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### Ethical and legal issues in teaching about Japanese popular culture to undergraduate students in Australia

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## Ethical and legal issues in teaching about Japanese popular culture to undergraduate students in Australia

### Abstract

Interest in Japanese popular culture, particularly young people's engagement with manga and animation, is widely acknowledged to be a driving factor in recruitment to undergraduate Japanese language and studies courses at universities around the world. Contemporary students live in a convergent media culture where they often occupy multiple roles as fans, students and 'producers' of Japanese cultural content. Students' easy access to and manipulation of Japanese cultural content through sites that offer 'scanlation' and 'fansubbing' services as well as sites that enable the production and dissemination of dōjin works raise a number of ethical and legal issues, not least infringement of copyright. However equally important are issues to do with the transnational consumption and production of Japanese cultural materials that are subject to different ratings systems and censorship. The sexualised content of some Japanese media, particularly in regard to representations of characters who may 'appear to be' minors, has become the site of increased concern in some countries, notably Canada and Australia where fictional depictions of child characters have been included in the definition of 'child-abuse publications'. The ever expanding scope of this legislation has led to the recent arrest and prosecution of manga and anime fans in both these countries and in the US

### Keywords

undergraduate, students, australia, popular, culture, japanese, ethical, about, teaching, issues, legal

### Disciplines

Arts and Humanities | Law

### Publication Details

McLelland, M. J. (2013). Ethical and legal issues in teaching about Japanese popular culture to undergraduate students in Australia. *Electronic Journal of Contemporary Japanese Studies*, 13 (2), 1-9.

## **Ethical and Legal Issues in Teaching about Japanese Popular Culture to Undergraduate Students in Australia**

### **Abstract**

Interest in Japanese popular culture, particularly young people's engagement with manga and animation, is widely acknowledged to be a driving factor in recruitment to undergraduate Japanese language and studies courses at universities around the world. Contemporary students live in a convergent media culture where they often occupy multiple roles as fans, students and 'producers' of Japanese cultural content. Students' easy access to and manipulation of Japanese cultural content through sites that offer 'scanlation' and 'fansubbing' services as well as sites that enable the production and dissemination of *dōjin* works raise a number of ethical and legal issues, not least infringement of copyright. However equally important are issues to do with the transnational consumption and production of Japanese cultural materials that are subject to different ratings systems and censorship. The sexualised content of some Japanese media, particularly in regard to representations of characters who may 'appear to be' minors, has become the site of increased concern in some countries, notably Canada and Australia where fictional depictions of child characters have been included in the definition of 'child-abuse publications'. The ever expanding scope of this legislation has led to the recent arrest and prosecution of manga and anime fans in both these countries and in the US.

This paper asks what role, if any, do educators have in alerting students to the problematic nature of studying, consuming, producing and disseminating contentious media content? How do we support students, balancing the need for academic freedom against requirements to live by the ethical and legal frameworks set by local authorities?

**Key words:** Japanese popular culture, internet, copyright, manga, pornography

Originally published in Volume 13, no. 2 of the *Electronic Journal Of Contemporary Japanese Studies*, September 2013

<http://www.japanesestudies.org.uk/ejcs/vol13/iss2/mclelland.html>

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editor of eight books on Japanese popular culture, sexuality studies and new media. His recent work on contentious online communities has appeared in *Media International Australia*, *The International Journal of Cultural Studies*, *The International Journal of Comic Art* and *New Media & Society*.

## **Introduction**

This paper began its life as a presentation at the conference ‘Teaching Japanese Popular Culture’, convened at the University of Singapore in November 2012, where I was asked to reflect on my experience teaching about Japan to undergraduates in Australia. The issues discussed below therefore focus mainly on the Australian context and are necessarily anecdotal – based on my own experience and that shared with me by colleagues. However I have attempted to broaden the argument and show that the ethical and legal issues I confront in the classroom each semester as a result of overbroad or misguided legislation are of concern elsewhere and are worthy of sustained consideration by all those with an investment in Japanese popular culture whether as teachers, researchers, students or fans.

