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Defending Human Rights in the Porn Industry: A Historical Perspective

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[Kawai Mikio \[Profile\]](#)

Reports of human rights abuses in the production of adult-content videos have led to public scrutiny of an industry that, despite its legality, has naturally tended to operate in the shadows. Kawai Mikio, one of a panel of experts tapped to draw up voluntary industry regulations, frames the issue in a broader historical and legal context and makes the case for common-sense solutions.

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Birth of a Social Issue

In March 2016, a Tokyo-based human rights watchdog group reported that Japanese porn video producers used deception, bullying, and other unethical practices to coerce young women into performing sex acts on camera. As a government panel (the Council for Gender Equality) began studying options for tightening laws and regulations governing the [adult video \(AV\)](#) industry—that is the producers and distributors of mainstream video pornography—the media kept

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the issue in the public eye with stories highlighting the harrowing experiences of victims.

In a typical case, a woman is induced to sign a contract without understanding all that it entails and is threatened with steep fines or legal action if she tries to back out. Coercion of this sort can be difficult to prove, and even if proven is not punishable as a criminal offense on the order of rape, since it does not entail physical force or the threat thereof. Most frequently, the law has dealt with such cases by applying article 58 of the Worker Dispatch Act, under which “inducing workers to engage in work injurious to public health or public morals” is punishable by 1 to 10 years in prison and a fine of up to ¥3 million. In July 2016, three executives of an AV talent agency were arrested and fined under the law.

Meanwhile, the AV industry is taking voluntary steps to clean up its act. In April 2017, three trade associations, representing the performers, producers, and distributors of adult videos, joined hands to spearhead voluntary industry reform by establishing an expert commission on ethics and human rights, of which I am a member.

Erotica and Obscenity in Japan

Japan’s attitude toward erotica and nudity can be difficult for outsiders to understand. On the one hand, the country has a long cultural tradition of frankness regarding such matters, from the eighth-century *Kojiki* (Record of Ancient Matters, a collection of origin myths) to the erotic art of [Katsushika Hokusai](#) and other *ukiyo-e* masters.

At the same time, under Japan’s modern legal system, the powers that be have a history of cracking down hard on anything deemed to have “crossed the line” into obscenity. In a landmark ruling in 1957, the translator and publisher of the Japanese edition of D.H. Lawrence’s *Lady Chatterley’s Lover* were found guilty of distributing obscene materials—a criminal offense under Article 175 of the Penal Code—even though the novel as a whole was acknowledged as a work of art. At times, even kissing has been subject to censorship in film and photography. Yet pornography is a booming and (for the most part) legal business in Japan.

These contradictions are nowhere more apparent than in Japan’s film and video industry.

As the spread of television threatened the movie industry in the 1960s, film studios turned to female nudity as a key to survival. By the 1970s, they were churning out soft porn known as “pink films,” testing the limits of the authorities’ tolerance.

Although the studios themselves used the term “porno,” the films were generally tame by today’s standards. The sex was all play-acting, and genitalia were hidden from sight.

Technology and Pornography

The rise of home video in the late 1970s and 1980s heralded the age of adult video. Intended for private consumption rather than public viewing, the AV genre went beyond pink films by showing performers engaged in actual sex acts. Nonetheless, the publishers reached an understanding with the authorities by drawing the line at the display of sex organs. The basic solution was to use a digital mosaic, applied post-production, to mask the genitals. (Even now, it is considered a violation of Japanese criminal law to distribute videos or films, domestic or foreign, that clearly show human genitalia.) To ensure compliance, the industry has established three

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review boards, overseen by retired police officials. This setup has served to maintain a minimum of order and discipline in the industry without the direct intervention of regulators.

According to industry insiders, securing female performers was a major challenge for AV producers in the 1980s. By the 1990s, however, becoming a porn star began to seem a more attractive career option. Some women even turned to the industry on their own initiative, appearing on late-night TV. In the boom years, AV businesses made huge profits and many formed proper tax-paying companies. Some accounts suggest that, by the beginning of this century, aspiring porn actresses were being turned away in droves. But I am skeptical of such claims, inasmuch as a survey I conducted in 2017 revealed that most working AV actresses had been recruited by talent scouts.

In this century, the rise of the Internet has shaken up the AV business, and the past 10 years have seen a drop in revenues. Producers, of course, have tried to capitalize on online distribution, in addition to the rental and sale of DVDs. One outgrowth of this development is the practice of releasing unedited videos of Japanese pornography (that is, with genitalia visible) via non-Japanese websites. In 2011, the government closed the legal loophole, but many of the unedited videos escape detection. Meanwhile, pirated versions (edited and unedited) are widely available. Moreover, because the unedited versions sell for a higher price than the legal editions, the former may now account for the bulk of industry revenues. (On the other hand, Japanese men have very little interest in porn videos actually produced overseas, perhaps because of the language gap.)

