

Children's Legal Rights Journal

Volume 35
Issue 2 2015

Article 10

1-1-2015

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Recommended Citation

Lauren Schroeder, *Around the World: Protecting Victims of Child Pornography in Japan*, 35 CHILD. LEGAL RTS. J. 197 (2015).
Available at: <http://lawcommons.luc.edu/clrj/vol35/iss2/10>

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Around the World: Protecting Victims of Child Pornography in Japan

By Lauren P. Schroeder

The rise of the Internet and the digital age in the last few decades has significantly multiplied the growth of the child pornography market. Such advances have made the child pornography market one of the fastest growing businesses on the Internet. Further, the global nature of the Internet has made child pornography an international problem. For instance, a recent investigation into a child pornography ring led to the arrest of 350 persons across six continents and involved over fifty countries. The worldwide scope of child pornography and vast number of laws and legal systems involved can make the prosecution of offenders and recovery for victims difficult.

By 1990, it was illegal to possess child pornography throughout a large portion of the United States. In contrast, the possession of such material in Japan was legal until 2014. Across cultures, child pornography victims face severe psychological damage. This damage is intensified by the knowledge that images of their sexual abuse can be accessed online and possessed across the world indefinitely. Japan's recent child pornography law is a welcome step, as Japan has long been criticized as a major production center of child pornography circulating around the world. Studies have shown that between 2011 and 2012, the number of child abuse victims in Japan jumped almost twenty percent. This indicates a need for tougher laws addressing child abuse, including the abuse of children through child pornography. Unfortunately, Japan's new law fails to prohibit the possession of manga and anime, two popular forms of Japanese animated media, which can depict violent sexual abuse of children. Tolerating such images of child sexual abuse can harm children and lead to further psychological damage to victims of child pornography. This failure is not unique to Japan and will contribute to a significant problem in protecting victims of child pornography worldwide.

In *Ashcroft v. Free Speech Coalition*, the Supreme Court of the United States gave First Amendment protection to "virtual child pornography." This child pornography was created through computer technology, without the use of real children, but still has the potential for devastating effects on victims of child pornography. The Supreme Court noted that pedophiles might use the materials to encourage or "groom" children to engage in sexual activity or might be encouraged by the virtual media to engage in the creation, distribution, and possession of child pornography involving real children. The Court reasoned that it is impossible to ban the idea of minors engaging in sexual activity, because doing so would ban materials beyond those imitating real child pornography, such as prominent films and famous books like *Romeo & Juliet*. Fortunately, the U.S. government followed the *Ashcroft* decision with legislation banning "obscene" virtual child pornography. This allows for courts to distinguish "hardcore" pornography that involves real or apparent minors from depictions of sexual activity with artistic value, such as *Romeo & Juliet*. Japan has made no such distinction and continues to protect animated child pornography.

Virtual child pornography, however, like that at issue in *Ashcroft* or in Japanese animation, still has the potential to severely harm children. Not only can it be used to

engage children in sexual activity, but it can be created by virtually editing images or likenesses of real children to make it look like they are engaging in sexual activity. This has the potential to create severe psychological damage to children who, even if not forced to engage in sexual activity for the purposes of producing child pornography, have to live with the knowledge that images of them doing so are accessible online and possessed across the world.

Further, Japan's laws are criticized for not creating long-term care to assist children who have experienced sexual abuse. This assistance would help victims overcome the abuse and address the intensified suffering due to the presence of the abuse material on the Internet. The ability to access long-term care is essential for child pornography victims because healing is a lifelong process, amplified by the re-victimization faced by victims when their images are shared. Japan needs to further acknowledge the harm faced by victims by the continued possession of their images through instituting laws that provide victims with financial assistance and long-term care programs. While not perfect, the United States has created a legal framework to assist victims of child pornography in recovery. Through a mandatory restitution statute, civil remedies, crime victim funds, and other government benefits, child pornography victims in the United States have some recourse to obtain resources to support their recovery. However, in Japan, a major producer of child pornography, victims have no such recourse.

This failure puts Japan in violation of two major international conventions it has ratified, the United Nations Convention on the Rights of the Child ("CRC") and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography ("Optional Protocol"). The CRC requires that countries take appropriate measures to protect children from abuse and the Optional Protocol explicitly requires that signors provide restorative services to victims and allow victims to receive restitution from their offenders. Specifically, the Optional Protocol mandates that countries take all "feasible measures with the aim of ensuring all appropriate assistance to victims of [child pornography], including their full social reintegration and their full physical and psychological recovery." Further, it requires signors to give victims access to seek compensation from those legally responsible. By not providing victims with recovery options, Japan fails in its obligations to protect children.

Until Japan passed its possession law in 2014, it was blatantly in violation of the Optional Protocol, as the Protocol requires all parties to take "appropriate measures aimed at effectively prohibiting the production and dissemination of [child pornography]." Legally banning the possession of child pornography was an essential step to moving towards compliance with its international obligations. Japan must now take further steps to clarify and affirm its commitment to protecting children. Specifically, Japan should enact laws that distinguish between appropriate Japanese anime and manga and that used to depict and perpetrate child pornography. The existence of such child pornography is harmful to victims in and of itself, but can also be used to induce children to engage in sexual activity. This allows for further production of child pornography. Additionally, as a world center for the production and distribution of child pornography, Japan must recognize the needs of victims and ensure they have access to

the services needed for recovery. By establishing crime victim funds and enacting laws that make it easy for victims to obtain restitution, Japan will begin to be seen by the world as a partner in the fight against child pornography and not a villain.

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