In the late 1980s when I first began to study Japanese at university, enrolments were largely prompted by students attracted by Japan’s economic success and international business profile. More recently, however, interest in ‘cool Japan’, particularly young people’s engagement with animation, comics and gaming, is widely acknowledged to be a driving factor in recruitment to undergraduate Japanese language and studies courses at universities around the world (Armour 2011; Tsutsui 2010; McGray 2002). Unlike the 1980s when obtaining original Japanese-language materials outside Japan was time consuming and expensive, contemporary students now live in a convergent media environment where they occupy multiple roles as fans, students and ‘producers’ (producers + users; Bruns 2008; Flew 2012: 7) of Japanese cultural content that is available via the Internet. The field of Japanese Studies has seen not only a transformation in the kinds of students attracted to the discipline, but also in the modes of engagement that these students have with Japanese popular culture more generally.

Although niche interest in aspects of Japanese popular culture had existed among some people since the original export of Japanese animations to Western countries in the 1960s, from the 1980s onward Japanese anime, in particular, has gained a mainstream audience.

Anime and associated merchandise (games, manga, figurines, cards, cosplay) associated with globally successful franchises such as *Naruto*, *Power Rangers* and *Pokemon* (Napier 2010; Tobin 2004) have become part of the childhood experience of many children in Australia, the US and elsewhere and the animated feature films of Studio Ghibli have also attracted a widespread adult audience. However, in comparison with the large number of manga and anime produced and made available in Japan, only a very small proportion of titles are ever commercially released in English. Furthermore there can be a long time lag between the original Japanese release date and the licensing of an English translation which makes fans impatient. Also important is the fact that many Japanese anime are altered in the localisation process – most often sexual references are edited out and any violence is toned down so as to fit with Western notions of what is acceptable for a young audience (see for example, Parini 2012). This frustrates many die-hard fans who are eager to view the original unadulterated series (Daniels 2008: 710).

Hence, as well as these mainstream products which have been officially licensed to overseas companies, translated into English, given appropriate viewer ratings and conventionally distributed, an enormous amount of unofficially translated and transmitted material also exists on the internet driven by fan demands. Original Japanese anime titles are dubbed or subtitled (so-called *\_fandubs\_* and *\_fansubs\_*) and manga scanned and translated (so-called *\_scanlations\_*) into English and other languages by circles of fans and distributed via fan sites and peer-to-peer networks (Lee 2012; Condry 2010; Hatcher 2005). New technologies not only enable the spread of these unofficial versions of Japanese media products to a wider audience but they break *\_the link between media content and delivery platforms\_* (Flew 2012: 7). Hence fans themselves have taken on *\_active roles as mediators and distributors\_* and facilitated the *\_bottom-up spread of culture across geographical and linguistic borders\_* (Lee 2011: 113) in a manner that evades industry and government regulation. The ease of manipulating digital content in today's *\_remix culture\_* (Lessig 2008) has also resulted in an equally voluminous amount of fan-generated content based on Japanese originals. Known in Japanese as *dōjin* (coterie) products, these *\_transformative works\_* are also widely available online and popular among fans (Lam 2010; Hatcher 2005).

New circuits of distribution enabled by social media including sites like Tumblr, Facebook and Reddit as well as video sharing sites such as YouTube and the Japanese site Nico nico douga have made this remixed material widely available. Despite the fact that fansubbers evince a *\_strong desire to support the local animation industry by promoting anime culture*

and widening anime's accessibility' (Lee 2011: 1138; see also Hatcher 2005) their activities do impact negatively on sales. Also, given that these circuits of production and redistribution are illegal in terms of international copyright law, they have at times resulted in the Japanese manga, anime, and gaming industries taking legal action (Lee 2012; Anime News Network 2010). Hence, students' easy access to and manipulation of Japanese cultural content through sites that offer scanlation and fansubbing hosting services, as well as sites that enable the production and dissemination of derivative *dōjin* works, raises a number of ethical and legal issues, not least infringement of copyright.

In addition to concerns over copyright there are problems to do with the increased flow of Japanese cultural materials that are treated differently by various viewer-ratings systems. A clear example of these inconsistencies is the treatment of the parody anime *Puni Puni Poemy* (2001), directed by Watanabe Shinichi (who also made the popular *Excel Saga*). This title has received an MA15 rating in Australia, an R18+ rating in the UK, but was banned in New Zealand<sup>1</sup> in 2004 over concerns about the apparent age of its main character, who is subject to exaggerated comical violence and sexual acts. Indeed the trailer for the anime on Australia's Madman distribution network plays with the controversy over the title, asking that viewers 'don't sue us' because they have removed all 'nudity, groping and inappropriate use of fish'.<sup>2</sup> This example illustrates Eiland's point that 'obscenity is based upon cultural norms' (2009: 406) which can differ even among societies as closely related as the UK, New Zealand and Australia.

