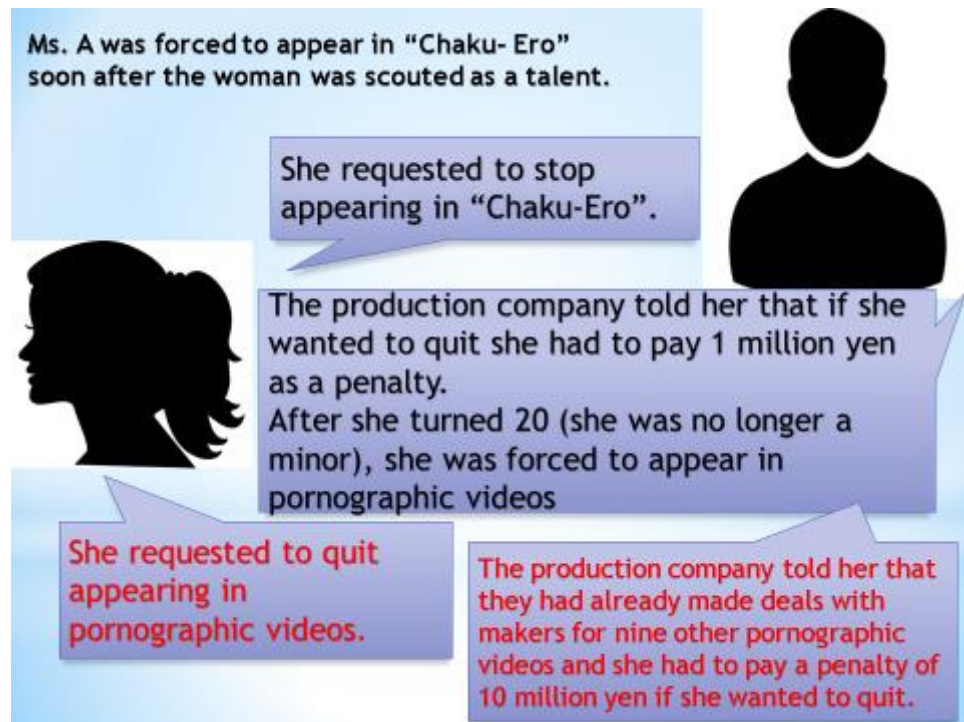
When A was a high school student, she was hired as a “photo model” by X’s scout on the street. A was interested in working as a talent in the show business/entertainment industry, so she agreed to be a photo model. She then signed an agreement as instructed. It should be noted that a copy of the agreement was not provided to A.

- A was assigned to her job of “Chaku-Ero,” i.e. be filmed wearing an extremely skimpy outfit. It was different from what A had expected as a photo model, so A asked X to terminate the Agreement. X responded that such “Chaku-Ero” work was already assigned to her, and that if A wanted to quit, she had to pay 1,000,000 JPY as penalty. Since A did not have 1,000,000 JPY, she had no other choice but to be filmed in the “Chaku-Ero.”
- X told A that this “Chaku-Ero” was a promotional activity for A to work as a talent in the show business industry, so there was no remuneration offered to her. A did not doubt this explanation because other women around her were working under the same conditions.

[Forced to appear in pornographic videos]

- After A turned 20, X told A that her next job would be to act in a pornographic video. Since A did not want to appear in a pornographic video, she pleaded to X that she wanted to quit repeatedly. However, X ignored her requests. A had no other choice but to appear in pornographic videos as she could not refuse due to the monetary penalty (known through her previous experiences).
- A was dispatched by X to Y (a maker) to be filmed. Scripts of the video were provided a day before the shooting but A had no say regarding the content of the scripts. She was coerced to have sexual intercourse with several men and suffered from both physical and mental injuries.
- A once again told X that she would not be able to appear in such videos. However, X told her that an agreement had been signed between X and Y for A to appear in a total of 10 pornographic videos. Thus the alternative to A appearing in the 9 remaining videos was to pay

the penalty of 10,000,000 JPY.



- A was not able to pay 10,000,000 JPY, but she could not bear doing any further pornographic videos. As she contemplated committing suicide, she decided to contact a support group and send a notice of termination of the agreement to X prior to the release date of her video and next shoot.
- X filed a lawsuit against her, claiming an enormous amount in damages.

(2) Filmed with Violent Scenes

- When B was 20 years old, an acquaintance told her that he/she would introduce her to a management company of "photo models", and B visited X's office for an interview. B agreed with X to enter into an exclusive model-management agreement without receiving any reference to or information about pornographic videos.
- B went to Y's office for an interview on referral by X. B was confounded by Y's indecent questions about her sexual experience. After the interview, it was decided that B would be filmed in a video produced by Y, but B was not informed of the details of the work assigned to her.
- B was told at the day of shooting that she would shoot a pornographic video. B refused to be filmed, but she could not refuse as she was told by X that refusing to shoot for the film would lead to high penalties.
- After the first pornographic video was filmed, B asked to terminate the Agreement with X. However, X told B that her next job was already scheduled. X also coerced B to appear in pornographic videos by telling her that in addition to paying a penalty for resignation, they would go to her university or her home to pick her up if she would not come to the filming location, and that if she could not pay the penalty charges, they would ask her parents to do so.

Ms. B entered into an agreement with the production as a model only to discover that she had to appear in pornographic videos.

She refused to work as a pornographic actress.



- She would have to pay a monetary penalty for resignation
- They would go to her university or her home to pick her up if she would not come to the filming location,.
- If she could not pay the penalty charges they would ask her parents to do so.

• With reluctance, she continued to appear in pornographic videos in response to the multiple threats. However, the contents of the pornographic videos became increasingly outrageous and she was subjected to cruel treatments against her will in the process of filming. Acts forced during the filming were as follows:

- forcing her to drink more than 12 liters of water per day for filming,
- genital penetration by several men without contraceptives and cleansing,
- vagina and anus penetration without contraceptives and cleansing,
- inserting a tube, which resembles a male genital, into her vagina and pouring large quantities of liquid into her vagina for several hours
- injecting semen of several men into her vagina without contraceptives
- violently raped while deprived of her movement with her upper body fastened onto a wooden board and her lower body fully exposed
- Coerced to appear in a number of unexpurgated pornographic videos

List of acts forced upon her

- Forcing her to drink more than 12 liters of water per day for filming,
- Genital penetration by several men without contraceptive and cleansing,
- Vagina and anus penetration without contraceptive and cleansing,
- Inserting a tube, which resembles a male genital, into her vagina and pouring large quantities of liquid into her vagina for several hours
- Injecting semen of several men into her vagina without any contraceptive
- Violently raped while deprived of her movement with her upper body fastened on to a wooden board and her lower body fully exposed.
- Coerced to appear in a number of unexpurgated pornographic videos



- B was never informed about the contents of the videos in advance. She sometimes cried out with pain during filming and ran away from a filming location naked. However, she was always yelled at by director(s) and others while the shooting continued.
- As a result of the series of filming described above, B fell ill with various diseases such as colitis, genital herpes, candida, gastroenteritis from virus, alopecia areata, depression, androphobia and claustrophobia.
- B finally managed to terminate the agreement with X, but she still suffers from emotional distress because of the pornographic videos which are still on the market. Y continues to produce new videos by secondary and third uses of her pornographic video.
- B felt she had no option but to change her face in order to escape from her past experiences in the pornographic film industry, and therefore repeatedly underwent plastic surgery and has continued to do so.

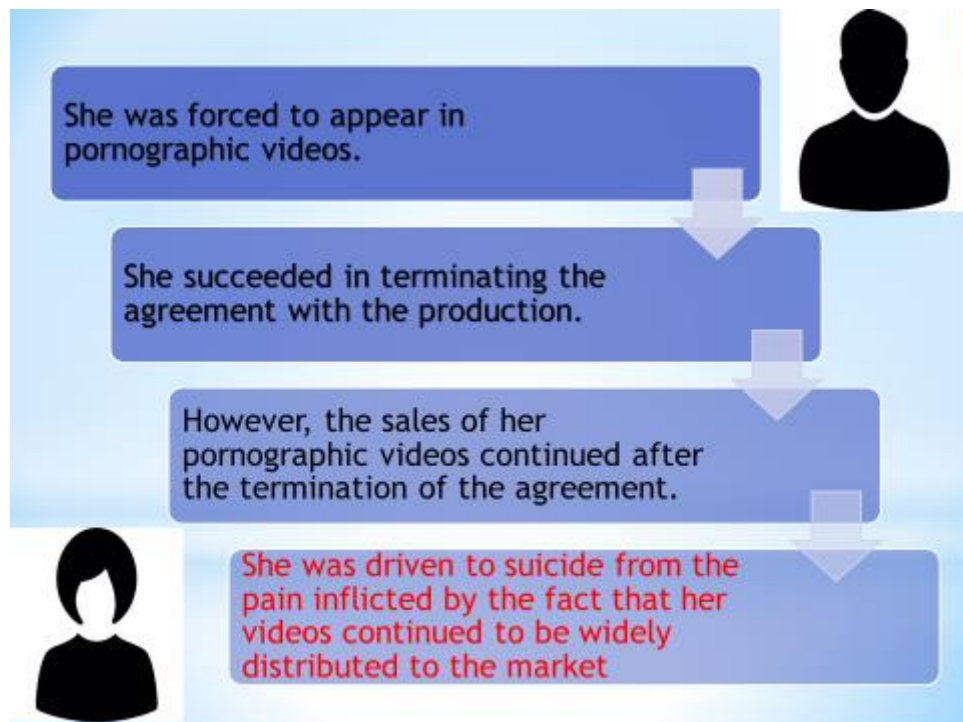
(3) Convinced behind Closed Doors and Coerced to Appear in Pornographic Video

- C applied for a job as a model when she was 19. C was told that the company would offer her a job when she turned 20. As soon as she turned 20, she was told by X that she got a job and was ordered to appear in a pornographic video.
- Although C refused to appear in the pornographic video, C was surrounded by employees of X who persistently tried to convince her to take the offer for approximately three hours.
- Eventually, C gave in when she felt she couldn't leave the room after many hours of persuasion, and eventually, though reluctantly, signed an agreement to appear in a pornographic video. Also, her free consent was taken away upon being informed that she would have to pay a large amount of money as penalty if she resigns.

