

Written Request for Legislation to End Forced Appearances in Adult Pornographic Videos

5 May 2022
Human Rights Now

For many years, our organization has called for the enactment of effective laws for protecting victims of forced appearances in pornography.¹ In particular, with concerns about the increase in victimization of 18- and 19-year-olds following the lowering of the legal age of adulthood, we have called for the creation of a legal system that maintains the same level of protection for victims in these age groups as the cancellation right for minors. We request that the legislators' bill which is currently under discussion become an effective legal system and that the serious human rights violations caused by sexual exploitation and digital sexual violence be eradicated. We specifically request the following;

1 Definitions and Provisions, etc.

Please change the term "video works of a sexual act" to "recorded images of a sexual act". This is necessary so that damages caused by the leak of a part of a video work, a making-of video, images, etc. will also be covered by the relief.

Please revise "free decision-making of the person performing" to "'dignity' or 'human rights' of the subject person."

- Please define "recorded images of a sexual act" as "a record that includes images of a person performing sexual intercourse or a sexual intercourse-like act, or touching or having someone touch his/her genitals, or performing assault, rape, humiliation, or cruelty, and that as a whole exclusively arouses or stimulates sexual desire, and please ensure consistency with the current legal system that does not permit forced sexual intercourse through contracts."

2 Content restrictions

(1) The following items should be specified in the contract.

The contract must be in Japanese (or native language for foreigners).

- 1) Specific details of the acts to be performed in the appearance
- 2) Scope and duration of distribution and media
- 3) Filmer/director, maximum time to be held
- 4) Consideration, time and manner of payment of consideration
- 5) Product title, production firm, distributor, copyright holder, official name of the distributor, representative, address, and phone number (must be a legal entity registered in Japan)

¹ Human Rights Now research report

<http://hrn.or.jp/wpHN/wp-content/uploads/2016/03/c5389134140c669e3ff6ec9004e4933a.pdf>

6) Rules regarding secondary use and compensation for secondary use (clearly state that secondary use, editing, or transfer without permission is not permitted.)²

7) Methods for storage and disposal of photographic data

- (2) As an explanation, a written document that clarifies the procedures for cancellation and for demanding injunction and that provides information regarding the complaints office and counseling and support organizations should be issued and made available.

2 Cancellation

- (1) In addition to cases of non-insurance of a contract and contractual issues, please determine that 18- and 19- year-olds are able to unconditionally cancel contracts.

*In view of the particularity and seriousness of the damage, taking measures that take vulnerability into account should not be inconsistent with the legal policy regarding the legal age of adulthood, and we request that this issue be considered again.

- (2) Due to the nature of long-term damage, there should be no statute of limitations on the right of cancellation, and the system should be such that it can be invoked at any time.

3 About termination

- (1) We request that the period during which the unconditional right of terminating a contract may be exercised extends to one year after the release and to at least two years after the filming, rather than one year after the filming.

For 18- and 19-year-olds (if the above unconditional right of cancellation is not introduced), we request that it extends to 5 years.

*** Since the provision of a certain period of time after filming has a risk that the vendor will keep the performers under restraint and control until that time, the period of time must be limited to a certain period of time after the release.**

- (2) In order to avoid any interpretation disputes as to whether the right of termination has retroactive effect or not, we request that it be clearly stated that the right of termination has retroactive effect.

- Due to the distribution being from person to person by nature, please provide that the third party protection provision (Article 545 of the Civil Code), which is a general provision for contract cancellation, be clearly exempted from application.

Civil Code Article 545. When one party exercises its right of termination, each party shall be obligated to restore the other party to its original state. However, this may not prejudice the rights of a third party.

***Without clarifying this, this will result in the inability to remedy the damage, given the nature of the goods which are**

² It is extremely important, as the AV Human Rights and Ethics Organization also states, that the industry must abide by Rule 8, which provides as follows: "The attribution of copyright and neighboring rights for each work produced shall be made clear. For any secondary use of such works, compensation for secondary use shall be paid to the performers in a manner to be determined separately."

distributed from person to person.

4 Prohibition of Secondary Use and Unauthorized Transfer

- (1) It must be clearly stated that no secondary use, transfer, editing or processing is allowed without performers' consent.
- (2) Clarify that in the event of cancellation or termination, Articles 91(2), 92(2) and 92-2(2) of the Copyright Act shall be exempted from application.

For (2), please introduce the following specific articles.

4 When video works of a sexual act have been produced without concluding a performance contract, or when a performance contract or a publication consent contract has been terminated, Article 91(2), Article 92(2), and Article 92-2(2) of the Copyright Act shall not apply to the performance of said performer.

*(1) Without these rules, it would be easy for malicious companies to circumvent the law and profit by selling improperly produced pornographic videos by "selling out". Victims and performers strongly complain of the serious effects of the semi-permanent suffering of victims caused by the current law that allows secondary use, transfer, and editing without the performers' consent, and legislative measures are necessary to eliminate such suffering.

*(2) Without such a provision, even if rules are established, the "one chance principle" (Article 91(2) of the Copyright Act, etc.), which states that once a performer grants a license, he or she loses all rights to an image and cannot exercise any rights to any use of the image, cannot be eliminated, and thus the right of cancellation or termination cannot be exercised with respect to such images which have been transferred from person to person. This would result in a lack of effectiveness. On the other hand, by enacting the above clear provision, victims will be able to recover their moral rights as the actual legal basis for injunction demands and take effective measures against overseas dissemination.

