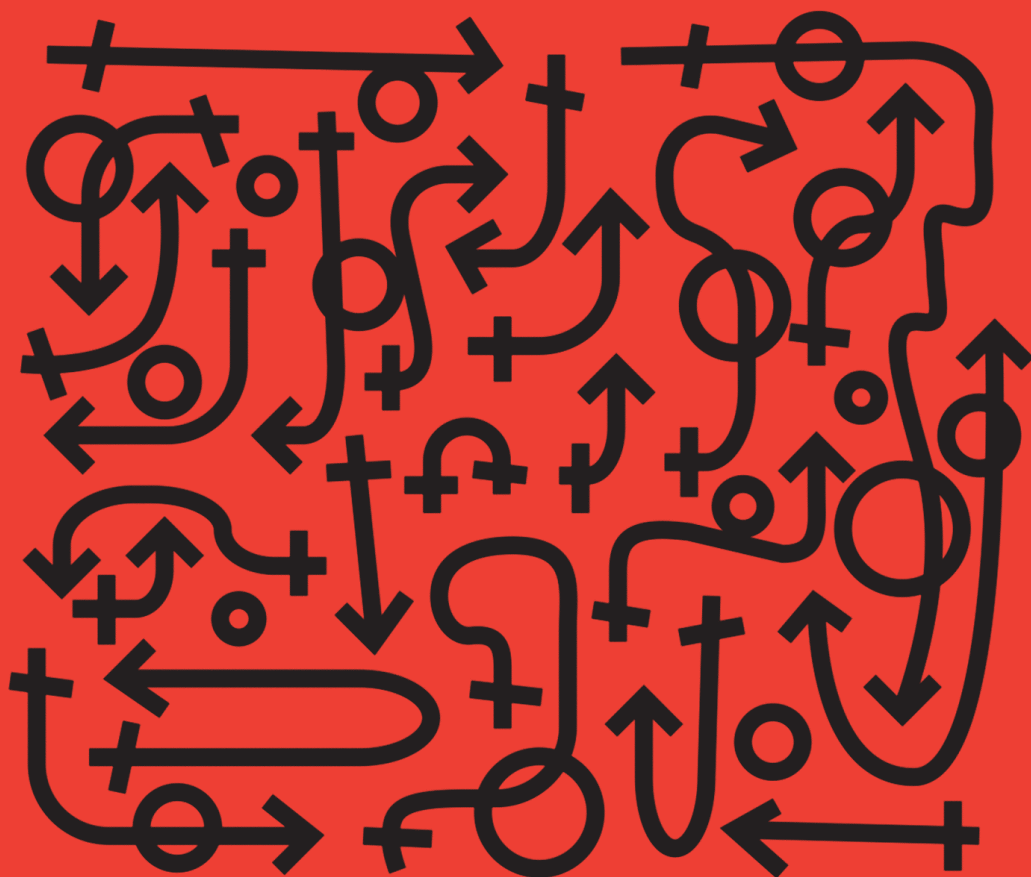


GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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JAPAN

THE CENSORSHIP OF PORNOGRAPHY, MASCULINITY, AND NATIONALISM IN JAPAN



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Introduction

In 2014, artist Igarashi Megumi – who works under the pseudonym Rokudenashiko, and uses her vagina in works of art – was arrested twice by the Tokyo Police for violating the country’s obscenity law.¹

The case of Rokudenashiko is distinctive for the following reasons. Firstly, it was the first time that the police applied the obscenity law to a case involving 3-D data. Their charge was that Rokudenashiko had scanned her vagina and emailed a URL containing the scanned data to donors who had provided money for the art project, with the idea of letting them use the data to replicate her vagina on a 3-D printer. This means that the authorities, on the grounds of the country’s obscenity law, are now able to restrict not only content that includes images of genitals, but also online data that can reproduce genitalia as an image or object.

Secondly, the case showed how the police are more concerned about censoring artistic expression than targeting the commercial sex toy industry. Although there are many online shops, including Amazon.co.jp, which sell sex toys that look like genitalia, the police chose to target the scanned data of Rokudenashiko’s vagina. On her second arrest, in December 2014, they also arrested the owner of a Tokyo sex shop for allegedly displaying Rokudenashiko’s artwork in her shop window, but not for displaying sex toys.

In doing this, authorities exposed their double standards: while overlooking the mass production of sex toys for commercial purposes, they have used a legal technicality to intervene in artistic expression that is protected by the constitution. How and why has such censorship been accepted by Japanese society? In this report, I will analyse the online discussions on freedom of expression in Japan and consider how censorship, which is easily applied as a double standard by the police, is accepted by society.

