

## **CHAPTER IV**

### **POLICY TAKEN BY THE GOVERNMENT TOWARD PORN INDUSTRY**

The history of obscenity in Japan is very long although the process is influenced by the Japanese society's point of view by not paying attention to norms in a more moral order of life related to sex, but the consideration of the Japanese government is how Japan is acceptable in the life of the nation and state in international world. Since the end of the Second World War Article 175 of the Japanese Criminal Code, known as the obscenity law (more precisely the *Waisetsu Butsu Hanpu To* / Distribution of Obscene Objects), has represented the principal official restrictions on freedom of expression, which are guaranteed by Article 21 of the Constitution 1947. Paragraph 2 of this article reads how "there is no censorship to be maintained". The obscene term (*waisetsu* in Japanese) first appeared in Article 259 of the 1880 Criminal Code although Article 175 is the main legal basis for regulating obscenity. Altered numerous times since it was implemented in 1907, it specifies that a person who distributes, sells or publicly shows indecent documents, images, or materials shall be punished to detention for no more than 2 years or a small fine, not exceeding 2,500,000 yen. It also applies to those who have similar

intentions<sup>104</sup>. However, Article 175 only focused on the distribution and sale of indecent materials. Government or court administrator has not been legally forced to determine what is meant by "material that is by a nature obscene"<sup>105</sup>. In this chapter the author will explain what policy taken by Japanese government toward porn industry, how it works, and the problem it has.

## A. Censorship

With regard to indecency in graphic materials such as the *manga* or movies, the law has been understood as disclosure of pubic hair, sexual genitals and the act itself. As a result, the indecent parts displayed in this graphic medium need to be covered by using *bokashi* (blurring or fogging) or a digital-made mosaic. Although court decisions have provided such a vague standard and definition of obscenity, the application of the article is extremely unreliable. This caused many contradictions in court decisions and become a major concern of the debate on freedom of speech in Japan.<sup>106</sup>

Currently, the basic material of explanation for obscenity is established in the 1950s, as reaction to the translation and distribution of *Lady Chatterley's Lover* novel by the English writer DH Lawrence. In 1950, Kyujiro Koyama and Sei Ito, an editor and translator, were suspect of obscenity for the translation, publication and

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<sup>104</sup> <http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=01&id=1960>, accessed on November 10, 2016

<sup>105</sup> Alexander, James R. (n.d.). *Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima's In the Realm of the Senses*. (p.154)

<sup>106</sup> Temai, Kensuke. (1983). Censorship. In *Kodansha Encyclopedia of Japan*, Volume 1. (p. 254).

distribution of the novel. The prosecution confirms about twelve sections of the novel were obscene and this publication was a crime under Article 175 of the Criminal Code. The defendant believed that the explanation of the Criminal Code provided by the prosecutor was imperfect. After sequences of heated discussion at the Tokyo High Court, the case in due course was presented to the Supreme Court in 1957. On March 13, the Supreme Court overruled the appeal filed by the defendant and supported the allegations filed by the prosecutor that twelve parts of the problems contaminated the whole novel with indecency on the grounds that "the description of the sex act contained in the twelve sections, as shown by the prosecutor, is all too bold, detailed, and realistic."<sup>107</sup>

The Supreme Court, when illustrating what signified the expression through obscene writing, hold by the ideologies recognized by the Court of Cassation when it made clear that the obscene term

"Referred to writing, pictures, and other things that tend to stimulate sexual desire or satisfy the same, and consequently, an obscene problem, it must have caused a man to be embarrassed and stupid".

The Supreme Court referred

"Obscene to the thing that excites unwanted sexual desires, hurts normal feelings of embarrassment that normally exist in normal people, and contrary to good moral concepts related to sexual matters."<sup>108</sup>

Translators and editors were forced to pay fines and publishing the novel was banned. Therefore, as pointed out by James R. Alexander, the basis of the obscenity

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<sup>107</sup> [http://www.courts.go.jp/app/hanrei\\_en/detail?id=11](http://www.courts.go.jp/app/hanrei_en/detail?id=11), accessed on November 12, 2016

