



Human Rights Now

Report on Child Pornography in Japan

What needs to be done in order to protect children?

~ Where to draw the line? ~

7 February 2018



(This picture does not represent any of the mentioned parties in the following report)

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Human Rights Now is a Tokyo-based international human rights NGO.

Note: This report is the English translation of the original Japanese report available at: <http://hrn.or.jp/activity/8307/>. This report will be shared publicly. In light of international and domestic legal standards on children's rights, certain images and text excerpts are not included.

Executive Summary

Children are entitled to the same human rights and fundamental freedoms as all individuals. However, like other vulnerable groups, children have been afforded special status and protection in international human rights treaties. Violations of children's human rights are considered particularly grave. Child pornography violates these international norms on a number of accounts.

The United Nations Convention on the Rights of the Child¹ (CRC) is the most comprehensive treaty on children's rights. Article 34 of the Convention covers the protection of children from all forms of 'sexual exploitation and sexual abuse', including the exploitative use of children in pornographic performances and materials.² The Second Optional Protocol to the CRC on the sale of children, child prostitution and child pornography³ requires states to ensure that sexual exploitation of children is criminalized. Japan is a signatory to this optional protocol.⁴

In Japanese domestic law, the 'Act on Punishment of Activities relating to Child Prostitution and Child Pornography and the Protection of Children'⁵ was adopted on 18 May 1999, based on the international norms enshrined in Article 34 of the CRC. The law has been revised in 2004 and 2014. The 2004 revision sought to incorporate the Optional Protocol to the CRC and the Council of Europe's Convention on Cybercrime. The 2014 revision marked 10 years since the last revision and focused on the rise of the Internet, which has led to a strong increase in the number of victims of child pornography.

Japan's revised law on child pornography defines the term 'child pornography' under three items in Article 2(3). Items (i) and (ii) define punishable products as any image involving sexual intercourse or touching of sexual organs which stimulates sexual desire, respectively. While Items (i) and (ii) are straightforward in intent, Item (iii) has provoked disputes. Item (iii) defines child pornography as "any image of a child wholly or partially naked, in which sexual body parts of the child (genital organs or the parts around them, buttocks or chest) are exhibited or emphasized and arouses or stimulates sexual desire"⁶ The core intent of Item (iii) is to ensure that even a product not involving sexual contact (or virtual sexual contact) could still be punishable as child pornography.

From May 2015 Human Rights Now ("HRN"), a Tokyo-based international human rights NGO, investigated whether the Child Prostitution and Child Pornography Act effectively regulated and criminalized child pornography. The implementation of the Act is restricted to cases where photographic

¹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

² Article 34, UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>

³ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, available at: <http://www.refworld.org/docid/47fd9b180.html>

⁴ Japan signed the Optional Protocol to the CRC on 10 May 2002 and ratified the Optional Protocol on 24 Jan 2005.

⁵ "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children", Act No. 52, 26 May 1999, , translation available at: <http://www.cas.go.jp/jp/seisaku/hourei/data/APARCP.pdf>.

⁶ "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children", Act No. 52, 26 May 1999, , translation available at: <http://www.cas.go.jp/jp/seisaku/hourei/data/APARCP.pdf>.

or video material of children is involved. Therefore, the Act does not cover (*manga*) drawings of minors. The scope of this report is thus limited to materials in which human actors are involved. Based on this one-year investigation, HRN publishes this report in both English and Japanese.

Based on this one-year investigation covering both online material and visits to physical retail stores in Tokyo's Akihabara district, HRN can confirm that material suspected of being child pornography is widely sold in Japan. This includes:

- Many DVDs openly advertised as if they contained child pornography;
- DVDs containing pornographic material which advertise their performers to be younger than eighteen;
- DVDs containing pornographic material where the physical appearance of performers seems to suggest that they are younger than eighteen.

These DVDs are widely circulated as commercial products, and they are openly displayed and sold in retail stores, as well as available through online channels.

Even though the investigation was limited in scope, it clearly revealed that material suspected of containing or advertising as if they were containing child pornography were widely available. Several factors contribute to this situation:

- 1) Police do not regulate child pornography when it cannot easily be determined that minors are involved due to the unknown age of performers (e.g., when the ages of performers are not printed on the cover of the material);
- 2) Monitoring systems for reviewing material, distribution, and sales which are meant to detect underage performers do not function properly;
- 3) A substantial monitoring system for pornographic material falling under Art. 2.3(iii) is lacking.

According to the Metropolitan police, the following issues prevent effective regulation:

- Victims rarely report to the police. This makes it more difficult to identify victims and perpetrators of child pornography and to find and verify the ages of performers;
- Priority is given to regulating instances under 2.3 (i) and 2.3 (ii). The regulation of serious child pornography has a first priority, so the regulation of material falling under Art. 2.3(iii), which is broadly sold commercially, is not thorough;
- The available human resources of police are insufficient to police child pornography. The majority of human resources focuses on online screening;
- Police have a bias in assuming that products openly and publically sold in shops or through the Internet cannot, for that reason, be child pornography under the Child Prostitution and Child Pornography Prohibition Act.

However, the videos that the HRN investigation team found in the shops were suspected to include all categories mentioned under Article 2(3) of the Child Prostitution and Child Pornography Act. In addition,

many products that did not pass the review process of review associations were still on sale in major adult video stores and websites, such as DMM.

Especially problematic are videos or images branded *chakuero* (“clothed ero”, i.e., images where the performer is wearing clothes). These videos do not include explicit sexual contact or sexual intercourse and are therefore regarded as non-adult products. Because of this, many *chakuero* manufacturers do not belong to the Specified Nonprofit Corporation Intellectual Property Promotion Association (IPPA) and are therefore exempt from review. In addition, even if some products pass the screening of a review association, they may promote their performers as elementary school students and are hence strongly suspected to be child pornography, despite having passed the review. Since *chakuero* is widely sold in Japanese stores, there seems to be a lack of clarity as to its legal position.

According to an interview with one of the review associations, the review process was upgraded in 2015, and products that allude to containing child pornography no longer pass the review. However, the improved review standard has not been made public, and HRN could not confirm whether the process has indeed improved. In addition, products that have already passed the pre-2015 review have not been recalled and continue to be sold widely. Furthermore, the review associations are biased towards manufacturers, and they do not have a mechanism to confirm the age of performers when they suspect child pornography. Therefore, the review system proves to be insufficient.

In retail stores, products that have not passed a review are widely sold. A system to confirm performers’ name and age by official documents when the store suspects a product as child pornography has also not been introduced. From the fact that products that fall within the item 2.3(iii) category are publicly sold in stores, it seems that the stores do not fully understand the regulation of this category and believe that a genre such as *chakuero* is allowed by law.

As a result, the following types of products are frequently encountered on the Japanese market:

- 1) Products that are suspected to be child pornography without passing a review (including *chakuero*);
- 2) Products that have passed a review before the revision of the review process in 2015;
- 3) Products that have passed the new review but are suspected to be child pornography because the review associations failed to check the age of the performers.

In addition, these products are sold online. Online shopping websites widely offer material suspected of containing child pornography. However, the Internet Contents Safety Association (ICSA) has started blocking child pornography. Internet providers and rental servers of adult video websites prohibit illegal contents according to the governing law. In addition, search engines like Google take steps to prevent child pornography from appearing in their search results. Unfortunately, in spite of these efforts, material suspected of being child pornography is widely available online and easily found through search engines.

The following factors contribute to this situation:

- 1) Relevant manufacturers do not have monitoring systems for the age of performers;

- 2) Materials falling under Article 2.3(iii), such as *chakuero* and image videos, are generally not fully recognized as prohibited.

Based on these facts, HRN has attempted to improve the current situation by raising awareness and meeting with relevant institutions and manufacturers. Following these actions, the following changes have occurred:

- The Metropolitan Police Department (MPD) detected an unscreened *chakuero* case in June 2016 and subsequently issued warnings to review association and stores in July 2016;
- The Intellectual Property Promotion Association (IPPA), an adult-video industry group, requested dealers who handle adult videos to ban unscreened products.
- Sell Media Network Association, another adult video retail stores association, has banned unscreened products following the MPD's warning and has declared that it will prevent recurrences.
- Following HRN's suggestion, the review associations have started to consider tightening their review standards for child pornography. Furthermore they are considering discarding products.

HRN welcomes these positive steps made by relevant institutions and manufacturers and hopes these efforts will be continued. HRN will continue to work together with these partners to eradicate child pornography in Japan.

Unfortunately, the scope of this report does not extend to situations where children become involved in sexual exploitation through child pornography. However, there seem to be professional services which connect children, especially young girls, to *chakuero* manufacturers. Productions that include children under the age of 18 do not comply with the Child Prostitution and Child Pornography Prohibition Act, as well as the Child Welfare Act and the Labor law (under Article 56, which addresses the employment of minors and criminalizes sexual exploitation of children). Effective monitoring systems to protect children's rights are essential, and the implementation of current legal standards should be improved.

To improve the current situation and eradicate child pornography in Japan, HRN developed research-based recommendations to relevant sectors of the Japanese government, MPD, and relevant manufacturers. HRN also suggested future legal revisions in light of the changing international standards and foreign practice regarding child pornography. Next to this, eradicating child pornography requires a societal change. A large part of this should be communicating accurate knowledge about the Child Pornography Act, since many Japanese believe *chakuero* (and other materials falling under Article 2.3(iii)) is not considered child pornography. HRN strongly demands a zero-tolerance policy to be enacted and asks the relevant institutions to communicate clear guidelines on which materials amount to child pornography.

Recommendations:

1. To the Government of Japan (the Cabinet Office and relevant cabinet ministers):

- Investigate (a) the reality of production, sales, circulation, and delivery of child pornography, (b) the background of children who get involved in child pornography, and (c) relevant industries and harmful practices, and take necessary steps to prevent such production, circulation, and harm.
- Consider effective supervision methods and legal regulations so that the production agencies that employ children under the age of eighteen actively work to protect children and employees.
- Actively communicate that pornographic material falling under Article 2.3(iii) amounts to child pornography and make its eradication an important mission to all government ministries, municipalities, public institutions, relevant industries and the community at large

2. To the Metropolitan Police Department:

- Designate the elimination of child pornography as a priority; allocate necessary financial resources and manpower to it; and establish a zero-tolerance policy for child pornography.
- Confirm the age of performers through supply chains and actively follow up on cases where the age of the performers is not confirmed.
- Inform all police stations that pornographic material falling under article 2.3(iii) amounts to child pornography. Furthermore, members of the police force should see this issue as a priority and routinely conduct searches and follow up activities at retail stores in their neighborhoods.
- Strengthen its search capability, develop and educate human resources, ensure necessary manpower at each police station, and strengthen existing regulations.

3. To government institutions and lawmakers, consider the following proposals:

- Obligate all parties who manufacture, edit, circulate, screen, sell, or deliver pornography to hold records to confirm the age of all performers and prosecute parties who fail to comply.
- Obligate providers to inform the police of pornographic material featuring children if they encounter any.

4. To Industry Stakeholders:

- Adopt a zero-tolerance policy for child pornography despite the public opinion of genres like *chakuero*.
- Adopt a zero-tolerance policy for the production, circulation, sale, delivery, and rental service of pornographic material featuring children, including but not limited to material falling under Art. 2.3(iii).
- Check performers' name, identity and age by official documents (ID) in all stages of the production process, including but not limited to production, review, circulation, delivery, sale, and rental of the material.
- Announce a uniform and tightened review standard applicable to all products in line with current and applicable legal standards.
- Confirm performers' age in the review phase by using official documents.

- Strictly prohibit child pornography including but not limited to pornographic materials falling under Art. 2.3(iii).
- Introduce self-regulation measures for products which allude to being child pornography.
- Collect and discard products which fail to pass the new standards in reviews.
- No longer sell, circulate, sell online, or deliver products that fail to pass a review.
- Establish and carry out guidelines which prohibit retail and online stores which feature child pornography or products suspected as child pornography from handling such products.

5. To review associations:

- Do not pass any pornography featuring a performer under the age of eighteen, regardless of whether it is *chakuero*, and inform the public of this practice.
- Establish clear and unified review standards and processes as review associations to eliminate child pornography, achieve accountability by publishing them to the society, and establish a system where all products should be reviewed.
- In order to comply with the Child Pornography Act, the standards and processes for review must include the following matters.
- Implement an age review in the review process and do not pass a product under the review unless the review association confirms that performers are 18 years old or older by IDs and age confirmation materials. Fail a product under review if there is no ID to prove a performer's age is over eighteen years of age.
- Do not pass any products which are suspected as falling under Art. 2.3(iii) under the review.
- Clarify the review standards for products which are suspected as child pornography and do not pass the following products under the review:
 - Any products where a child has sexual intercourse with an adult, or a child is sexually assaulted, sexually abused, or sexually harassed regardless of the age of the performer;
 - Any products that are suspected as child pornography, regardless of the age of the performer;
 - Any products advertising or stating that a performer is an elementary school student or junior high school student or is under the age of 18;
 - Any products advertised as "child pornography" or *chakuero*;
 - Any products suggestive of child pornography from the costumes or accessories in the video to personal belongings or the setting, etc.
- Re-screen all of the products previously passed under former review standards in order to ensure that products violating new standards are not distributed, sold, or delivered. Immediately stop selling, distributing, lending, or collecting and discard those products that do not pass the new review; and make sure everyone is informed of this practice.

