

The public comment about "The United Nations Committee on the Rights of the Child DRAFT Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography"

[Introduction]

We call ourselves Teenagers Group Against the Prohibition of Comics, Animation and Games. Our organization consists of mostly teenagers, who are subjects of the Convention on the Rights of the Child. After discussing the contents of the DRAFT Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography amongst ourselves, we have decided to make these public comments based on the stipulations of Article 3 of the Convention on the Rights of the Child.

[Opinion Summary]

We demand the omission of Paragraphs 61 through 64, and Paragraph 68 and "non-existent children" in Paragraph 62 included in the DRAFT Guidelines. There are no reasonable grounds included in these provisions for prohibition by law of fictional children depicted in explicit sexual activities. This constitutes a grave infringement and violation of the freedom of expression, as expressed clearly in Article 19 of the Universal Declaration of Human Rights. In addition, the prohibition by law of the depiction of fictional children in explicit sexual activities will on the contrary violate the rights of children, making actual issues and cases of child sexual exploitation difficult to resolve.

[The reasons for demanding the omission of Paragraphs 61 through 64, and Paragraph 68 and Paragraph 62 "non-existent children" of the DRAFT Guidelines]

[Reason 1]

Prohibition by law of explicit sexual expression of fictional children is not only unconstitutional and lacking rationality, but it is a violation of individual human rights including the freedom of expression.

[Reason 2]

Prohibition by law of explicit sexual expression of fictional children will harm the creators and fans, who are unassociated with sexual exploitation and sex crimes against children, leading to the obstruction of the wholesome development of all art and culture, such as comics, animation, film, painting, sculpture, etc. This will go against the happiness of all human beings, including us children.

[Reason 3]

This does not respect the cultural diversity of all countries and regions, and it is racist by nature. And additionally, it violates the rights of children.

[Explanation for Reason 1]

A Supreme Court of Sweden precedent states that "classifying child pornography of fictional children as a crime can be considered a threat towards freedom of

forming an opinion, and limits both the freedom of expression and information. As such, possession of comics and illustrations depicting fictional children shall not be punished as a crime of child pornography.”¹

In addition, a Supreme Court of Japan precedent determines that in order to control freedom of expression (prohibition of presentation and sale, distribution, possession), all conditions for “clear and present danger” must be met. The following three points are the conditions for “clear and present danger”:

- There is a clear certainty of actual harm happening in the near future.
- Harm actually happening is serious.
- Regulation is absolutely essential to avoid the harm.

The ruling of the Supreme Court of Japan states the following:

“Under the constitution, justification of controlling freedom of expression shall be limited to cases of existing danger towards human life and property. Simply a possibility shall not be deemed sufficient for such. It is necessary to foresee the specific occurrences of imminent danger that were clarified by individual precedents.”²

However, Paragraph 63 of this DRAFT, states only that “Such depictions contribute to normalizing the sexualization of children and fuel the demand of child sexual abuse material.”

Within the present-day criminal psychology the need for domination, not sexual impulses, is generally understood as the primary reason for sex crimes and sexual abuse.³

In July 2012, the Ministry of Justice of Denmark, has published the research findings of a research institution belonging to the University of Copenhagen Hospital, which stated that “There is no causation between sexual abuse of children and fictional depictions of child pornography in comics and animation.”⁴ In addition, there continue to be numerous cases of sexual abuse of children by

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Judgments of the Supreme Court of Sweden ”Judgments of the Supreme Court, 15 June 2012, B990-11 ”(2012), available at:
<http://www.hogstodomstolen.se/Domstolar/hogstodomstolen/Avgoranden/2012/2012-06-15%20B%20990-11%20Dom.pdf>

2

Judgment of the Supreme Court of Japan,”3rd Petty Bench, (March. 7, 1995) ,Case Number 1989 (o) 762.” (1995) ,pdf file p7 ,available at:
http://www.courts.go.jp/app/hanrei_jp/detail2?id=52449
http://www.courts.go.jp/app/files/hanrei_jp/449/052449_hanrei.pdf