<sup>108</sup> [http://www.courts.go.jp/app/hanrei\\_en/detail?id=11](http://www.courts.go.jp/app/hanrei_en/detail?id=11), accessed on November 12, 2016

doctrine of Japanese Judicial is currently developed during the Supreme Court's decision on *Lady Chatterley's Lover's* translation and the authorization of obscene terminology provided by former decisions by the Court of Cassation and the Supreme Court, and how Article 175 The Criminal Code is further applied.<sup>109</sup> In its gradual development the law has recognized the creative benefit of an artistic creation is a justifying cause to decide whether a specific creation is indecent and, thus, warrants its censorship.<sup>110</sup>

November 21, 1963 the Tokyo High Court opposed the result of the Tokyo District Court and found the suspect guilty of indecency. On October 15, 1969, the Supreme Court supported this ruling. With this decision the jury is detailed more clearly than in the case of *Lady Chatterley's Lover* that the indecent portions make the entire creation indecent<sup>111</sup> and more notably, in applying for the first time chapters 12 and 13 of the Constitution on the Standard of People's Welfare to limit the freedom of academics assured in the Article 21 of the Constitution. Even though the suspect was found to be guilty, the Supreme Court explained that there may possibly cases where the quality of the art and the intellectual of a work can lessen the sexual stimulation of the indecent part to the degree that it may not be subject to sanction by article 175 of the Criminal Code and relief all work of all allegations of indecency.

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<sup>109</sup> [http://www.courts.go.jp/app/hanrei\\_en/detail?id=11](http://www.courts.go.jp/app/hanrei_en/detail?id=11), accessed on November 12, 2016

<sup>110</sup> Alexander, James R. (n.d.). *Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima's In the Realm of the Senses*. (p.155-156)

<sup>111</sup> Beer, Lawrence W. (1983). *de Sade Case*. In Kodansha Encyclopedia of Japan, Volume 2. (p. 88-89)

## 1. The Transformation of the Policy

### I. Before Pink Film Era

The reforms undertaken by the Japanese government after the Meiji Restoration also reached a popular entertainment area, which faced a crackdown on its obscenity and cruel representation that occurred before Article 175 of the Japanese Criminal Code was published. As Yoshimoto explained

"The sole interest of the government is limiting the negative impact of frivolous and vulgar entertainment against the people, and if possible, uses them as ideological instruments to legitimize state power".<sup>112</sup>

On April 21, 1872 Kyobusho (Ministry of Religious Affairs) was formed and immediately issued an order, consisting of three decisions, to control fiction and popular entertainment. This is the way of respect for the gods and the love of the state to be realized, the way of life of Heaven, Earth, and Man must be explained, obedience to the emperor and his will must be inculcated.<sup>113</sup> Soon the owner and playwright of the three Kabuki theaters were summoned to the Tokyo prefectural office and asked to revise the Kabuki scenario so that they could be morally acceptable by the aristocratic and foreign audiences.

Thus the Meiji Government initiated a campaign to eradicate the element of obscenity and unwanted cruelty displayed in many Kabuki dramas. However, as Yoshimoto noted "Kabuki enjoys tremendous popularity precisely because it is a

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<sup>112</sup> Yoshimoto, Mitsuhiro. (2000). *Kurosawa: Film Studies and Japanese Cinema*. Duke University Press. (p.104)

<sup>113</sup> Keene, Donald. (1984). *Dawn to the West: Japanese Literature of the Modern Era (Fiction)*. New York. (p.21)

popular fantasy product, whose obscenity and cruelty are held integrally”<sup>114</sup>. Kabuki was again placed under strict control first by the wartime Japanese government and then by the American Occupation troops which took place during and after World War II. During the war, the Japanese government cracked down on dramas that disrupted public safety and morals, such as works that showed indifference to imperial households and undermined national prestige or included obscenity, adultery, lewd sexuality, cruelty and distortion of goodness.<sup>115</sup>

On 16 November 1945 SCAP (Supreme Commander for Allied Power) had commanded the banning of 236 movies created in between 1931-1945 because of overload feudalistic, militaristic or nationalistic tendency. Although pre-war and post-war censorship is aimed at different topics and themes, as Kaneko Ichiro, famous star Shinkokugeki (New National Theater), drama of sword fighting, "which remains the same is obscenity."<sup>116</sup>

With regard to cinemas in Japan, since the end of World War II *Nikutai no Ichiba* (Market of Flesh) is considered the first Japan-produced film (and also the first pinku eiga) accused of obscenity. Directed by Japan's so-called erotic cinema fathers Satoru Kobayashi, *Nikutai No Ichiba* opened in Tokyo's regional cinema on February 27, 1962. As Domening explains, the film does not immediately cause immediate controversy when launched as stated in many sources, but more than two