In fact, in recent years, the violent and sexualised content of some Japanese media, particularly in regard to representations of characters who may 'appear to be' minors, has caused considerable concern in some countries, notably the US, the UK, Canada, Sweden, New Zealand and Australia, where fictional depictions of child characters have been included in the definition of 'child-abuse publications' (McLelland 2012; Eiland 2009; Zanghellini 2008). The ever-expanding scope of this legislation has led to serious charges being laid against some manga and anime collectors in these jurisdictions. In one recent Swedish case, a professional manga translator was convicted over cartoon images stored on his computer that appeared to depict minors in sexual contexts (Orange 2012). Although this conviction was later overturned in the Supreme Court, it demonstrates how fans, academics and students alike should exercise extreme caution over which manga images they choose to archive. As Eiland notes, 'No one with comic images in their possession – which can include viewing them on a computer – can afford not to know the law' (2009: 396).

Furthermore, while anime such as *Poemy* that have been licensed and distributed through official channels at least have ratings attached, *dōjin* works, which might have received a PG rating for their official versions, are often ‘sexed up’ in fan creations to an extent that they would receive adult-only ratings or be banned altogether in some jurisdictions. Take for example the *Harry Potter* franchise, the movie versions of which are rated M in Australia. M for ‘mature’ is the highest unrestricted rating, meaning that it does not specify a minimum viewing age but advises that the film ‘contains material that may require a mature perspective but is not deemed too strong for younger viewers’. Young people, who may initially consume the ‘official’ *Harry Potter* texts in books purchased from the store or by viewing the movies on DVD, if they were to follow their interest online, would encounter thousands of fan creations specializing in *Harry Potter* slash (sexualised fan-authored stories and artwork). Indeed highly sexualised *Harry Potter* manga are a major *dōjin* genre in Japan and internationally (Orbaugh 2010). Concerns about children accessing this material while searching for official *Harry Potter* sites on the internet have prompted the author J.K. Rowling to send a cease and desist letter via her publisher to at least one *Harry Potter* fan site hosting such ‘sexually explicit content’.<sup>3</sup>

Hence, although official ratings systems may be useful for gauging what material is suitable to use in class or as the basis for student research projects, students do not only access officially distributed merchandise but download other material directly from the internet. The irony of the New Zealand ban on *Puni Puni Poemy*, for instance, is that episodes from the series can be downloaded for free from YouTube and the ban is only likely to increase people’s interest in the title.

Concerns about copyright, ratings and exposure to potentially illegal content are serious issues for those of us teaching Japanese popular culture in the classroom, although to date the literature discussing these last two issues is scant (McLelland 2012; Noppe 2010; Zanghellini 2009; McLelland and Yoo 2007). In this paper I will first discuss the context in which I teach about Japan and then outline the legal and ethical issues I have encountered both in the classroom and in my own research.

## **Where and how I teach about Japan**

Although my PhD training is in Japanese Studies, I am a sociologist working in a school comprising social sciences and media and communication studies. I do not teach courses that are specifically about Japan, although I do use many examples from Japan in my teaching, and my students (some of whom are taking Japanese language classes) like to use Japanese examples in their project work. One course where topics deriving from Japanese popular culture occur with some frequency is my third-year level ‘Globalisation and Social Transformation’, which enrolls around 100 students annually. The subject outline promises that classes will attempt to de-centre ‘the West’ by focussing on Japan’s role as an important node in the creation and recycling of popular culture. The main intellectual paradigm deployed in this enterprise is that of Arjun Appadurai’s (1996) five ‘scapes’, the ethnoscape, financescape, and in particular technoscape, mediascape and ideoscape that define and condition global flows of culture in a digital age. One key question that I pose to students is ‘What happens when content from specific locales moves around increasingly de-territorialised mediascapes via the internet?’ The case studies we look at in class include the movement from ‘hard’ (militarist, corporate) to ‘soft’ (J-pop and manga) power in Japan. This involves discussing comparative masculinities and looking at the regional popularity of Japanese boy bands and the manner in which they have inspired a ‘pan-East-Asian soft masculinity’ (Jung 2009) quite distinct from the male pop idols in some Western countries.

