

**International Symposium  
Freedom of Opinion and Expression in Cyberspace  
: The Situation and Challenges in East Asia**

의사표현의 자유에 관한 유엔특별보고관 초청 국제심포지엄  
사이버상 의사표현의 자유:  
동아시아 지역의 실태와 과제

**13 October 2009  
Seoul, Republic of Korea**

**Programme Agenda and the Compilation of  
Background Materials**

**Organized by**  
Asian Forum for Human Rights and Development (FORUM-ASIA)  
Korean Network for International Human Rights (KNIHR)  
Korea University Global Legal Clinic  
포럼아시아 / 국제인권네트워크 / 고려대 글로벌 리걸 클리닉

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## 인사말

### 곽노현, 국제민주연대 공동대표, 방송대 교수

의사표현의 자유에 관한 유엔특별보고관의 방한을 진심으로 환영합니다.

의사표현의 자유 증진 및 보호에 관한 유엔특별보고관(이하 표현의 자유 유엔특별보고관) 프랭크 라 루 씨의 한국 방문을 초청기관인 포럼아시아와 국제인권네트워크의 구성단체인 국제민주연대의 공동대표로서 진심으로 환영합니다.

인권의 보호와 증진이라는 유엔의 사명에 있어서 핵심적 역할을 하는 특별보고관 활동의 중요성에 대해서는 새삼 강조하지 않겠습니다. 표현의 자유 유엔특별보고관 프랭크 라 루 씨는 2004년에 노벨평화상 후보에 오를 정도로 저명하신 과테말라의 인권운동가이십니다.

작년 8월 표현의 자유 유엔특별보고관으로 임명된 이래 라 루 특별보고관은 특히 언론인, 노조원, 인권활동가들의 의견과 표현의 자유에 대한 국가의 침해행태 및 독립적인 인터넷매체에 대한 국가의 검열과 감시행태에 대해 각별한 관심과 우려를 표명해 왔습니다.

따라서 한국, 태국, 말레이시아, 싱가포르 등 사이버 공간에 대한 검열과 통제를 강화하려는 움직임을 보이는 아시아 각국의 인권활동가들이 라 루 특별보고관을 초청하여 동아시아 지역의 사이버상의 표현의 자유에 관한 국제심포지엄을 개최하는 것은 너무나 자연스러운 일입니다.

한국 시민사회가 내일 라 루 특별보고관과 별도의 워크숍을 가짐으로써 특별보고관제도 등 유엔인권특별절차에 대한 이해를 높이고 한국의 의견과 표현의 자유 상황에 관하여 정보와 의견을 나누게 된 점도 매우 고무적입니다. 이에 대해 라 루 특별보고관께 특별한 감사를 드립니다.

전임 국가인권위원으로서, 인권법학자로서, 그리고 인권활동가로서 이 시점에서 라 루 특별보고관을 맞이하는 저의 심정은 조금 착잡하기도 합니다. 작년 봄이래 한국의 인권상황이 계속 뒷걸음질 치고 있기 때문입니다. 그 중에서도 제일 심각한 것이 언론인, 노조원, 인권활동가의 표현의 자유와 인터넷 상의 표현의 자유입니다.

이런 위기상황에서 진행되는 라 루 특별보고관의 방한 활동은 설령 한국의 표현의 자유 실태조사가 직접적인 목적이 아니라 할지라도, 한국의 시민사회가 민주주의와 인권 수호에서 사이버상의 표현의 자유, 특히 언론인, 노조원, 활동가들의 표현의 자유가 차지하는 결정적

중요성을 재확인하고 그를 위해 효과적인 투쟁을 재조직하는 데 적잖이 기여할 것으로 기대됩니다.

끝으로 오늘의 국제심포지엄을 기획하고 주관한 국내외의 인권단체 네트워크, 즉 그동안 유엔인권이사회 등 국제인권사회에 한국의 인권상황을 가감 없이 알리는 데 힘써온 국제인권네트워크 및 아시아지역의 인권 보호와 증진에 앞장서온 포럼아시아 활동가들에게 이 지면을 빌어 깊은 감사와 격려의 말씀을 전합니다.

라 루 특별보고관을 모시고 오늘 이 자리에서 아시아 각국의 표현의 자유문제를 함께 고민하고 대응할 수 있는 소중한 기회가 마련된 건 전적으로 그분들의 수고 덕분입니다. 마지막으로 특별보고관의 바쁜 업무와 빡빡한 방한일정에도 불구하고 한국 인권단체들의 초청에 흔쾌히 응해서 지구 반대편의 한국을 방문해주신 라 루 특별보고관께 다시 한 번 마음으로부터 감사와 환영의 인사를 드리는 바입니다.