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<sup>114</sup> Yoshimoto, Mitsuhiro. (2000). *Kurosawa: Film Studies and Japanese Cinema*. Duke University Press. (p.104)

<sup>115</sup> Okamoto, Shiro. (2001). *The Man Who Saved Kabuki: Faubion Bowers and Theatre Censorship in Occupied Japan*. University of Hawaii Press. (p. 22-23)

<sup>116</sup> Okamoto, Shiro. (2001). *The Man Who Saved Kabuki: Faubion Bowers and Theatre Censorship in Occupied Japan*. University of Hawaii Press. (p. 50)

weeks later due to the sensational media coverage given to the film.<sup>117</sup> On March 15, the Tokyo Police Department indicted the Market of Flesh for violating Article 174 (*kozen waisetsu* / general indecency) of the Criminal Code.<sup>118</sup> This article reads as follows:

"A person who commits public misconduct shall be sentenced to imprisonment for not more than 6 months, a fine of no more than 300,000 yen, and a minor offense without a small fine job."

The authorities demand the cutting of some scenes which describes sex and violence totaling 1,000 feet, or about 11 minutes, before it can be re-released.

The first Japanese film sued for alleged obscenity was *Kuroi Yuki* (Black Snow) directed by Tetsuji Takechi and produced by Nikkatsu, premiered on June 19, 1965. The Nikkatsu office and Takechi's own home were raided by the Tokyo Metropolitan Police Department and all film copies are confiscated. *Kuroi Yuki* represents another significant milestone in the history of Japanese censorship and Article 175 because the film had previously been approved by EIRIN (short for *Eirin Kanri Inkai* or the Film Code Ethics Commission, an independent and non-governmental censorship committee selected and governed by members of the film industry Japan itself).<sup>119</sup>

The controversies and media coverage created greatly by *Kuroi Yuki*, although many film critics still regard *Ai no Corrida* from Nagisa Oshima as the

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<sup>117</sup> Domenig, Roland. (2014). The Market of Flesh and the Rise of the "Pink Film". In A. M. Nornes (Ed.), *The Pink Book: The Japanese Eroducton and Its Contexts* (pp. 20-26). Kinema Club.

<sup>118</sup> Domenig, Roland. (2014). The Market of Flesh and the Rise of the "Pink Film". In A. M. Nornes (Ed.), *The Pink Book: The Japanese Eroducton and Its Contexts* (pp. 20-26). Kinema Club.

<sup>119</sup> <http://www.midnighteye.com/reviews/black-snow/>, accessed on November 16, 2016

most representative film facing a law accused of obscenity according to chapter 175. With reference to these movies, we need to emphasize the important things. *Kuroi Yuki* had been given approval by Eirin to be released without any censorship.

The most famous case without a doubt is Nagisa Oshima's *Ai No Corrida* (In the Realm of the Senses). Oddly, the film itself was never brought to court but a book containing essays written by directors, screenwriters and twelve photographs accompanying the text. Although recorded secretly in Japan with a crew of mostly Japanese, *Ai No Corrida* is considered a French production. The film stock has been imported from France and the negative has been sent to a French laboratory for the development and editing of it.<sup>120</sup>

The Cannes Film Festival on September 26 of that year was launched in commercial cinemas of Paris as a world premiere show that took place as part of Director's Fortnight in 1976. Meanwhile, the above mentioned book was published in Japan and subject to obscenity by the end of July, even before the film imported to Japan. During the trial, Oshima admitted that the book had just become the scapegoat for the possibility of the film indictment. Movie distribution in Japan was blocked initially by customs at international airports.<sup>121</sup> Only after one-third of the original films have been altered by the censorship, the film was allowed to be released in Japan in late 1976. To this day the original version of *Ai No Corrida* has never been shown in theaters or released on video or DVD. In Japan, A version released in 2000 entitled *Ai No Corrida 2000* was shown without cut, with a

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<sup>120</sup> Alexander, James R. (2003). Obscenity, Pornography, and the Law in Japan. In *Asian-Pacific Law & Policy Journal*, 4(1), 152.

