

## GISWatch 2009 Country Report – Republic of Korea

### Introduction

There had been candlelight vigil protest everyday for over one hundred days from 2 May 2008, demanding renegotiation of US beef import agreement. The public opposition to the government decision to lift ban on import of US Beef which had been believed to be exposed to “mad cow disease” risk kept growing and spread to the other policy areas such as education, public health, media, and privatization. Internet plays a critical role in forming public opinion against the beef deal and encouraging public protest.

As criticism over beef import negotiation spread through the internet, the Korean government stipulated the internet as the origin of “negative public opinion against the government”. The “Korean Communications Standards Commission (KCSC)”, a deliberation authority, issued recommendations to delete articles which were critical of the government. Prosecutors and the police investigated the articles critical of the government. Since 2008 when the current president sworn in, administrative control on internet contents is getting tighter and the number of criminal prosecution cases against them has been increasing. It does not only violate freedom of expression of those who posted messages on the internet, but also it has a serious chilling effect on the general public.

### Policy and legislative environment

The Republic of Korea is one of the top ranking countries in terms of access to broadband internet. The number of Korean internet users reached 36.19 millions in June 2008. Internet users make up of 77% of the whole population.

Internet is a media through which people's voice can be heard directly contrary to old media like newspapers and broadcasting. Raw voice is communicated on the internet without being filtered by an editor, which sometimes can threaten a government and disturb social norm. The Korean government had tried to regulate the expression on the internet. Current system for internet content regulation had been established before present government came into power.

#### Internet real name system

In June 2007, 37 major internet sites like portal sites and government sites were forced to adopt the verification system of one's identity when posting articles or comments on the bulletin boards of those sites under the article 44-5 of the “Act on Promotion of Information and Communications Network Utilization and Information Protection”, also known as the “Network Act”. The subject sites were determined by their daily number of visitors that was set at 200,000 or 300,000 visits per day. As the public opinion criticizing the beef import negotiation spread fast over internet in 2008, the Korean government and the governing party, the

Grand National party, revised the enforcement ordinance of the law decreasing the number of daily visitors necessary to qualify for this system to 100,000 visitors per day to expand the subject sites to 153 in November 2008. YouTube denied to adopt internet real name system and banned users whose “country content preference” is set to South Korea from posting any content in April 2009.

#### Temporary internet message blocking

Internet messages criticizing government and powerful individuals had been deleted indiscriminately on the ground of defamation. Such measure, so called “temporary blocking measure”, has been taken under the article 44-2 of the “Network Act”, which provides that online service providers temporarily blocks messages that become subject of complaints from persons who claim their reputation damaged by the messages, up to 30 days as a temporary measure.

#### Comprehensive administrative censorship on the internet

Deliberation by an administrative body on messages posted on internet bulletin boards and deletion of them as results of such deliberation has happened routinely. The administrative deliberation has been conducted by KCSC. KCSC decides the legality of messages under Article 44-7 of the “Network Act” and Subparagraph (3) of Article 21 of the “Act on the Establishment and Operation of Broadcasting and Communications Commission”, and it reviews messages in terms of its harmfulness to minors and on grounds of any other subjects necessary to promote sound communication ethics under Subparagraph (4) of Article 21. The online service providers and the maintainers of bulletin boards are notified about the KCSC deliberation decisions which are formally recommendations, but they almost never reject to follow them, because the “Korea Communications Commission (KCC)” can issue administrative orders to delete messages without a court decision under the article 44-7 of the law if online service providers or maintainers reject to follow them.

#### Prosecutions based on dissemination of false information

Since 2008, punishment on dissemination of false information has increased under the article 47 of the “Framework Act on Electronic Communications”. According to the law, a person who publicly makes a false communication using electronic communication facilities for the purpose of derogating public interest shall be subject to imprisonment or confinement of up to 5 years or a fine of 50 million won.

### **Korean contents regulation system of internet violating freedom of expression**

Internet content regulation system in Korea has been criticized to be unconstitutional violating user’s right to freedom of expression.

#### Internet real name system

Korean human rights groups have criticized that internet real name system would violate the freedom of expression and the right to anonymity of all users. The right

to anonymity has been one of the essential tools of free speech. Such forced self-identification will chill the speech critical of the government and powerful individuals. The “National Human Rights Commission of Korea (NHRC)” expressed an objection to internet real name policy in February 2004, pointing out that “internet real name policy is clearly a censorship presuming that all people who would post in the bulletin board would circulate false information and/or libel, and violates freedom of expression under the article 19 of the World Human Rights Declaration and the article 21 of the Constitution by restricting freedom of expression and right to form opinions based on anonymity on the internet”.