6. To retailers, wholesalers, and rental shops:

- Confirm a policy not to sell, distribute, lend, or handle child pornography including material categorized under Art. 2.3(iii);
- Check in advance and keep copies of the public documents showing the name and age of the performers of all products in which a child under the age of 18 may perform.

- Do not sell at stores, do not lend, and do not distribute through wholesalers the products which have not been passed under strict review.

7. To Pornographic Websites:

- Adopt a strict policy on child pornography and actively check the ages of performers, including materials falling under Art. 2.3 (iii).
- Take all necessary steps to prevent users from watching child pornography, including but not limited to blocking and deletion of user accounts and streaming websites.

Chapter 1: Introduction

The production, sale, distribution, commercialization, and possession of child pornography are serious violations of children's rights. The rise of the Internet has led to a sharp increase in the production and spreading of pornographic material featuring children. In Japan, both online and offline child pornography is prevalent and products explicitly advertised or highly suspected of being child pornography are widely sold and circulated. However, both international and domestic legal standards criminalize the production, sale, and possession of child pornography in Japan.

As a response to the prevalence of child pornography and mounting international criticism, Japan passed the "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children" in 1999 in accordance with the United Nations Convention on the Rights of the Child (CRC). The original law was revised in 2014 and sought to extend the scope of the law to online child pornography. The Japanese government has strengthened its regulations against child pornography due to criticism from the international community, and the number of arrests and victims of child pornography reached a record-high in 2014. In spite of these efforts, there is a serious gap between legal regulations and reality on the ground, considering the prevalence of material suspected of being child pornography in retail stores in Japan, as well as in online environments.

Starting in May 2015, Human Rights Now (HRN), a Japan-based international human rights NGO, conducted a one-year research project on child pornography. HRN staff members reviewed both websites and retail stores in Tokyo's Akihabara district and scheduled interviews with institutions involved in the identification and prosecution of child pornography, such as the Metropolitan Police Department (MPD).

This report will outline the methodology used by the research team and introduce the applicable legal framework in Japan. Subsequently, the results of the field research and interviews with members of industry stakeholders will be introduced. The final part of the report will touch upon the international legal framework regarding child pornography and will suggest a number of recommendations to relevant stakeholders in order to effectively criminalize and eradicate child pornography in Japan.

Chapter 2: Research Methods

The one-year investigation by the HRN team started in May 2015. In order to adequately gather information on the prevalence of child pornography in Japan, the team employed a number of research methods.

The HRN team visited both retail stores in Tokyo and online stores where material suspected of being child pornography is sold. Both retail stores and online stores were visited several times during the research project. The team selected and investigated stores around Akihabara, Chiyoda-ku, Tokyo. It was difficult to contact victims of child pornography. Therefore, we limited the scope of this investigation to the distribution of suspected child pornography.

Secondly, the HRN team contacted relevant institutions and investigated their policies and actions. These institutions include the MPD, review associations, sales groups, and adult video (hereinafter “AV”) producers. Subsequently, the impacts of their increased efforts were analyzed. Due to the wide range of actors, HRN realizes that knowledge acquired through these interviews does not paint a comprehensive picture of the situation. However, it was decided to include the results of the interviews in this report in order to share information on the current situation of child pornography in Japanese society.

Thirdly, the HRN team interviewed an experienced pediatrician. We showed her material that did not specify the age of performers, and her expertise served to identify cases of suspected child pornography. Although the definition of child pornography sometimes includes pornographic material advertised as child pornography in which performers are nevertheless over the age of 18, the definition used in the Child Prostitution and Child Pornography Prohibition Act was employed.

1. The background of legal restrictions on child pornography in Japanese domestic law

Japan did not have any regulations on child pornography before passing the Child Prostitution and Child Pornography Prohibition Act in 1999. It is said that child pornography freely circulated before that time. (The situation was labelled by some as “child pornography heaven”.) Recently, emerging technologies such as smartphones, cameras, and computers have enabled users to record and save child pornography easily. This has led to a worldwide increase in the sale and distribution of Japanese child pornography.

A number of studies show that child pornography of Japanese origin is widely circulated. For example, according to a survey by University College Cork (Ireland) in 1997, most of the pornographic material featuring underage girls circulating online was from Japan. This accounts for 73% of the total content, followed by the USA (14%), and the UK (3%).⁷ During the first World Conference against the Commercial Sexual Exploitation of Children held in 1996, facts emerged that sex tourism by Japanese men in Southeast Asia is wide-spread and Japan had become an international source of child pornography. The international community voiced criticism on the lack of domestic Japanese legal regulation to address this situation at that point in time.

⁷ Taylor, M. (1998) "Paedophilia and the Internet", *Proceedings of the First COPINE Conference*. University College Cork.

This resulted in the adoption of the Child Prostitution and Child Pornography Prohibition Act in 1999.⁸ The bill of the Act was submitted to the House of Councilors in 1999 by seven cross-party lawmakers including Mr. Yoshimasa Hayashi, a member of the House of Councilors. It was passed by both the House of Representatives and the House of Councilors and issued on 26 May 1999. Ms. Mayumi Moriyama, a member of the House of Representatives, stated that it was decided to include only the minimum possible requirements on which it was easy to reach agreement for the sake of expediency in passing the Act. Because of this, the criminal provisions on reporting victims' names and possession of pornographic materials featuring children was only included in the Act when it was amended three years later.

Article 6 of a supplemental provision of the bill of the Act stated the following:

Regulations of child prostitution and child pornography and other systems to protect children from sexual exploitation and sexual abuse shall be reconsidered in light of the enforcement status of the Act and international movements regarding protection of children's rights after three years from the effective date of the Act. Based on the result of the reconsideration, necessary measures shall be taken.

To assess the harm inflicted by victims of child pornography, the first investigation was carried out in February and March 2016 toward all child welfare officers throughout Japan, titled "The research and case-study panel regarding methods taken to victims of child prostitution and child pornography at child guidance centers." The result of the investigation was published as a report.

2. Child Prostitution and the Child Pornography Prohibition Act

The Child Prostitution and Child Pornography Prohibition Act defines the term "Child Pornography" under three items in Article 2(3). Items (i) and (ii) define punishable products as any image involving sexual intercourse or touching of sexual organs which stimulates sexual desire, respectively. While Items (i) and (ii) are straightforward in intent, Item (iii) has provoked disputes. Item (iii) defines child pornography as "any image of a child wholly or partially naked, in which sexual body parts of the child (genital organs or the parts around them, buttocks, or chest) are exhibited or emphasized and arouses or stimulates sexual desire." Therefore the intention of Item (iii) is to ensure that even a product not involving sexual contact (or virtual sexual contact) could still be punishable as child pornography.

(1) The First Revision

However, after the Act took effect, child prostitution and child pornography cases still increased. A proposal for revision was therefore submitted on 1 June 2004, passed both Houses in the 159th session of the Diet, and was issued on 18 June 2004. International developments on legal standards regarding

⁸ "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children", Act No. 52, 26 May 1999, , translation available at: <http://www.cas.go.jp/jp/seisaku/hourei/data/APARCP.pdf>.

child pornography had also developed, most notably the United Nation's "Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography"⁹ and the Council of Europe's "Convention on Cybercrime".¹⁰ These advanced standards were included in the revision of the Act. Next to this, the statutory penalty was tightened to punish child prostitution and child pornography more strictly, and the range of punishment was broadened.

(2) The Second Revision

In 2014, the chairman of the Committee on Judicial Affairs submitted the proposal for revision of the Act in the 186th session of the Diet.¹¹ The revision was then issued on 25 June 2014. It was based on the consideration that ten years had passed since the first revision of the Act, and the number of children who became victims of child pornography had increased due to the rise of the Internet. In addition, continuous domestic debate and pressure from the international community to criminalize possession of child pornography played a role. Firstly, the 2014 revision prohibits people from possessing child pornography without good reason by the new Article 3(2), and the possession of child pornography for the purpose of satisfying one's sexual curiosity is also punishable by Article 7(1). Secondly, the 2014 revision added a provision to criminalize the production of child pornography by secret filming. Thirdly, the revision changed the definition of child pornography under Art. 2.3(iii) to "Any image of a child wholly or partially naked, in which sexual body parts of the child (genital organs or the parts around them, buttocks or chest) are exhibited or emphasized and arouses or stimulates sexual desire." Finally, the revision includes online actions by business operators regarding "assisted public display" of child pornography. In 2015, pursuant to the revised Act, an operator of digital applications was arrested for the first time for posting child pornography.

In 2014, regulation of illustrated depictions like comics, anime, and CG which depict children in a sexual manner was discussed but postponed. On this point, the international community considers Japan's efforts insufficient. A number of international institutions, such as UNICEF Japan, have published statements stressing that depictions of children's sexual exploitation should be included in the definition of child pornography.¹²

3. Other legal restrictions on child pornography in Japan

Next to the Child Prostitution and Child Pornography Prohibition Act, there are a number of other legal regulations that cover this issue.

⁹ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, available at: <http://www.refworld.org/docid/47fdb180.html>

¹⁰ Council of Europe, *Convention on Cybercrime*, 23 November 2001, available at: <http://www.refworld.org/docid/47fdb202.html>

¹¹ A translation of the revision is available at: <http://www.loc.gov/law/foreign-news/article/japan-possession-of-child-pornography-finally-punishable/>.

¹² OHCHR, 'UN Human Rights Expert urges Japan to step up Efforts to Combat Child Sexual Exploitation', 28 Oct. 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16669&>; Reuters, 'UNICEF says Japan failing to control Child Porn', 11 Mar. 2008, available at: <https://www.reuters.com/article/us-japan-pornography/unicef-says-japan-failing-to-control-child-porn-idUST20430220080311>

(1) Regulations for the production and sale of child pornography

Article 175 of the Penal Code prohibits the “distribution, display in public, or possession of an obscene document, drawing, or other object.”¹³ According to legal precedent, ‘indecenty’ is defined as what “unnecessarily excites or stimulates sexual desire, contravenes the normal sense of embarrassment commonly present in a normal ordinary person, and runs counter to a good moral concept pertaining to sexual matters.” In practice, judges seem to weigh the presence or absence of exposure of private parts heavily.

(2) Juvenile protection ordinances

In Japan, each municipality has its own juvenile protection ordinances. These ordinances often have individual regulations of child pornography. For example, the Osaka Prefecture Juvenile Protection Ordinance declared that the following actions are sexual abuse of juveniles:

- To make a juvenile whose age is under 13 hold a pose that emphasizes the pubic region and buttocks wearing swimwear or underwear.
- To make a juvenile whose age is between 13 and 18, without consent or by using duress, fraud, or confusion, hold a pose that emphasizes the pubic region and buttocks wearing swimwear or underwear.

The ordinance required business operators and parents or guardians not to produce or sell records of children’s sexual abuse and furthermore prohibited possession of such records. Regulations against violations of children’s human rights during the production process of child pornography are included.

(3) The Penal Code

Article 182 of the Penal Code covering Inducement to Promiscuous Intercourse, states “A person who, for the purpose of profit, induces a female without a promiscuous habit to engage in sexual intercourse, shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 300,000 yen.”

(4) The Child Welfare Act

The Child Welfare Act prohibits actions which “cause a child to commit an obscene act” and “keep a child under one’s control, with the intent of causing the child to commit an act making an impact that is mentally and physically harmful to the child.” A breach of these prohibitions is punishable by a punishment which includes a prison term.¹⁴

¹³ Penal Code, Act No.45 of 1907, translation available at: <http://www.cas.go.jp/jp/seisaku/hourei/data/PC.pdf>.

¹⁴ “Child Welfare Act”, Act No. 164, 12 Dec. 1947, translation available at: http://www.japaneselawtranslation.go.jp/law/detail_main?id=11&vm=2

(5) Act on the Prevention of Child Abuse

This act clarifies that to “engage in indecency against a child or cause a child to engage in indecency” is included in the definition of child abuse, and it prohibits such actions. The act does not specify a possible sentence.¹⁵

The Japanese government, especially the police force, has undertaken action on several levels: they have (1) conducted a series of steps including development of a “domestic action plan against children’s commercial sexual exploitation” in 2001; (2) enacted the Act on Regulation on Soliciting Children by Using Opposite Sex Introducing Service on Internet in 2003; (3) published a decision on the Comprehensive Measure to Eliminate Child Pornography in 2010; and (4) published Japan’s 2014 Action Plan to Combat Trafficking in Persons.

(6) Comprehensive Measures to Eliminate Child Pornography

In July 2010, the cabinet ministers responsible for anti-crime measures established the Comprehensive Measures to Eliminate Child Pornography to stop the persistent spread of child pornography in Japan. These measures were based on current legal standards and contain a number of steps that government agencies need to perform in cooperation with business operators and other relevant actors in society.

However, notwithstanding these efforts, the number of child pornography cases continued to increase. As a result, the Second Comprehensive Measures to Eliminate Child Pornography was established in May 2013. This measure strengthened regulations on circulation and online browsing of pornographic materials featuring children, including countermeasures against file sharing software. In addition, protections for victim assistance were strengthened, as were efforts to boost international cooperation.

Furthermore, the cabinet ministers responsible for anti-crime measures established the Third Comprehensive Measure to Eliminate Child Pornography in July 2016. According to these measures, the government should take a number of steps such as crackdowns, prevention of circulation and browsing, and assistance of child victims. The measures especially worked to strengthen crackdowns on younger child pornography fan groups, child pornography sales groups, and malicious child pornography cases including overseas crimes.¹⁶

(7) Efforts and policies of the National Police Agency and the Metropolitan Police Department

Both the National Police Agency and the Metropolitan Police Department have created websites to ask people to provide information on child pornography.