The obscenity law in Japan

Japan has a complicated history of ideas regarding “obscenity”. The country’s obscenity law, in Article 175 of the Japan Penal Code,² restricts the sale and distribution of obscene materials:

A person who distributes or sells obscene writing, pictures, or other objects or who publicly displays the same, shall be punished with imprisonment... or a fine. The same applies to a person who possesses the same for the purpose of sale.³

Although there is no clause in Japan’s obscenity law that defines the term “obscenity”, the obscenity banned by the law is conventionally taken to refer to images of genitalia.

However, this law was challenged in post-war Japan under the Constitution of Japan,⁴ which protects freedom of expression and, under Article 21, prohibits any censorship. In 1957, the Supreme Court of Japan upheld Article 175 on grounds of morality, social order, and healthy sexual behaviour, and this decision has not yet been overturned.⁵

Online discussions supporting freedom of expression but against Rokudenashiko

What is notable in Rokudenashiko’s case is that many who argue for child pornography in comics – or *loli-con* – on grounds of freedom of expression, have defended the arrests and criticised Rokudenashiko on online chat boards and on Twitter. This phenomenon raises several issues regarding the logic of censorship and free expression in Japan at the moment.

2 For an English translation of the Penal Code of Japan, see: www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=02&dn=1&yo=penal+code&x=0&y=0&ky=&page=1

3 Alexander, J. R. (2003). Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima’s ‘In the Realm of the Senses’. *Asian-Pacific Law & Policy Journal*, 4(1), 148-168. papers.ssrn.com/sol3/papers.cfm?abstract_id=2041314

4 For an English translation of the Constitution of Japan, see: japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

5 Itoh, H., & Beer, L.W. (Eds.). (1978). *The Constitutional Case Law of Japan: Selected Supreme Court Decisions, 1961-1970*. Seattle: University of Washington Press.

1 The first time on 15 July and the second on 3 December.

If there is no victim, there is no abuse

Japanese child pornography comics have been regarded as inappropriate by both international media and local governments in Japan. When the national government proposed the bill banning the possession of child pornography (real images of child sexual abuse), which was passed by the Diet, Japan's bicameral legislature, in June 2014, a call to ban child pornography in comics was also made. When, after much debate, the Diet decided not to include comics in the prohibitions on pornography, a BBC report featuring Japanese pornographic sub-cultures stated: "As the Olympics approach, outside eyes will turn to Japan, exerting a powerful pressure for manga and anime to be part of what people see as 'cool Japan' rather than 'weird Japan'."⁶

Responding to this kind of international criticism and to the attempts to prohibit these publications in the Diet, supporters of freedom of expression in Japan insist that child pornography in comics is a field of fantasy in which the government should not intervene. They emphasise that, unlike real images of child sexual abuse, there is no actual child victim involved in making the comics.⁷ With an emphasis on how comics and animation differ from real images of pornography – based on the perspective that that there is no real victim involved – freedom of expression regarding pornographic cartoons is accepted in society for now.

Feminist attacks, attacking feminists

Nonetheless, as the BBC reported, "Many in Japan, particularly women, have a wider concern, too."⁸ Relations between some feminists and supporters of freedom of expression when it comes to child pornography in comics are tense.

For example, Kitahara Megumi, a feminist critic and owner of a sex shop for women, who was also involved in Rokudenashiko's second arrest for allegedly displaying "obscene goods" – though she and Rokudenashiko insist those are not "obscene goods" but "art works" – is an outspoken feminist who has criticised Japanese pornography. Just after Rokudenashiko's first arrest, Kitahara criticised Japanese pornography as a symbol of patriarchal society, saying that "it is the same logic of patriarchy that the society allows the expression of child pornography in comics and regards female genitalia as obscene. In this regard, it is not a contradiction to support banning expressions of child pornography

while criticising the censorship of obscenity; and furthermore, it is ridiculous to discuss the problem of the restriction of obscenity as a problem of freedom of expression."⁹

Rather than showing solidarity, there have been many tweets expressing annoyance with Rokudenashiko and feminist critics such as Kitahara. Akagi Tomohiro, a freelance writer, has tweeted: "If she is an artist, she can make works where viewers recognise her genitals while also avoiding legal troubles. Why do we have to bother about the issue of freedom of expression with her chicken game?"¹⁰ On Kitahara's criticism of pornographic expression, he stated: "If we care about 'violence' and 'discrimination', we should censor Kitahara's opinions. Although she thinks not, her views are appallingly discriminatory and violent."¹¹