## Programme Agenda

### I. Background

1. Freedom of opinion and expression includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Everyone has thoughts, ideas and opinions and is entitled to express them without fear of suffering prejudice, discrimination or oppression.
2. The protection afforded under international human rights standards to all forms of media – traditional print media and new information technologies – should be guaranteed because they have a critical role in enabling freedom of opinion and expression. All such means of communication provide access to sources of information and platforms to exchange different opinions and ideas.
3. The exercise of the right to freedom of opinion and expression is a significant indicator of the level of protection and respect for human rights in any society. The right is stipulated in several international human rights instruments, including Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR).
4. Despite existing international human rights norms and standards spelling out freedom of opinion and expression as a fundamental human right, we have witnessed that the right to freedom of opinion and expression has been heavily circumscribed in many Asian countries.
5. At the 11<sup>th</sup> regular session of the UN Human Rights Council in June 2009, Mr. Frank La Rue, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, highlighted the key trends and challenges that hamper the full enjoyment or benefit of this right. Grave concerns were expressed in relation to attacks on the physical and psychological integrity of journalists, students, human rights defenders and trade unionists. The majority of communications received by the Special Rapporteur in 2008 were concerning violations of the right to freedom of expression due to the imprisonment of individuals and media professionals on charges of defamation, libel and slander. Also, it was identified that many countries have adopted legislation that unduly limits the freedom of expression by allowing states to intervene in editorial independence.
6. With the suppression of traditional means of communication in Asia, people have looked for alternative ways to exercise their right to freedom of opinion and expression. In the countries where the government intimidates individuals and organisations into self-censorship, controls the media and revokes their licences, the Internet is an important alternative source of

information. Emails, blogs, and web-pages have become important platforms for civil society and human rights defenders to raise their issues and concerns.

7. In some Asian countries such as China and Vietnam, the Internet has become one of the only viable media for offering independent news, information and commentary as an alternative to prevailing state-controlled news. Unlike traditional means of communication, the Internet allows people to enjoy economical and direct access to information and bypass the control of state authorities.
8. Nevertheless, cyber dissidents and other Internet users have come under attack. Websites that criticise the policies and performance of governments have been frequently blocked, shut down, or directly censored by the authorities. Cyber dissidents expressing their political views or reporting critically against government policies have often received harsh sentences, been harassed or detained. This is particularly serious in East Asian countries where Internet penetration is amongst the highest in the world.
9. In the **Republic of Korea**, for instance, censoring comments posted by Internet users has been tightened with the 'Real-Name Registration' system as it was amended in April 2009. Many human rights groups claim that this regulation has been abused by government authorities by using it as a tool to place under surveillance and silence those persons critical of government policies and actions. In **Singapore**, the government has the authority to conduct complete surveillance over an Internet user through real-time software with amendment to article 15(a) of the Computer Misuse Act in 2003. In **Malaysia**, cyber-activists who write about 'sensitive issues' identified by the government risk the possibility of being charged under the Internal Security Act (which allows detention without trial is allowed for up to two years or more), the Sedition Act 1948 (which carries a penalty of up to three-year imprisonment and/or fine for seditious speech), or Section 121(b) of the Penal Code (which concerns offences and defamation against the King and carries a death penalty or life sentence). The Communication Multimedia Act of 1998 has also been frequently used to silence dissidents on cyberspace in Malaysia. Similarly, in **Thailand**, several websites critical of the government and the royal family have been closed down under the pretext of protecting national security. The Computer Crimes Act of 2007 allows applying Lèse Majesté law to cyberspace and if critical comments towards the government are made on the website, not only a person who wrote the comment, but also the host of the website can be arrested. Recently in **China**, a blogger was arrested under the charge of illegal possession of state secret and faced three years imprisonment. He was well known for addressing human rights abuses across the country through his blog. In **Vietnam**, human rights defenders and bloggers were arrested under the violation of Article 88 of the Criminal Act that punishes the distribution of news and information which are deemed hostile to the state. Also, at the beginning of this year, new measures called Circular No. 7 were introduced to regulate blogging. According to Article 6 under the new regulation, every six months, or at the government's request, blog platform hosts must provide information about the activities of their clients to the government.