2. Cases in which production companies forced or tried to force women to appear in pornographic videos using malicious solicitation and persuasion.

(4) A case in which a woman was driven to suicide

- D was approached and scouted by an agent who worked for X. As the scout noticed that D was a timid person who had difficulties saying no, he called in several colleagues to persuade D to appear in a pornographic video. D eventually agreed to do so.
- Although D appeared in pornographic videos having failed to refuse, she strongly regretted her decision after the shoot. However, she had to continue as she was told by X that the second video was already scheduled to be filmed.
- After X became aware of D's intention to quit her job as a pornographic actress, X made her appear in many videos in a short term in order to produce as many videos as possible before she quit.
- Within six months, D appeared in numerous pornographic videos which were widely distributed in public.
- D could terminate the Agreement with X. However, she suffered from the negative mental health impact from the continued sales of her pornographic videos.
- D consulted a victim support organization and decided to hire a lawyer to stop the distribution of her videos. However, she hung herself before actually contacting a lawyer.

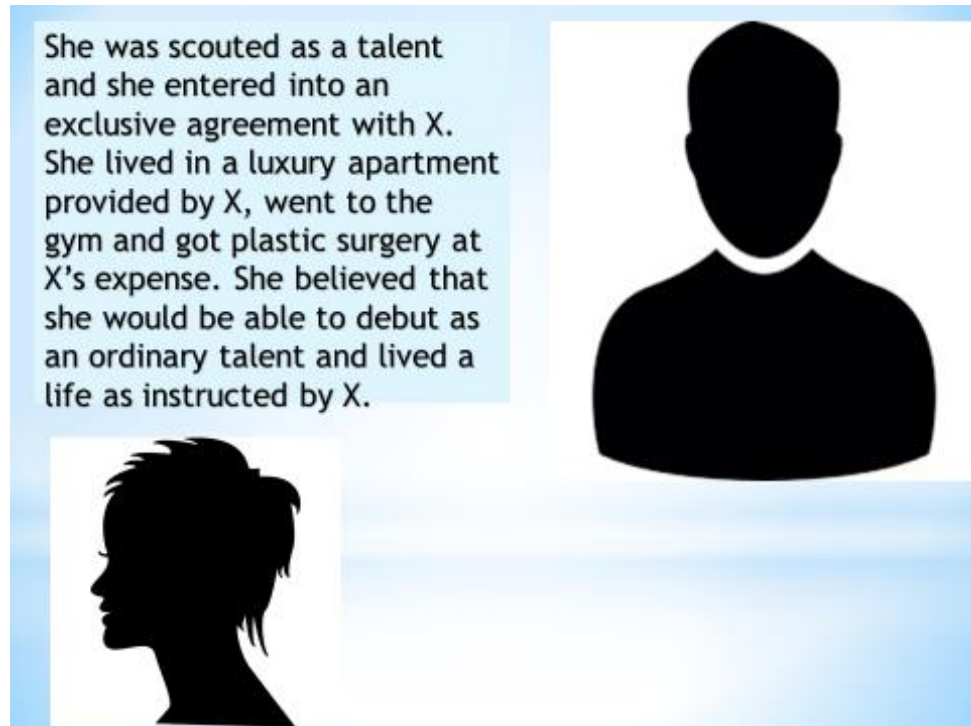


(5) Entered into an Exclusive Management Agreement as a Talent but Instructed to Have Interview for Pornographic Video

- E was scouted by X's scout on the street who asked if she was interested in working in the entertainment industry, and she entered into an exclusive management agreement with X as

a talent. The agreement did not make any reference to the filming of a pornographic video.


- E lived in a luxury apartment provided by X, went to the gym and got plastic surgery at X's expense. She believed that she would be able to debut as an ordinary talent and lived a life as instructed by X.




- One month later, she was instructed by X to go for an interview at Y's office, which turned out to be an interview for a pornographic video. E was confounded by Y's indecent questions, such as if she was ready for sexual intercourse or anal sex. Although she refused Y's offer by stating that she had no intention in engaging in sexual acts, Y's employees ignored E's protest and in the end made her strip and took topless pictures of E. E was frightened by the unexpected request by Y and asked X to terminate the Agreement soon after the interview.
- X threatened E that she would have to refund all the rent, expenses of the gym and plastic surgery X paid for her as a penalty upon terminating the Agreement. X also threatened her that if she could not pay the penalty, X would explain the situation to her parents or her school and ask them to pay on her behalf.

She went to an interview as instructed by the production only to find out that it was an interview for pornographic videos.

She requested to terminate the agreement with the production since she didn't want to appear in such videos.



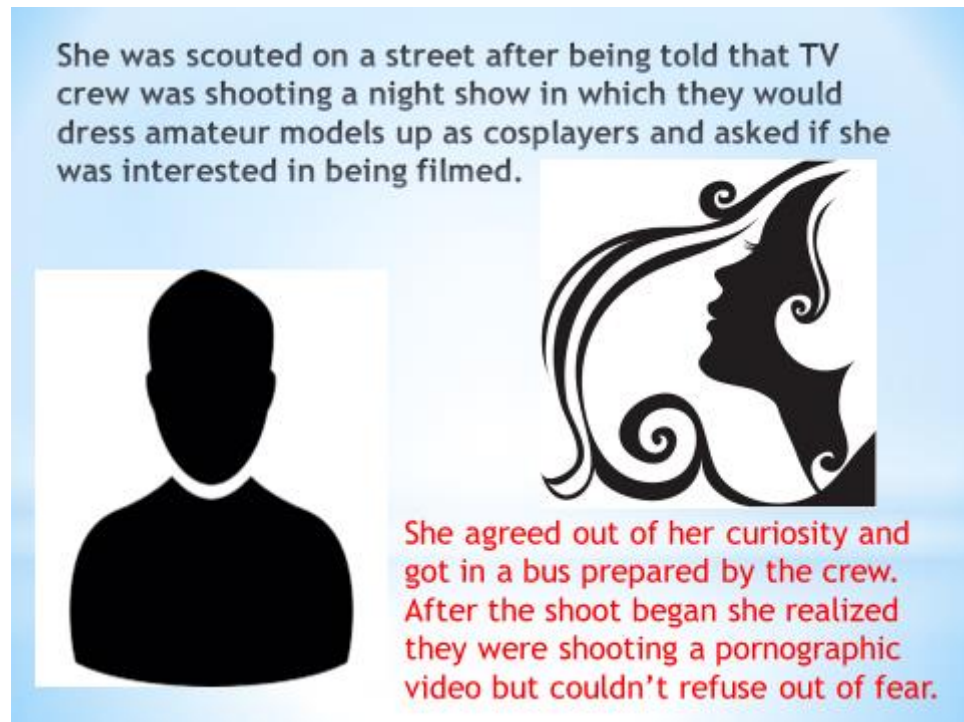


The production threatened her by telling her that she would have to refund all the expenses they spent on her and they would inform parents if she couldn't pay.

- E left the apartment supplied by X in fear of being coerced to appear in the pornographic videos under confinement. E managed to terminate the Agreement with X with the help of an organization supporting pornographic video victims and a lawyer.

(6) Case in which a woman was scouted for a TV show which turned out to be a pornographic video

- F was scouted on a street by a guy in his thirties who told her that they were shooting a night show in which they dress up amateur models as cosplayers and asked if she was interested in being filmed. The guy told her that they would pay her honorarium if she agreed to appear in the show. Since she was curious about the offer, F accepted the offer right away.
- F was taken into a bus prepared by the TV crew and was asked to sign a document and present her ID. Since F thought that it was a reliable company, F signed the document even though F could not read it in the dark and handed over her ID. There were three to four staff in the bus, including women, which made F feel safe.
- After F dressed up in a costume and people started filming, F was confounded by a change in the tone of a male staff whose questions became more and more indecent. F was confused but was not sure what to do as the camera was already on. Several men started to touch her body while she remained in great confusion. F could not move due to her immense fear, and meanwhile several male penetrated her while the crew filmed the scene.



3. Other cases

(7) Compelled to Pay Extortionate Penalty

- G was lured by an acquaintance into appearing in a pornographic video. However, G regretted the decision immediately after filming, and asked Y not to release the video. Y requested G to pay an amount of almost 10,000,000 JPY as a penalty for stopping the release of the film.
- G consulted with a lawyer who advised G that the amount of penalty claimed by X was extortionate. However, Y insisted that they would sell the pornographic video unless G paid the penalty. Thus G had no choice but to agree to pay the penalty of several million yen.
- G obtained a loan from a financial company against a real estate owned by her relative. However, this loan was not sufficient for covering the whole penalty, so G made an agreement with Y to pay the penalty in installments.

(8) Distributed on the Internet as Unexpurgated Videos

- J applied for a “well-paid job” when she was 19. J was told at the interview that the job would be to appear in a pornographic video. J hesitated but agreed to it because of the interviewer’s reassurance that “nobody will know (about your appearance in pornographic videos).”
- J regretted the decision after shooting for the film. Since J was a minor at the time when she signed the Agreement, J had the right to contact Y to cancel the Agreement by sending a formal notice in order to stop the release of the video. However, as J was not given a copy of the Agreement at the time she signed it, J could not identify the formal name and address of Y in order to send the notice.
- Later, J found out that Y had already distributed the unexpurgated pornographic video in

which J had appeared.

- J reported to X that her video was sold as an unexpurgated pornographic video and asked X to stop the sales, but X did not respond to her request.
- Furthermore, X hampered J's effort to report to the police by threatening J that J had given her consent to the distribution of the unexpurgated video and therefore J would be arrested if she went to the police.