¹⁵ “Act on the Prevention, etc. of Child Abuse”, Act No. 82, 24 May 2000, translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=2221&vm=04&re=02>.

¹⁶ Based on these Comprehensive Measures, the Cabinet Office, the National Police Agency, the Ministry of Health, Labor and Welfare, the Ministry of Internal Affairs and Communications, the Ministry of Justice, the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Economy, Trade and Industry are carrying out steps to eliminate child pornography.

1) The National Police Agency

The National Police Agency created a special website¹⁷ which provides that child pornography is prohibited. Additionally, the website informs the public on developments regarding the First, Second, and Third Comprehensive Measures to Eliminate Child Pornography.

On 12 June 2015, the Child Pornography Eradication Working Team summarized their progress (from May 2014 to April 2015) as follows:

1. Strengthened a national movement to eliminate child pornography through the Council for the Promotion of Measures against Child Pornography. Furthermore, organized a public symposium “Consideration of child pornography cases: prevention in advance, prevention of expansion, and protection and support of children victims”. Lastly, organized information activities, such as the production and distribution of posters and leaflets.
2. Set up measures to prevent new victims of child pornography. These include educational activities like delinquency prevention classes, the Net Moral Caravan group, and Internet-safety classes.
3. Prevention of the circulation and browsing of pornographic images featuring children on the Internet. This includes strengthening the crackdown on malicious child pornography cases and promoting prompt deletion to website managers. In addition, public awareness activities were organized on specific blocking measures.
4. Support activities for vulnerable children at risk of becoming involved in child pornography.
5. Strengthening crackdowns on child pornography cases fueled by the actions of child pornography fan groups through an active application of the Child Prostitution and Child Pornography Prohibition Act.
6. Establishing systems of cooperation with other countries regarding the issue of child pornography and strengthening international cooperation.

2) The Metropolitan Police Department

On the Metropolitan Police Department’s website, the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children is published. The website explains that the following actions are under regulation: (1) production of and sharing child pornography, (2) public display of child pornography, (3) possession of child pornography for the purpose of sharing it with others, (4) possession of child pornography for the purpose of satisfying one's sexual curiosity, and (5) production of child pornography by secret filming.

To improve the situation, the Metropolitan Police Department established the “Stop Child Pornography! Information Hotline” which receives information on child pornography cases, such as knowledge about a person who produces, uploads, or sells pornographic materials featuring children. The hotline also

¹⁷ The website is available at https://www.npa.go.jp/safetylife/syonen/no_cp/.

provides counseling for victims through phone and emails on a confidential basis. In addition, the Metropolitan Police Department frequently publishes articles on child pornography in its regular newsletter ("*Koho Keishicho*").¹⁸

(8) Developments in the private sector

In the Japanese private sector, the prohibition on browsing child pornography on the Internet (blocking) is widely known. The Internet Contents Safety Association (ICSA), a group established in March 2011, took the initiative and 90 companies, including Google Inc., Yahoo Japan Corporation, and NTT Communications, have joined as of 1 April 2015.

The process of blocking malicious content is as follows: the ICSA receives information from police and the Internet Hotline Center (IHC), and it seeks to confirm whether the material amounts to child pornography. It does so by seeking the advice of experts, mostly doctors and lawyers. When child pornography is detected, an address list is provided to business operators. Subsequently, Internet Service Providers (ISP), search engine service operators, and filtering operators block the material.

From May 2014 to April 2015, the ICSA provided address lists to websites containing child pornography to 54 ISP companies, three search engine service operators, and three filtering operators.

¹⁸ *Koho Keishicho* are available at: http://www.keishicho.metro.tokyo.jp/about_mpd/joho/koho/koho.html.

Chapter 3: Human Rights Now Field Survey

As previously mentioned, even though regulations against child pornography are getting stricter every year, HRN's investigation confirms that material suspected of being child pornography and DVDs alluding to containing child pornographic content are widely sold and distributed in Japan.

1. Investigation of physical retail stores in May and August 2015

At the end of May 2015, the HRN investigation team conducted a field survey of child pornography in the Akihabara area in Tokyo. In August 2015, the team conducted a similar survey to compare samples.

Although the products mentioned below were strongly suspected of being child pornography, this should be determined in a criminal procedure. Therefore, the products encountered during the field mission are labeled as products suspected of containing child pornography. The results of these field missions are presented below.



A street corner where pornographic materials featuring children were displayed.

(1) Pornographic products featuring young girls

(a) "Thirteen elementary sch■l students – Show all special!!"¹⁹

The package of this product was clearly and blatantly indicating that some of the performers were elementary school children. Its package featured the following statements: "real elementary school students", "Super Lolita complex!" and "Child porno!!".

¹⁹ On the packaging, the term equivalent to "sch■l" is a Japanese character which has been partially covered so only the edges are showing. The edges identify the character unambiguously to viewers as the word for "school" as no other character will fit.

From the information and screen images on the packaging of the DVD, it appeared that a child-actor was involved in sexual intercourse. If the contents of the DVD are the same as depicted on its packaging, it would be categorized as Art. 2.3(i) under Japan’s revised pornography law.

In addition, the fact that the performer was advertised to be an elementary school student means that she would be under the age of thirteen. In this case, if the DVD would show what it advertises to show, this would amount to rape under Article 177 of the Penal Code. In case other obscene acts were conducted, this would fall into forcible indecency under Article 176 of the Penal Code.

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Although the team was not able to confirm the girl’s name and age, it was concluded that the product was highly suspected to be child pornography based on the information on the package, containing the following phrases: “real elementary school students,” “Super Lolita complex!” and “Child porno!!”. However, according to Lighthouse, an NGO focused on combating sex trafficking, the police often fail to follow up on leads relating to these materials since they face difficulties confirming the age of performers.

(b) “Sixth grade, Real Lolita video, Backside”

Although the girl’s name and age were not confirmed in this product, based on the information on its packaging, it was highly suspected to be child pornography that contained sexual intercourse with a sixth grade student like (a) above. The packaging of this product displayed the following slogans: “Real pleasure, real throbbing, and real elementary school students” and “Endangered Lolita video”. It was thus clearly and blatantly advertised as child pornography. Based on the performers’ body shape and the packaging display, the material was strongly suspected to be child pornography.

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(2) *Pornographic material containing images of sexual abuse*

The team confirmed that a series of titles were sold named “■■■■■■, a girl with bloomers” with “Lolita” written in clear language.

(c) Series “■■■■■■, a girl with bloomers”

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In this series, videos in which a girl wearing a school uniform was raped by several males or molested and abused like a slave were sold. Although the girls’ names and ages were not confirmed, the package advertises “A slave girl in uniform”. It was therefore suspected to be child pornography. Although the material might be staged, it seemed that the performers’ dignity had been seriously damaged as a result of the violations and duress made in the course of the production. Furthermore, it is incredibly worrisome that these videos may encourage abuse of women and girls in real life.

(d) “Gang Rape” (e) “A slave girl in uniform”

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(3) *Chakuero*

In addition to the above, *chakuero* or image videos of junior high or high school students were sold in large amounts. *Chakuero* implies material in which girls wear underwear or swimwear—it is distinguished from semi-nude or nude material because models wear a kind of clothing—but they pose obscenely and are filmed while emphasizing their private parts. Although adult women sometimes appear in *chakuero*, the products often identify their performers as JK or JC. (JK refers to a female high school student, and JC means a female junior high school student.) In the retail store survey HRN

conducted in May 2015, the team found many *chakuero* videos that clearly stated the performer's age and advertised itself with phrases like "Real JC".

The following items describe a number of examples of *chakuero*:

(f) The new image video of "■■■■"

In the pictures on this package, a child wearing underwear was filmed emphasizing her buttocks and bust. The pictures were meant to excite and stimulate sexual desire. If the product's performer is a real junior high school student as its package advertises, this is clearly child pornography. The pornographic video of the same girl was also available on the Internet, and its caption specified that the girl was under 18 during the recording process: "this product was filmed when ■■■■ was fourteen years old and on sale in ■■, 2015"

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DVDs suspected to be child pornography introduced in this report are part of the investigation results, and they are by no means exceptions to the general content of the material on offer in retail stores in Akihabara. HRN shared the information regarding (a) and (b) above that were especially suspected as child pornography with the Metropolitan Police Department in December 2015.

2. Investigation of retail stores in March 2016

After providing information to the Metropolitan Police Department, the HRN investigation team conducted a survey in Akihabara in March 2016 to confirm whether DVDs suspected as child pornography were still sold in the same stores. As a result, although the products that the team reported to the Metropolitan Police Department (mentioned as (a) and (b) in 1 above) were not found, the team found similar DVDs that were strongly suspected to be child pornography.

(1) Products that involve sexual intercourse with elementary school students

(g) "■■ who is 139 centimeters tall is an elementary sch■l student"

On the back of the package for this product, it said "■th grade class 3 No. 5 ■■," and that the contents involved a teacher's obscene act against an elementary school student.

Producer: I.B. Works limited.

The package also stated “adults only,” and an approval seal of the review association VSIC’s was included. On the back of the package, there was a description that performers under 18 did not appear in the product.

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(2) Chakuero products

(h) “Grade 1 Class 3 No.2 ■■■■” (the title is concealed for public sharing purposes)

Producer: Zeus

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There was no review association’s seal and no description that performers under 18 did not appear in the video on the package for this product.

(3) Videos containing sexual intercourse

(i) “Carrying off homebound elementary sch■l students and gang raping them”.

On the back of this product, there was the following shocking description: “a serious rape that devastates an immature child”.

Producer: MANIAC

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This product has nine chapters, and each chapter contains scenes where girls who acted as elementary school students or junior high school students were carried off and violently raped. There was no review association's seal and no description that performers under 18 did not appear in the video. The producer's name which appeared on the package was Maniac. Maniac is known as a label for Crystal Movies, an AV producer; however, the team failed to confirm Maniac as the producer. However, the same product is also sold on the DMM AV shopping website under the name "Mania 9".

(j) "Although it was job, I really hated it being filmed"

In the back of this package, there were descriptions such as "real sex scenes" and "A Loli is terrified by the intense situation", as well as pictures showing half-naked girls on the front and back of the product.

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There were two DVDs in this package, one titled "Although it was job, I really hated it being filmed", and the other was "Female high school student is gang jacked", which was described as "sixteen students and four hours, covered with sweat, tears, and semen. 240 minutes."

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The picture was deleted for public sharing purposes. The package included a statement that it passed JMRC review and “No.080805” written on it.

3. Investigation of physical retail stores in May 2016

On 27 May 2016, the HRN investigation team went to AV retail shops in Akihabara again and found many *chakuero* videos that were categorized as “Junior Idol”.

(k) Video displaying a Junior Idol



(l) Video of a girl in swimwear



Among them, the following two products emphasized the performers’ sexual organs, and the performers’ age was written.

(m) “Fourteen years old, ■■■ at night”

A beautiful real junior high school girl. (The title was omitted for public sharing purposes.)

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A half-naked girl's figure was on the cover of this product, and a picture displaying a half-naked or naked girl tightened with ropes was on its backside.

(n) "JC smile"

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The title of this product is "JC smile," and on its back is "Smash hit after debut!! The pure, beautiful JC2 girl is rapidly becoming popular". The full name of the performer was also found on the back of the product. JC2 refers to female junior high school students in second grade. A girl performer appeared in swimwear on the front and back of the cover, and the pictures focused on her buttocks and private parts covered by clothes. On the back, as part of the model's profile, her name was written, and her birth date was written as 2000. Thus, the packaging advertised her to be under eighteen years of age. Both of the above products had contents that could be classified as material falling under Art. 2.3(iii) of the Child Pornography Act. As mentioned above, *chakuero* products such as these were widely on offer in Akihabara's retail stores.

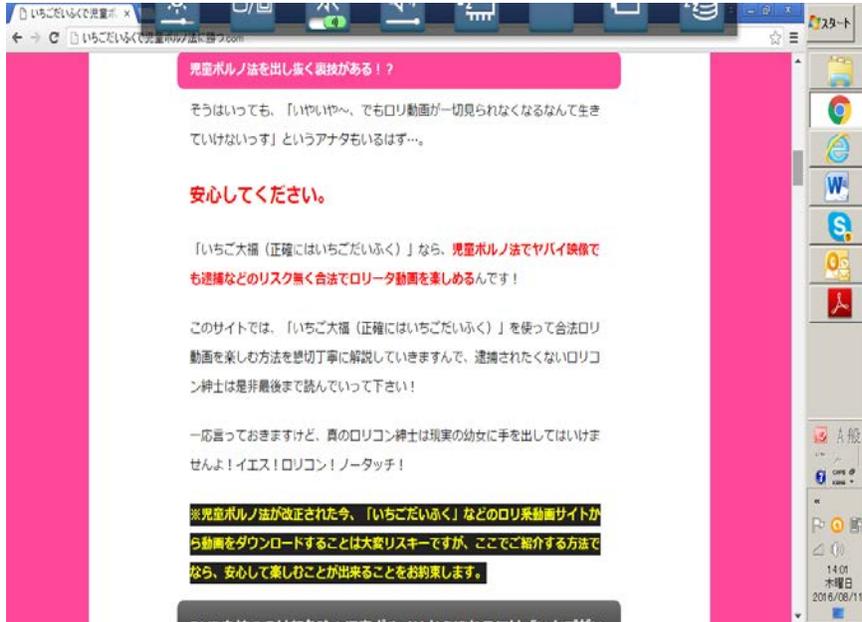
4. Investigation of Online Material

When one enters the search terms "Loli" or "girl" in an online search engine, a wide array of material is found. The HRN team strongly suspects that these search results include material by performers younger than eighteen. However, this could not be confirmed within the scope of this research. When one searches "■■■ IV" or "■■■■neru"²⁰ online, a large number of videos that film girls' private parts are found. In addition, if one browses the websites of *chakuero* producers, many similar videos can be found, even though these are easily categorized under Art. 2.3(iii).