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Psychology Today "Sex Crimes Are Not About Sex", "Criminals are not the sexually charged dynamos that they are often thought to be" (June. 30, 2011) ,available at:
<https://www.psychologytoday.com/us/blog/inside-the-criminal-mind/201106/sex-crimes-are-not-about-sex>

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Denmark Department of Justice “Report on sex crimes of The Criminal Law Committee. Report No. 1534” (2012) ,available at:
<http://jm.schultzboghandel.dk/upload/microsites/jm/ebooks/bet1534/bet/helepubl.html#23.5.2>
<http://jm.schultzboghandel.dk/upload/microsites/jm/ebooks/bet1534/bet/helepubl.html#kap31>

clergymen of the Catholic church, a place without fictional depictions of child pornography.⁵

Furthermore, in 2019 Japan's National Police Agency (NPA), published a report entitled "2018 Status Report Regarding Child Sexual Exploitation" which states that the majority of child pornography crimes are in correlation with SNS.⁶

These facts prove that depiction of fictional child pornography is not the reason for sexual abuse of children. Prohibiting depictions of fictional children in explicit sexual activities will have no effect on the actual protection of children.

The reasoning in Paragraph 63 of the DRAFT does not meet the conditions of "clear and present danger." By prohibiting under law, the specific philosophies and expressions based on undefined possibilities and morals, the United Nations is acting contrary to Article 19 of the Universal Declaration of Human Rights. Article 3 of Japan's Act on Prohibition of Child Pornography states that "this law shall not be utilized against the purpose of child protection, and must have respect towards academic research, cultural and artistic activities, the rights and freedom of the citizens regarding news coverage." We believe that in discussing urgent issues regarding child protection, we must not forgo respect towards fundamental human rights. Freedom of expression is a basic human right and the core right of liberal democracy, and it must be dealt with the maximum amount of respect and consideration within the legislation process.

As indicated in a precedent of the Supreme Court of Sweden and the above facts, Paragraphs 61 through 64, and Paragraph 68 of the DRAFT Guidelines are unconstitutional and lack rationality.

[Explanation for Reason 2]

The definitions for "any person appearing to be a child," "realistic representations," and "realistic and/or virtual depictions" in Paragraph 62 and Paragraph 63 are ambiguous and obscure. The art style prevalent in Japanese comics and animation includes short proportioned persons with enlarged eyes. There are many cases in which the depictions of adults have been determined as children. For example, this is especially the case of artwork of cartoonists Osamu Tezuka, Fujio Fujiko and Akira Toriyama, who are famous both in Japan and abroad. Through a prohibition by law, persons utilizing Japanese animation and comics as their means of artistic expression will be limited in their craft, and will be required to implement self-censorship.

The Supreme Court of Sweden has stated the following:

"Freedom of expression is the foundation of liberally democratic society. The

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The New York Times "Catholic Priests Abused 1,000 Children in Pennsylvania, Report Says" (Aug. 14, 2018), available at:

<https://www.nytimes.com/2018/08/14/us/catholic-church-sex-abuse-pennsylvania.html>

BBC NEWS "Catholic Church sex abuse scandals around the world" (September.14, 2010), available at:

<https://www.bbc.com/news/10407559>

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Japan's National Police Agency "2018 Status Report Regarding Child Sexual Exploitation" (2019), available at:

https://www.npa.go.jp/safetylife/syonen/no_cp/newsrelease/kodomonoseihigaih30.pdf

possibility for the exception of freedom of expression must be interpreted in the narrowest of margins, and a necessity for prohibition by law, must be reported in a convincing manner. "

"Wanting to protect children from being lured into sexual activities is not a solid reason to rationalize prohibition by law."