## II. Objectives

10. The objectives of the International Symposium, “Freedom of Opinion and Expression in Cyberspace: the Situation and Challenges in East Asia” are the following:
- i) To discuss emerging trends and identify challenges in exercising and protecting the freedom of opinion and expression in cyberspace in East Asia;
  - ii) To develop strategies and a common commitment laying out how civil society groups and human rights defenders in East Asia address challenges they face in exercising their freedom of opinion and expression in cyberspace;
  - iii) To explore ways to closely cooperate with the UN Special Rapporteur on the Right to Freedom of Opinion and Expression in addressing the issues and challenges identified.

## III. Programme Agenda

| 13 October 2009 (Tuesday)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <p><b>&lt;International Symposium&gt;</b><br/> <b>Freedom of Opinion and Expression in Cyberspace</b><br/> <b>: The Situation and Challenges in East Asia</b></p> <p><b>Organized by</b><br/> <b>Asian Forum for Human Rights and Development (FORUM-ASIA)</b><br/> <b>Korean Network for International Human Rights</b><br/>           (Korea Center for United Nations Human Rights Policy,<br/>           Korea Public Interest Lawyers’ Group GONG-GAM,<br/>           Korean Confederation of Trade Unions,<br/>           Korean House for International Solidarity,<br/>           MINBYUN-Lawyers for a Democratic Society,<br/>           MINKAHYUP Human Rights Group,<br/>           People’s Solidarity for Participatory Democracy)<br/> <b>Korea University Global Legal Clinic</b></p> <p><b>Sponsored by</b><br/> <b>The Beautiful Foundation</b><br/> <b>Friedrich-Ebert Foundation</b></p> |                                                                                        |
| <b>09:30-10:00</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Registration</b>                                                                    |
| <b>10:00-10:30</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Moderator: Ms. Emerlynne Gil, FORUM-ASIA<br><br><b>Opening: Background and Context</b> |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|             | <p><b>Welcome Remarks</b></p> <ul style="list-style-type: none"> <li>✧ Prof. Lee-sik Chae, Korea University Global Legal Clinic</li> <li>✧ Prof. No-hyun Kwak, Korean House for International Solidarity</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 10:30-11:00 | <p><b>Keynote Speech</b></p> <ul style="list-style-type: none"> <li>✧ Mr. Frank La Rue, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 11:00-12:00 | <p><b>Country Presentation I: Thailand, Malaysia (20 mins for each)</b></p> <ul style="list-style-type: none"> <li>✧ Thailand: Ms. Chiranuch Premchaiporn, Prachatai</li> <li>✧ Malaysia: Mr. K. Kabilan, Malaysiakini</li> </ul> <p><b>Questions from the Floor</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 12:00-13:30 | <p><b>Lunch</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 13:30-14:30 | <p>Moderator: Prof. Kyung-shin Park, Korea University Global Legal Clinic</p> <p><b>Country Presentation II: South Korea, Singapore (20 mins for each)</b></p> <ul style="list-style-type: none"> <li>✧ S. Korea: Ms. Yeo-kyung Chang, Korean Progressive Network Jinbonet</li> <li>✧ Singapore: Mr. Martyn See, Film maker</li> </ul> <p><b>Questions from the Floor</b></p>                                                                                                                                                                                                                                                                                                                                       |
| 14:30-15:30 | <p><b>Panel Discussion (15 mins for each)</b></p> <ul style="list-style-type: none"> <li>✧ Mr. Eung-hwi Jeon, Green Consumers Network in Korea</li> <li>✧ Prof. Yeong-mook Choi, SungKongHoe University, Department of Media and Communication</li> <li>✧ Mr. Bratt Cole, The Economist</li> <li>✧ Mr. Vincent Brossel, Reporters Without Borders</li> </ul> <p><i>Discussants can make a general comment on the country presentations and/or provide additional input for the following suggested themes: i) permissible limitations to freedom of expression, ii) criminalization of defamation, iii) challenges faced by cyber journalism, iv) good practices with respect to relevant laws and policies</i></p> |
| 15:30-16:00 | <p><b>Comments by the Special Rapporteur</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 16:00-16:30 | <p><b>Coffee/Tea Break</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 16:30-17:30 | <p><b>Floor Discussion</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 17:30-18:00 | <p><b>Summary and Synthesis</b><br/><b>Closing Remarks</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