²⁰ These titles are concealed for sharing purposes.

DMM, a major delivery company, is delivering the products (c), (e), (g), (h) and (i) above. This should be strongly condemned and followed-up by the MPD since these products are highly suspected to be child pornography based on the information on their covers.

In addition, on the Internet, some business operators argue that if viewers watch child pornography through streaming instead of downloading, this will not be punishable as a breach of the Child Prostitution Act. For example, the website named “■■■■” (the title was concealed for public sharing purposes) delivered 208 titles by itself under the category “Stimulating Junior Idols” (as of June 22, 2016). Many products suspected as child pornography were available on the website through streaming.



This screenshot of the website assures viewers they would not be arrested for violating the Child Pornography Act (dated August 11, 2016).



Examples are as follows:

(a) ■■■■

In this product, a girl who is easily recognized as an elementary school child wears swimwear and poses in a manner emphasizing her private parts and buttocks. (Tags like “*suji*”, “*ω*”, and “*kuikomi*” are linked to the product to make it easy to search.)²¹ It is obvious that the video exists to excite or stimulate sexual desires. It is highly likely this material would fall under Art. 2.3(iii).

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Contents: *suji*, *ω*, *kuikomi*, *kiwa kiwa*, opening legs, rodeo machine, taking a bath or shower, costume, competitive swimming wear, bikini, swimwear, leotard, t-back, knee-highs, knee socks.²¹

Release Date: May 17, 2015

“Attractive, slender bodied ■■■’s image ‘Mo■■■n’”. She shows her slender legs in cool denim shorts and changes to a strawberry bikini! In the scene where she lies on a bed in school swimwear, she boldly opens her legs many times! You should pay attention to innocent ■■■’s shower scene! In addition, ■■■ plays in a park with cat ears, changes into a bikini and plays with balloons, and dances in a room with lots of figurines. Your heart will beat faster when you see ■■■ with a full smile. Then, in the last scene she wears a thin leotard! There are many points you should not miss like *suji*, *kuikomi*, and *ω*!! This is a treasured work where you can find the new charms of ■■■.”

(b) A■i thirteen years old

In this product, a thirteen-year old girl wears revealing swimwear with straps and opens her legs to emphasize the shape of her private parts. In the introduction of the product, there is a description that the model’s age is 13, so it is likely that her age is under 18, and the video is strongly suspected to be Art.2.3(iii) material.

²¹ The following terms have the following meanings: *suji*: “stretched tendon”, a pose in which the “v-line” tendons of the groin are stretched out; “*ω*”: the shape of a girl’s genitalia through swimwear; *kuikomi*: “biting into”, clothing so tight it bites into the skin and exposes its contours; *pochi*: “small thing”, typically used for buttons, referring to nipples poking button-like through cloth; “rodeo machine”: the pose or motion of bucking back and forth like on a rodeo horse machine; *kiwa-kiwa*, “just on the edge” of showing private parts; “t-back”, string underwear bottom that forms a T-shape in the back; “sailor suit”: the school uniform for junior high and high school girls.

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Contents: *pochi, suji, ω, kuikomi*, transparent, *kiwa kiwa*, balance ball, taking a bath or shower, costume, bikini, high-cut, t-back, sailor suit, blazer, knee highs, knee socks, maid.²¹

“This sexy junior high school student who is popular in the junior world debuts in the under-15 label. This is “A■” of ■■■■. B84, W55, H86... Is this a junior high school student’s body!? Very resilient buttocks, flower-patterned swimwear, pink t-front bikini, red frill bikini, light blue super high-cut bikini, etc. Many bikinis beyond limitation are a must-see! In addition, she plays harmonica in sailor suit, picks fruit in a cute maid outfit, takes a shower in a white lace one-piece, plays in the pool in a pink bikini, etc. Her innocent facial expression is so cute! Furthermore, in chapter 2, in the scene where she lies down on a sofa in v-line swimwear, you will find treasure-happening shots!!”

These images are sample images that are available on a website which everyone can access without any special procedure like membership registration. Although the membership registration is required to watch the videos, once registered, it is presumed that more stimulating suspected child pornography will become available. On the other hand, the website named “■■■■” displays a message that its material is not child pornography, but it delivers images and videos of junior idols, and there were products among them where the performers were half-naked or had their sexual parts emphasized, and some products were strongly suspected to be child pornography.

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5. Reflections from a health professional

In order to make an accurate estimation of the age of some performers, HRN engaged an experienced pediatrician to identify the age of performers in several of the videos introduced in this report. The pediatrician assessed the material by noting the facial characteristics, muscle development, breast development and pubic hair of the performers.

(a) “Thirteen elementary sch■l students – Show all special!!”

It seems that the performers are in upper elementary school.

(b) "Sixth grade, Real Lolita video, Backside"

It is difficult to judge the age of the performers because the material is vague.

(f) "■■■■"

It seems that the performers are in upper elementary school or junior high school.

However, regarding the above products, when we showed the pictures on their packages, it was difficult for the doctor to fully analyze the pictures. Subsequently, HRN asked the doctors to check the products (g), (h), (i) and (j) above. The doctor's replies were as follows.

(g) "■■ who is 139 centimeters tall is an elementary sch■l student"

It is presumed that the performer is under 18. Although it is difficult to judge from her face and body development, she may be in upper elementary school.

(h) "Grade 1 Class 3 No.2 ■■■■"

It is presumed that the performer is an elementary school student or junior high school student because of her bony framework and breast development.

(i) "Carrying off homebound elementary sch■l students and gang raping them"

Although the product contains various chapters, a girl who seems to be in upper elementary school or junior high school and a girl who seems to be in junior high school were included among the performers.

(j) "Although it was job, I really hated it being filmed"

It is presumed that the performer is a junior high school student.

(j) In the same package was "Female high school student ■■■ is gang jacked"

It is presumed that the girl in the video is over 18.

6. Summary of the HRN Field Survey

As can be observed from the above, the investigation of physical retail stores and on the Internet discovered that DVDs and videos which are or are suspected as child pornography are openly sold and distributed. The following products investigated at retail stores are strongly suspected to be child pornography since they include the description "elementary sch■l students", show sexual intercourse of child-like performers, and the performers seem to be younger than 18 years old. Furthermore, since the performers conducted real sexual intercourse or pseudo-sexual intercourse, these products are considered very harmful examples of child pornography.

- "Thirteen elementary sch■l students – Show all special!!"
- "Sixth grade, Real Lolita video, Backside"

- “■■ who is 139 centimeters tall is an elementary sch■l student”
- “Carrying off homebound elementary sch■l students and gang raping them”

Each of the products above were openly sold at the retail stores under investigation. HRN failed to find evidence of a thorough police investigation regarding these products. The reason these products are openly sold is that there is no evidence to prove that the performers are younger than 18 years old. However, investigating authorities should give first priority to products advertised as child pornography or products which are sold by suggesting that their performers are younger than 18 years old. The sale and distribution of these products should be halted immediately through extensive monitoring and prosecution. Further, the products (f), (h), (m) and (n) are *chakuero* videos whose performers are strongly suspected to be minors. Product (f) advertises a “Real JC 15 years old”; product (m) advertises a 14-year-old JC, and product (n) indicates a birth date for a person under 18. By doing so, these products are advertising that the performers are minors.

Some of the products encountered during the retail stores investigations are also sold online by major dealers, such as DMM for products (c), (e), (g), (h) and (i). Further, as for the online products (a) and (b), while they seem to be videos classified under Art. 2.3(iii), they are widely available through streaming. These materials are strongly suspected to be child pornography.

Chapter 5: Industry Stakeholders

Based on the facts above, this chapter focuses on relevant stakeholders in the preparation, distribution, and promotion of child pornography.

1. Product Producers

Most of the producers who create the products casting performers under the age of 18 are not reviewed. Among the adult video producers, there are two types: (i) producers who belong to an NPO called the Intellectual Property Promotion Association (“IPPA”) who are reviewed by a review organization and (ii) independent producers who are not reviewed. IPPA is an industry organization for adult videos. While around 240 companies belong to IPPA, most of them are producers. Producers belonging to IPPA are reviewed by one of the following three review organizations by self-regulation.

- Japan Software Contents Review Center
- Visual Software Contents Industry Coop (VSIC)
- Ethics Organization of Japan Video Production and Sales (JVPS)

Videos of non-nude girls under the age of 18 are classified as “image videos” or *chakuero*. Most of the producers who create these videos do not belong to IPPA, and these kinds of videos are not considered to be products for adults because these do not show sexual intercourse or similar activities. Thus, unlike adult videos (“AV”), it is said that these producers are not reviewed by any review association at all. A video classified as AV whose performer is under the age of 18 could not pass a review association’s review. According to interviews of the review associations and producers, some of the products indicating that they are *chakuero* videos show some activities with men. Even in such cases, the products are not reviewed by a review association because they are not claimed to be for adults. However, not all of the producers who create products suspected as child pornography are non-reviewed producers. “Minimum”, an affiliate of the adult producer CA, creates a Loli product whose performer is less than 20 years old at first glance by advertising “a little girl who is shorter than 150cm.”

Further, according to interviews with industry participants, I.B. Works and First Star (whose review association is VSIC) are producers creating a number of child pornography products. Among the producers of the products which HRN identified through the retail stores and Internet investigations, MANIAC belongs to JVPS and Zeus belongs to IPPA. We could not identify which review association “Puberty.com” and “Forbidden Fruits / Hallucination Gang” belong to.

There are many *chakuero* producers, such as ‘*Shinkousha*’, and there are many video producers of them, such as ‘Idol School and Guild’. Most of the products are videos of idols with swimming suits, but some products are extreme. It seems that some *chakuero* producers recently considered joining IPPA. However, the possibility that their products would be considered child pornography and would not pass the review process acts as an obstacle, and therefore the process for their entry has stalled. From an inquiry to IPPA, it was found that among the 42 *chakuero* producers, eight producers were confirmed to

be AV producers or distribution sites for various AV producers; but whether other producers belong to IPPA or other review associations was not confirmed. Among the 27 producers, only one producer (which joined IPPA in August, 2016) belongs to IPPA.

2. Review Associations

As mentioned above, there are three review associations for AV products: Japan Software Contents Review Center, Visual Software Contents Industry Coop (VSIC), and Japan Video Production and Sales (JVPS). Any producer belonging to the Intellectual Property Promotion Association (IPPA) must be reviewed by one of the three associations. According to VSIC, the following is the history of the integration of review associations. In 2012, the five main review associations—VSIC, Contents Soft cooperative Association (CSA), JVPS, East Japan Contents Soft (EJCS), and All Japan Video *Shinsa* [Ethics Review Association] (AJVS)—established IPPA, allowing the AV industry to jointly handle the issue of video copying.

With respect to the history of the integration of review associations, the member producers of Nihon Ethics of Video Association (NEVA) established the Ethics Review Organization of Japanese Video (EROJV) in 2008. In 2010, the Ethics Organization of Video (EOV) was established as a result of a merger between two review bodies, CSA (“Media Ethics”) and EROJV. In January 2016, Japan Software Contents Review Center was established as a result of the integration of Media Ethics, EJCS, and AJVS. At the present time, the main self-regulated review associations for adult video are Japan Software Contents Review Center, VSICS (its investigation unit is registered as Ethics Association of Japanese Contents), and JVPS.

3. Store Owners

Full details about the retail stores selling AV and image videos are unknown. Under Article 2(6) Item 5 of the Law Regulating Adult Entertainment Businesses “a business selling or lending exclusively pictures, videos, or other things set forth in cabinet ordinances which arouse the sexual curiosity at its shops” needs to obtain a license as an adult entertainment business.” “Exclusively” above is interpreted as 70 to 80 percent. So if 20 to 30 percent or more of the total goods being sold are something other than adult goods, a license is not required. Most shops have over 20 to 30 percent of non-adult goods, and in that case, there is no supervision by regulators.

Companies selling and/or lending DVDs, such as Culture Convenience Club Co., Ltd., Yodobashi Camera (Yodobashi.com) and Don Quijote Co., Ltd., have not clearly indicated their policy for dealing with adult products, especially child pornography, on their website. As for online stores, platforms and servers where customers themselves sell their own products, discussed in detail below, companies prohibit the sale of child pornography under their terms of services. Although Sell Media Network Association (established in 1999) is the industry association for AV shops, it does not include all AV shops. It is assumed that there are around 1,000 AV shops in Japan. There are 143 shop members of such associations. So the ratio of AV shop members to the total number of AV shops is less than 15 percent,

assuming that the total number of the AV shops is 1,000. Lammtarra, a major AV shop where a retail store investigation was conducted belongs to the Sell Media Network Association.

4. Delivery, Rental Service and Wholesale Stores

(1) Delivery and rental service

The largest AV site for mail-order and delivery is DMM. DMM's ethics standards for its video are equivalent to the standards of NEVA, VSIC, CSA, AJVS, and JVPS, with the products of other ethics association and self-regulating producers following in-house standards. As for DMM's Adult Auction, it is stated that only women who are older than 18 years old, who are not high school students, and who have submitted IDs with photos are featured in their products. There is, however, no similar statement for videos.