Provided with the context and background of the comic medium's deep roots in Japanese culture, freedom of expression must be significantly upheld to the utmost degree."¹

We must remember that history has shown, that vague legal provisions lead to abuse of power, and oppression of the rights of the citizens. Determining the legal or illegal of expression through trial is absurd argumentation towards the arrested creators being prosecuted. In a diverse culture that encompasses art, a society that cowers from the expression of children will in turn be unable to protect them.

[Explanation for Reason 3]

Regardless of gender or age, the animation and comics of Japan are loved and fascinated by many people in Japan and overseas, including children. By depicting various issues and conflicts of teenagers, comics and animation of Japan have elevated themselves to artistic relevance and a form of culture. Sexual themes are especially important.

For example, works such as *Kaze to Ki no Uta* ("The Poem of Wind and Trees" by Keiko Takemiya) and *DEEP LOVE* (story by yoshi, art by Yu Yoshi) depict sexual abuse of children. These works have been widely supported by teenagers. In *The Poem of Wind and Trees*, there is a depiction of sexual abuse of a nine-year-old boy. In her BBC interview, Keiko Takemiya has stated, "Such things do happen in real life. Hiding it will not make it go away. While recognizing this fact, I tried to portray the resilience of these boys. How they managed to survive and regain their lives after experiencing sexual abuse." Ms. Takemiya recalls receiving a letter from one of her readers who said she had been raped by her father. In the letter, the reader stated that Ms. Takemiya's work had told her that she was not alone and this had saved her.⁷

In reading these comics, we as teenagers learn and think about our own issues surrounding our sexuality. If fictional depictions of explicit sexual activities and sexual abuse are prohibited by law, and the publication sale and possession of these comics is prohibited, we will be denied the opportunity to learn and understand these issues. In addition, just having possession of these comics will lead to the arrest and imprisonment of teenagers. This has already actually occurred in South Korea. The violation of this child's human rights in South Korea came as a result of laws prohibiting comics and animation that depict explicit sexual activities and sexual abuse of fictional children.⁸

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BBC NEWS "The godmother of manga sex in Japan" (March. 16, 2016) ,available at: <https://www.bbc.com/news/world-asia-35714067>

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Otapol "The purpose of mass arrests is to police earn points? Minors were arrested one after another in South Korea came as a result of laws prohibiting comics and animation that depict sexual activities and sexual abuse of fictional children." (September. 19, 2013) ,available at: <https://otapol.jp/2013/09/post-7.html>

As with religion, one set of values in a society does not necessarily suit the values of another society. Forcing one particular set of values as the de facto criteria for all societies will cause rifts and friction due to the differences in values. The enforcement of a particular set of moralistic values as a convention for all countries under the power of the United Nations is an extremely racist and anti-democratic position that disregards cultural diversity.

In the Final Appeal of Children and Young People at the 2nd World Congress Against Commercial Sexual Exploitation of Children held in 2001, an appeal was adopted for "...consideration of this cultural, political and economic diversity, as well as individual differences. " At this time, please remember this one more time. There are many aspiring future cartoonists and novelists within our group. There are many teenage fans of comics and animations. There are many teenagers with various issues in Japan that are encouraged by reading and viewing of comics and animation. With the reasoning of child protection, please do not take away from us, children of the present, and also children of the future, our freedom of expression, which is protected under the constitution.

[Conclusion]

Due to the above reasons, we demand the omission of Paragraphs 61 through 64, and Paragraph 68 and Paragraph 62 "non-existent children" included in the DRAFT Guidelines.

We do believe in the conscience of the United Nations Committee on the Rights of Children and its members. But we understand that even conscience can lead to unfortunate outcomes towards people in certain cases. We believe that by reading this public comments, the member of the United Nations Committee on the Rights of Children will omit Paragraphs 61 through 64, and Paragraph 68 and Paragraph 62 "non-existent children" from the DRAFT Guidelines.

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Matsuoka Kaito, representative of the Teenagers Group Against the Prohibition of Comics, Animation and Games

[Group Members]

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