(9) Case in which a woman was given false explanation about method of advertisement and distribution of her video

- K was solicited by X to appear in a pornographic video under the condition that her videos would be available only on TV in "love hotels," and K agreed to do so. However, K's pornographic video was broadly distributed on the internet.
- K filed a petition to the court for a provisional injunction to stop the sale of the video based on Y's violation of his promise.
- However, the court found that there is no evidence showing that Y made such promises regarding the advertisement method, and therefore did not grant a provisional injunction. In the end, K's pornographic video was widely distributed to the public.

4. Cases in which women continue to appear in pornographic videos

(10) Unable to Cut Ties with Pornographic Film Industry for Many Years

- L has always wanted to become an idol, and was scouted by X in a city. X gave false accounts of several well-known actresses and explained to Y that many famous actresses had previously been involved in the pornographic film industry.
- L initially refused X's offer multiple times. However, X kept on seducing L by bringing L to parties where L had the opportunity to meet celebrities, explaining that L would be able to socialize with people in the entertainment business, which would foster her career as an idol, and stating that L could live in a company dormitory and be given acting lessons.
- Due to her desire to become a star, L eventually gave in and agreed to act in a pornographic video. As pornographic filming was a harsh and oppressive experience for L, L wanted to quit. However, X seduced L to continue her work by taking her to lunch/dinner every day and giving L presents. L kept appearing in new pornographic videos and became a well-known pornographic actress.
- X began to tell L that she had no choice but to continue her career as a pornographic actress, because L's fame would render it difficult for her to find work outside the pornographic film industry. X also asked L to make positive comments regarding pornographic videos on social media as an advertising spokesperson for X.
- L thought that L would not be able to work in any industry other than pornographic videos and felt hopeless. L thought the only option would be to earn enough (by appearing in pornographic videos) in order to afford living abroad.

The production company gave her false accounts by giving names of several well-known actresses and explaining that many famous actresses were once pornographic actresses.

As she has always wanted to become an idol, she was persuaded by the production company and decided to appear in pornographic videos.

Although she found filming of such video harsh and unbearable, she was not allowed to quit.

The production company told her she could no longer work as an idol since she is now a recognized pornographic actress.

As a result, she has no other choice but to appear in videos that contains scenes of rape and other extremely violent acts.



However, in the meantime, in order to maintain popularity in the industry which tends to value fresh actresses compared to ones with longer acting careers, her pornographic videos gradually became more brutal with scenes of rape and extremely violent acts (often referred to as “castro”), which caused much damage to both her mental and physical health.

- L is currently consulting with an organization that supports victims of the pornographic film industry. However, L has to continue appearing in new videos as well as making positive remarks about the industry on social media.

VI. Identifying Root Causes of Problems

Based on our analysis of the cases mentioned above and other cases that we have investigated, we identified the following to be the root causes of the human rights violations.

1. From Being Scouted to Signing Contract with a Production Company

(1) Young women as their target group

All the victims we were able to interview were young women aged between 19 to mid-twenties at the time of their appearance in pornographic videos. In particular, we discovered that most victims were women who had just turned 20 of age. They are often students and there is little difference between them and minors in respect of social experiences, but their legal age renders the signing of such contracts valid in law, thus making them easy targets for scouts and production companies.

Scouts and production companies exploit young women’s lack of knowledge by presenting contracts that are difficult and almost impossible for young women to understand. Additionally, they pursue various tactics such as persuading the women for long periods of time, forcing them

to sign the contracts without consulting their family and relatives etc. In other words, these companies and their scouts exploit vulnerable, young women's ignorance by indirectly forcing them to sign such contracts.

Also, as seen in the case described in V.1 (1), minors were forced to appear in image videos such as "Chaku-Ero," and were coerced to appear in the pornographic videos after they turn 20 of age.

(2) Problems in solicitation methods

As described in V.1.(1), V.1.(2), V.1.(3), V.2.(5) and V.2.(6) above, scouts often take women to a production company's office by soliciting them based on false explanations that the women could become "talents" and "models" without any reference to pornographic videos. In many cases, a young woman would sign an agreement to join a production company as a "talent" or "model". Meanwhile, the production company would, with intention, withhold information in the agreement regarding consent to appear in pornographic videos at the time of signing, but later instructs and coerces women to appear in the pornographic videos based on the signed agreement.

Also, as the cases described in V.1. (3) and V.2.(4) above, there are some cases in which the women were convinced by several adult men surrounding them for a long time to sign the contracts with agreements including appearances in pornographic videos.

Further as the case described in V.2. (6) above, there are some cases in which the women were filmed as a result of fraudulent measures.

(3) Content of Contracts

Our investigation confirmed that there are many cases in which production companies exploit women by failing to give a signed contract to them. As a result, such women blindly accept the production company's demands as they do not know of their rights and obligations under the said contract.

Contracts between the women and their production companies do not follow a standard form, but appear in various structures such as model and/or talent management agreements, service agreements in which the production company renders management services to the women, or other service agreements in which the women render some services to the production company.

In some cases, a contract includes appearances in pornographic videos in its job description, but in other cases, it does not. However, what is common in the content of the contracts is that a production company manages the talent and the talent is obliged to implement assigned work in accordance with instructions given by the production company, and if the talent does not implement her work as set forth in the contracts, she is required to pay the penalty for non-compliance. The characteristic of these types of contracts is that the women do not have the right to choose to accept or refuse to appear in the videos.

As a result of such contracts, there are many cases in which a production company advertises a job that requires appearances in pornographic videos (with a maker) without informing the women, and later forcing her to appear in such videos against her will by threatening her with a potential monetary penalty.

There are also the cases in which a production company includes pornographic videos in an agreement or convinces a woman to appear in such videos. Production companies play tricks with the women's minds and seduce them with false explanations that appearing in the

pornographic video would foster their careers as idols. In other cases, production companies pressure women to agree to appear in pornographic videos by ordering their employees to gang up on them for long periods of time.

The amount of remuneration for appearing in such pornographic videos is not specified in the agreement and is decided on the production company's sole discretion.

In general, female talents and actresses are under the direction and supervision of the production company, and the relationship between them and the production company is assumed to be an employment agreement. However, as appearing in a pornographic video is regarded as "work which is harmful to public health or morals" under the Employment Security Act and Worker Dispatching Act, contracts executed between the production company and the women are deliberately worded to distinguish them from a standard employment agreement. As a result, the women may not obtain any protection or rights under Labor Laws.

(4) No evidence exists for false explanations or duress

Although contracts are often signed under the influence of false explanations and/or coercion, in many cases it is difficult to find material evidence for such acts since they are often done behind closed doors. Therefore, victims are put at a disadvantage when they file lawsuits later on.

(5) Women are not informed about appearing in pornographic videos

Our investigation revealed that many women, especially those who are young, accepted offers from scouts without any understanding of the agreements in the contracts. There are some cases in which young women signed an agreement without knowing that actual sexual intercourse would be filmed in pornographic videos, as they believed that such videos were merely videos with sexy contents.

However, we found that in none of the cases did the production company explain the contents of the videos to women in detail at the time of the execution of the contracts.

There are a number of victims who had only been aware of the agreement's content after they had signed their contracts. Such information includes: the content of the video they will be appearing in will not be disclosed to them until the day of shooting, and they are not given the option to refuse or accept the job, the videos will be widely distributed on the internet and will remain available online almost permanently, and these footages will be edited for second and third-party uses and will continue to be circulated in the market as new videos.

2. Coercion to Appear in Pornographic Videos

Once a woman has signed the contract with a production company, the production company would enter into a contract with a maker (without consulting with the woman involved) and order the woman to go to the filming location.

The production company then coerces the woman to appear in a film that contains indecent scenes by telling her that she has an obligation to comply with the agreement since she had already signed it. This habit of production companies to make deals with makers of pornographic videos without consulting the woman before coercing her to complete the job is very common. It is very rare for a production company to accept a woman's refusal to shoot for the film afterwards. This is because, as discussed above, if the filming is canceled, the production company is then obligated to pay damages to the maker.

Our investigation revealed that in some cases, methods employed by production companies exceeded the scope of persuasion, thus constitute coercion. Such methods include threatening young women to pay extortionate penalties, threatening them that the production companies would ask their parents to pay the penalty (cases V.1.(1), V.1.(2) and V.2.(5) above), and telling them that the production companies would come to pick them up at their universities and home if they do not come to the location of the filming.

In these cases, women are usually left with little time to consult with a third party, thus they usually do not see any other choice but to participate in the filming of videos as they cannot afford to pay the penalty and/or they fear their parents or friends might be informed of the situation.

The situation in which women are coerced into appearing in pornographic videos and are required to have sexual acts due to their inability to pay penalties is nothing but slavery “debt bondage” thus constitutes grave human rights violations.

3. Filming of the Pornographic Videos

As discussed, in our investigation, we could not find a single case in which the woman was given a choice not to appear in the pornographic videos.

We also could not find any cases in which a woman was provided with scripts or scenarios of a video in advance and chose the film in which she would participate based on her free will, went to audition by herself, or had any discussions with a director before filming to reflect her opinion in the videos.

In many cases, the scenarios in the pornographic video were not given to women by the night before filming or even the day of filming. The scripts were often vague, and women were not informed of what kind of acts they would be engaged in and with whom. There was one case in which the woman involved, a minor, who did not have any sexual experience, participated in the filming of the pornographic video without understanding what such videos were.

The circumstances of filming are often extremely harsh. However, it is almost impossible for these young women to make the filming stop and refuse to be filmed. The women cannot run away from the film set because they are kept naked and surrounded by adult men who are guarding their clothes.

As described in the case V.1.(2), the woman was not allowed to run away and was forced to be filmed in humiliating scenes. Also, as shown in V.1.(2) and V.4.(8) above, actresses with longer careers in the industry tend to participate in more cruel and humiliating pornographic videos in order to maintain their fresh image and popularity. It is not necessarily the case that the actress is treated as an equal with the production company as she becomes more experienced with a long career as a pornographic actress.