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The Sex Industry and Human Rights

In response to the recent controversy, some have argued that pornography is inherently debasing to women and damaging to society and have called for a general crackdown on adult videos. In addition, with the problem of sex trafficking attracting growing concern around the globe, some have argued that coercion of performers should be punishable under the Penal Code's prohibition against human trafficking. With these assertions in mind, I would like to take a moment to look at human trafficking and the sex industry in Japan from a historical perspective.

Human trafficking has certainly been documented in Japan. From pre-modern records, we know of the existence of human traffickers, who bought girls (usually from destitute rural families) and sold them to businesses engaged in prostitution. This continued through the Edo period (1603–1868) and it lingered through the late nineteenth century, even after human trafficking had been outlawed under Japan's modern legal code. In 1900, under pressure from social crusaders, the Meiji government moved to crack down on such abuses by tightening regulation of *yūkaku*, the designated entertainment districts where prostitution was effectively legal.

After World War II, the system of licensing prostitutes was abandoned, but prostitution continued to be tacitly permitted in designated districts until 1957, when the Anti-Prostitution Act came into effect. Then the red-light districts disappeared almost overnight. What was the impact on Japanese society? Ironically, the number of rapes reported nationwide jumped by 50%, to 6,000, the following year.

It took very little time for sex entrepreneurs to devise a raft of new services and entertainments not covered by the legal definition of prostitution. The sex industry

bounced back quickly and has grown by leaps and bounds ever since. Meanwhile, the number of reported rapes in Japan has declined year by year (in part reflecting a general improvement in public safety). According to police statistics, about 2,000 rapes and attempted rapes are reported annually. To be sure, the actual number of sexual assaults (including unreported ones) can be assumed to be much higher, but the fact remains that historical trends argue against the notion of banning the commercialization of sex (including pornography) as a means of defending women or society as a whole. We must seek other solutions to the problem of human rights and labor abuses in the Japanese AV industry.

Toward Common-Sense Solutions

In October 2017, the AV Human Rights Ethics Organization (created from the expert commission formed the previous April) began drawing up industry measures to address the problem of coerced video performances. Our solution was the adoption of a standard industrywide contract, along with procedures aimed at clearly ascertaining what the recruit will and will not do and a rule barring companies from suing performers for damages (such as the cost of filming preparations) in the event that they decide to back out.

In the process of studying the issue, however, we came to understand that the problem was actually more complicated than we had thought. While some women have indeed been the victims of coercive tactics, others appear to have resorted to charges of coercion in a bid to halt the dissemination of their videos online. These are women who signed contracts relinquishing all rights in perpetuity, back in the days before online distribution became routine. After leaving the profession and embarking on a new life, they find that virtually anyone of any age can access the videos on their computers or smartphones. Of course, this is also a major concern among women who actually *have* been subject to coercion. In February 2018, the AV Human Rights Ethics Organization began accepting petitions from performers to demand the halt of online distribution of videos that had originally gone on sale at least five years previously, in cases where their distribution could be deemed detrimental to the woman in her current situation.

Another problem that emerged during our deliberations was that of exploitation or unfair compensation. To ensure fair payment, our rules require producers to disclose to recruits the full amount payable by the publisher and the percentage passed on to the performer, information they had not been in the habit of providing. The big question now is whether companies wishing to operate legally in the AV industry can stay in full compliance with these regulations.

To conclude, let me say a word about the public reaction to the issue of human rights abuses and exploitation in the AV industry. Some have attacked the entire business as fundamentally abusive and exploitative, while others have sought to defend the freedom of each woman to choose her profession and express her sexuality as she chooses. But both reactions have come overwhelmingly from women. The truth is that few Japanese men consider this an issue of real importance.

Perhaps the least helpful reaction is the moral outrage I have heard directed toward single mothers who—impelled by circumstances on which we can only speculate—turn to the AV business to support themselves and their children. No one has the right to demand that these women “get married like normal people,” or “choose a life of virtuous poverty” over the shame of appearing in adult videos. I agree that we need tighter safeguards to keep pornography from intruding on those who have no wish to see it, but we cannot deny people (whether performers

or consumers) the right to make their own choice. Our top concern should be protecting the rights of AV actresses and the unfortunate women compelled to appear in adult videos against their will.

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Professor and Vice President at Tōin University of Yokohama. Born in 1960. Completed his doctoral studies in law at the University of Kyoto. Also pursued doctoral-level studies at the Pantheon-Assas University in Paris. Publications include *Anzen shinwa hōkai no paradokkusu* (The Paradoxical Collapse of the Myth of Safety) and *Nihon no satsujin* (Murder in Japan).

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