Another topic involves the indigenisation of manga/anime for Western audiences and the recycling of content in *dōjin* work. The main point of comparison here is the different ways in which complex gender and sexual issues are incorporated into media for children and young people in Japan, and the main example explored is Japanese Boys Love (BL) comics popular with women and girls. From an intellectual standpoint, given the focus of the class, it would be remiss not to address the radical implications of the global flows of fans’ own ‘transformative works’ in this new media environment. Indeed, as Axel Bruns argues, there is a need for educators to teach ‘new literacies to enable users to work effectively and assuredly with the artefacts of produsage’ (2008: 339). Hence, the class also considers these global flows alongside the legal and ethical issues concerned with the production, distribution and consumption of these materials.

**What are the legal issues?**

As Nele Noppe points out in relation to teaching Japanese popular culture through one of its most prominent forms, manga:

Manga studies focus on a medium with a large proportion of young and tech-savvy readers, a considerable number of whom are involved in some form of online fannish interaction and directly experience the disconnect between legal restrictions and technological realities (2010).

Many of my students take my course because they are interested in Asia (and are studying Japanese or Chinese language). Some of these students are of Asian-Australian backgrounds or are exchange students from Asian countries and already have a strong interest in and long experience of engagement with manga and anime due to the prominence of these media in their families' cultures of origin, including Singapore, Hong Kong, Taiwan and mainland China. However, all students in their early 20s in Australia have had some exposure to Japanese popular culture having grown up during the 1990s *Pokemon* boom. Many of my students have a far more detailed understanding of specific manga and anime titles than I do and some regularly visit Japanese pop culture events such as *animania*. I have also encountered students who cosplay and produce their own *dōjin* works.

In a convergent media environment, students are used to a cut-and-paste culture which makes the development of assessment items, whether they are essays, reports or larger scale presentation-projects, an exercise in bricolage – browsing the web and then cutting, pasting and reworking material. Of course lecturers do this to a certain extent but given that much of our teaching material needs to be delivered online or placed in an online repository such as Moodle, university staff have to take copyright concerns very seriously, especially in the face of random audits of our teaching sites. One problem that has arisen recently in my institution is that in two auditoriums the software used to automatically record lectures for placement in Moodle for student access has been programmed not to record any copyrighted material played in a lecture. The playing of a YouTube clip live in a lecture, for instance, is apparently within the copyright guidelines but the recording of that clip as part of the lecture for redistribution to students is an infringement. Hence students in the lecture itself will see the video clip whereas students accessing the lecture from remote campuses will see only a blank screen. Incidents such as this further compound the difficulty of teaching 'digital literacies' that involve the viewing and critique of artefacts from 'remix culture'.

So far, most scrutiny of student work (at my university at least) is centred on plagiarism (making sure that students' sources are properly attributed). However as students are increasingly encouraged to submit their work online (and it therefore comes to reside on a university-maintained server), it is likely that this work will also begin to be audited for copyright compliance. This is a growing concern given that students are now encouraged to take advantage of the convergent multi-media environment and include images and even sound clips and videos as part of their project work. It is unclear how copyright restrictions would apply to students' own *dōjin* work produced as part of an assignment. As Matthew Rimmer (2012) points out, despite the fact that a number of 'creative artists, fans and amateurs, citizen journalists, scholars and researchers, and others . . . rely upon copyright exceptions', there is no government department or citizen's agency that champions fair use in Australia that could advise on these issues. Given that university lawyers tend to be risk averse, it is likely that the administration would take a dim view of such student activities.

Another aspect of contemporary convergence culture concerning copyright is that students and academics alike travel with all their 'stuff', including image and music files and work and study related materials, on devices such as laptops and iPads. People are increasingly reliant on an internet environment that enables 'multi-tasking and mobility' (Han 2011: 73) and yet the archiving of all users' stuff on convergent devices exposes them to increased surveillance by the state. Carolyn Guertin has noted how since 2008 in the US, border guards have been given increased oversight of copyright infringement and 'have the right to seize any digital devices or files without suspicion of wrongdoing' (2012:13). Guertin queries whether these 'copyright cops' are able to distinguish between academic fair use and piracy. Inconsistencies in the ratings of Japanese pop culture content across jurisdictions, as mentioned above, is another problem that can arise as students and academics move across borders. The Canadian Customs and Border Control, in particular, have demonstrated an enhanced scrutiny of manga and anime in recent years, as will be detailed later.

