**Comment for Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

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( <http://afee.jp/english> )

We, the Association for Freedom of Entertainment Expression (AFEE), are an activist group for the right to freedom of expression in Japan, particularly freedom of entertainment expression that is deeply rooted in Japanese grassroots culture, including Japanese cartoons (*manga*), animations, and games.

Freedom of expression is one of the most important human rights formally set out in France’s Declaration of the Rights of Man and of the Citizen and the Universal Declaration of Human Rights, particularly as the foundation of democratic politics, and we are confident that freedom of expression can be shared as an important human value.

**On the term “child pornography”**

First, we support the explicit redefinition of the ambiguous term “child pornography” in sections 6, 65, and 66 as “child sexual abuse material,”… “namely the recorded material (images, videos, audio recordings etc.) of children being sexually abused,” to avoid trivializing the abuses suffered by children. However, we urge that the scope be limited to those cases that are inseparable from and integral to the actual sexual abuse of existing children.

We consider sexual abuse of children to be a serious crime that should immediately be stopped and do not request that the recorded material of existing children being sexually abused be upheld based on the concept of freedom of expression.

**On sexual images produced by children themselves**

In addition, we strongly agree with the provision set out in section 70 that “a child should never be held criminally liable for the production of images of her/himself.”

**On works of imagination that are not accompanied by abuse**

However, we are concerned about the unconditional inclusion of works of imagination in the description of “child pornography” (which should better be called CSAM; Child Sexual Abuse Material) in sections 61—64. It is self-evident that unlike photos or videos, the process of creation of cartoons and CGs does not necessarily involve sexual abuse of children. We believe that our common goal is not to reflect specific religious beliefs or conservative morality but to prevent child abuse. Moreover, while specific religious beliefs or conservative morality declare themselves to be against sexual materials, we request that special attention be paid to the fact that those who hold such beliefs also commit sexual offenses against children.

At the same time, we are concerned that such culturally and socially acclaimed works of art as Edvard Munch’s Puberty, a famous painting; a series of works by Balthus; and Huynh Cong Út’s Fear of War (referred to informally as The Napalm Girl), which was completed during the Vietnam War, may be included in the recorded materials of children being sexually abused.

Regarding this problem, the notion that “such depictions contribute to normalizing the sexualization of children and fuel the demand of child sexual abuse material” has often been used as a convenient pretext, which nevertheless is not grounded in scientific fact and is nothing but a call for the realization of a particular religious belief or conservative morality.

The greatest problem, we suggest, is that the scope of agreement in OPSC is about to be modified in guidelines, including the Luxembourg Guidelines. Article II of OPSC (C) defines child pornography as “any representation, by whatever means, of an (existing) child,” and even if cartoons are included in this, its application should be limited to extremely rare cartoons (no such cases have yet been reported in the history of criminology in Japan) which contain photos of sexual abuse of an existing child.” The convention should clearly describe this particular matter in the guidelines.

We also add that the aforementioned definition of “children” in “child pornography” does not include non-existing fictional children, as Article II, (a), (b) of OPSC clearly does not involve fictional children and it is clear that there is no other way to interpret (c) than as not including fictional children.

**On cartoons, animations, and games in Japan**

Japanese cartoons, animations, and games have grown out of contemporary Japanese culture, and many works have been created for adults in the same culture. Moreover, most of us understand that imagining the fictional world described and taking practical action in actual society are entirely different things, and that the latter involves responsibility.

We think it necessary to be cautious lest children see adult content. Meanwhile, the call for removing all adult content from anywhere is often based on a particular religious belief or conservative morality, and we consider that removing materials based on any such particular set of values is a violation of the human right of freedom of expression.

In addition, we must also touch on racial characteristics. Although it is very difficult to squarely deal with the concept of racial characteristics in view of the history of racial discrimination, we believe attention must be paid to the fact that people in East Asia and Southeast Asia including Japan reach adulthood with relatively youthful looks from the perspective of other ethnicities. How our adults appear directly reflects our image of an adult. Therefore, our appearance and our image of an adult as well as creators are natural consequences and have nothing to do with the intention to allow child abuse by other people.

**On diversity of cartoons, animations, and games**

Regarding masculinity and gender set forth in Section 33, in Japanese grassroots culture including cartoons, animations, and games, we point out that there is a widespread trend of acknowledging homosexuality and transgenderism rather than masculinity and the fixed concept of gender, creating a cultural upheaval that is actually replacing traditional masculinity and the fixed concept of gender in Japanese society.

In Japanese grassroots culture including cartoons, animations, and games, sexual minorities and survivors of child molestation express the bias and harm they suffered. We suggest that these expressions function as a place to grow a positive awareness of the presence of the author him/herself as well as his/her readers.