<sup>121</sup> Beer, Lawrence W. (1983). Obscenity. In *Kodansha Encyclopedia of Japan*, Volume 6. (p.50)



recovered five minute recording censored in its initial release, but still containing a lot of digital bokashi or masking in many scenes.<sup>122</sup>

The obscenity-obscured book by the National Police Agency mentioned above includes twelve indecent performances to "portray sexual positions of men and women"<sup>123</sup> and nine sections "in which male or female sexual intercourse is described bluntly"<sup>124</sup>.

Oshima asked the court to explain him the philosophical, political, legal, conceptual and visual standards underlying the alleged production of such charges. Oshima also demanded from the courts to clarify the terms "sexual relations" and "sexual play" and cases in which "depicting sexual positions of men and women" cannot be considered obscene. Likewise, Oshima asked the court for recommendations on how much he should re-edit the photo so it was not considered obscene. In his defense, Oshima explained that the production that was still in the book was not his own essay but also a professional photographer. Furthermore, the negative film of the photographs was not his own, but belonged to the production company Argos Films. In the same way, Oshima asked the court to explain him the standard for considering the nine parts of the obscene script.<sup>125</sup> The Supreme Court

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<sup>122</sup> <http://www.variety.com/article/VR1117981744.html?categoryid=20&cs=1>, accessed on November 21, 2016

<sup>123</sup> Oshima, Nagisa. (1992). *Censorship, and the State: The Writings of Nagisa Oshima*. London: The MIT Press. (p.269)

<sup>124</sup> Oshima, Nagisa. (1992). *Censorship, and the State: The Writings of Nagisa Oshima*. London: The MIT Press. (p.273)

<sup>125</sup> De Silva, Joaquin. (2009). *Obscenity and Article 175 of the Japanese Penal Code: A Short Introduction to Japanese Censorship*, retrieved from <http://es.geocities.com/eiga9/articulos/obscenity.html#volver5>, accessed on November 29, 2016

did not pay attention to these claims and failed to clarify points related to the meaning of obscene terms. However, Oshima was released from any claim in 1982. Prior to this court decision, in 1979 the San'Ichishobo publisher was also found not guilty for publishing obscene literature.<sup>126</sup>

In inequalities and strikingly in general, foreign films and publications have always been subjected to lighter treatment by Japanese censorship, perhaps due to the pressure exerted by foreign artists, directors, editors and even governments. Thus, the verdict granted by the Supreme Court during the Sade Case in which he explains that there may be cases where the artistic and intellectual qualities of a work can reduce sexual arousal from obscene parts to levels where it may not be punished under article 175 of the Criminal Code, is the reason why Eirin gave a green light to a scene with frontal nudity in a German film about the Spanish painter *Goya Goya-Oder Der Arge Weg Der Erkenntnis*, released in Japan in September 1972.<sup>127</sup>

One of the causes of censorship free is due to the pressure given by directors, the scale and magnitude of events in the first year and the bad publicity that can result from the banning of these films. That is why all of these films are projected without any censorship. However, the Japanese authorities made it clear that their

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<sup>126</sup> De Silva, Joaquin. (2009). *Obscenity and Article 175 of the Japanese Penal Code: A Short Introduction to Japanese Censorship*, retrieved from <http://es.geocities.com/eiga9/articulos/obscenity.html#volver5>, accessed on November 29, 2016

<sup>127</sup> <https://ja.wikipedia.org/wiki/%E3%83%98%E3%82%A2%E3%83%8C%E3%83%BC%E3%83%89>, accessed on November 22, 2016.

decision to let these three films show uncensored is just an exception and whether these films are commercially distributed then they must comply with local laws<sup>128</sup>.

## II. After Pink Film Era

Since the mid-80s, the restrictions on Article 175 has started to get lessened as seen in the publication in 1991 which is a photo collection book with nude pictures of actress Kanako Higuchi titled *Water Fruit*, where, and for the first time in a publication, shown pubic hair. The photos were taken by Kishin Shinoyama, one of the most famous photographers of the time.<sup>129</sup> The launching of this photo book of uncensored photos triggered a 'hair nude' explosion in Japan. Since then, pubic hair exposure has ceased to be one of the standards that can be used in articles about obscenity. Pubic hair exposure in various publications is gradually allowed because the genitals are not shown.<sup>130</sup>

In May 1992 was when a film containing many frontal and full naked scenes will be shown for the first time without being cut and without *bokashi* in commercial cinema and then released in video format. This is a French film *La Belle Noiseuse* directed by Jacques Rivette, who won the Grand Prix du Jury at Cannes in 1991 and was shown at the Tokyo International Film Festival the