One more contentious issue regarding the kinds of material that students use in their assignments and show in class concerns sexual explicitness. As has been widely noted in alarmist articles in the Anglophone press (McLelland 2003), Japanese popular culture does not segregate material of a sexual nature to the same extent as some countries in the West. Although the manufacture and dissemination of child pornography was made illegal in Japan in 1999, 'simple possession' of these materials is still not an offense (McLelland 2011: 359). Furthermore, despite recent attempts by conservative politicians, in particular the previous

Tokyo governor Ishihara Shintarō, to reign in sexualised depictions in media available to young people (McLelland 2011), as Tobin points out ‘there is much less concern in Japan than in the West about the presence of sexual themes in media texts enjoyed by children’ (2004: 284; see also Daniels 2008: 721-22). One clip I have used in another class (a second-year course entitled ‘Genders and Sexualities’) to demonstrate different cultural sensibilities around what is considered appropriate content for children is from popular anime *Crayon Shin-chan*. The character Shin-chan (the chan suffix is a diminutive title), a precocious and troublesome four year old, was first introduced as a character in an adult manga, but became very popular with children after a toned-down anime version was screened on TV Asahi at 7.00 pm (Grigsby 1999: 186).

The scene is of Shin-chan’s bath time – already a touchy scenario for Australian viewers because he appears naked – even touchier is that his mother joins him in the tub (a common bathing habit in Japan), where they begin a conversation about why he doesn’t have breasts. Anyone familiar with the series would know that one persistent strand of humour is Shin-chan’s sexual precociousness, a topic that would not be alluded to in an Australian children’s show or a Disney animation. Indeed references to sexual precocity are widespread across Japanese children’s media as further evidenced by *Doraemon* character Nobi Nobita’s interest in lifting girls skirts and as discussed in sex-education books for prepubescent children such as Makayuri Fumiko and Tanaka Shinsuke’s (2003) *Ke ke ke* (Hair, hair, hair) which has the text ‘–Hey, why does my dad’s dick have hair on it? □ and other questions I want to ask mum’ emblazoned on the book’s *obi* (promotional wrap-around sash).

Of particular concern, however, is the manner in which there are genres within Japanese manga and anime, specifically *rori* (Lolita), *hentai* (perverse sex) and *yaoi* or ‘Boys Love’, that represent actual sexual acts among characters who are or may appear to be minors (under the age of 16 or 18, depending on local legislation). The only genre that I introduce for pedagogic purposes is ‘Boys Love’ (also referred to as BL). Although to those outside the fandom, ‘boys love’ in the Western context may conjure up images of adult male pederasty, Japanese researchers into BL manga point out that ‘The BL phenomenon is...a female gendered space, since its participants—writers, artists, readers, and the majority of editors—are female’ (Mizoguchi 2003: 53). Given BL’s ‘overwhelmingly female’ readership (Nagaike 2003: 77), the pornographic nature of these stories and illustrations may come as a surprise to those not familiar with Japanese culture – and that is precisely why I use this genre to generate classroom discussion. Despite the fact that much of the debate about pornography in

a Western context assumes a generalized male consumer, in Japan there are numerous pornographic print media created and consumed by women. Although the ratings category ‘adult’ (*seinen*) is applied to manga containing explicit sex or fetishes, and these products are shrink wrapped and sold only in specialty stores, the ‘aesthetic’ nature of BL means it is not considered adult-rated and is freely available in bookshops and libraries. This may seem odd in the Western context since BL stories and illustrations do not shy away from depiction of sexual acts; as Nagaïke notes, BL is ‘an example of narrative pornography directed at female readers’ and ‘BL narratives include all kinds of sexual acts, such as hand jobs, fellatio, digital penetration of the anus and S/M’ (2003: 80). BL thus has much in common with the largely female Western ‘slash’ fandom genre that also features explicit fictional descriptions of male homosexuality and it is no surprise that the two fandoms interconnect around certain key texts such as *Harry Potter* (Orbaugh 2010).

Students who investigate the BL genre via their own web searches often find it exciting and amusing and because the illustrations are cartoon-like, they do not attribute any moral seriousness to them. Students feel that since they do not depict *real* people, they are not *really* pornographic and not that shocking. Hence, each year, when this issue is raised in class, my students are disturbed to discover that these depictions can be covered by child pornography legislation, not just in Australia, but increasingly in other jurisdictions across the world. Students simply are not used to thinking of young fans like themselves as paedophiles.