On the contrary, there are some cases in which the production company controls the woman to a greater degree by exploiting the vulnerability of the woman who fears that she will not be able to work anywhere outside of pornographic video industry or that she has lost her popularity.

Women who have appeared in pornographic videos for a long time often suffer from emotional trauma and mental illnesses caused by the cruel filming environment and tend to lose the power to make their way out of their current situation. Also, production companies tend to play tricks with women’s minds and force them to continue their career in pornographic videos by making them feel unworthy outside the industry.

As discussed, the interviews we conducted in this investigation revealed that women who managed to terminate their agreements continued to suffer from mental and physical pain from their brutal and harsh experiences while shooting pornographic videos.

Our investigation reveals the brutal situation of the filming of the pornographic videos that put the woman's health and personality at risk. In a similar incident named "Bakky case" from 2004, a maker of pornographic video filmed a female victim while his staff inserted an instrument into her anus and broke the instrument inside her causing a rectal perforation and rapture of her anus. The woman ended up hospitalized for four months due to the injuries caused by the filming. This case shows practices that forsake these women's human rights, while putting their lives at risk and repeatedly causing physical injuries to them (in the pornographic video industry).

We assume that there are many other cases in which even though the women gave consent to appear in the pornographic videos, they are deprived of their right to choose the films in which they appear in. Furthermore, they are unable to negotiate on equal terms with their production companies or makers, thus are forced to participate in films that are so humiliating they constitute a blatant violation of basic human rights.

4. At the Stage of the Contract Execution with a Maker

Although the women are usually not involved in the signing of a contract executed between a production company and maker, they are required to sign an agreement with a maker in which they consent to appear in pornographic videos and waive their rights in such videos later on.

In general, an employee of the production company (usually referred to as "manager") accompanies a woman when she signs an agreement with a maker. The woman is often not informed about the basic terms of the agreement, including the contents of videos, the number of videos she is required to appear in and the amount of compensation to be paid from the maker to the production company. The woman signs such agreement with a maker as instructed by the manager.

In some cases, the maker preserves the evidence to show that the woman voluntarily agrees to appear in the pornographic videos by recording the interview with the woman. However, in these cases, the woman is not in a position to be able to reveal her real intentions because the woman is forced to have the interview with a maker under the production company's instruction and in the presence of an employee of the production company. Therefore, such interviews by the maker do not effectively function as a safeguard for the victims.

Usually, the production company and the maker would sign an agreement at the same time an actress signs an agreement with the maker. We found in some cases that an agreement between the production company and the maker contains a provision that requires the production company to pay the maker penalty fees (in case of non-compliance).

5. Problems Related to the Contract

(1) Contracts with production companies

In general, a woman is dispatched to a maker under the production company's order and appears in pornographic video under the instructions of the maker. The amount of remuneration and the contents of the video are decided by the maker and production without involving the woman. In light of these circumstances, the relationship between the woman and the production company is assumed to be an employment agreement, and assignment of the woman to the maker is considered a worker dispatch. Based on this analysis, the production company is

legally obligated to maintain a safe environment and take other measures to protect its employee in order to perform its obligations as an employer. Furthermore, a license must be obtained from the Ministry of Health, Labor and Welfare to conduct worker dispatch business.

However, in reality, the agreements executed between the production company and women are titled “Business Outsourcing Contract (Service Contract)” or “Exclusive Artist Contract” since production companies seek to avoid using the title of an employment agreement. From what we discovered in this investigation, although agreements between the women and their production companies should be employment agreements, we found no agreement that specifies the amount of remuneration while a number of agreements included provisions that require penalties for defaults.

To sum up, the relationship between a production company and a woman is actually an employer-employee relationship. However, the relationship is often made to look otherwise to avoid any legal obligation that a production company must assume as an employer. Thus, a woman is not protected as an employee in many cases.

(2) Contracts with makers

In an agreement with a maker, it is typical that a woman transfers all rights, such as publicity rights and neighboring rights, to the maker inclusively and permanently.

If the woman consents to appear in the pornographic videos and waive her copyrights in such videos, it allows the maker’s second and third use of such videos. In many cases, any restriction, reservation or provision regarding amount of remuneration to the women for second and third-party uses are set forth in the agreement.²³

In reality, young women who do not have enough legal knowledge, especially with regards to copyrights, waive their rights and authorize a maker to use their videos without understanding that their videos will be used indefinitely.

As a result, a pornographic video may continue to be sold for a long period of time by second and third uses of the video and the woman is never able to request discontinuation of sales of the videos.

6. At the Stage that the Pornographic Video is Sold

(1) A maker demands payment of penalty from the woman

It is often the case that a production company or a maker demands a woman to pay a penalty when the woman requests to stop the release of her video after it has been filmed (as seen in case V.1.(1) and V.3. (7)). Even if the maker has already collected all the expenses for the filming of the first video, the maker can still claim such penalty as he has the right to produce new videos by secondary and third-party uses of the video which has been transferred by the woman to the maker upon the execution of the agreement.

Our investigation reveals a case in which a woman paid the maker an extortionate penalty to buy back all her rights in her videos by obtaining a loan from a financial company against a real estate owned by a relative.

Although the maker’s claim for such an extortionate penalty constitutes gouging and thus

²³ According to Article 91 (2) of the Copyright Act, it is interpreted that a performer does not have rights to the sound or visuals of his/her performance in case the work has been reproduced in a cinematographic work (such as making the cinema into DVDs) once the performer has given consent to record the sound or visuals of the performance in a cinematographic work.

should be held invalid, the women, in desperate need to stop the distribution of such videos as soon as possible, have no choice but to accept such penalty.

(2) The videos remain on the internet

There are some cases in which makers agree to stop distribution of the pornographic videos if the victims are minors or the agreement between the victims and the makers is held invalid on the basis of mistake or duress.

However, even though the maker stops distribution of the pornographic videos, pornographic videos broadly distributed on the Internet cannot be completely eliminated and remain permanently on websites where they have been posted by private individuals.

Cases have also been reported where the release of a pornographic video was canceled after pre-ordering became available on a website. Subsequently, the fact of the cancellation itself attracted a lot of attention on the internet and the digital images released during pre-ordering were reproduced on many websites.

7. Problems related to the Distribution of Unexpurgated Videos using Overseas Servers

In Japan, the exposure of genitals is considered “obscene” under the Criminal Code. Pornographic videos are distributed in Japan after the genitals have been pixelated.

However, recently, due to the distribution of unexpurgated videos to overseas servers, such videos have become readily available to anyone who has access to the internet.²⁴ It is obvious that such videos are produced for Japanese citizens, because the pornographic actresses who appear in them are Japanese, and their entire website is only in Japanese. This business is conducted based on the assumption that if the server is located overseas, the Criminal Code of Japan does not apply.

However, there is a Supreme Court Judgment whereby the court made a conviction for the distribution of obscene videos on overseas servers by applying the Criminal Code of Japan.²⁵

There was also a recent case in which persons involved in FC2, a major distributor of videos, were indicted for similar crimes.²⁶ With that being said, many websites distributing unexpurgated pornographic videos remain uncontrolled.

If women want to suspend distribution of unexpurgated videos, the women need to negotiate with the makers or the companies that operate the website on which such unexpurgated videos are uploaded. These companies that deal with the unexpurgated videos are relatively small, and it becomes more and more difficult to find out the name of the makers or operating companies involved. For example, such websites usually only disclose the name of operating companies abroad. Also, it is reported that when a woman requested the production company to stop the distribution of unexpurgated videos, she was threatened that she was also criminally liable because she consented to appear in the unexpurgated videos.

8. At the Stage of Legal Action

(1) Difficult to find out the name of the maker

²⁴ <http://www.caribbeancom.com/index2.htm>

²⁵ November 25, 2014 the Supreme Ct.

²⁶ August 6, 2015 Jiji Press Ltd. <http://headlines.yahoo.co.jp/hl?a=20150806-00000095-jij-soci>

In this investigation, we could not find any case in which the women received the signed agreement (or its copy). Therefore, it acts as a hurdle for them to file legal actions since they are only informed of names of the company instead of those of makers. It is often the case that company's websites do not contain information that reveals the makers' whereabouts.²⁷

Such difficulty is especially problematic in cases where the women want to stop the release of videos. Since the time period between the filming and its release is short, such videos are sometimes released while the women (or their legal representatives) are still trying to identify the name of the makers. It has become a serious problem that largely impedes the exercise of rights.

(2) Difficult to stop the sale of the videos

Even in cases in which women were forced to appear in pornographic videos against their will, it is difficult to show the court enough evidence to grant an injunction order to stop the sale of the videos. In this investigation, we couldn't find any case in which the court granted such orders.

As discussed above, there is often not a lot of evidence that shows the false explanation or duress exerted by the production company. On the other hand, the production company is careful to produce evidence that shows good relationship with the women by exchanging frequent messages through messaging services like LINE, especially when there is a risk that a legal dispute may arise later on. Therefore, in the legal dispute, the women may not be able to produce any evidence that supports their argument but the production company may offer a substantial amount of evidence that supports its counter arguments.

Our investigation found cases in which the women who appeared in pornographic videos after being lied to about methods of distribution by the production company filed a preliminary injunction to stop the sale of the video. However, the court found that there is no evidence showing that the production company made such promises regarding the distribution method, and therefore did not grant an injunctive order.

We recommend the court grant legal remedies in light of actual damages based on evidence such as written statements in due consideration of various situations, such as the difference in the power between the production company/maker and the women; the seriousness in mental injuries and the outcome of the distribution of the pornographic videos – especially in cases where the victim was driven to commit suicide as described in V.2. (4) above.

(3) Rarely charged and indicted for criminal offense

The makers and production companies are often not held liable for offences such as coercing young women to appear in pornographic videos against their will, or even in cases where these women were raped, assaulted, injured, confined, or abused during the filming of such videos. This is partially because the women executed a contract as pornographic actress, and there was not enough evidence that showed the extent of the duress by the maker and the production company.