Amazon is another example of an online shopping company. Aichi Police raided Amazon in January 2015 after finding child pornography products on their website online, and the responsible persons were prosecuted in March. Amazon's sales policy states "the registration of products which include images of children under the age of 18 that provide sexual stimulus or are provocative is prohibited". However, while it states that products violating this policy will be deleted, as the above child pornography products were published, it was judged that Amazon Japan's measures were insufficient. After the above incident, Amazon Japan has made efforts to reinforce its preventative measures in response to the prefectural police's request.

The largest rental video shop is TSUTAYA. The industry association for their rental videos is the Compact Disc & Video Rental Commerce Trade Association of Japan. Any policy regarding child pornography could not be identified on their website.

(2) Wholesale Stores

According to the information provided from Sell Media Network Association and others, the wholesale retailers for AV stores are: Yokohama Scramble Company, ML Works, Tokyo Sell Video Sales, CS, Sanwa Soft, Tees, Eiten, Jeid Airfoward, and VOC.

While we also checked the websites of the retailers above, other than CS and Tees which do not have websites, their policies regarding child pornography were not stated. In addition, there are many cases where a major producer has an affiliated company for distribution. For CA, TIS conducts distribution. As for the products SOD creates, Soft On Demand conducts distribution. AV stores, however, have and sell products which do not pass through wholesale retailers.

(3) Online sales and Applications

With respect to the dissemination of child pornography online, the main issues are how providers and search engines block child pornography content, and how servers, which often handle adult content, deal with child pornography. Furthermore, with the recent growing popularity of smart phones, the role of app stores has become more important.

Chapter 6: The Efforts of Relevant Institutions

Based on the considerations above, HRN researched the efforts of relevant institutions regarding the removal of child pornography. As a result, we identified the following reasons which explain the general lack in their effectiveness.

1. Systemic flaws leading to ineffective control over child pornography in Japan

The following three points are the main structural reasons for a system resulting in ineffective control over child pornography.

1. If the age of a performer is unclear and it cannot be determined whether he or she is a “child” or not, the police do not investigate.
2. The screening system at the review, distribution, and sales stages is inadequate.
3. The content check system for material categorized under Art. 2.3(iii) is inadequate.

With respect to this matter, the following facts were confirmed in our research.

- a. Most of the producers who create video content of performers under the age of 18 are not included within the structure of reviews by review associations which are part of IPPA.
- b. Even when review associations conduct reviews, they avoid checking the age of performers because of previously established trust relationships with producers.
- c. Also, an adequate review system has not been confirmed for wholesale retailers.
- d. The retail stores do not check the age of the performers when they receive videos because of the trust relationship between producers and store owners.
- e. The police do not thoroughly investigate due to the difficulty of proving that a particular product is indeed child pornography “because the age of the performer is unknown.” Therefore, “even if there is a suspicious product at a shop, it cannot be prosecuted.” There seems to be an unwritten rule that “products which are openly sold at shops cannot possibly be child pornography.” Furthermore, because the net patrol for “malicious” online child pornography is prioritized, current investigations do not focus on suspicious child pornography products sold at retail stores. Material categorized under Art. 2.3(iii) seems to be particularly disregarded.

In this situation, even if a producer not under any review process creates child pornography products, it is likely that the relevant parties and institutions believe, without any evidence, that the producer cannot have conducted an illegal activity. Therefore they do not check the age of the performers, and as a result there is no follow up. The monitoring system currently in place is thus extremely weak.

If the stores kept documents on the age of performers in videos suspected to be under 18 or of videos overtly advertised as being such, the police could check the age and take necessary action during investigations. There is, however, no such policy. A social recognition of the illegality of material categorized under Art. 2.3(iii) is also lacking. This contributes to the insufficient efforts by police and

stakeholders in regulating this material. In the “Third Comprehensive Measures to Eliminate Child Pornography” issued by the Crime Prevention Ministerial Conference in July 2016, “thorough arrests for malicious child pornography” was emphasized as the policy for “strengthening the crackdown against child pornography.” Thus it appears that priority is placed on the control of pornographic items under Art. 2.3(i) and Art. 2.3(ii) and not under Art. 2.3(iii).

2. Interviews with the National Police Agency and Metropolitan Police Department

Based on the fourth investigation, the HRN investigation team sent a written inquiry to the National Police Agency and the Metropolitan Police Department in November 2015 to ask how they handle the issue of child pornography.

The team managed to interview the National Police Agency and the Metropolitan Police Department in December 2015. At the interview, the HRN investigation team presented pictures of several DVDs which were suspected to be child pornography and asked whether they were considered to be categorized under Art. 2.3(i) and Art. 2.3(ii) or under Art. 2.3(iii) of the Child Prostitution and Child Pornography Prohibition Act.

The products the HRN investigation team asked about included the following two products:

- (a) “Thirteen elementary school students – Show all special!!”
- (b) “Sixth grade, Real Lolita video, Backside”

(1) Interview with the National Police Agency

The National Police Agency explained their efforts to eliminate child pornography. In regards to HRN’s investigation, they could not make any comments on individual products. They issued the following statements:

- With respect to child pornography, the National Policy Agency is reinforcing their response by mainly focusing on online patrols.
- They are actively investigating child pornography, considering the harm this inflicts on victims.
- If the age of the performer is not confirmed, it cannot be proven that the product is child pornography.
- If the age of the performer is uncertain, expert opinion is sought.

(2) Interview with the Metropolitan Police Department

We also asked the Metropolitan Police Department whether products (a) and (b) are considered to be child pornography. They explained that they could not reply to individual cases, and we could not receive a concrete response. Further, we asked for their views on the argument that “streaming video is not illegal child pornography” made by a business operator who manages a website which includes child pornography. They, however, said that they could not give a concrete response. In addition, based on

the current situation where the categories of *chakuero* and image videos are widespread, we asked them whether these videos are categorized under Art. 2.3(iii). The Metropolitan Police Department, however, merely stated that they do not use the categorization of *chakuero* and that they determine whether an individual product is child pornography.

We also received the following responses from the Metropolitan Police Department to our questions regarding child pornography.

1. When they determine whether a product is child pornography, they do not determine this based on the advertising language on the packaging of DVDs. For example, even if a package says “16 years old,” it is not unusual that an actress who is 18 years old or above plays the role of a 16 year-old girl. As for products whose packaging states “Rape girls” and “Child pornography,” their performers are not necessarily under the age of 18. The same is true of video products. If it is suspected that the performer is a child, they make determinations based on the opinions of medical professionals. (They did not disclose the personal information of these medical professionals.) If the Metropolitan Police Department determines a product violates the law, the case is sent to the Public Prosecutor’s Office. Even if the child victim cannot be identified, the case can be sent to the Public Prosecutor’s Office based on the opinion of the medical professionals consulted.
2. The Metropolitan Police Department actively collects information through the “child pornography hotline” and “cyber patrols”, and if compromising information is found, the Metropolitan Police Department or relevant police station takes action.
3. Ever since the penalty for possession of child pornography was enacted, inquiries into whether an individual video or picture is child pornography have increased, but the police do not respond to individual cases. They, however, are advising against the possession of anything suspected of being child pornography and encourage individuals and stores to relinquish such material voluntarily.
4. Next to child pornography producers, the MPD also investigates retailers if they violate the law.
5. To assist the recovery of victims of child pornography, the police sometimes connect victims with psychology experts, allowing the victims to consult with the experts.
6. While arrests for child pornography when victim identification is difficult should be conducted within the current legal framework, each regional police station tailors its response to the prevalence of the activities in their region.

While there are no regulations which provide for the management of child pornography investigations, police conduct training for concrete cases and prepare work materials. In addition, they pointed out issues specific to child pornography, such as cases where a child takes pictures of him or herself and discloses them to a third party, and cases where a parent of the victim is involved.

On 30 September 2015, Kanagawa Police arrested seven people, including the senior managers of Mediajyu (a wholesale retailer in Shinjuku-ku, Tokyo) and E Media Commerce (a retailer in Okegawa-shi, Saitama), for allegedly selling *chakuero* DVDs in violation of the Child Prostitution and Child Pornography Prohibition Act. Asahi Newspaper stated, “It used to be difficult to prove the illegality of *chakuero*

because its performers are not fully naked. However, the revision of the said law in June last year clarified the definition of videos falling under the category of *chakuero*, which enabled the police to arrest suspects by applying the revised version of the definition of child pornography.” Furthermore, on 4 June 2016, the National Police Agency (NPA) Community Safety Bureau Safety Division arrested the president of Escom (a DVD producer and retailer) on the suspicion of distributing obscene electronic or magnetic records. According to the Division, the reason for the arrest is that the company produced images and video corresponding to the *chakuero* category, where the performer mainly wears a small swimming suit, and sold these videos at “Shibuya Shoten.com” (an online shopping website managed by the company) and others. There were obscene videos where the private parts of performers can be seen through thin underwear or wraps.

On 21 July 2016, the National Police Agency Community Safety Bureau Safety Division sent two documents, “The appropriate review of *chakuero* DVDs (Request)” (hereinafter “Review Notice”) and “The appropriate sales of DVDs (Request)” (hereinafter “Sales Notice”) to related institutions. The former document was sent to IPPA, and the latter document was sent to DVD retailers and DVD handling companies, such as EC stores. In these documents, the National Police Agency stated, with respect to what is thought to be the 4 June 2016 arrest mentioned above, “We exposed a producer and retailer of obscene DVDs and arrested the director of the company.” In this case, the company sold obscene DVDs produced by the company itself as “*chakuero* DVDs” on its homepage, in its directly managed store, and on major online shopping websites.

Furthermore, these DVDs are openly sold at stores and online. This not only undermines public morals, but it also has an impact on the sound upbringing of youth. The NPA Review Notice states, “We are requesting each relevant party to ask its member companies to have DVDs including sexual expression reviewed and to be more careful when reviewing products requested by the production company.” In addition, the Review Notice provides: “We are requesting each relevant party to confirm the contents of DVDs including sexual expression, to make efforts to protect healthy sexual order, and to prevent reoccurrences.” The Sales Notice asks for organizations to “continue providing us with information on obscene child pornography cases, and to please continue to cooperate with our investigations.” Although these documents do not refer to child pornography falling under item (iii), they request strict review and confirmation of non-reviewed *chakuero* DVDs at the time of transactions for the investigation of child pornography. We hope these strict reviews and confirmations will continue in the future.

3. Review Associations and the Intellectual Property Promotion Association

HRN conducted question-and-answer sessions during its visits to the Japan Software Contents Review Center (“Center”) on 1 July 2016, VSIC on 14 July 2016, and also when the latter visited HRN on 10 August.

(1) Japan Contents Review Center's efforts

The Center summarized the issues above and the reality of the review process in the field. Questions regarded the review of child pornography. HRN showed the (g) to (j) videos and asked whether these have been reviewed by the review association. The questions and answers are as follows.

(HRN Q) Have you reviewed the (g) to (j) videos?

(CENTER A) Among the (g) to (j) videos, there is no product which has passed the Japan Contents Review Center's review and been distributed. Only product (g) has gone through a screening, and judging from the indications on its packaging, it seems that it was VSIC who reviewed it. Video products of a girl under the age of 18 are classified as "imagery and video". Therefore, they are not considered adult-targeted products and are not screened at all. This is a big problem. Although centers have their own review standards, videos such as these do not pass through review. Under the review standards, packaging which indicates that the performer's age is below 18, such as "elementary school student" or "such-and-such grade and class", etc., are not allowed, and they cannot pass the screening even if parts of the words are censored. A video whose performer has a school bag or a yellow hat specific to children suggests that the performer is a minor, so it cannot be allowed under the review either. [Referring to the performer in the (h) product:] It is strongly suspected that the performer is less than 18 years old. The current situation whereby these products are distributed is a big concern.

(Q) Do you disclose the review standard?

(A) No. It is difficult to disclose it.

(Q) Among the products brought in by the producers, there are some products whose packaging says "girls" or indicates "loli", and others whose performers look like minors. What is the review process for these products?

(A) These products have gone through review, but generally, we do not check the age of the performers. In the past, speaking about products whose performers are suspected to be minors, we sometimes checked the ages by documents. However, we have not done that recently. The producer is expected to fully understand that child pornography is not allowed, partly because of the existence of the Child Pornography Act. We have a trust relationship with IPPA member producers, so we have not reviewed ages under the assumption that products must not be child pornography.

(Q) You said you reviewed products at some time in the past whose performers were suspected to be minors. Did you review all of the products whose packaging said “loli” or “girl”? If not, under what standard did you review?

(A) We did not review all of the products that mentioned “loli” or “girl”. There is no clear standard.

(2) Visual Software Contents Industry Corporation

The number of companies that belong to IPPA is 240, and 73 companies belong to VSIC. The councilors (three people) prepare the review standard (“Standards Document”). Because the law is arbitrary, VSIC notifies producers of details not mentioned in law such as the unified minimum standard line. Because the Standards Document is an internal guideline, generally it is not disclosed; but if requested by the producer, it is disclosed. The review is delegated to the Ethic Association of Japanese Contents and is conducted in accordance with the Standards Document.

