

The background of the slide features a close-up, slightly blurred image of a notebook page. A pencil is visible on the left side, resting on the paper. The page has faint cursive handwriting, likely in blue ink, which is out of focus. The overall color palette is warm, with shades of brown and beige.

Virtual Child Pornography, Human Trafficking and Japanese Law:

Pop Culture, Harm and Legal Restraints

What is Virtual Child Pornography or *Lolicon*?

- Virtual Child Pornography or *Lolicon* both refer to fictitious depictions of children in sexual scenarios or situations
- They are “virtual”, that is, no actual child is depicted. Instead we have drawings or computer generated images. These depictions can be in a manga (or comic), animation or video game.
- Lolicon is an amalgamation of the words Lolita Complex and refers to the desire for cute girl characters in manga, animation and games.

Japanese Law

- Article 21, the roof under which freedom of expression is protected establishes that “[f]reedom of assembly and association as well as speech, press and all other forms of expression are guaranteed”. Moreover, Article 21 prohibits any form of censorship (Matsui 2011).
- Article 175 of the Criminal Code (1907) explicitly specifies a case where freedom of expression could, in theory, be limited when a person distributes, sells or displays in public an obscene document, drawing or other objects.

Japanese Law

- Article 2, paragraph 3 of the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children (1999) defines child pornography as:
 - ... photographs, recording medium containing electronic or magnetic records... or any of the following medium which depicts the image of a Child, in a form recognizable by the sense of sight: (i) any image of sexual intercourse or any conduct similar to sexual intercourse with a Child or between Children; (ii) any image of a Child having the Genital Organs, etc. touched by another person or of a Child touching another person's Genital Organs, etc. which arouses or stimulates sexual desire; or (iii) any image of a Child wholly or partially naked, in which sexual body parts of the Child (genital organs or the parts around them, buttocks or chest) are exhibited or emphasized and arouses or stimulates sexual desire.

International Law

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against (also known as the Palermo Protocol):

- Human trafficking happens when an individual recruits, transfers, transports, harbours or receives people by means of deception, fraud, coercion, abuse of power, payment to others in control of the victim, use of force, threat to use force, or abduction for the purpose of forced labour, sexual exploitation, removal of organs, servitude and slavery or practices similar to slavery.
- The treaty also establishes that there is no need to show that any of the “means” spelled out in this provision have been used to facilitate exploitation if the victim is under the age of eighteen
- Moreover, there is no informed or free consent when the person has been deceived, coerced, defrauded, threatened, forced, abducted or controlled by another person

Revisiting the Questions:

- The question is whether drawings or computer generated images depicting sexual intercourse of young-looking characters can be used as an instrument to sexually exploit real people, including children. Could this action be framed as part of human trafficking?
- Whether children are or could be harmed by virtual child pornography in ways it could justify framing this behaviour as human trafficking.

The Grooming Argument:

- This process, known as "grooming," entails exposing a potential victim to images of children engaged in sexual acts in an effort to normalize sexual imagery, desensitize the victim, and lower his or her inhibitions. The wide availability of Lolicon enhances its potential for abuse in grooming processes (Takeuchi 2015, 223).

The “Direct Harm” Argument:

- Nakasatomi (2009), for example, argues that children are indeed subjected to various forms of torture, abuse, and exploitation in the virtual world.
- He asserts that pornography, especially sexually deviant materials such as rape and *lolicon*, can lead part of the general population into committing sex offenses (Nakasatomi follows Catherine MacKinnon).

Research on the Effects of C.P

- Malamuth and Huppin (2007, 820): “evidence does not support the proposition that there is a strong connection between being a child pornography offender and committing sexual molestation”.

Comparison: United States

- With the PROTECT Act - 2003, virtual child pornography was criminalized and its definition was removed from the Miller Test (obscenity test).
- The Act prohibits receiving, distributing, and possessing “child pornography”—redefined as any visual depiction of sexually explicit conduct involving the use of a real minor or a “digital image, computer image, or computer-generated image that is, or is indistinguishable from,” that of a real minor (Bell, 2012).
- “Indistinguishable” is defined as “such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct,” excluding drawings, cartoons, sculptures, or paintings (18 U.S.C.A. § 2256(11); Kornegay 2006)..

Comparison: United States

- Congress justification: “many criminal defendants... suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated”.
- Furthermore, according to Congress, it might be difficult even for experts to establish beyond reasonable doubt that certain images depict real children (Kornegay 2006).

What Could Japan Do?

- Japan could amend the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children to criminalize digital images of children, engaging in sexual conducts when these depictions are indistinguishable from a real minor.

What Could Japan Do?

- Accordingly, **both:**

(1) showing virtual child pornography of any kind (that is: as a means to deceit or coerce); and

(2) creating, possessing and distributing virtual pornography when digital images are indistinguishable from a real child

Could be prosecuted under the label of human trafficking.

What Could Japan Do?

- Labeling as human trafficking could:
- Justify severe penalties;
- Send a message to the public that these acts are unacceptable in society;
- Would arguably not clash with Japan's protection of freedom of expression

Thank you!