Also, because the relationship between the production company and the women is an

²⁷ For instance, there are pornographic videos produced and sold under the label "MOODYZ" which is one of the major labels of CA Corporation. On the official website for "MOODYZ", an email address is given for contact, but there is no address or phone number or any items relating to CA Corporation (<http://www.moodyz.com/top.html>) . Currently, CA Corporation deals with the negotiation regarding the pornographic videos produced and sold under the label "MOODYZ". However, the legal relationship between MOODYZ and CA Corporation is not clarified.

employer-employee relationship in substance, the production should be subject to criminal penalties for the breach of Employment Security Act and Worker Dispatching Act for the illegal dispatch of women to the maker. However, in reality, police do not actively intervene in these cases for breach of these Acts as the contracts executed between the production companies and the women are not employment agreements.

(4) Lack of relief mechanisms

Although there are many disputes relating to pornographic videos, many victims cannot even find any person or organization to turn to for support. Therefore, the public is not aware of the situation of the victims, mechanisms to support the victims have not been established yet, and there are not enough legal precedents on this matter.

Production companies and makers of pornographic videos are not subject to the Act on Control and Improvement of Amusement Business and there are no regulatory agencies that apply to them. Since production companies assume that the agreements executed with the women are not employment agreements and do not obtain the license for the worker dispatch undertaking, they can avoid supervision by the Labor Standards Office and the regulations under Worker Dispatching Act. Further, as the pornographic actress is not the consumer who purchases the products by herself, the framework for consumer protection is not applicable. Therefore, there is no relief mechanism to solve this sexual exploitation.

VII. Legal Remedies

1. Regulation by Application of Labor Law

Most of the pornographic actresses do not execute employment contracts with production companies. However, as the actresses are under instruction by the production companies and the relationship between the production and the actresses is an employer-employee relationship in substance, the conducts of the production companies should be regulated by the application of Labor Law.

(1) Tokyo District Court Judgment dated September 9, 2015

In September 9, 2015, the Tokyo District Court dismissed the claim for a penalty of 24,000,000 JPY by a production company against a woman who refused to appear in the pornographic video. We cite this judgment below for reference to establish the measures to support the pornographic victims.

(a) Overview of the case

When the woman in question was a high school student, she was scouted at a local train station and hired by a production company. At that time, she believed she was hired as an ordinary talent, and would never be required to do any obscene conduct.

•Later on, the woman signed a “Business Outsourcing Agreement” which stated that the women would surrender management of her work to the production company, and if she did not cooperate with the production’s management, she would be required to pay the penalty. Although the content of the agreement was too difficult for a minor like her to understand, and the production company did not provide sufficient explanation to her, she signed it without consulting with her parents. A copy of the signed Agreement was never provided to the woman.

- All the work assigned to her as a talent following the execution of the agreement were obscene, but she could not choose to accept or reject the job offers as the production company has already made deals with makers without consulting with her. When she told the company about her intent to quit her work as a talent, members of the company coerced her into continuing her work by threatening with remarks such as “you are obliged to follow (their instructions) as it’s decided in the agreement”, “you have to pay one million yen if you resign”, or “we will inform your parents if you do not show up to for the filming” etc.. While she was a minor, the company sexually exploited her by confiscating her earnings.
- After the woman turned 20; the production company requested her to act in a pornographic video without receiving her consent. She had repeatedly asked the company to terminate the Agreement. Nonetheless, she was coerced into appearing in the pornographic video because the company told her that if she did not take the job, she would be required to pay a penalty. She was not informed about the details or scenarios of the film prior to the shoot, and she was subsequently forced to have sexual intercourse surrounded by adult men (film crew members). She could not run away because she was naked and was surrounded by staff. Immediately after the first day of filming, she was forced to sign an agreement to appear in a second pornographic video. At the film set, she cried from the acute pain inflicted on her genitals but the cameras were kept rolling.
- After the initial shoot, she pleaded to the company for her to be able to stop appearing in the pornographic videos. However, the company told her that an agreement has already been signed between the them and the maker to have her appear in 9 other pornographic videos, and that if she refused to be filmed, the penalty would be 10,000,000 JPY. Thus she could not terminate the Agreement until she has completed the 9 remaining videos. The woman became depressed and experienced suicidal thoughts. She found a supporting organization which advised her to send a notice of termination of the Agreement to the production company. Upon receiving the notification, the company tried to coerce her into appearing in the remaining videos by posing numerous threats of a potential monetary penalty. Since she did not give in, the company filed a lawsuit against her claiming a fine exceeding 24,000,000 JPY for alleged damages.

(b) Framework of the Judgment

- Although the Agreement executed between the production (plaintiff) and the woman (defendant) was titled as “Business Outsourcing Agreement”, the court found that the agreement executed between the woman and the production was an “Employment Agreement in substance” under which the production hired the woman as its talent or pornographic actress and had her appear in pornographic videos assigned by the production company under its direct instructions. The court took into account several factors, such as the fact that the production company had determined her assignments without consulting with her; she did not have the discretion to choose her assignments based on the film contents; the agreement between the two parties explicitly requires the woman to appear in such videos; and the fact that the production company had experiences of managing a number of other pornographic actresses while the defendant was still at a young age (with little experience).
- The court found that the provisions of “Employment” of the Civil Code shall be applied to this case and that even in the case where the parties have specified the term of employment, if there are unavoidable reasons set forth in Article 628 of Civil Code, the woman (defendant) may immediately cancel the contract.
- The court found that as the work assigned to the woman was to have sexual

intercourse with the male specified by the production company, the nature of the work is that it shall not be forced to perform against her will.

- However, the production company determined the woman's appearance in the pornographic videos against her will and tried to force her to appear in the video by threatening that if she did not appear in the video, she would be required to pay 10,000,000 JPY as a penalty. The court found that therefore the woman had "unavoidable reason" to cancel the agreement with the production company.
- The court found that the woman would not be liable for nonperformance of the agreement, even though she would not appear in the pornographic videos after repudiating the agreement.

(c) Significance of the Judgment

This case is an important precedent because the court found, as followed:

- Regardless of the type of the contract executed between the production company and the woman, the agreement between them was an "Employment Agreement in substance" based on the fact that the woman was young and had no discretion to choose the assignments in which she was instructed by the production company. It is not allowed for the woman to be forced to appear in pornographic videos against her will.
- If the production company tried to coerce the woman to appear in pornographic videos, such act shall be considered an "unavoidable reason" (Article 628 of Civil Code) to disregard the agreement for the woman.

(2) Criteria of judgment for determining whether a person is an "employee" or not

According to the "Criteria of judgment whether to be a worker or not in Labor Standards Law"²⁸ published by the Study Group of Labor Standards Act, which is a private consultative body to the Minister of Health, Labor and Welfare, in December 19, 1985, whether the person is an "employee" or not is determined by (i) whether labor services are provided under the direction and supervision of the employer, and (ii) whether the wage would satisfy as sufficient consideration for labor services provided by the person.

To determine (i) whether labor services are provided under the direction and supervision of the employer, the following facts are considered:

- Whether the person has freedom to accept/reject a request to work or a direction to perform a duty
- Whether the person performs a duty under such direction and supervision as to contents of the duty or how the duty should be performed
- Whether there is any restrictive fact in engaging in work such as restrictions on the place and the time of that work

In addition to the three criteria mentioned above, substitutability is considered as a corroborating factor to determine as to whether labor services are provided under the

²⁸ It is widely accepted as the concrete set of criteria of judgment and is mentioned as a norm in many precedents.

direction and supervision of the employer.²⁹

To determine (ii) whether the wage would satisfy as sufficient consideration for labor services provided by the person, if it is paid by the employer to employee and in consideration for the work, it is “wage” no matter what it is named.

According to the criteria above and other precedents, the pornographic actress should be assumed to be the employee of the production if their relationship meets any of the following situations:

- The actress has virtually no freedom to accept/reject a request to work or a direction to perform a duty.³⁰
- The production company instructs and determines her work and the content, place and time of that work.³¹
- The compensation for the work is determined by the production company.

Relevant parties should actively take measures based on Labor Laws if any of the above-mentioned situations arise.

(3) Legal Remedies available when “Employment Agreement in Substance” is applied

(a) Legal protections

Regardless of the type of contract, if the relationship between the pornographic actress and the production company shall be assumed as the employer agreement in substance based on the actual facts as discussed above, investigation, punishment or supervision shall be enforced as follows:

(i) The breach of Labor Standards Act

To coerce the woman to appear in the pornographic videos by threatening a penalty constitutes a breach of Article 5 of the Labor Standards Act, which states that “the employers shall not force Workers to work against their will”.

Also, the penalty clause in the agreement executed between the woman and production company breaches Article 16 of the Labor Standards Act, which states that “the employers shall not make a labor contract which predetermines either a sum payable to the employer for breach of contract or an amount of compensation payable for damages”.

(ii) The breach of Employment Security Act

The solicitation to become a pornographic actress, which is assumed to be “work that is harmful to public health or morals”, breaches Item 2, Article 63 of the Employment

²⁹ It is stated that substitutability for labor service is considered as one of factors that denies existence of structure in which an employee works under supervision and directions of an employer.

³⁰ It should be interpreted that the woman does not have freedom to accept/reject a request of work if the producer coerces the woman to appear in the pornographic videos by threatening her that if she refuses to appear in the videos, she is required to pay the penalty. In the first place it should be prohibited to set forth the penalty clause in the agreement.

³¹ See Tokyo District Court Judgment dated March 8, 2011 and Tokyo District Court Judgment September 8, 1994. Although there are the cases in which the place and time of the work are not fixed or determined by the maker, it shall not be immediately concluded that the production does not instruct and supervise the woman as the place and time of the work are determined before the woman starts work and it is usual in the show business that the time and place of the work is not fixed. Also although the production does not instruct the woman on the specific move at the site of filming of the pornographic videos, it shall not be denied that the production does not instruct and supervise the woman as it happens because of the characteristic of the filming of the pornographic videos. (March 8, 2011, Tokyo Dist. Ct.)

Security Act.