There was a revision of the review standard in 2015, and the standard has become stricter since January 2015. Any descriptions with a connotation of underage performers, such as a school bag, elementary school student, JC, JS, Grade 1 Class C, and the like have become unacceptable (since January 2015). Its intention is to improve the low standard of Japan when compared to the world standard. A high school student is generally allowed. In addition, we determined that sexual intercourse with an animal is not accepted during reviews ever since the amended standard came into effect in January 2015. As for torture play, if it involves bleeding, generally it is not acceptable. But it is acceptable if it is SM play which does not involve bleeding. Scatological play is also accepted because such a category has been established. Whether sexual intercourse is actually conducted is not judged, and the thickness of the mosaic is checked.

Regarding VSIC’s review standard for child pornography, currently the review is conducted in accordance with the new standard applied after January 2015. As for the confirmation that the performer is not a person under the age of 18, generally the producer checks the age and submits a certification to VSIC.

(Q) Does the review association double-check the age?

(A) No. The producer has primary responsibility.

(Q) Have you reviewed the (g) to (j) videos?

(A) VSIC reviewed (g), but this was created a long time ago. This could not be passed under the review standard revised in 2015.

(Q) The (g) DVD was sold at AV stores in 2016. Does this mean that once they have passed the review, products with your certification mark are being distributed even if they are not acceptable under the current review standards?

- (A) We are considering complete compilations. There was a proposal that, if five videos (created over five years ago) are sold as a pack, they should be re-screened. However, we could not reach an agreement partly because the previous review standards for the trademark rights and portrait rights were lenient. It will be our task to think of ways to address the issues entailed by the distribution of products which have been passed under previous review standards.

(3) Recent Efforts of the Intellectual Property Promotion Association (IPPA)

As a result of HRN's interview with IPPA and review associations after June 2016, concerns were expressed that, among the imagery and videos yet to receive review, there are products being advertised and sold as child pornography whose contents do not pass review. On 13 July 2016, IPPA sent a document entitled "Request to stop handling non-reviewed products" to business operators handling AV products.

With respect to AV products, most producers join our association as well as Visual Software Contents Industry Coop ("VSIC") and the Japan Video Production Software Sales Ethics Group ("JVPS"), who are both member associations of IPPA. As such, the producers will have their product contents inspected (ethics screening and inspection) by a third party and will sell ones that have passed the inspection process. This is not a requirement under the law but is institutionalized as a self-regulative measure within the AV industry in order to deliver products created in accordance with certain rules to business operators and consumers handling the end products.

However, despite the existence of such rules, the number of unscreened products is not so few, so that producers not belonging to any association apply their own rules and judgments upon production. As such, there is a situation in which screened products and unscreened products are sold, rented, and transmitted on equal terms.

However, there has been an effort to improve the soundness of the AV industry as a response to social demand. With such circumstances observed in the industry, as an association promoting the distribution of screened/inspected products, IPPA and also member producers who voluntarily go through screening and inspection cannot ignore the continuance of such a situation. We are requesting all of you handling AV products to consider and agree to handle only AV products which are reviewed/ inspected by the three associations related to IPPA and the Ethics Organization of Computer Software ("EOCS").

IPPA also expressed "We accept the request with sincerity and will promote efforts to improve the soundness of the industry" as its response to "The appropriate review of *chakuro* DVDs (Request)" issued by the National Police Agency Community Safety Bureau Safety Division on 21 July 2016.

As a result of HRN's investigation, however, the following were found.

1. Among the reviewed products, there are some products which are suspected to be child pornography, like product (g).
2. Zeus, which creates product (h) “Grade 1 Class 3 ■■■■”, is a member of IPPA, but that product has not been reviewed and is suspected to be child pornography.
3. Product (i) indicates that MANIAC is the producer, and it seems that MANIAC is a member of JVPS. However, this product has not been reviewed and is suspected to be child pornography.

Therefore, it cannot be said that being a member of a review association will solve all problems. There is an urgent need to further tighten the standards of review associations, to carry out thorough age checks, and to take measures for the distribution of non-reviewed products. Furthermore, the ambiguous position of material categorized under Art. 2.3(iii) should be clarified.

4. Policy Developments Addressing Physical Retail Stores

(1) Visit to the Self Media Network Association

On 4 August 2016, HRN visited the Self Media Network Association (SMNA) and asked the following two questions:

1. We have confirmed that non-reviewed products which are suspected to be child pornography are sold at member stores. Do the stores take measures such as age checks? Is there a unified policy in the Self Media Network Association?
2. Do you comply with “The appropriate sales of *chakuero* DVDs (Request)” (“Sales Notice”) issued by the police on 21 July?

The followings are the responses from the Self Media Network Association.

As for (1), there is no unified policy for age checks regarding child pornography.

As for (2), an emergency board meeting took place the day before HRN’s visit. As a result of the discussion, we, as an association, accepted the police request and will not sell non-reviewed DVDs, and we will notify and instruct this to our members.

(2) The reason why a decision like (2) above had not been made yet

As the retail industry originally developed for non-reviewed independent producers, mid- or small-sized stores in particular, survived by differentiating themselves from competitors by selling rare products that are not sold by major AV producers. It is an issue of profit. It was pointed out that it would have been difficult to prohibit the sale of non-reviewed products for this reason.

(3) Alerting Stores to the Presence of Child Pornography

According to SMNA, it originally instigated a criminal case (the so-called Bakki case) after it instructed all members to prohibit the sale of a video made by AV producer Bakki Visual Planning containing severe

sexual assault after receiving information from one of its members.²² This later became the basis of a criminal case. SMNA also first raised issues about an offending video which later led to arrests, the so-called NEVA case.²³ The association was the first to call for the voluntarily ban of sales of the offending video once it determined the serious illegality of its contents, which included “thin mosaics, child pornography, *chakuero*, and synthetic cannabis.”

However, SMNA’s efforts to end child pornography have not been sufficient. At the time the review association Media Ethics was active, it conducted voluntary monitoring of *chakuero* with no formal review. As a result, if sales of *chakuero* were identified, SMNA often received a warning notice providing information about the violation and a request not to sell the offending product because it is child pornography. When such a notice was received, SMNA shared the information with its member stores and alerted them to stop the product’s sale. Since Media Ethics ended and was restructure into a new entity, SMNA has not issued such alerts because there have been no voluntary monitoring and warning notices. SMNA hired staff who are former policemen, and it regularly visited and alerted stores, but it is possible that some cases were overlooked. While SMNA makes requests for member company compliance by sending them documents listing the items to be regulated at the time the company joins, there are some items for which it is difficult to get compliance and to gain consensus. The current finalized agreement on items is not disclosed, and it seems to be unclear.

(4) Results of the Investigation

While we informed SMNA of the results of our retail store investigation described in Chapter 4 and that one investigated store is a member of its association, SMNA stated that they “did not oversee all cases thoroughly.” It is difficult for SMNA to oversee or instruct its members. While SMNA has established a rule stating that stores cannot use verbal monitoring for the protection of juveniles when selling adult products, major adult stores take the lead in violating this rule. As such, currently the instruction is not carried out adequately.

Even if IPPA requests stores to only sell reviewed products and the Metropolitan Police Department requests a careful approach towards non-reviewed DVDs, SMNA feels that it will be difficult to eliminate non-reviewed DVDs solely through internal controls. Even if the association reaches a consensus, the stores that do not belong to the association will not stop selling non-reviewed products in order to differentiate themselves from other stores. External pressure is an important factor. If IPPA decides not to sell formal products to the stores that are selling non-reviewed products, the stores will comply with such a decision. On 5 August 2016, the day after HRN representatives visited SMNA, the following document was released on the association’s website:

²² The Bakki case involved the AV producer Bakki Visual Planning (“Bakki”), representatives of which were found criminally responsible, the owner receiving an 18-year sentence, for drugging and raping an 18 year old woman for an AV video in which she suffered severe internal injuries and was hospitalized for over a month. See, Human Rights Now, “Human Rights Violations against Women and Girls Manifesting from the Adult Pornographic Film Industry in Japan”, 3 Mar. 2016, pp 11, 30, <http://hrn.or.jp/eng/wp-content/uploads/2016/06/ReportonAVindustry-20160303-tentative-translation.pdf>

²³ “*Video censor, others held over obscene DVDs*”, Japan Times, 2 Mar. 2008, <https://www.japantimes.co.jp/news/2008/03/02/national/video-censor-others-held-over-obscene-dvds/#.WmGycDeYNPa>. In the case, it was revealed that the head of screening for the Nihon Ethics of Video Association (NEVA) and four other NEVA staff were involved in allowing the violating video to pass its screening, leading to their arrest.

Sell Media Network Association completely accepts “The appropriate sales of DVDs” (Ho, Kaze-No. 1160) issued by the Safety Division of the Community Safety Bureau of the Metropolitan Police Department, and will cooperate to prevent reoccurrences. We understand that this is a request for not only our members located in the region covered by the Metropolitan Police Department but also our members located in all regions of Japan. We will discuss and coordinate with the relevant associations, and we will contribute to the health of the AV industry and the sound growth of children.

Sell Media Network Association
President Motoyoshi Motizuki

5. Policy developments addressing Internet-related Services

As for Internet related companies, providers and rental servers are involved when users access their websites. Furthermore, when a user looks for a website containing child pornography, there must be a process in which a user inserts some keywords in a search engine, such as Google. In addition, recently applications focusing on smart phones that include adult content, including child pornography, have been developed and sold. Child pornography is provided on the Internet as follows. (1) The provider of child pornography completes the server provision agreement with the rental server provider and creates a website to which child pornography is uploaded. (2) The user completes the provider provision agreement with the Internet provider, and access is given to such website through the Internet. As such, in the process above, the provider is involved in the user’s access/non-access to the internet, and the rental server provider is involved in the admission/rejection of the website manager’s website.

(1) Internet Providers

Each Internet provider has the same policy for handling child pornography. Internet providers receive a list of “Internet addresses involving child pornography” from Internet Contents Safety Association, and the providers’ block the relevant site (i.e., prohibit users from accessing the relevant website).

Example policies:

OCN: http://www.ocn.ne.jp/info/announce/2011/04/21_1.html

OCN will receive an address list involving child pornography from Internet Contents Safety Association (ICSA), and will limit access to the relevant sites. If you try to access the sites set forth in the list, you will find the following picture, indicating that access is blocked instead of the blocked site.

Yahoo! BB: <http://www.softbank.jp/ybb/block/>

KDDI: http://www.kddi.com/corporate/news_release/2011/0421/

BIGLOBE: <http://support.biglobe.ne.jp/news/news338.html>

Furthermore, as for ordinary adult content and other contents classified as alcohol, tobacco, drugs, or violence, there is a service providing a filter function which can restrict the access to the website based on the level of the contents, considering any effects on minors.

Examples:

Nifty “All Time Safety Security 24 Plus” Options:

- “Elementary school/junior high school students” mode. All categories are restricted.
- “High School students” mode. All categories are restricted except Internet communications media, news, and computer games, which have no restrictions.
- Custom mode: The user can select the restricted categories.

Purara “Net Barrier Basic” Options:

- Level 2 (ON): “Basic Standard.” Access is blocked to sites which are harmful to juveniles (violence, adult content, etc.); sites which encourage criminal behavior, such as sexual abuse against children or child prostitution (child pornography); and dangerous sites for security purposes (one click fraud, phishing, etc.)
- Level 1 (ON): Access is blocked to dangerous sites for security purposes (one click fraud, phishing, etc.).
- Level 0 (OFF): No restrictions (same as filter cancelation)

(2) Rental-server Providers

As for the servers actively dealing with adult content, the servers’ laws generally govern how child pornography is treated. The terms of services prohibit illegal contents, and in some cases there are additional provisions related to individual contents, such child pornography or abuse. The violation of the terms of services leads to the cancellation of the server provision agreement. The following is a comparison among the three major adult contents servers.

- FC2 rental server: <http://help.fc2.com/common/tos/ja>
This server actively deals with adult content, and Nevada, U.S., laws apply to it. While the terms of service prohibit “activities which harm the sound development of juveniles (such as sending or posting any document or picture of child pornography, child prostitution, bestiality, or violence) or the encouragement of such activity”, the terms of services do not refer to other obscene adult contents. As a result, this server is regarded as a very generous server for adult content.
- FUTOKA rental server: <https://www.futoka.jp/?mode=policy>
While this server also actively manages adult content, because Japanese law applies to this server, the terms of membership prohibit any activity in violation of law. There is, however, no specific provision regarding child pornography.

- KAGOYA shared server: <http://www.kagoya.jp/terms/kir.html>
Article 11 of the terms of service prohibits “any activity sending or displaying pictures, video, voice, or document, etc., of obscene material, child pornography, or child abuse, or sales of a media recording of such an activity, or any activity displaying or sending an advertisement which makes viewers believe such material is being sent, displayed, or sold” or any other general illegal activity (applying Japanese law). If there is a violation, access may be limited or membership may be cancelled. As for the standard for “obscene adult content”, its homepage states the following: “Please consider the books distributed at an ordinary books store or the products distributed at a major rental video shop as forming the rough standard. However, pictures showing sexual organs are deemed as ‘obscene’, even if there is a mosaic.”
- Vectant (ARTERIA Networks)
<https://www.marubeni-access.com/ja/service/vectant/>
*****, a website which displays content which seems to be item (iii) pornography, uses ARTERIA Networks. ARTERIA Networks is also an internet provider, and it has a policy, “Blocking access to child pornography”, to mandatorily block access to child pornography websites in accordance with the address list for child pornography websites received from the Internet Contents Safety Association in the same manner as other providers above. Although such a policy has been expressed, access to the ***** website has not been blocked. Thus, there is a possibility that the address list issued by ICSA does not include the ***** or ***** websites.