Since I do not teach Japanese popular culture as a topic in itself but take examples from Japan to illustrate wider points about the nature of globalisation in a convergent media environment, it is not necessary for me to teach BL texts in detail (and this would be impossible to do in an Australian context anyway, given the current legislation). Indeed, a new offence that was added to child protection legislation in 2010 was to ‘make available’ objectionable content. The legislation defines this as, ‘describing how to obtain access, or describing methods that are likely to facilitate access, to material (for example: by setting out the name of a website, an IP address, a URL, a password, or the name of a newsgroup)’ (Crimes Legislation Amendment [Sexual Offences against Children Bill] 2010: 60). Hence, given the problematic nature of BL and other sexualised Japanese manga and anime genres, it is important to be extremely circumspect when discussing them in class. My teaching instead focuses on Appadurai’s (1996) notion of ‘ideoscapes’. In particular I address how the now global circulation of BL and similar Japanese genres is an interesting point of reference for related issues such as how the social construction of childhood in manga and anime can be

contrasted with Disney products, or how different disciplinary regimes apply to the representation of different kinds of images across cultures.

Students find the development and spread of the relevant legislation covering manga and anime depictions of minors to be of interest. While early child pornography legislation dating from the 70s aimed to stop the production and circulation of images of harm and abuse of *actual* children, since the digital revolution of the 1990s, this definition has been expanded to include ‘virtual’ (that is, unreal, fictitious, manufactured) images including manga and anime representations (McLelland 2012; Johnson 2010). Legislation that covers these purely fictitious representations includes:

- Canada: in *R. v. Sharpe* (2001) the legislation states that ‘-person’ includes both actual and imaginary human beings’.
- USA: the PROTECT Act Section 1466A (2003) criminalizes possession of ‘a visual depiction of any kind including . . . a cartoon’ that depicts ‘a minor engaging in sexually explicit conduct’.
- Australia: in the case *McEwan vs Simmons & Anor* (2008) it states that ‘the word -person’ includes fictional or imaginary characters’.
- UK: the Coroners and Justice Act Chapter 2 (2009) ‘requires that a person in an image is to be treated as a child...despite the fact that some of the physical characteristics shown are not of a child’; subsection (8) ‘makes it clear that references to an image of a child include references to an imaginary child’.<sup>4</sup>

As noted above there has been a legal ruling that cartoon images do contravene local (in this case the Australian state of New South Wales) regulations covering child pornography. That cartoon representations fall within the definition of a ‘person’ in the relevant legislation was clarified by Justice Michael Adams in his ruling in the case *McEWEN v SIMMONS & ANOR* [2008] NSWSC 1292. This case was heard as an appeal against an earlier conviction. The plaintiff had originally been convicted of the offences of possessing child pornography contrary to s 91H(3) of the *Crimes Act* 1900 and using his computer to access child pornography material contrary to 474.19(1)(a)(I) of the *Criminal Code Act* 1995. The appeal was launched on the basis that the images in question – user-generated cartoons modelled on child characters of the animated television series *The Simpsons* – could not reasonably be

defined as ‘persons’ as specified in the legislation. Justice Adams, however, upheld the original conviction, stating:

In my view, the Magistrate was correct in determining that, in respect of both the Commonwealth and the New South Wales offences, the word ‘person’ included fictional or imaginary characters and the mere fact that the figure depicted departed from a realistic representation in some respects of a human being did not mean that such a figure was not a ‘person’ (McEWEN v SIMMONS & ANOR [2008] NSWSC 1292, para 41).

In 2009, based on Justice Adam’s ruling, another Australian man was prosecuted for possessing six doctored images of *Simpsons* and *Pokemon* child characters in sexual scenarios. However, unlike the McEWAN case, this individual had no previous history of child-abuse offenses and there was no suggestion that he was also a collector of pornographic pictures involving actually existing minors. The presiding magistrate apparently commented that ‘even though the images did not depict actual children being exploited, the need remained to deter members of the community from viewing or disseminating such images’ (*Newcastle Herald* 2009), thus sending a clear message that the kinds of sexualised *dōjin* products popular among young manga and anime fans are illegal to create, possess or distribute in Australia.

A recent conviction was also obtained in the US, this time specifically in relation to the import of manga from Japan. In February 2010, Christopher Handley, an avid manga collector living in Iowa, was sentenced to six months in prison, after pleading guilty to possessing manga supposedly featuring ‘obscene visual representations of minors engaged in sexual conduct’. I insert ‘supposedly’ here since Handley accepted a plea bargain and the case was never tried in court, so the ‘obscenity’ of the material in question was based on a presupposition of the arresting officers, not a finding by a jury or magistrate.