#### Temporary internet message blocking

An emergency measure like temporary blocking may be necessary in that messages on the internet can be copied and disseminated in real time, and accessible continuously. However, current temporary blocking measure system has a fault in its process that there is no way for the posters to file objections against the measures. Even Korean copyright law guarantees objection of posters when their messages are taken down by the notice of copyright holder. Temporary blocking measure has been misused by the government and powerful individuals to control critical expressions. Such temporary blocking measure was applied to:

- (a) messages containing a captured video of a television report which criticized the brother of the police chief on the request of the police, in May and July 2008.
- (b) a (just three line) message which described a governing party lawmaker “dead drunken and causing a nuisance” and included a link to his personal homepage, in October 2008.
- (c) a message that criticized the government party lawmakers and contained scraps from news reports in regard to the accident that evictee by a redevelopment project were burnt to death during the police tried to break up the sit-it strike of evictee, in April 2009.
- (d) many internet messages criticizing violent methods used by the police to suppress the May Day demonstrations on the ground that they defame the policemen, in May 2009.
- (e) Internet messages posted by some lawmakers of opposition parties and citizens criticizing a owner of a government-friendly newspaper based on the allegation that he had been treated with sexual intercourse, in April 2009.

#### Comprehensive administrative censorship

Korean human rights groups have criticized that deliberations by an administrative body on messages posted on the internet and deletion of them without court decision would be unconstitutional, even if it takes place after the speech has been made. Korea’s administrative censorship agency, KCSC, can censor potentially an unlimited range of materials, including but not limited to defamatory materials and materials aiding and abetting a crime. This makes freedom of speech in Korea vulnerable to government suppression as shown below.

- (a) In May 2008, KCSC recommended to “purify languages and refrain from exaggerated expressions” on the grounds that the message called the president “2MB” or a “sly person.”

(b) In July 2008, KCSC recommended to delete lists of advertiser on three major newspapers which had been friendly to the government. The lists were made by citizens who wanted to promote a boycott on the newspapers. The accused and human rights groups took an unconstitutional suit against the deliberation of KCSC and article 44-7 of the Act on Promotion of Information and Communications Network Utilization and Information Protection. In February 2009, 24 of the accused were convicted at the first trials. But, the judge decided that posting lists of advertiser and promoting a boycott on internet was legal, which means KCSC's decision could be different from that of judge.

(c) In January 2009, KCSC recommended to delete a message that criticized remarks by the governor of Gyeonggi province colonial and requested him to step down from his office, on the ground that they defamed him.

(d) In April 2009, KSCS recommended to delete messages of an environmental activists criticizing "waste cement" on the ground that they defamed cement companies.

#### Prosecutions based on dissemination of false information

The article 47 of the Framework Act on Electronic Communications, which was enacted in 1983, has been hardly used for over 30 years until the President Lee Myung Paik took power in 2008, whose prosecutors began to use the law and applied the law only against citizens critical of his policies.

(a) A teenager was prosecuted because he proposed a strike of students (refusing to attend schools) by posting messages on internet and through mobile text messages. The court found him not guilty at his first and second trials. The case is now in the Supreme court.

(b) Citizens who posted rumors such as raping and killing of citizens by the policemen during the violent crackdowns and arrests, were criminally charged on the ground of circulating fabricated stories. At the first trials of them, some of them were found guilty.

(c) A citizen, known to the public by his user name "Menerva" in a portal site, who posted articles criticizing the government's foreign currency policy on the internet was arrested and detained with the charge of spreading fabricated stories, but he was found not guilty by the court at the first trial in April 2009.

#### New Issues

In addition to the current regulation system, new legal provisions which would violate freedom of expression and make it for investigation agencies to trace citizens' activities on the internet easier were introduced.

#### Expansion of internet real name system

In 2008, the government proposed an amendment of the Act on Promotion of Information and Communications Network Utilization and Information Protection to expand the scope of subject sites. According to the bill, the criterion of subject sites which is set as the sites whose daily average users exceed 100,000 in the law, is mandated to the enforcement ordinance. If the bill is passed in the

assembly, the government can expand the scope of subject sites arbitrarily by revising the enforcement ordinance.

#### Cyber insult offense

In 2008, two amendments to Acts, the Criminal Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, are proposed by the governing party to control the internet through the creation of the 'Cyber Insult' offense, which punishes the crime of insulting a person on the internet more heavily than the crime of insulting a person which is already provided in the criminal code and make criminal investigation be able to begin without complaints of the victims. Korean human rights groups argued that insult law itself should be abolished because it could be misused to suppress speech critical to government or powerful individuals. Moreover, the police and prosecutors can monitor the internet looking for messages insulting to others, especially the government and powerful individual, and apply pressure on the posters through investigations, etc. under the cyber insult offense, because it allows the posters to be prosecuted even when a supposed victim has not come forward.

#### Obligation of online service provider to monitor

In 2008, the government proposed an amendment of the "Network Act" to impose an obligation to monitor contents in their services on online service providers. It means online service providers have legal responsibility for any illegal contents or expressions, therefore online service providers cannot but strengthen private censorship to avoid their legal responsibility.

#### Action steps

To protect user's right to freedom of expression on the internet, Korean human rights groups have asked to amend the related laws with changes of:

- (a) abolishing the internet real name system,
- (b) abolishing the administrative deliberation on internet messages,
- (c) abolishing the punishment of dissemination of false information,
- (d) stopping criminal prosecution against internet messages which criticize the government and powerful individuals,
- (e) amending the temporary blocking measure system in the direction of securing the objection of posters, and
- (f) stopping the legislation which violates freedom of expression or chills free expression, such as cyber insult offense and obligation of online service provider to monitor.

#### Reference

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