(iii) The breach of Worker Dispatching Act

Worker Dispatching to the maker by the production company breaches Article 58 of the Worker Dispatching Act and is subject to punishment.

(iv) The obligation of the Employer

If the woman is not dispatched to the maker, it does not breach the Worker Dispatching Act. However, the employer has the obligations under Industrial Safety and Health Act, and is obligated to prevent occupational accidents and pay compensation for accidents if such accidents occur.

(v) For the responsibility of the Government

The Government has the responsibility to supervise the employer's' compliance with the Labor Standards Act and Industrial Safety and Health Act.

2. Protection under Consumer Contract

As discussed, the women should be protected by the application of the Labor Laws in cases in which there is an employment agreement in substance between the production company and the women to appear in the pornographic videos. On the other hand, it is not acceptable that the women are left without any legal protection in rare cases where they have discretion to choose the assignment instructed by the production. Also, there are many cases in which the damage from pornographic videos arises at the stage of inducement of the contracts. These are similar situations as when consumers suffer damage from agreements induced and executed by taking advantage of young women. Therefore, in the cases in which the employer agreement in substance cannot be found, the victims should be protected as consumers who suffer damage (by the inappropriate inducement to the contracts), and such protections should be codified in relevant laws.

Although the continuous service contract in which the consumer receives the service by the service provider, such as the esthetic service, is defined as one of the transactions protected under the Act on Specified Commercial Transaction, the continuous service contract in which the consumer is obligated to continuously provide the service to the producer is not specified under the Act, and is therefore not included in the legal framework for consumer protection.

For the first step, the Act on Specified Commercial Transaction shall be amended by adding the continuous service contract in which the consumer is the service provider to one of the transactions protected under such Act, and local consumer centers should take appropriate measures to actively accept applications for counseling from the victims of these transactions.

3. The Criminal Code

The investigative authorities should actively investigate and prosecute cases of injuries and incidences of rape as a result of coercing women to appear in pornographic videos against their will and/or filming pornographic scenes that are socially unacceptable.

Also, investigative authorities should investigate and prosecute those responsible in cases of human trafficking in accordance with the Criminal Code.

VIII. Responsibility of the Government and Enterprises under International Human Rights Laws

1. Responsibility of the Government under International Human Rights Laws

(1) The Convention on the Elimination of All Forms of Discrimination against Women

The General Recommendation No. 19 adopted by the Committee on the Elimination of Discrimination against Women in accordance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), states that gender-based violence is a form of discrimination prohibited under the CEDAW, and defines gender-based violence as “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.” (Article 6 of the General Recommendation No 19)

Coercing women to appear in pornographic videos clearly falls under the definition of gender-based violence, and thus the Government bears responsibility to take appropriate measures to eliminate such violence based on the CEDAW.

The Committee adopted the General Recommendation No.19 to call on States to take appropriate and effective measures to eliminate gender-based violence and provided a comprehensive set of recommendations. Amongst which, the measures set forth in Article 24 are of particular importance:

(b) State parties should ensure that laws against ... gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. [...];

(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

(i) Effective complaints procedures and remedies, including compensation, should be provided; and

(k) State parties should establish or support services for victims of ... gender-based violence, including refuges, specially trained health workers, rehabilitation and counseling.³²

Also, Article 6 of the CEDAW states that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”³³

The Government should take effective preventive and punitive measures and provide remedies, protection and support service to victims of coercion of appearance in the pornographic videos.

³² <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>

³³ “Traffic in women” should be interpreted in accordance with the international consensus of the human trafficking. Article 3 (a) of “Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the united nations convention against transnational organized crime” defines “trafficking in persons” as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, force labor or services, slavery or practices similar to slavery servitude or the removal of organs”. It falls into “trafficking in persons” that the production hires the women as the pornographic actresses against their will and dispatches them to the makers by means of the threat or use of fraud or of a position of vulnerability.

(2) International Covenant on Civil and Political Rights (ICCPR)³⁴

The Paragraph 3 (a), Article 8 of International Covenant on Civil and Political Rights (ICCPR) states that “[n]o one shall be required to perform forced or compulsory labor”. Although the definition of the “forced or compulsory labor” is not set forth in this Covenant, the International Labour Organization (ILO) Convention concerning Forced or Compulsory Labor (No. 29) as discussed below defines the forced or compulsory labor.

As the “forced or compulsory labor” under the ICCPR shall be interpreted to have the same meaning as the definition under the Convention concerning Forced or Compulsory Labor³⁵, the coercion to appear in the pornographic videos by payment of penalty shall falls under the “forced or compulsory labor”. Thus, the Government has the responsibility to take appropriate measures to eliminate the coercion of appearance in the pornographic videos as a State Party which has ratified the ICCPR.

(3) International Labour Organization (ILO) Convention concerning Forced or Compulsory Labor (No. 29) (Entry into force in 1932, Ratified by Japan in 1932)³⁶

In this Convention, it is stated that “[e]ach Member of the International Labor Organization which ratifies this Convention undertakes to suppress the use of forced or compulsory labor in all its forms within the shortest possible period” (Paragraph 1 of Article 1) and “[t]he illegal exaction of forced or compulsory labor shall be punishable as a penal offence, and it shall be an obligation of any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced” (Article 25). Paragraph 1 of Article 2 of this Convention defines the “forced or compulsory labor” as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The “penalty” may include not only criminal penalties and disciplinary punishments but also payment of a penalty in this context.

Generally, the women are coerced to appear in pornographic videos against their will with the threat that if they refused, they would be required to pay an extortionate penalty. Also, in these cases, it is obvious that the women do not participate voluntarily. Therefore, it falls under the use of “forced or compulsory labor” by the production company that the company had coerced these women to appear in pornographic videos under the threat of exorbitant penalties.

As a ratifying State Party to this Convention, the Government should undertake to eliminate the use of force or compulsory labor within the shortest possible time, and is obligated to establish appropriate legal measures and ensure that such implementations are properly enforced.³⁷

(4) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Entry into force in 1957, not ratified by Japan)

³⁴ <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁵ P 14 of “Abolishing Slavery and its contemporary Forms” (HR/PUB/02/4), David Weissbrodt and Anti-Slavery International, United Nations New York and Geneva 2002

³⁶ http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

³⁷ The ILO adopted Declaration on Fundamental Principles and Rights at Work in 1998, which emphasized the importance of the elimination of forced or compulsory labor. This declaration states that member states of the ILO should respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. The elimination of forced or compulsory labor is specified as one of the four categories in this Declaration. It shows that the ILO places the elimination of forced or compulsory labor as its top priority. <http://www.ilo.org/declaration/lang--en/index.htm>

This Supplementary Convention was adopted to supplement the Slavery Convention adopted in 1926 in light of continuing human rights violations taking place not only under the common scope of “slavery” in which persons are treated as commodity of others, but also under institutions and practices similar to slavery. In this Supplementary Convention, debt bondage is specified as one of the practices similar to slavery and is defined as (i) “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt”, (ii) “if the value of those services as reasonably assessed is not applied towards the liquidation of the debt, or the length and nature of those services are not respectively limited and defined”.

Appearing in pornographic videos is considered a personal service. Yet the women have no discretion in the process as they are under the control of the production company by threats of paying an extortionate penalty for disobedience (a situation applicable to the conditions specified in (i) mentioned above). The value of appearance of the pornographic videos is not applied towards the liquidation of the penalty, and the terms in which they are required to appear in the videos is not limited. Also, the contents of the videos in which they are required to appear is not explained to the women by the producers (a situation applicable to the conditions specified in (ii) mentioned above). Considering all of the above-mentioned conditions, we should conclude that these victims fall under the definition of debt bondage under the Supplementary Convention.

Although Japan has not ratified this Supplement Convention, as a ratified State Party to the Slavery Convention of 1926, the Government bears responsibility in respecting the Supplementary Convention and eliminate the practice of debt bondage.

2. Responsibility of the Relevant Industry and Enterprises under International Human Rights Laws

“Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework” 38(“Ruggie Principle”) adopted by the United Nations Human Rights Council in 2012 clarifies the responsibility of business enterprises to respect human rights.

The Leaders’ Declaration of the G7 Summit in 2015 declares that the leaders of G7 support and respect the Principles and are committed to promote respect for human rights in supply chains.

The Guiding Principles set forth that business enterprises have the responsibility to prevent or mitigate human rights violations that are not only directly linked to their operations but also to their business relationships (Principle 13). This responsibility applies to all enterprises (regardless of their size, sector, operational context, ownership and structure) (Principle 14). Also, the Principles requests business enterprises to comply with not only domestic legislations but also international human rights standards that are universally recognized (Principle 23).

13. The responsibility to respect human rights requires that business enterprises:
- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

³⁸ http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf#search='%EF%BC%88A%2FHRC%2F17%2F31%EF%BC%89

The Guiding Principles place the responsibility of “due diligence” on business enterprises by requiring them to carry out human rights due diligence if there are potential adverse human rights impacts by their business activities.

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating on how impacts are being addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.

Furthermore, the Guiding Principles set forth the remediation by business enterprises for adverse human rights impact, which is caused by or contributed to by them.

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

It can be said that there is a high risk in the pornographic video industry of human rights violations occurring in the process of producing the videos.

Production companies and makers should of course not directly participate in any acts of human rights violation. Furthermore, as there is a high risk for companies to coerce women in the process of producing pornographic videos thus violating human rights, business enterprises that produce, sell, rent and distribute the pornographic videos have the responsibility to ensure that human rights violations have not taken place throughout the supply chain and must attempt to eliminate any human rights violation throughout the supply chain. Currently, relevant business enterprises do not have any policy in place relating to human rights. Also, there are currently no mechanisms in place to provide remedies for human rights violations and to check their compliance in the pornographic video industry.

IX. Recommendations

As discussed above, coercing women to appear in pornographic videos is a serious violation against women as well as general human rights in the form of debt bondage. Therefore, effective measures should be promptly taken in order to avoid these human rights violations and to protect and provide remedies for the victims.