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<sup>128</sup> <http://www.webdice.jp/dice/detail/27/>, accessed on November 21, 2016

<sup>129</sup> Japan Photo Guide. (n.d.). *Photo History 1990-1994*. Retrieved from [http://photoguide.jp/txt/PhotoHistory\\_1990-1994](http://photoguide.jp/txt/PhotoHistory_1990-1994), accessed on November 27, 2016

<sup>130</sup> Cather, K. (2014). Policing the Pinks. In Abe Mark Nornes (Ed.), *The Pink Book: The Japanese Eroduction and its Contexts* (p. 93-98). Kinema Club.

previous year. In this case, Eirin, as he had done with *Goya-Oder Der Arge Weg Der Erkenntnis* two decades earlier, did not touch the naked scene.<sup>131</sup>

*Ai No Shinsekai* (New Love in Tokyo) by filmmaker Banmei Takahashi released on December 17, 1994 is a domestic film and features excessive nude scenes, among which there is a female frontal nude scene on the beach near the end of the film with actress Sawa Suzuki and Reiko Kataoka. It became a bokashi-free movie scene in the first Japanese cinema in a film released commercially in the country. The script is based on part of a portrait book of Tokyo prostitute *Ai no Shinsekai / La Nouveau Monde Amoureux* by renowned photographer Nobuyoshi Araki and this could be the reason why the film was not censored.<sup>132</sup> Again, a non-pixelated DVD version of the film was released on May 27, 2011.

Other films depicting female actors in full frontal naked scenes soon sprung up and passed without cut like Kaori Fuji in *Swallowtail* (Shinji Iwai, 1996), Hiroko Shimada in *Midori* (Ryuichi Hiroki, 1996) or Kaori Saeki and Yuna Natsuo in *Koshoku No Yume* (Masahiro Nakata, 1997)<sup>133</sup>. However, other films such as *Total Eclipse* (Agnieszka Holland, 1995), *Beyond The Clouds* (Michelangelo Antonioni and Wim Wenders, 1995), and *The Pillow Book* (Peter Greenaway, 1996), still suffer at the hands of Eirin. Nevertheless, although Customs became softer on letting nudity and pubic hair displayed in the film, it was still considered obscene to

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<sup>131</sup> Helms, Udo. (2001). Obscenity and Homosexual Depiction in Japan. In A. Grossman (Ed.), *Queer Asian Cinema: Shadows in the Shade* (pp.136). Harrington Park Press.

<sup>132</sup> Kimihiko, Kimata. (2014). Thoughts on the Extremely Private Pink Film of the 1970s. In Abe Mark Nornes (Ed.), *The Pink Book: The Japanese Eroticism and its Contexts* (p. 74). Kinema Club.

<sup>133</sup> <https://ja.wikipedia.org/wiki/%E3%83%98%E3%82%A2%E3%83%8C%E3%83%BC%E3%83%89>, accessed on November 23, 2016

portray male sexual organs such as censorship on *The Crying Game* and later *Moeder Dao*, documentary *De Schildpadgelijkende*.<sup>134</sup>

Very strict rules about pubic hair have always been there, but now as long as you do not show the sex scene itself, showing the hair is fine according to pinku-eiga director Takahisa Zeze. According to the rules in Japan that if you display men and women naked and having sex in a whole body portrait, then it becomes R-18.<sup>135</sup> The law in Japan prohibits any kind of scene with actors in frontal nudity thoroughly during intercourse, even if it is simulated, so genital exposure also ceases to be an object of censorship if it is not accompanied by an intimate scene. As a result of this hair boom and loose legal loopholes about pubic hair depictions in print and audio-visual materials since the late 90s, many foreign erotic films which was originally censored when it was first released in theaters or video has been re-released on DVD with the term hair *mushuusei ban* (hair unaltered version) or *mushuusei kanzenban* (hair unaltered complete version) added to their title. However, this new nomenclature does not guarantee the version is completely unchanged, as if the genitals are displayed in a sexual intercourse scene, whether or not simulated, will surely be obscured by *bokashi*.<sup>136</sup>

Japanese courts have repeatedly stated that freedom of expression guaranteed by Article 21 of the Constitution is not absolutely unconditional, for

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<sup>134</sup> <http://www.imdb.com/title/tt0113840/news#ni0076505>, accessed on November 25, 2016