Another tweet stated: "I want to tell feminist people, 'First of all, reform yourself if you want to gain support for Rokudenashiko's issue.' They should be self-critical about what they have done – awful things that support anti-pornography, the police and far-right cults."¹²

As the comments clearly show, these people regard Rokudenashiko's provocative works and Kitahara's feminist opinions as more of a potential threat to them than Japan's obscenity law and the police's actions. Here, "freedom of expression" is understood not as a principle but as something technical: expressing what you want while avoiding police intervention. For some supporters of "freedom of expression" when it comes to child pornography in comics, as long as these do not contain images of genitalia, Japan's obscenity law is currently not a problem, but feminist art and critique are.

Scepticism of the international media

As Japan is notorious for having a large pornography industry, the police's move against Rokudenashiko's artwork has attracted international media attention, especially focusing on Japan's censorship and double standards regarding freedom of expression.¹³ However, such criticism from the international media has also fuelled hostility against Rokudenashiko's case. On Twitter, discourses criticising

6 Fletcher, J. (2015, 7 January). Why hasn't Japan banned child-porn comics? BBC. www.bbc.co.uk/news/magazine-30698640

7 AFEE. afee.jp/manga

8 Fletcher, J. (2015, 7 January). Op. cit.

9 Kitahara, M. (2014, 15 July). Rokudenashiko san no taiho ni omoukoto (An idea on Rokudenashiko's case). *Love Piece Club*. www.lovepiececlub.com/lovecafe/minori/2014/07/15/entry_005228.html

10 https://twitter.com/T_akagi/status/489068832011468801

11 https://twitter.com/T_akagi/status/489072446553612288

12 <https://twitter.com/Artanejp/status/489006145013424129>

13 McCurry, J. (2015, 15 April). Japanese artist goes on trial over 'vagina selfies'. *The Guardian*. www.theguardian.com/world/2015/apr/15/japanese-artist-trial-vagina-selfies

international media reports featuring the case have appeared; for example: “Again, they insist on the theory that it is discriminatory and showing double standards as though Japan is perverted”, and “I think their coverage is based on Orientalism”.¹⁴ Here the international media’s criticism is being interpreted as being the product of “Orientalism”, rather than legitimately questioning Japan’s principle of freedom of expression, especially censorship targeting women’s freedom of expression in a democratic society. Instead, critics appeal to a sense of national pride and fuel nationalism.

Masculinity, nationalism and censorship

Here I will analyse how the issue of Japan’s censorship, as raised by the Rokudenashiko case, has been transferred to other issues through the online discussions, as seen above.

Firstly, as the Japanese system of censorship focuses on images of genitalia, it sometimes allows a wider variety of sexual expression including child pornographic expression than do other advanced democratic countries in respect to sexual content.¹⁵ The simple provision in Japan is that this expression does not contain realistic images of genitalia. However, at the same time, this restriction makes it impossible to realise one of the foundations of feminist art, namely, the ownership, control and free expression of one’s own body – including the vagina. Rokudenashiko’s case exposed the problem of the Japanese censorship system as *The Economist* ironically described: “Rape comics, yes; anatomical art, no.”¹⁶ However, many supporters of freedom of expression insist on maintaining Japan’s existing “freedom of expression” laws with the exception on genitalia, rather than confronting the problems this presents. This is the result of political calculation: they share the idea that they can save the existing *status quo* when it comes to freedom of expression – one that allows them to express and consume what they want to – rather than criticising the authorities and introducing a new form of freedom of expression that could prohibit comics with extreme content, as occurs in many countries in the West.

Secondly, international criticism has stimulated a sense of nationalism rather than respect for freedom. For example, a reader criticising the article

in *The Economist* commented: “He knows nothing about economics which is very strange working for The Economist, but he is very close to anti-Japanese left wings and femi activists.”¹⁷ In particular, criticism of Japanese child pornography in comics promotes the idea that Western “freedom of expression” tends to restrict expression more than the Japanese model of free expression does.

Thirdly, feminist criticism of the pornographic gaze of Japanese men has given rise to a counter-sentiment of masculinity linked to nationalism. Through this anti-feminist sentiment, the Rokudenashiko case is regarded as “karmic payback” rather than as censorship by the police.