ICSA prepares the address list based on the list of sites that are reported to the Internet Hotline Center after conducting its own examination in accordance with the previously determined standard. It is uncertain how ICSA determines contents labeled as “image video” of “junior idol” or sites displaying *chakuero*. As such, while internet providers and adult video site servers clearly state their policy to prohibit contents which violate the governing laws, in reality, sites which unambiguously arouse or stimulate sexual arousal, such as *****, remain unchecked. Illegal item (iii) pornography is thus slipping through the cracks of regulations by using the terms *chakuero* and image video, which give the impression that they are not pornography, resulting in differences between regulations and reality.

(3) Search Engines

As for the efforts of search engines, a site such as Google excludes websites from search results which it determines to contain child pornography in order to prevent displays of child pornography as results of searches. Google has also made efforts such as detecting child pornography in Gmail attachments, reporting hits to the relevant authorities, and developing a system which automatically detects and blocks imagery suspected to be child pornography in cooperation with different social networking systems such as Facebook and Twitter, who share information with it. Further, when HRN asked Google Japan, Inc., about its actions against child pornography, they replied that, in addition to the imagery detection system, they also share information with ICSA and cooperate with the relevant authorities such as the National Police Agency and Ministry of Internal Affairs and Communications (as of 1

September 2016). Despite the above-mentioned actions, however, it is still the case that users can easily access child pornographic content when they make some modifications to the keywords.

(4) Online Applications

The process of an app reaching users' hands is as follows:

1. An app creator ("App Developer") develops software.
2. The software goes through app providers ("App Store"), such as an App Store's review.
3. After passing that review, the app is distributed on App Stores.
4. Users obtain the app by downloading it from an App Store.

The review process of smartphone apps is typically lenient, and this enables even amateurs to easily participate in the market. Therefore the focus will be on smartphone apps in this section. Smartphone apps can be classified into two broad categories, apps for iPhone and for Android, and each of them has its own review standard ("Guideline"). Any app which does not meet the review standard will be rejected ("Rejection") and will not be distributed on the respective App Store. Despite such efforts, however, in 2015 an app developer's crime was exposed after he posted online child pornographic contents in violation of the Child Prostitution and Child Pornography Prohibition Act.

- **iPhone:** <https://developer.apple.com/app-store/review/guidelines/>

While child pornography is not explicitly subject to the iPhone Guideline, an app can be subject to Rejection if (1) it has the intent of stimulating erotic feelings as set forth in Article 1.1.4 of the Guideline or, (2) it involves user-created contents (e.g. SNS, video sharing website, blog etc.) whose main purpose is primarily for pornographic contents as set forth in Article 1.2 of the Guideline.

- **Android:** https://play.google.com/intl/ja_ALL/about/restricted-content/child-endangerment/
According to Android's Guideline, "Google has a zero tolerance policy against child sexual abuse imagery. If we become aware of any content with child sexual abuse imagery, we will report it to the appropriate authorities and delete the Google Accounts of those involved with the distribution." Furthermore, regardless of whether an app contains child pornography, Google does not "allow apps that contain or promote sexually explicit content, such as pornography. In general, we don't allow content or services intended to be sexually gratifying."

As mentioned above, each of the internet related business operators has taken some measures to block users' access to child pornography. Despite these efforts, however, child pornography is still widespread on the Internet, and users can easily gain access to such content. Due to its unique characteristics, the Internet poses significant challenges to the prosecution of child pornography.

Chapter 7: International Human Rights Standards

It is difficult to say that the actual situation in Japan regarding child pornography is sufficiently meeting the standards of international human rights, including the standards set by human rights treaties ratified by the Japanese government itself.

1. International human rights laws and standards regarding child pornography

(1) *Related international human rights laws and standards*

a) Overview

Among treaties currently ratified by the Japanese government, the following treaties refer directly to child pornography: (1) Convention on the Rights of the Child (CRC), (2) Worst Forms of Child Labour Convention, 1999 (No. 182) (ILO Convention No. 182), (3) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC Optional Protocol (CP)), and (4) Convention on Cybercrime.

b) Convention on the Rights of the Child (adopted by the United Nations in 1989, signed by Japan in 1990, ratified and came into force in Japan in 1994)²⁴

This is the first convention that directly refers to the rights of children. Article 34 requires contracting parties to take all appropriate measures to eradicate sexual exploitation of children; however, it does not mention any specific measures to be taken by contracting countries.

Article 34.

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

[...]

(c) The exploitative use of children in pornographic performances and materials.

²⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, <http://www.refworld.org/docid/3ae6b38f0.html>

- c) Worst Forms of Child Labour Convention, 1999 (No. 182) (ILO Convention No. 182) (adopted by ILO in 1999 and ratified by Japan in 2001)²⁵

Discussions on the protection of children's rights made progress from the 1990s onward, culminating in the adoption of this convention. The convention defined child pornography as "the worst forms of child labour" (Article 3), and it required contracting parties to design and implement programs of action to eliminate, as a priority, the worst forms of child labour (Article 6), to take measures such as providing prevention, assistance, and education (Article 7), and to take measures through international cooperation (Article 8). In particular, the Convention required contracting parties to admit that sexual exploitation of children, including child pornography, are criminal offences (Paragraph 12).

Article 3.

For the purposes of this Convention, the term the worst forms of child labour comprises:

[...]

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances: Recommendation concerning the prohibition and immediate action for the elimination of the worst forms of child labour (No. 190) (Paragraph 12)

12. Members should provide that the following worst forms of child labour are criminal offences:

[...]

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances:

[...]

- d) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (CRC Optional Protocol (CP)) (adopted by the United Nations in 2000, ratified and coming into force in Japan in 2005)²⁶

This protocol mainly focuses on Article 34 of the CRC, and it is described to be the first international instrument that provides comprehensive and specific provisions in relation to the commercial and sexual exploitation of children. In particular, with respect to the definition of child pornography (Article 2(c)), it should be noted that this protocol includes any representation that makes recipients think that a child is engaging in sexual activities (e.g., "simulated" sexual activities), as well as any representation where a child is actually engaging in real and explicit sexual activities.

²⁵ International Labour Organization (ILO), *Worst Forms of Child Labour Convention, C182*, 17 June 1999, C182, <http://www.refworld.org/docid/3ddb6e0c4.html>

²⁶ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 25 May 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

The CRC Optional Protocol (CP) also requires the contracting parties to admit that the following activities are criminal offences (Article 3): producing, distributing, importing, exporting, offering, selling or possessing for the purposes of doing the same. In addition, the CRC Optional Protocol (CP) specifies penal provisions, including establishment of jurisdiction (Article 4), extradition of offenders (Article 5), international assistance in connection with investigations or related proceedings (Article 6), seizure and confiscation of criminal proceeds (Article 7), as well as protection measures such as informing the victim and protecting the victim's privacy (Article 8) and education and enlightenment activities (Article 9).

i. Article 2

Article 2.

For the purposes of the present Protocol:

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

ii. Article 3

Article 3.

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

[...]

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

[...]

e) Convention on Cybercrime (adopted by the Council of Europe in 2001, signed by Japan in 2001, and coming into force in Japan in 2002)²⁷

In the year following the CRC Optional Protocol (CP), the Council of Europe, a regional organization in Europe, adopted this convention, which addresses child pornography related crimes on the Internet. First, with respect to the comprehensive definition of child pornography under Article 9(2), the Convention states that pornographic material which visually depicts "a person appearing to be a minor engaged in sexually explicit conduct" (Art. 9(2)(b)) should be included in the definition, as well as

²⁷ Council of Europe, *Convention on Cybercrime*, 23 November 2001, <http://www.refworld.org/docid/47dfb202.html>

materials depicting “a minor engaged in sexually explicit conduct” (Art. 9(2)(a)), and it provides penalties for child pornography related activities as follows.

i. Article 9

Article 9.

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- a. producing child pornography for the purpose of its distribution through a computer system;
- b. offering or making available child pornography through a computer system;
- c. distributing or transmitting child pornography through a computer system;
- d. procuring child pornography through a computer system for oneself or for another person;
- e. possessing child pornography in a computer system or on a computer-data storage medium.

2. For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

- a. a minor engaged in sexually explicit conduct;
- b. a person appearing to be a minor engaged in sexually explicit conduct;

[...]

4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

2. The Current Situation in Japan

In order to meet international standards and requests from international society, Japan enacted the Child Pornography Act and amended it twice. However, as mentioned in this report, the implementation of the regulation is insufficient, and therefore the current situation is still far from eliminating child pornography. In its Concluding Observations on the Japanese government’s Third Report for CRC Optional Protocol (CP) (2010), the Committee on the Rights of the Child recommended the government to take more comprehensive measures as follows: “The Committee welcomes the efforts of the State party to combat child pornography and child prostitution. The Committee, however, is concerned that, in view of the prevalence of these offences, preventive measures remain inadequate.”²⁸ The government then criminalized even simple possession with an amendment to the law after taking into

²⁸ Committee on the Rights of the Child, “Consideration of reports submitted by States parties under article 12, paragraph 1 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography”, para. 26, CRC/C/OPSC/JPN/CO/1, 22 June 2010, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fOPSC%2fJPN%2fCO%2f1&Lang=en.

consideration the 2010 Committee recommendation. However, the implementation of the law still has many problems.

Japan ratified the Convention on Cybercrime in July 2012, and the convention is effective domestically. Based on Article 9(1) of the Convention on Cybercrime, the Child Prostitution and Child Pornography Prohibition Act criminalizes the supply of electronic records with child pornographic contents on platforms such as the Internet. However, upon ratification of the treaty, the Japanese government declared that only pornographic contents depicting a child's body (including pornographic contents confirmed to be depicting an actual child's body) are considered child pornography under this treaty (see Article 9). As such, they are withholding application of any provision under Article 9 which contradicts their definition of child pornography. Thus, the restriction on pornography regarding "a person appearing to be a minor who engages in sexually explicit conduct", which is regarded as child pornography under the treaty, has not been considered for adoption. Many such products are therefore still being sold at stores and are prevalent on the Internet.

In 2015, the UN Special Rapporteur on the sale and sexual exploitation of children, Maud de Boer-Buquicchio, visited Japan to investigate and submitted a report to the UN Human Rights Council in March 2016. In this report, while the Special Rapporteur spoke highly of the Japanese government's efforts to date, she also expressed significant concern regarding the sexual exploitation of children and child pornography and recommended the government to: (1) take a comprehensive approach to deal with the issue, (2) implement existing law and policy, (3) strengthen efforts to punish any illegal activity, (4) provide training for investigating authorities, (5) cooperate with the related civil business sector, and (6) reinforce efforts for child education.

Additionally, in March 2016, the UN Committee on the Elimination of Discrimination against Women recommended the following regarding child pornography.²⁹ (Only the relevant portions are written.)

- Effectively implement existing legal measures and monitor programmes in order to regulate the production and distribution of pornographic material ... that exacerbate discriminatory gender stereotypes and reinforce sexual violence against women and girls (Para. 21(b));
- Intensify monitoring and inspection programmes targeting establishments that provide adult entertainment and produce pornographic film, in order to prevent sexual exploitation (Para. 27(b)).

(1) Guiding Principles on Business and Human Rights³⁰

Among international human rights standards, the responsibility to respect human rights within the business sector is provided in the Guiding Principles on Business and Human Rights, the so-called Ruggie

²⁹ Committee on the Elimination of Discrimination Against Women, "Concluding observations on the combined seventh and eighth periodic reports of Japan", CEDAW /C/JPN/CO/7-8, 7 Mar. 2016, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/JPN/CEDAW_C_JPN_CO_7-8_21666_E.pdf

³⁰ UN Human Rights Council, *Protect, respect and remedy : a framework for business and human rights : report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie*, 7 April 2008, A/HRC/8/5, available at: <http://www.refworld.org/docid/484d2d5f2.html>

Principles. Under these principles, business enterprises have an obligation to prevent or mitigate human rights violations that are not only caused by the enterprise itself but also violations linked to their operations (Principle 13). Such responsibility applies to all enterprises (Principle 14). Child pornography in Japan is considered a violation of children’s human rights in a supply chain from producers to distributors. Therefore, each and every enterprise involved in the creation and spread of child pornography has a responsibility to prevent, mitigate, and account for such violations under the Ruggie Principles. All of the related enterprises in the supply chain should make efforts to prevent any human rights violation.

i. Principle 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.

3. Examples from abroad

(1) The United States

The criminal responsibility for the sexual exploitation of children and child pornography is provided in Sections 2251 to 2260 of Title 18 of the United States Code (18 US Code Sec. 2251-2260). Child pornography is defined as follows.

Section 2256

(8) “child pornography” means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

- (A) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
- (C) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

Activities that are punishable by penalty are as follows.

- a. The intentional delivery, transportation, receipt, distribution, duplication for the purpose of distribution, selling, or possession for the purpose of sale, of child pornography.
- b. To intentionally possess child pornography (simple possession).
- c. To create any obscene visual depiction of explicit sexual activity of a child under the age of 18, or advertise, promote or distribute the visual depiction of such activity conducted by an existing child under 18.
- d. To provide children under the age of 18 with the visual depiction which is or appears to be of explicit sexual activity conducted by children under 18 in order to encourage their participation in the illegal activity.