<sup>135</sup> [http://www.midnighteye.com/interviews/takahisa\\_zeze.shtml](http://www.midnighteye.com/interviews/takahisa_zeze.shtml), accessed on November 25, 2016

<sup>136</sup> <https://ja.wikipedia.org/wiki/%E3%83%98%E3%82%A2%E7%84%A1%E4%BF%AE%E6%AD%A3%E7%89%88>, accessed on November 27, 2016

example if it interferes with the welfare of society as defined in Articles 12 and 13 of the Constitution. Alexander pointed out that,

"Up to now, Japanese court decisions are fairly consistent in confirming the policy that the protection of public welfare through censorship of obscenity is not a violation of the guarantee of freedom of expression"<sup>137</sup>.

Again, the standard for limiting freedom of expression is regulated in Lady Chatterley's Lover's court when the Supreme Court states,

"that human rights guaranteed by the Constitution are not absolute but subject to the welfare of society, including the maintenance of minimum standards of morality on sexuality, and that freedom of speech, Important for a democratic government, get the same restrictions".

The most important thing to remember in connection with the Supreme Court's decision on the Lady Chatterley's Lover translation case is that it gives priority to Article 12 of the Constitution on Article 21. In short, the Supreme Court recognizes that freedom of expression is limited.<sup>138</sup>. Thus, basic human rights such as freedom of expression "whether it contains self-limiting clauses, they are all included within the limits prescribed under the provisions of Articles 12 and 13 for the benefit of the public welfare, so that no one may abuse the privileges guaranteed under it"<sup>139</sup>.

This indicates that not only in Article 175 which is accused of being unconstitutional but also the Special Tariff Act (Kanzei Teiritsu Ho) beginning in

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<sup>137</sup> Alexander, James R. (n.d.). *Obscenity, Pornography, and the Law in Japan: Reconsidering Oshima's In the Realm of the Senses*. (p.156)

<sup>138</sup> Mashima, Rieko & Katsuya Hirose. (n.d.). *From "Dial-a-Porn" to "Cyberporn": Approaches to and Limitations of Regulation in the United States and Japan*.

<sup>139</sup> <http://courtdomino2.courts.go.jp/promjudg.nsf/0/647cbd34a4260d6649256739000d56ce?OpenDocument>, accessed on December 1, 2016

1910. Under article 21, paragraph 4, the Customs Bureau has the authority to confiscate, prohibit or restrict (request for withholding or the use of technology to obscure in foreign production films) the import of "books, pictures, carvings, and other articles that could endanger public safety or morals (obscene or immoral materials, such as pornography)"<sup>140</sup>. Interestingly enough, the Japanese version of this definition found on the Japanese Customs homepage does not mention pornography as obscene or immoral material that is believed to endanger the moral safety of the community<sup>141</sup>. Several times "the government's right to do such activities has been challenged. In 1984, however, the Supreme Court of Japan ruled that screening of imported books and magazines by customs authorities was not a censor."<sup>142</sup>

According to an article on obscenity in Kodansha's Japan: An Illustrated Encyclopedia, "Japanese law and society have been relatively tolerant of erotic material" and show that "obscenity is primarily governed not by court decisions, but with a combination of government and non-governmental mechanisms such as self-imposed industry codes run by trade associations or industrial ethics committees"<sup>143</sup> as in the case of Eirin, Council on Publishing Ethics (*Shuppan Rinri Kyogikai*, established in 1963), The Principles of Newspaper Ethics (*Shimbun Rinri Koryo*, established in 1946). In addition, in 1955 some "media organizations formed a

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<sup>140</sup> <http://www.customs.go.jp/english/summary/prohibit.htm>, accessed on December 1, 2016

<sup>141</sup> <http://www.customs.go.jp/mizugiwa/kinshi.htm>, accessed on December 1, 2016

<sup>142</sup> *Japan: An Illustrated Encyclopedia*. (1993). Kodansha. (p.171)

<sup>143</sup> *Japan: An Illustrated Encyclopedia*. (1993). Kodansha. (p.1122)

number of correctional organizations themselves in response to the campaign to enact legislation to protect the morality of young people"<sup>144</sup>. Also at this time several citizen's organizations were created such as the Society for the Protection of Children (*Kodomo o Mamoru Kai*), the Central Council on Youth Problems (*Chuo Seishonen Mondai Kyogikai*), Ban Harmful Books (*Akusho Tsuiho*) and the Society to Promote Self-Discipline in Publishing (*Ahuppan no Jishuku o Motomeru Kai*).