Handley was prosecuted under provisions of the PROTECT Act, which widened the list of crimes related to the sexual exploitation of minors to include possession and distribution of ‘obscene’ fictional images. Handley’s prosecution was the first time in the US that a comic book collector was sent to prison for owning comic books when there was no other evidence that he also collected or accessed real child pornography. As the Comic Book Legal Defense Fund (CBLDF) pointed out, the problem with provisions that ban sexualized depictions of

minors in cartoons, paintings, sculpture and other art forms is that they do not protect victims of actual crimes, but instead criminalize speech.<sup>5</sup> Given the sheer scale of potential infringements of the ever-expanding scope of ‘child abuse publications’ legislation, these prosecutions are somewhat arbitrary and cruel (see also, Johnson and Rogers 2009). Indeed, as Eiland points out, ‘There are many collectors of Japanese manga who may unwittingly have material that would be considered illegal’ (2009: 406).

This legislation has also hit closer to home. One of my PhD students had art books relevant to his thesis that he had ordered online from a supplier in Japan refused entry by Australian Customs. The legal procedure he then had to go through to gain access to the material can only be described as fraught (as well as expensive and time consuming). The contentious images in question involved the ‘baby art’ of a British artist resident in Japan, Trevor Brown. Again it is ironic that the material deemed too dangerous to enter Australia in printed book form by Customs can be viewed on the artist’s website or on the sites of galleries that exhibit his work in Japan. My student later published a book chapter reflecting on the case (Stapleton 2013).

The cases discussed above have serious implications for students, researchers and fans of Japanese popular culture. As one colleague pointed out to me when discussing the Handley case:

We have items on the open/public shelves here like the ones that were described in the Handley case. I have a lot of Japanese students going abroad, and tell them to not take anything explicit, and to make sure they have none on their computers either (personal communication from academic teaching Japanese popular culture in English for overseas students and Japanese students at a Japanese university).

My colleague is right to recommend caution as the US-based CBLDF website lists a number of cases where US-citizens crossing the border into Canada with print copies of Japanese pop culture content or digital copies on their electronic devices have been detained and questioned on child-pornography charges relating to purely fictional materials. Details of the arrest of one target, Ryan Mattheson, including reproductions of the contentious material, are available on the CBLDF website which contains a link to an audio account by Mattheson recounting his ordeal for a New York comic convention.<sup>6</sup> Indeed confiscation of comics at

the Canadian border is becoming so common that there are online articles advising travellers on the kinds of material most likely to be targeted (Hudson 2011; see also Gomez 2012).

Despite the severity with which Customs, law enforcement officers and the courts treat these kinds of fictional cartoon images, in Australia I have never encountered an undergraduate student who was perturbed by the BL case study, although colleagues teaching about Japan at institutions in the American mid-West have pointed out how they are cautious about topics touching on unconventional sexual relations due to the religious sensibilities of a small but vocal number of students. In Missouri for example, State legislation allows students to opt out of assignments that they feel violates their religious beliefs (Huffington Post 2012).

Of interest is that there is no evidence that such images and narratives are necessarily harmful or dangerous. In fact, prior to the tabling in 2009 of the Coroners and Justice Act which broadened UK child-pornography legislation to cover purely fictional images, the UK Home Office released a Consultation Paper where it was stated that ‘We are unaware of any specific research into whether there is a link between accessing these fantasy images of child sexual abuse and the commission of offences against children’ (cited in Ost 2009: 238). Yet, despite the lack of evidence that the new provisions addressed an actual harm, the legislation passed into law in 2010 anyway.

Likewise in Australia, legislators do not seem beholden to evidence when arguing for increased restrictions. In a review of Justice Adam’s ruling by the New South Wales Child Pornography Working Party in January 2010, no evidence supporting the supposition that cartoon-sex depictions of minors are dangerous was tabled. Instead, the authors cited extensively from a submission by the Public Defender who argued that if the sexual manipulation of fictional child characters were not illegal, then ‘[exploitive] behaviour *may be* normalised and cognitive distortions reinforced’ (my emphasis). The working party went on to conclude that it did ‘not believe the decision has any unintended policy consequences and does not over reach the purpose of the legislation’ (Report, 2010: 42). However as has been argued elsewhere (McLelland 2012), the implications of this ruling are in fact very serious for teachers, researchers, students and fans of Japanese popular culture.