As is evident in the pornographic video cases above, the women were persuaded to enter into an agreement with their production companies. Such companies take advantage of the women’s lack of knowledge of the law and the hardship they faced. Once they signed the

agreements, they were coerced to appear in pornographic videos against their will through threats of penalties resulting from defaulting on their obligations based on such agreements. The structure of this business is nothing but sexual exploitation by the production companies and makers of the pornographic videos. Although the young women are hired by the production companies and are obligated to appear in the videos determined by the companies and required to follow their instructions, the victims may not receive legal protection as an “employee” because the agreements executed between the victims and the production companies are not employment agreements but business outsourcing agreements.

Taking into consideration the reality of the relationship between the victims and the production companies, the regulations should be enacted by making reference to the regulations on consumer protection, employee protection and the Criminal Code in order to relieve the damage to the victims.

Also, it is essential to thoroughly investigate the current situation due to its serious violation of women’s rights, and to enact a comprehensive set of law that prohibits sexual violence and sexual exploitation of women, as well as criminalizing pornographic filming that cause injuries.

Therefore, we make following recommendations to the relevant parties in order to take effective measures to prevent and relieve the damage caused in the production process of pornographic videos.

1. To the Cabinet Office (the Gender Equality Bureau)

(1) To take active measures for gender equality with respect to sexual exploitation in the production process of pornographic videos.

(2) Fact-finding Survey

To conduct a fact-finding investigation of the pornographic videos victims, and investigate the production process of pornographic videos and its chain of distribution as the current situation regarding pornographic videos has not been fully uncovered.

(3) Dissemination and Awareness Raising

To raise awareness (about the human rights violations) in order to prevent damages caused by the production of pornographic videos.

(4) Legislation

To legislate comprehensive provisions for the prevention of damages incurred in the process of producing pornographic videos, and for protection of and remedies for the victims, as well as punishment for the perpetrators.

2. To the Cabinet Office Consumer Commission

Although the pornographic videos problem has some similarities to consumer damage, there have been also many cases in which the employment agreements in substance are assumed to be made between the production company and the women. Also, criminal regulation for perpetrators is necessary. Under these circumstances, it is necessary to go beyond the boundaries to each Ministry and take measures to enact and enforce necessary legal measures. Thus, the Commission should conduct a fact-finding investigation of damages incurred by the production of pornographic videos, and propose each ministry to take necessary measures (based on the investigation).

3. To the Consumer Affairs Agency

The pornographic videos problem as described in this report has some similarities to consumer damage in the sense that the damage is caused by the agreements executed between the enterprise and the victim by taking advantage of victims' lack of knowledge and/or confusion. Also, compared to other cases of violence against women, the cases of damages related to the production of pornographic videos are unique in that the perpetrators sexually exploit the victims for commercial purposes as organized business. Therefore, in cases other than that the employment agreement in substance is assumed to be executed between the victims and the production companies, thus the Consumer Affairs Agency should deal with the problem as consumer damage and take consumer protection measures to prevent and relieve the damage.

(1) Amendment to the Act on Specified Commercial Transactions

To propose an amendment of the Act to cover damages caused by the production of pornographic videos by adding the continuous service contract in which the consumer is the service provider to relevant enterprises as a new category of transactions protected under the Act.

(2) Amendment of Consumer Safety Act

To propose an amendment to the definition of "Actual or Potential Consumer-Related Incident" set forth in Paragraph 5 (i) and (ii), Article 2 of Consumer Safety Act so that the Act could provide remedies not only for monetary damages of consumers, which is the primary purpose of the Act, but also for mental and physical injuries of consumers, by adding consumer damage caused by the continuous service contract in which the consumer acts as the service provider of relevant enterprises under a new category of consumer damage protected under the Act.

To issue admonitions and orders to the relevant enterprises to prevent consumers from suffering mental and physical harm related to pornographic videos in accordance with Article 40 of the Act.

To make Cabinet Order in accordance with Paragraph 8 (ii), Article 2 of the Act and set forth "unfair dealings which are prejudicial to the financial interest of the consumer, in which the consumer is obligated to provide continuous service not pursuant to employment agreement" as one of the form of unfair dealings regulated under the Act.

To take measures to address pornographic videos problems as "Circumstances Financially Damaging to a Great Number of Consumers" under the Act.

(3) Comprehensive legislation

In collaboration with other Ministries, to propose to legislate comprehensive and concrete measures specified in the Appendix attached to this report, for the prevention of damages caused by pornographic videos, and the protection of victims by offering them their rightful remedies and punishing responsible perpetrators.

(4) Consultations and Awareness Raising Measures at consumer centers

To organize a consultation system addressing problems arising from the pornographic film

industry at local consumer centers and to promote dissemination of information regarding such consultation systems, as well as to provide support for such systems and help capacity-building at the centers so that victims could resolve any dispute and receive remedies promptly.

- (5) To alert consumers in accordance with Article 38 of the Act in the event the Agency finds an enterprise has engaged in unfair dealings in inducement of contracts or hindering the termination of the contracts regarding appearance in the pornographic videos.

4. To National Consumer Affairs Center and Consumer Affairs Centers

National Consumer Affairs Center should inform consumers about the damages caused by the production of pornographic videos, and also raise awareness about such damages among consumers.

Consumer Affairs Centers should organize a consultation system for the pornographic videos problem and disseminate information about such consultation system so that the victims could promptly and easily resolve any dispute and receive remedies.

National Consumer Affairs Center and Consumer Affairs Centers should effectively cooperate with NGOs who have expertise in this matter in order to prevent secondary injury and build consultation systems suitable to address the damages.

5. To Ministry of Health, Labor and Welfare

Appearance in pornographic videos falls under “work which is harmful to public health or morals” under the Employment Security Act and Worker Dispatching Act. If the victims who were forced to appear in the pornographic videos are employees of the production company, it is a violation of the Employment Security and Worker Dispatching Act for the production company to recruit and dispatch pornographic actresses and dispatch employees without a license. Also, the production company as an employer of the actresses has an obligation to prevent occupational accidents.

However, in reality, the productions circumvent the laws such as Labor Standards Act, Employment Security Act and Worker Dispatching Act by signing an agreement with the actresses as model management agreement or service agreement (instead of an employment agreement). As a result, production companies recruit and dispatch the women for the purpose of forcing them to appear in pornographic videos. In these cases, their mental and physical safety is completely ignored, resulting in serious human rights violations.

As discussed in Section VII above in detail, as the actress shall be assumed to be an employee of the production under the circumstances listed below, the Ministry of Health, Labor and Welfare should take active measures including the following:

- (1) To issue notices to clarify that in the event where any of the following circumstances exists, it is a violation of the law to recruit and dispatch women to the maker for the purpose of assisting their appearances in pornographic videos, and that the production as an employer of the women is accompanied by an obligation to protect their occupational safety and health, prevent occupational accidents and consider their safety.³⁹

³⁹ In September 4, 2006, the Ministry of Health, Labor and Welfare issued the notice to wipe out disguised subcontracting which was widespread after amendment of Worker Dispatching Act in 2003 because the Ministry saw

- The actress virtually does not have freedom to accept/reject requests of work.
- The production company instructs and directs the actress's work and the content, place and time of her work are determined by the production company.
- The compensation for her work is determined by the production company.

(2) In addition to the issuance of the aforementioned notice, the Ministry should take measures to raise awareness of the notice to the public and relevant enterprises

In particular, it must thoroughly notify the related enterprises that the recruitment of pornographic actress and the dispatch of actresses to the makers violate the Employment Security Act and the Worker Dispatching Act, respectively.

(3) Through the Labor Bureau and the Labour Standards Inspection Office, the Ministry should supervise the working conditions, occupational health and safety of workers, and prevent occupational accidents in accordance with Labor Standards Act and other relevant laws such as Industrial Safety and Health Act .

6. To Police and Prosecutors

(1) The investigative authorities should actively investigate and prosecute cases of injuries and incidences of rape as a result of coercing women to appear in pornographic videos against their will and/or filming pornographic scenes that are socially unacceptable.

(2) Investigative authorities should investigate and prosecute those responsible in cases of human trafficking in accordance with the Criminal Code.

(3) As discussed above, if the pornographic actress is assumed to be an employee of the production company, recruitment and dispatch of actress without a license are subject to criminal penalty (Item 2, Article 63 of the Employment Security Act, Articles 58 and Item 2, Article 59 of Worker Dispatching Act). Regardless of the form of the contracts, if the actress is assumed to be an employee of the production company based on the actual facts, police and prosecutors should actively investigate and prosecute those responsible for violations of the Employment Security Act and Worker Dispatching Act.

7. To Members of the Diet

(1) Enactment of comprehensive legislation

To enact comprehensive legislations for the prevention of damages caused by appearing in pornographic videos, protection of victims, provision of remedies and punishment for perpetrators, and include, in the legislation, the contents laid out in the Appendix and specify regulatory authority.

that disguised subcontracting violates Employment Security Act and Worker Dispatching Act and that the problems of safety and health of employee and working condition had emerged. Coercing women to appear in the pornographic videos is serious circumvention of Labor Laws comparable to disguised subcontracting and thus the Ministry should take remedial measures by issuing a notice (similar to the case of disguised subcontracting).

Also to consider regulations on the distribution and dissemination of contents which include acts that may be harmful to life and/or body.

(2) Immediate Legislative Measures

Before enactment of the comprehensive legislations recommended above, to promptly amend the Act on Specified Commercial Transactions and Consumer Safety Act to open up the possibility of providing remedies for damages caused by the production process of pornographic videos.

8. To Related Enterprises

(1) To immediately stop coercing women to appear in the pornographic videos against their will and stop other human rights violations incurred by the filming of pornographic videos that adversely affects a woman's mental and physical safety and health.

(2) To establish policies on human rights, to conduct checks on standards of due diligence and supervise the supply chain in order to avoid human rights violation and to undertake drastic reform to eradicate human rights violations.