In his article on censorship Kensuke Temai questions whether all of the censorship organizations themselves who apply vague government standards about censorship are an effective way to maintain the freedom of expression<sup>145</sup>. Even more contradictory, the element of Japanese society that has fascinated and puzzled many commentators are large number of pornographic publications and film depicting ultra-violent and ultra-sadistic acts that present a variety of unimaginable fetish and minority sexual practices. And yet, Japan's main focus of censors only focused on hiding pubic hair and genitals. Now, the question is how long the democracy of the world's second largest economy can justify this censorship practice that is supported inconsistently and vaguely by some unconstitutional Supreme Court rulings.

## **2. The Agency Besides Government which Regulates the Policy**

VIDERIN is one of the oldest self-organizing bodies in the industry formed in 1972 by several major AV companies. VIDERIN (short for *Nippon Video Rinri Kyoukai* or Japan Video Morality Association, known in English as Nihon Ethics of

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<sup>144</sup> Temai, Kensuke. (1983). Censorship. In *Kodansha Encyclopedia of Japan*, Volume 1. (p. 254-255).

<sup>145</sup> Temai, Kensuke. (1983). Censorship. In *Kodansha Encyclopedia of Japan*, Volume 1. (p. 254-255).



Video Association or NEVA), in August 2006 lifted a ban on pubic hair displayed in porn films and created new standards for the use of mosaic censors. These new measures are adopted as in recent years VIDERIN:

“Quickly lost its members as an adult DVD company, under pressure from sensitive internet pornography, migrated to a new organization with a looser standard. In the past two years, DVD shipments by NEVA have decreased by 40 percent”<sup>146</sup>.

Since then, the mosaic that still has to cover the genitals has become smaller and more transparent when Viderin lost his place as the most influential independent porn regulator in Japan. The AV Company Soft on Demand started in 1996 its own self-regulating group known as *Media Rinri Kyoukai (Medi-rin)* or Media Ethics Association comprising an "indie" company, an independent AV studio that explores pornographic themes that are prohibited by NEVA rules and who use a thinner censor mosaic for the video. Medi-rin was reorganized in 2005 to form *Content Soft Kyoudokumiai* or Content Soft Association (CSA) to review and manage adult videos and adult software games.<sup>147</sup> In addition, another self-censorship organization, *Visual Software Contents Kyoudokumiai* or Visual Software Contents Industry Coop (VSIC) in December 2003 received a license from the Ministry of Economy, Trade and Industry to operate, becoming the only government-sponsored adult video industry censorship organization.<sup>148</sup>

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<sup>146</sup> <http://www.variety.com/article/VR1117981744.html?categoryid=20&cs=1>, accessed on December 5, 2016

<sup>147</sup> [https://en.wikipedia.org/wiki/Soft\\_On\\_Demand](https://en.wikipedia.org/wiki/Soft_On_Demand), accessed on December 5, 2016

<sup>148</sup> <http://www.vsic.jp/authorization.html>, accessed on December 5, 2016

VIDERIN ceased to function as the main independent regulatory body of the AV industry in June 2008. On the 25th of that month VIDERIN changed its name to *Nihon Eizo Kinri Shinsa Kiko* (*NICHIESHIN*). On 11 December 2010, in an effort to standardize the criteria for the evaluation of pornographic material and thus avoiding further scandals, NICHIESHIN and the Content Soft Association (CSA), another major regulator, merged into a new regulatory body with a legal personality called *Eizo Rinrikiko* (EIZORIN), which in charge of checking Video, DVD, video games and so on. On July 1, 2011, Shinsa Center, outsource regulatory agency, joined EIZORIN.

On its website, EIZORIN, though agreeing that, as a general rule, freedom of expression guaranteed by paragraph 1, article 21 of the Japanese constitution, claims that in order to protect the public welfare of the intrusions of individual rights, restrictions on obscene material must be applied.<sup>149</sup> In short, the protection of public welfare justifies the limitation of the right to freedom of expression because it is vaguely and openly expressed in articles 12 and 13 of the Japanese Constitution. The steps adopted by EIZORIN to examine the work of AV retain the previous censorship procedure regarding genital exposure, which must be blurred through a digital mosaic.