The lack of any compelling evidence driving the legislation has led some legal scholars to argue that the banning of these ‘virtual images’ surpasses the harm principle – as the supposed ‘crimes’ depicted are entirely fictitious, the legislation is not harm based but morality based. As legal scholar Bruce Ryde points out in relation to the Canadian legislation:

Expressive material that does not involve harm in its production . . . should be no concern of the criminal law. Moral corruption arguments do not provide a compelling basis for the imposition of sanctions on the creation, dissemination and use of expressive material (2003: 135).

However such sweeping legislation has serious implications for a large number of people, not simply those with an avid interest in popular culture in Japan where there is no such legislation that actually bans the depiction of imaginary characters in sexual scenarios, irrespective of their age. As legal studies scholar Maureen Johnson points out regarding the situation in the UK, ‘[cartoon] images widely available on the internet and often passed between friends, particularly young men as –a bit of a laugh’ are now capable of giving those individuals a criminal record for possession of child pornography’ (2009: 15). The number of people who would have come across such images or even have them (inadvertently) stored somewhere on their computer is certain to be large.

## **Conclusion**

Taiwanese academic Josephine Ho, who was herself taken to court by Christian right-wingers over links she had included on a sex-education website based at her university, has noted that ‘–Children’s welfare’ has now become an aggressive concept that proactively purifies social space for the sake of children’ (2007: 134). Nowhere is this proactive purification better illustrated than in the escalating concern over Japanese manga, games and anime. Even Japan, the source of much of the material considered problematic, is being pulled into this now global debate. In February 2010 conservative Tokyo Governor Ishihara Shintarō introduced a local ordinance that placed further restrictions on the display and sale of manga, anime and games that might be considered ‘harmful to youth’. The ordinance was ridiculed in the press as the ‘Non-Existent Youth (*hijitsuzai seishōnen*) Bill’ because of its policing of the activities

of purely fictional young people, but despite strong industry and academic opposition, was passed into law in December 2010 (McLelland 2011). In addition, in 2013 the ruling Liberal Democratic Party's policy research council made the recommendation that existing child pornography legislation be expanded to capture even purely fictional images that 'violate the rights of children', leading to an outcry from the manga and anime industries who argued that their products would be unfairly targeted (Nihon manga gakkai 2013).

Given that Japan has now been pulled into this global debate about the limits of acceptable representations of children and young people, it is likely that the scrutiny and regulation of Japanese popular cultural materials depicting characters that may only 'appear to be' minors will accelerate. These concerns over potential illegalities in *representation* in the media need to be added to existing concerns over copyright violations in the *reproduction* of media. These are, of course, complex legal issues that are dealt with rather differently in different jurisdictions and it is difficult for students and educators to grapple with their implications individually. Hence given the increased flow of culture and people across borders, particularly among academics and students involved with Japan, these issues are something that the relevant professional organisations in each country need to take on board and advise on. After all, it is not just in the classroom that these issues arise but also on the international conference circuit.

It is not every day that classroom teaching invites the possibility of police investigation and arrest. But given that in the Japanese popular culture classroom potentially infringing material is only ever a click away, it behoves us as educators and researchers to take these restrictions very seriously indeed and to lobby our professional bodies to establish guidelines for teachers and speakers, and to inform our students of the risks inherent in pursuing their interests in Japanese popular culture.

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## Notes

The author would like to thank Alisa Freedman, Laura Miller, James Welker and Sabine Fruhstuck for comments on an earlier version of the paper, and the organisers and participants of the Teaching Japanese Popular Culture Workshop for their support.

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<sup>1</sup> See detailed report of applicant contesting the ban on this website:

<http://www.hikari.org.nz/stuff/otaku/ppp/> [accessed 4 February 2013]

<sup>2</sup> See <http://www.madman.com.au/actions/video.do?method=view&videoid=765> [accessed 11 February 2013]

<sup>3</sup> See a copy of the letter at: <https://www.chillingeffects.org/fanfic/notice.cgi?NoticeID=522> [accessed 12 June 2013]

<sup>4</sup> This website makes clear that manga are a target of the UK legislation: [http://www.backlash-uk.org.uk/wp/?page\\_id=547](http://www.backlash-uk.org.uk/wp/?page_id=547) [accessed 14 February 2013]

<sup>5</sup> Discussed on this web link: <http://cbldf.org/about-us/case-files/handley/> [accessed 4 February 2013]

<sup>6</sup> See: <http://cbldf.org/ryan-mathesons-true-story-of-defending-manga-in-his-own-words/> [accessed 4 February 2013]