Copyright Act, Article 91 (Sound and Visual Recording Rights)

(1) Performers shall have the exclusive right to make sound recordings or visual recordings of their performances.

(2) The preceding paragraph shall not apply to a performance sound-recorded or visual recorded in a cinematographic work with the permission of the person who has the right prescribed in the said paragraph, except when the performance is recorded in a sound recording (excluding those intended to reproduce sound exclusively together with images).

Article 92 (Broadcasting rights and wire broadcasting rights)

1 Performers shall have the exclusive right to broadcast or wire-broadcast their performances.

(2) The provisions of the preceding paragraph shall not apply to the following cases

(ii) In the case of broadcasting or wire-broadcasting the following performances

(a) Performances that have been sound-recorded or visual recorded with the permission of a person who has the rights stipulated in paragraph (1) of the

preceding Article

(b) Performances set forth in paragraph (2) of the preceding Article that have been sound-recorded or video-recorded on an object other than the sound recording set forth in the same paragraph

(Right to make transmittable) Article 92-2 Performers shall have the exclusive right to make their performances transmittable.

(2) The provisions of the preceding paragraph shall not apply to the following performances.

(i) Performances that are visually recorded with the permission of a person who has the right stipulated in Article 91, paragraph (1)

(ii) Performances under Article 91, paragraph (2) that are sound-recorded or visually recorded on an object other than a sound recording under the same paragraph.

5 Clauses that unilaterally prejudice the interests of the performer are invalid.

It should be clear what falls under this category. At a minimum, the following items should be clearly listed as examples of invalid items. The following should also be prohibited.

1) Uncensored video³

2) Contracts that are delivered overseas and that do not achieve the prevention of complaints or dissemination in Japan.

3) Contracts for the production, distribution/sale, transfer, or secondary use of commercial sexual image recordings without performers' consent, or the transfer of portrait rights and publicity rights without compensation. (As mentioned above, if this is not clearly stated, Article 91 of the Copyright Law will apply and secondary use, etc. will always be possible; so it should be clearly excluded.)

4) Contracts whose circulation/distribution period exceeds five and a half years.

Semi-permanent distribution is a violation of human rights and important from the perspective of the right to be forgotten.

5) Contracts that impose sexual intercourse, oral intercourse, anal intercourse, or insertion of objects into the genitals as actual contractual content

Until now, the Japanese legal system has held that sexual intercourse cannot be forced by contract. Allowing sexual intercourse against one's will by contractual restraints or at the direction of supervision is inconsistent with the direction of criminal law reform and is unacceptable.

6) Video recordings including abuse, humiliation, violent behavior, or other acts that affect physical or mental safety or health.

7) Placing provisions for financial penalties. The provision of financial penalties by production companies should also be prohibited.

³ An uncensored video is considered a crime under Japanese domestic law and is mainly distributed by overseas servers, which not only causes the performers a great deal of pain, but also puts them at risk of being punished.

6 Right to demand an injunction and dissemination prevention measures

(1) Impose a duty of cooperation on copyright holders with respect to injunction demands.⁴

(2) Introduce an anti-dissemination provision similar to Article 4 of the Revenge Pornography Law.

In the case of damage caused by unexpected filming or damage caused by a malicious individual who tricked the victim, rather than a so-called domestic pornographer, the address, name, etc. of the perpetrator or copyright holder may not be identified, and it may be difficult to stop the dissemination even if a service of public notice⁵ is made. As described below, punishment under the Revenge Pornography Law should be applied to the parties involved who spread the material despite the cancellation or termination, and in addition, the measures to prevent the dissemination of the material under Article 4 of the same law should also be applied.

(3) Dealing with overseas websites

It is necessary to take measures to prevent the dissemination of pornography in line with the fact that the number of victims through distribution sites operated overseas is increasing. We request that blocking similar to that for child pornography be introduced.

7 Criminal penalties

- Please establish penalties for violations of this law in order to ensure the effectiveness of regulations.
- Please establish penalties equivalent to those under the Revenge Pornography Law in cases where the sale or distribution is forced despite cancellation or termination.
- Please establish provisions for crimes outside Japan in light of the increasing number of victims of overseas uncensored pornography.
- Unauthorized transfer, unauthorized secondary use, and violation of prohibitions should also be punishable.
- Inappropriate solicitation should also be subject to punishment.

8 Cooperation with regulatory agencies and victim support/support groups

(1) Establish a system for supervision and victim support within government departments, and clearly provide for it in the law.

⁴ In particular, if the material has been improperly spread to foreign websites, it is difficult to respond to the removal without the involvement of the copyright holder. It is reasonable to assume that even if the performer's moral rights are restored to the performer by the termination, the copyright holder still has an external obligation.

⁵ https://www.courts.go.jp/tokyo-s/saiban/13/Vcms3_00000347.html

(2) "Collaborate" with private organizations in victim support and provide financial support.

9 Review Provisions

| Please place a review provision and set a period of two years so that the actual operation can be checked and the law can be reviewed at an early stage.

End