End

Proposed regulations to eradicate pornographic video damage

1. General Principal

Coercing women to appear in pornographic videos is violence against women and a human rights violation. The Government has the responsibility to eradicate such practice and prevent, protect and relieve the victims.

2. The Government shall impose criminal penalties on a person who induces another person by inappropriate means of inducement such as coercion, deception and bafflement, and whom has the person appear in a pornographic video by the use of coercion, deception, bafflement, and/or threat of a penalty.

The Government shall establish the basic policy including the following points to prevent pornographic videos damage:

- (1) To ensure the application of the Employment Security Act including penal provisions to a person who has carried out or engaged in labor recruitment or labor supply with an intention of having actresses (employees) appear in pornographic videos in the case that actresses fall under “employees” in light of actual conditions of contracts regardless of the name of the contracts⁴⁰;
- (2) To ensure the application of Worker Dispatching Act including penal provisions to a production company that has dispatched the actresses to a maker with the intention of having the actresses appear in a pornographic video if the actresses fall under the “employees” in light of actual conditions of contracts regardless of the name of the contracts⁴¹;
- (3) Improvement of a consultation system; and
- (4) Dissemination and awareness raising

3. Regulations for inducement

Inducement to appear in the pornographic videos by coercion, deception and bafflement, including the following acts shall be prohibited:

- (1) To solicit a person to appear in a pornographic video by misrepresentation of the content of the contract, such as telling the person that the contract entails the signing party to become a “model” “talent” or “idol”⁴²;
- (2) To solicit a person to appear in the pornographic videos by misrepresentation as to the amount of remuneration, time and methods of payment, rights of termination and other terms of the contract;⁴³
- (3) To solicit a person to appear in the pornographic videos by misrepresentation as to the important matter of the contracts regarding the appearance of such videos which affect the

⁴⁰ Item 2, Article 63 of Employment Security Act

⁴¹ Article 58 of Work Dispatch Act

⁴² Paragraphs 1, 2 and 4 of Article 4 of Consumer Contract Act

⁴³ Paragraphs 1 and 4 of Article 4 of Consumer Contract Act, Article 4 of Act on Specified Commercial Transactions

person's decision to accept such contracts⁴⁴;

(4) To solicit the conclusion of a contract with a person that involves authorizing their appearance in pornographic videos other than in a place into and out of which the general public has access to such videos, without informing the person that the purpose for doing so is to solicit the person to appear in pornographic videos⁴⁵;

(5) To solicit unspecified people to appear in the pornographic videos in a public place;

(6) To solicit the conclusion of a contract from a person who has manifested his or her intention not to conclude such a contract⁴⁶;

(7) To solicit the conclusion of a contract regarding appearance in pornographic videos by preventing person from leaving a place where the enterprise is soliciting the person to enter into such contract in defiance of the person's request to leave⁴⁷;

(8) To solicit the person by intentionally not disclosing the following information:

- Appearance in pornographic videos requires the person to have actual sexual intercourse in filming and the image of naked person and sexual intercourse will be distributed and sold; and
- Appearance in pornographic videos falls under “work which is harmful to public health or morals” under Employment Security Act and Worker Dispatching Act and it is lawful only if the production does not have the right to instruct and order the person to appear in pornographic videos.

(9) To advertise solicitation without disclosing the points specified in (8) above.

4. Regulations for Content of Contracts

(1) Upon the conclusion of a contract, the following points shall be explained to a person:

- Appearance in pornographic videos requires the person to have actual sexual intercourse in filming and the image of naked person and sexual intercourse would be distributed and sold;
- Appearance in pornographic videos falls under “work which is harmful to public health and morals” under Employment Security Act and Worker Dispatching Act and it is lawful only if the production does not have the right to instruct and order the person to appear in pornographic videos;
- Consent to appear in pornographic video shall not be comprehensive but be made at each video on a voluntarily basis and based on a prior informed consent; and
- Contract regarding appearance in pornographic videos may be any time terminated and retracted by the person.

(2) Upon the conclusion of a contract regarding appearance in pornographic videos, a document containing following information shall be delivered to the person involved⁴⁸:

⁴⁴ Item 7, Paragraph 1 of Article 6 of Act on Specified Commercial Transactions

⁴⁵ Paragraph 4, Article 6 of Act on Specified Commercial Transactions

⁴⁶ Paragraph 2, Articles 3-2 and Article 17 of Act on Specified Commercial Transactions

⁴⁷ Paragraph 3, Article 4 of Consumer Contract Act

⁴⁸ Article 5 of Act on Specified Commercial Transactions, Article 4 of Regulations for Enforcement of the Act on Specified Commercial Transactions

- Area, period and media of distribution
- Amount of compensation, time and method of payment and an upper limit for the number of times the person will appear in the videos
- Content of sexual intercourse and similar acts which the women may perform or refuse to perform.
- Total hours spent for the work (e.g. filming of the videos)
- Consent or refusal to secondary use and remuneration for secondary use
- Official name, representative, address and telephone number of production companies and makers
- Name of the person in charge of conclusion of the contract regarding appearance of pornographic videos

(3) Production companies and makers shall be prohibited from the following practices:

- To stipulate the penalty in the contracts
- To coerce persons to appear in the pornographic videos against their will

(4) A copy of contract or a letter of consent shall be delivered to the signees.

5. Regulations for Safety and Health

(1) Employers shall ensure the safety and health of the actresses, prevent injury and accidents in the filming of the pornographic videos as well as protect the actresses from pregnancy, sexually transmitted infection, injury and mental distress.

(2) Employer shall prevent any accidents and damages that may be caused by filming.

(3) Actions, which may affect mental, physical safety and health, shall be basically prohibited in the filming of pornographic videos. If there is any scene that may affect mental and physical safety and health in filming of the video, necessary measures shall be taken to prevent such effect to actresses and prior written consent that specifies the content of performance shall be obtained from the actresses.

(4) Production companies and makers shall compensate the actresses for damages caused by the breach of their obligations of considering safety.

(5) Production companies and makers shall subscribe to insurance that assures compensation.

(6) Sales and distribution of pornographic videos that contain acts that put women's life and body at risk, shall be prohibited and its violation shall be subject to punishment.⁴⁹

6. Suspension of Sales

(1) If women are coerced to appear in the pornographic videos, they may suspend the release and sales of such videos.

(2) Where a production has violated any of the provisions set forth in Paragraph 3 of the

⁴⁹ Prohibited acts shall be clarified by references to relevant laws including legislations implemented in the U.K.

Appendix, the women may suspend the release and sale of the pornographic videos.

(3) Where a production has violated any of the provisions set forth in Paragraph 4 of the Appendix, the women may suspend the release and sale of the pornographic videos.

(4) If a minor appeared in the pornographic videos and the parents of the minor retract the contract regarding such videos, the minor may suspend release and sale of the pornographic videos.

7. Regulatory Authority

Regulatory Authority to supervise business of pornographic videos shall be established.

8. Instruction

Competent Ministers may instruct production companies to take any necessary measures in the following cases:

- When a production company has violated any of the provisions set forth in Paragraph 3 or 5 of the Appendix, or;
- When a production company has failed to disclose facts with the intention of preventing the termination of the contracts relating to appearing in the pornographic videos by harassing the women (who signed the contracts), and when the competent minister believes these conducts are likely to prejudice the interests of the induced women or the women appearing in the pornographic videos⁵⁰.

9. Suspension of Business

Where a production company has violated any of the provisions set forth in Paragraph 3 or 5 of the Appendix, the competent minister may order the production to suspend all or part of its business activities related to pornographic videos⁵¹ if the competent minister finds that the conduct is likely to significantly prejudice the interests of the induced women or the women who appeared in the pornographic videos, or if the production has failed to follow the instructions under the provisions set forth in Paragraph 8 of the Appendix.

10. Penal Provisions

(1) A person who has violated any of the following shall be subject to criminal punishment(s):

- A person who has violated any provision set forth in Paragraph 3 (1) or (3) shall be punished by imprisonment or a fine⁵².
- A person who has violated any provision set forth in Paragraph 3 (4) or (5) shall be punished with imprisonment or a fine⁵³.

⁵⁰ Article 7 of Act on Specified Commercial Transactions, Article 7 of Regulations for Enforcement of the Act on Specified Commercial Transactions

⁵¹ Article 8 of Act on Specified Commercial Transactions

⁵² Article 70 of Act on Specified Commercial Transactions, which stipulates imprisonment with work for not more than three years, a fine of not more than three million yen, or both.

⁵³ Article 70-3 of Act on Specified Commercial Transactions which stipulates imprisonment with work for not more than one year, a fine of not more than two million yen, or both

- A person who, in violation of the provisions set forth in Paragraph 4 (2), has failed to deliver a document or who has delivered a document that did not contain the information prescribed in said provisions or that contained false statements, and has violated provisions set forth in Paragraph 4 (3) shall be punished by imprisonment or a fine⁵⁴.

- A person who has violated the instructions under the provisions set forth in Paragraph 8 shall be punished by a fine⁵⁵.

- A person who has violated the order under the provisions set forth in Paragraph 9 shall be punished by imprisonment or a fine⁵⁶.

(2) A person who, in violation of the provision set forth in Paragraph 5(3), has assaulted or injured the women without prior written consent shall be punished in accordance with Criminal Code.

11. Consultation

The Consumer Affairs Centers should set up consultation desks for victims of sexual violence based on the needs of the victims.

12. Responsibility of the Government for protection of, counseling and rehabilitation to the pornographic videos victims

End

⁵⁴ Article 71 of Act on Specified Commercial Transactions which speculates imprisonment with work for not more than six months, a fine of not more than one million yen, or both, and Article 72 (1) of Act on Specified Commercial Transactions which speculates a fine of not more than one million yen

⁵⁵ Paragraph 1 (2), Article 7 of Act on Specified Commercial Transactions which speculates a fine of not more than one million yen

⁵⁶ Article 70-2 of Act on Specified Commercial Transactions which speculates imprisonment with work for not more than two years, a fine of not more than three million yen, or both

Note: Images used in this report are obtained from websites listed below.



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