In these ways, many self-identified supporters of freedom of expression have expressed online sympathy for the police’s action with regard to Rokudenashiko’s case.

Conclusion: Fragile freedom and failing solidarity

While the Rokudenashiko case exposes Japan’s contradictory situation when it comes to freedom of expression and its complicated social context of “censorship”, the Japanese media have tended to discuss whether Rokudenashiko’s work is art or if it is pornography, which the police can or should censor. On the other hand, the international media covering the case have focused on Japan’s “double standards” regarding sexual content, implying that rape or child pornography in comics are far more immoral than any expression using genitalia. However, both arguments are based on the idea that the government is an authority that can judge the morality of any expression, and that it can intervene when it comes to “immoral” expression by way of censorship or criminalisation. Supposedly, both discourses could be used, depending on the case, for strengthening Japan’s censorship through its obscure obscenity law.

Similarly, online discussions about the Rokudenashiko case have resulted in passive acceptance of police censorship in order to ensure existing “freedoms” and to support anti-feminist sentiment. Online debates reveal that Japan’s system of censorship has been sustained not only by the police’s arbitrary enforcement of the law, but also by people’s passive support of this.

One of the elements that have led to people ignoring issues concerning the state of freedom of expression in Japan is the combination of Japanese nationalism and masculinity, which emerged in the

¹⁴ togetter.com/li/694500?page=1

¹⁵ There are several cases of prosecutions and criminal convictions for possession of Japanese comics as possession of child pornography in the United States and Canada. For a list of cases, see: cblbf.org/criminal-prosecutions-of-manga

¹⁶ *The Economist*. (2015, 13 June). Japan’s obscenity laws: Vagina monologue. *The Economist*. www.economist.com/news/asia/21654119-rape-comics-yes-anatomical-art-no-vagina-monologue

¹⁷ <https://www.economist.com/users/guest-oomwljo/comments>

reaction to the international coverage of Japan's position on child pornography in comics. Nationalistic sentiment and the defence of masculinity among Japanese men have two political functions in regard to contemporary issues of freedom of expression. Firstly, appealing to nationalism disturbs more rational discussions on freedom of expression in Japan. Nationalistic counter-sentiment not only views international criticism as merely "cultural differences", but also transforms the police's censorship into the "Japanese way" of society, and so accepts it; through nationalism, the censorship is transformed into a kind of "tradition".

Secondly, nationalism combined with the defence of masculinity sets up a double bind for feminists and minorities in Japan. While a feminist critique that points out how the patriarchal and violent gaze of men is used to reproduce a masculinity that embraces pornographic expression along with nationalism among Japanese men, the calls for restrictions of pornographic expression are easily appropriated by the police to restrict the counter-cultural expressions of women. It is significant in the Rokudenashiko case that the police arrested Kitahara Megumi, who is said to be one of the most vocal feminist critics of Japanese pornography, for displaying Rokudenashiko's work in her shop. This kind of double bind now benefits the Japanese authorities, which want to intervene in people's freedom of speech, not only regarding pornography but also regarding the voices of feminists and minorities.

Japan now needs rational discussions about freedom of expression without moral judgements or nationalistic sentiment.

Action steps

For rational discussions to take place, it is important to make it possible to talk about freedom of speech as a principle of democracy without stimulating a sense of nationalism. Due to the long history of censorship in Japan, and persistent scepticism against the "Western way" of freedom of speech, it is important to start to distinguish between discussions of the actual social effects of free expression and those that draw on issues of morality, or between the necessary political moves to protect women and children and moral judgements. It might be necessary to bridge the two later, but only once practical considerations are made.

To provide safety for women and children while protecting freedom of expression, Japan needs to focus on actual sexual violence and the improvement of social care for victims, rather than wasting resources in attempting to intervene in expressions that do not directly involve victims. At the same time, there is not enough empirical data and research on how far pornographic comics can cause harm in Japanese society. This research will be useful to figure out how far this form of free expression can affect the society and human behaviour, although studies must be conducted without any ideological influence.

To tackle the double bind that feminists and sexual minorities find themselves in, international criticism can still be effective if it focuses on the government. The Japanese government and police will be sensitive to how they are considered internationally, especially before the Tokyo Olympics in 2020. International criticism is still essential and effective, especially when Japan has an ultra-nationalist government such as the current Abe administration, in order to stop the administration and the police from abusing their power against feminists and minorities.

To achieve moral improvement, we need persistent, honest and rational discussions, but to prevent the abuse of power, we need prompt solidarity and action.

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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