The punishment for (a), (c) or (d) is a fine and 5 to 20 years imprisonment, and the punishment for (b) is a fine, 10 or fewer years of imprisonment, or both. 18 US Code Sec. 2257 provides for the record keeping requirement. The provision states that all persons involved in the production, editing, distribution or any other part of the process of pornographic products must keep the IDs of all of the actors. This applies to any products that include explicit sexual activities in its content. As such, the U.S. obligates all related persons to keep age verification documents of their performers. It is in this way that the U.S. attempts to eliminate any activity sexually exploiting children in the porn industry.

Further, under Section 2258A of the US Code, any person engaged in providing an electronic communication service or a remote computing service has the obligation to report child pornography to a specified NPO. (They are required to provide personal information—e.g., an e-mail address and IP address—access history information of the service provider, picture, or video of the child pornographic contents, and other information such as these.) Under this system, a fine will be imposed on a person who intentionally fails to report.

(2) The European Union

As measures against the sexual exploitation of children and child pornography, the European Council passed Council Framework Decision 2004/68/JHA in December 2003, and the decision came into effect in 2004. Under Section 1 thereof, child pornography is defined to include sexually explicit conduct of not only a child but also a person appearing to be a child. Furthermore, Directive 2011/92/EU of the European Parliament and the Council on combating the sexual abuse and sexual exploitation of children and child pornography was promulgated and came into effect in December 2011. Each member country was required to harmonize its domestic law in correspondence with this decision by 18 December 2013.

Under the EU Directive, child pornography is defined as follows.

1. Any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
2. Any depiction of the sexual organs of a child for primarily sexual purposes;
3. Any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or

4. Realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes.

Soliciting, recruiting, or forcing a child to participate in child pornography is severely punished, and the production, supply, distribution, delivery, sale, purchase, access, and possession, etc., of such are also punished. In response to this EU Directive, each member country is carrying out the development of its domestic law based on the Directive.

Chapter 8: Conclusion

The investigation carried out by HRN found that child pornography, or pictures or videos which are suspected to be child pornography, are openly and commercially produced, distributed, sold, and delivered, and that the regulation and investigation of child pornography have not been thoroughly carried out. The reasons are as follows:

1. There is a lack of police investigations due to the uncertain age of performers making it difficult to confirm them being “children”.
2. The monitoring system is inadequate at the review, distribution, and sales stages.
3. There is insufficient investigation and actual monitoring of material categorized under Art. 2.3(iii) due to limited social recognition of the category.

With respect to the pictures and videos produced, distributed, sold, or delivered for commercial purposes, it is necessary to establish a clear set of rules and a review/monitoring system. This will go far in creating a situation where the production and distribution of child pornography is halted. It is equally necessary to have measures which protect children’s rights and public welfare to prevent children from being involved in child pornography.

Under the current law, a performer being below eighteen years of age is a prerequisite for criminalizing a product as child pornography. However, in the current situation where investigations are not carried out due to the difficulty in verifying the ages of performers, the legal standards are not being effectively implemented. This situation jeopardizes children and should not be permitted to continue.

Therefore, an effective code of conduct regarding pornographic products needs to be established in Japan. Firstly, a system should be created whereby all products are screened by review associations before their sale, distribution, and transmission, and age verification is conducted at all stages including review, distribution, sales, and transmission. Also, following the example set by the U.S. legal standard, records containing official documents indicating performers’ names, identities, and ages should be kept. Furthermore, police should thoroughly conduct monitoring, age verification, and investigations for pornographic content in which it is uncertain whether the performers are 18 years old or older (e.g., pornographic products with advertisements indicating that “the performer is a child” or “the performer appears to be a child”).

This investigation confirms that many pornographic products advertised as “child pornography” or having casted a “performer under the age of 18” are widely sold. Even if some of these products cast performers over the age of 18, the dissemination and prevalence of pornographic products with performers who appear to be children creates great ambiguity in child pornography regulations, significantly obstructing the complete restriction of actual child pornography. It is also of concern that contents which clearly depict criminal acts against or sexual exploitation of children may promote or encourage actual cases of sexual offences and sexual abuse against girls.

As mentioned above, under international and EU standards, restrictions and penalties for pornographic contents include those where a performer “appears to be a child”. Japan should also discuss whether it is really acceptable to allow such pornographic contents where a performer “appears to be a child” to be left as they are. There is a strong concern that the expansion of such regulations on videos will only have negative effects. Therefore, we are calling for the industry and related industries to push for self-regulations which also prohibit pornography in which the performer’s age (above or below 18 years old) is unclear and cannot be confirmed. Such regulations could, for example, regulate videos which advertise themselves as having, e.g., “child performers” or “performers who look like children”.

The investigation also found that *chakuero* products are still being widely sold. This is a serious infringement of children’s rights and the government of Japan should clarify that material falling under Art. 2.3(iii) is also child pornography. And at the same time, it should involve related business operators and advance an aggressive policy of investigation and arrests. Further, the producers, review associations, and any business operators involved in the distribution, sales, and online transmission should fundamentally revise their recognition of the issue. Regardless of whether a product is *chakuero*, “image video”, or any other category, they should not produce any pornography containing a performer under the age of 18, including item (iii) pornography. They are also required to block the distribution, sale, and transmission of such products and to commit to eliminate child pornography.

1. Measures to protect children

The scope of this research was too limited to address situations of vulnerable children lured into the *chakuero* industry. However, considering the prevalence of this material, it is suspected certain producers scout young girls for these roles in a professional manner.

HRN previously investigated and published a report in March 2016 regarding cases of forcibly soliciting performers for adult videos. Among the cases examined, there were some cases where a bikini model was initially recruited as a minor, induced into moving from bikini modeling into *chakuero*, and finally ended up being forced into performing in an adult video with no choice. In this case, compensation for the minor’s performance has not been paid at all. This is an example of sexual exploitation of children.

Since 2015 there have been court decisions regarding litigation on “penalty charges” (for breaches of employment contracts) leveled by entertainment or AV management companies against protesting performers. These decisions found that AV performers’ contracts operated “similarly to employment contracts”, which must consider the age and experience, etc., of the performer. Thus, a contract between a child under the age of 18 and a management company is deemed to be similar to an employment contract without any exception, and it is reasonable to assume that employment related regulations must apply to these contracts. In this regard, the Labor Standards Act prohibits employment of a child until 31 March after a child turns 15 years old. A child can still work for a movie/theatre company even if the child is under the age of 15; however, it must be a job that is not harmful for the health and welfare of the child, and the approval of relevant authorities are required (Article 56 of the law). Further requirements include a certificate of family registration for children under the age of 18, a

certificate indicating that the child's school president certifies that the job does not affect the education of the child, and consent from his or her parents, all of which must be kept at the management office (Article 57 of the law). The payment of salary and other appropriate labour standards must be ensured (the Labour Standards Act), and the child is not allowed to work at a hazardous workplace (the Worker Dispatch Law). Additionally, the Child Welfare Act prohibits anyone from "making a child conduct sexual activity" and "controlling a child for the purpose of making the child conduct an action harmful to the mind and body of the child" (Article 34, Paragraph 1, Items 5 and 9), and it imposes penalties for violators.

Considering the current situation in which *chakuero* is prevailing, it is unlikely that the relevant authorities have conducted appropriate monitoring or investigations of whether these production companies, to which children under age 18 may belong, comply with the Penal Law (prohibiting sexual conduct), the Child Prostitution and Child Pornography Prohibition Act, the Child Welfare Act, and the Labor Act (especially Article 56 and thereafter of the Labor Standards Act regarding the use of minors), or whether or not they have sexually exploited the children in question. An effective monitoring and supervision system for the protection of children's human rights is necessary to ensure that the production companies, to which children belong as "talent" or models, do not violate the Penal Law, child pornography restrictions, the Child Welfare Act, and labour related laws. We believe it is necessary to develop the laws and to improve the operation of current laws so that each relevant authority establishes an effective supervision system and the infringement of children's rights, such as the exploitation of children, can be avoided.

CHAPTER 9: Recommendations

Based on the results of the investigations and considerations above, Human Rights Now issues the following recommendations:

1. To the Government of Japan (the Cabinet Office and relevant cabinet ministers):

- Investigate (a) the reality of production, sales, circulation, and delivery of child pornography, (b) the background of children who get involved in child pornography, and (c) relevant industries and harmful practices, and take necessary steps to prevent such production, circulation and harm.
- Consider effective supervision methods and legal regulations so that the production agencies that employ children under the age of eighteen actively work to protect children and employees.
- Actively communicate that pornographic material falling under Article 2.3(iii) amounts to child pornography and make its eradication an important mission to all government ministries, municipalities, public institutions, relevant industries, and the community at large

2. To the Metropolitan Police Department:

- Designate the elimination of child pornography as a priority; allocate necessary financial resources and manpower to it; and establish a zero-tolerance policy for child pornography.
- Confirm the age of performers through supply chains and actively follow up on cases where the age of the performers is not confirmed.
- Inform all police stations that pornographic material falling under article 2.3(iii) amounts to child pornography. Furthermore, members of the police force should see this issue as a priority and routinely conduct search and follow up activities at retail stores in their neighborhoods.
- Strengthen its search capability, develop and educate human resources, ensure necessary manpower at each police station, and strengthen existing regulations.

3. To Government Institutions and lawmakers, consider the following proposals:

- Obligate all parties who manufacture, edit, circulate, screen, sell, or deliver pornography to hold records to confirm the age of all performers and prosecute parties who fail to comply.
- Obligate providers to inform the police of pornographic material featuring children if they encounter any.

4. To Industry Stakeholders:

- Adopt a zero-tolerance policy for child pornography despite the public opinion of genres like *chakuero*.
- Adopt a zero-tolerance policy for the production, circulation, sale, delivery, and rental service of pornographic material featuring children, including but not limited to material falling under Art. 2.3(iii).
- Check performers' name, identity, and age by official documents (ID) in all stages of the production process, including but not limited to production, screening, circulation, delivery, sale, and rental of the material.

- Announce a uniform and tightened review standard applicable to all products in line with current and applicable legal standards.
- Confirm performers' age in the review phase by using official documents.
- Strictly prohibit child pornography including but not limited to pornographic materials falling under Art. 2.3(iii).
- Introduce self-regulation measures for products which allude to being child pornography.
- Collect and discard products which fail to pass the new standards in reviews.
- No longer sell, circulate, sell online, or deliver products that fail to pass a review.
- Establish and carry out guidelines which prohibit retail and online stores which feature child pornography or products suspected as child pornography from handling such products.

5. To review associations:

- Do not pass any pornography featuring a performer under the age of eighteen, regardless of whether it is *chakuero*, and inform the public of this practice.
- Establish clear and unified review standards and processes as review associations, to eliminate child pornography, achieve accountability by publishing them to the society, and establish a system where all products should be reviewed.
- In order to comply with the Child Pornography Act, the standards and processes for the review must include the following matters.
- Implement an age review in the review process, and do not pass a product under the review unless the review association confirms that performers are 18 years old or older by IDs and age confirmation materials. Fail a product under review if there is no ID to prove a performer's age is over eighteen years of age.
- Do not pass any products which are suspected as falling under Art. 2.3(iii) under the review.
- Clarify the review standards for products which are suspected as child pornography and do not pass the following products under the review:
 - Any products where a child has sexual intercourse with an adult, or a child is sexually assaulted, sexually abused, or sexually harassed regardless of the age of the performer;
 - Any products that are suspected as child pornography, regardless of the age of the performer;
 - Any products advertising or stating that the performer is an elementary school student or junior high school student or is under the age of 18;
 - Any products advertised as "child pornography" or *chakuero*;
 - Any products suggestive of child pornography from the costumes or accessories in the video to personal belongings or the setting, etc.
- Re-screen all of the products previously passed under former review standards in order to ensure that products violating new standards are not distributed, sold, or delivered. Immediately stop selling, distributing, lending, or collecting and discard those products that do not pass the new review; and make sure everyone is informed of this practice.

6. To sales stores, wholesalers, and rental shops:

- Confirm a policy not to sell, distribute, or lend, or handle child pornography including material categorized under Art. 2.3(iii)
- Check in advance and to keep copies of the public documents showing the name and age of the performers of all products in which a child under the age of 18 may perform.
- Do not sell at stores, do not lend, and do not distribute through wholesalers the products which have not been passed under strict review.

7. To Pornographic Websites:

- Adopt a strict policy on child pornography and actively check the ages of performers, including materials falling under Art. 2.3(iii).
- Take all necessary steps to prevent users from watching child pornography, including but not limited to blocking and deletion of user accounts and streaming websites.

Addendum

Supplemental information

(9 September 2016)

1. With respect to video (a) “Thirteen junior sch■l students – Show all special!!” mentioned in Chapter 4 of this report, the relevant footnote states that “The product was also sold on the Internet. According to information we received, the manufacturer was First Star.” After the preparation of this report, however, First Star declared on their website that there is no product involving performers under the age of 18. (Source: <http://www.first-star.co.jp/>)
2. With respect to video (g) “■■ who is 139 centimeters tall, is a junior high sch■l student” mentioned in Chapter 4 of this report, IPPA declared that this product is an AV product depicting “lolita” in their statement dated 8 September 2016. (Source: <http://www.ippa.jp/pdf/ippa-jidoung20160908-2.pdf>)
3. Chapter 5 Part 1 and Chapter 6 Part 3.3 of this report state that MANIAC is a member of JVPS and that Zeus is the member of IPPA. We based these descriptions on the confirmation of IPPA and IPPA’s response that they are members in this way. In IPPA’s statement dated 8 September 2016, however, IPPA denied that MANIAC is the member of JVPS and that Zeus is the member of IPPA. (Source: <http://www.ippa.jp/pdf/ippa-jidoung20160908-2.pdf>)