## **B. Age Restriction**

Article 4 The Japanese Child Welfare Act defines "child" as "anyone under the age of 18." Measures to promote child welfare have been carried out in

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<sup>149</sup> <http://eizorin.or.jp/greeting.html>, accessed on December 5, 2016

accordance with the basic policy of the Act as described in paragraph 1 of Article 1 with "everyone should strive to ensure the birth and growth of children, both in mind and body" and also in Paragraph 2 Article 2 as "the livelihood of each and every child are equally guaranteed and protected."<sup>150</sup> The definition of "child" is, in this case, applied to those who appear in the film and those who want to purchase adult-related products specifically, especially in adult shops.

Child pornography laws in Japan prohibit child pornography. The production, sale, distribution and commercialization of child pornography is illegal under Article 7 of the Act on Punishment of Activities Related to Child Prostitution and Child Pornography, and Child Protection and may be punished with a maximum sentence of five years in prison and / or a fine 5,000,000 yen. Ownership of child pornography with the purpose of distribution and sales is also illegal.<sup>151</sup> In accordance with the definition of "child", it shall be prohibited for a person under the age of 18 to appear in films and other material depicting, in a visually identifiable manner, in relation to sexual intercourse or acts similar to sexual intercourse with or by child.

Many pornographic films ("Japanese Adult Video" or JAV) have titles that might indicate that they are using minors. However, the titles circulated already with the approval of Eirin, Japan's film industry regulatory agency, which fully comply with and do not violate Japanese law. A common tactic is to have a part of a

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<sup>150</sup> <http://www.mofa.go.jp/policy/human/child/report2/definition.html>, accessed on December 5, 2016

<sup>151</sup> [http://www.japaneselawtranslation.go.jp/law/detail\\_main/?printID=&ky=work&re=02&page=18&vm=03&id=100](http://www.japaneselawtranslation.go.jp/law/detail_main/?printID=&ky=work&re=02&page=18&vm=03&id=100), accessed on December 5, 2016

title that is replaced with a character, or use a phonetically similar neologism. For example, a video about "19-year-old Girl Sex Party!" can be sold under the title of "1X-year-old Girl Sex Party!" The word "*joshikōsei*" (女子 高 生), meaning "high school girl", cannot be used because it will give the impression of a girl aged 15 years or younger, who cannot legally play a role in a pornographic video. The homonymous neologism "*joshikōsei*" (校 校 生), which may mean "female student", is used in a large number of titles to promote the product without violating the censorship laws.<sup>152</sup>

Adult shops in Japan prohibit access to minors and public stores that have adult sections should be placed at certain corner of the stores and have different marks such as a large banner containing R18 marks<sup>153</sup> and the entrance should be covered with a curtain, which also has an R18 mark printed on it, so that people cannot see inside of the adult section.

### C. Conclusion of the Chapter

In this chapter we can see how the Japanese government's efforts in adopting a policy to regulate the pornography industry, which regulates censorship procedures concerning genital exposure that must be blurred through digital mosaics and minimum age restrictions for customers which must be over 18 years of age to be able to purchase adult goods and materials including pornographic films.

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<sup>152</sup> [https://en.wikipedia.org/wiki/Pornography\\_in\\_Japan](https://en.wikipedia.org/wiki/Pornography_in_Japan), accessed on December 5, 2016

<sup>153</sup> <http://bbfc.co.uk/what-classification/r18>, accessed on December 5, 2016

Japan as a society has traditionally accepted and held to the notion that social welfare problems precede individual preferences. The Japanese court has accepted and supported the constitutional idea of individual rights defined primarily as a matter of mutual respect in the context of broader communal welfare. However, the rules of individual behavior have been accepted as the appropriate responsibility of government officials and court judges. This issue is not disputed on a case-by-case basis. The right of individual expression is always subject to obstacles by the law, and historically there is widespread public acceptance and adherence to this end. The obscenity laws imposed by judges, not individual members of society, continue to be the measure by which a sense of traditional dignity is preserved. And that sense of dignity is considered part of society not individual.

Another proven connection throughout the history of censorship discussed here is the way in which authorities justify their intervention is on behalf of certain segments of society which believe to be most at risk from exposure to sexual material. In much of the last century, this is a more 'lower' social order that seems to outweigh the risks, but today calls for a wider censorship of more and more sexual material is made on behalf of children and youth. It shows that Japanese media has always been a location of oversight and intervention by Japanese government agencies.