| <b>14 October 2009 (Wednesday)</b>                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| <b>Meetings with the Special Rapporteur by Country</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>09:30-10:10</b>                                     | <b>Closed Meeting - Situation of Freedom of Expression in Malaysia</b><br><br>✧ Mr. K. Kabilan, Malaysiakini                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>10:10-10:25</b>                                     | <b>Coffee/Tea Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>10:25-11:05</b>                                     | <b>Closed Meeting - Situation of Freedom of Expression in Singapore</b><br><br>✧ Mr. Martyn See, Film maker                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>11:05-11:20</b>                                     | <b>Coffee/Tea Break</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>11:20-12:00</b>                                     | <b>Closed Meeting - Situation of Freedom of Expression in Thailand</b><br><br>✧ Ms. Chiranuch Premchaiporn, Prachatai                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>12:00-13:30</b>                                     | <b>Lunch</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>13:30-17:30</b>                                     | <b>&lt;Workshop&gt; Situation of Freedom of Expression in South Korea and the Use of UN Special Procedures</b><br><br><i>This meeting is jointly organized by People's Solidarity for Participatory Democracy (PSPD) and Korean House for International Solidarity (KHIS), which are member organizations of FORUM-ASLA, in collaboration with Conference of Korean Human Rights Organizations (CKHRO) and Korean Confederation of Trade Unions (KCTU)</i><br><br>Moderator: Mr. Won-suk Park, People's Solidarity for Participatory Democracy<br><br><b>13:30-13:50 Welcome and Opening Remarks</b><br>✧ Ms. Gi-ran Lim, MINKAHYUP Human Rights Group<br>✧ Mr. Seong-kyu Lim, Korean Confederation of Trade Unions<br><br><b>13:50-14:15 Mandate and Working Methods of the UN Special Rapporteur</b><br>✧ Mr. Frank La Rue, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression<br><br><b>14:15-14:30 Video Screening</b><br><br><b>14:30-15:30 Case Study I</b><br>✧ <b>Freedom of Thought and National Security Act</b><br>Mr. Ji-woong Park, MINBYUN-Lawyers for a Democratic Society<br>✧ <b>Freedom of Expression in Cyberspace</b><br>Mr. Tae-bong Lee, Korea Press Consumerism Organization |

Mr. Dae-sung Park, Blogger know by his pen name Minerva

**15:30-16:00 Coffee/Tea Break**

**16:00-16:40 Case Study II**

✧ **Freedom of Media**

Mr. Sang-jae Choi, National Union of Media Workers

✧ **Freedom of Assembly and Demonstration**

Mr. Sung Yu, Conference of Korean Human Rights Organization

✧ **Expression of Political Opinions by Trade Unions**

Mr. Hoon-chan Dong, Korean Teachers and Education Workers' Union

Mr. Sung-ho Hong, Korean Government Employees' Union

**16:40-17:10 Comments and Suggestions**

✧ Ms. Norma Kang Muico, Amnesty International

✧ Prof. Ji-bong Lim, Sogang University, College of Law

**17:10-17:40 Questions from the Floor**

**17:40-18:00 Closing Remarks**

## 기획 의도 및 프로그램 일정

### I. 배경

1. 의사 표현의 자유는 제약 없이 자유로이 의견을 갖는 것과 모든 언론매체를 통해 정보와 사상을 추구하고 취득하는 것을 의미한다. 모든 사람은 생각과 사상과 의견을 가질 자유가 있으며 편견, 차별과 억압에 대한 두려움 없이 이를 표현할 권리가 있다.
2. 전통적인 형식의 출판 매체와 IT를 포함한 새로운 형태의 모든 언론 매체에 대해 국제 인권의 기준에 따른 표현의 자유가 보장되어야 한다. 이는 이들 매체가 의사 표현의 자유를 가능케 하는 결정적인 역할을 하기 때문이다. 모든 종류의 통신 수단은 정보 접근성을 보장하고 다양한 의견과 사상을 교환하는 장을 제공해야 한다.
3. 의사 표현의 자유에 대한 권리 행사는 그 사회 인권 수준을 가늠하는 결정적인 척도가 된다. 의사 표현의 자유는 세계인권선언(UDHR) 제 19 조와 시민적정치적권리에 대한 국제규약(ICCPR) 제 19 조를 포함한 여러 국제 인권 협정에 명시되어 있다.
4. 여러 국제 인권 규범과 기준에서 의사 표현의 자유가 기본권으로 명시되어 있음에도 불구하고 우리는 이 권리가 많은 아시아 국가에서 상당히 제한되어 있다는 것을 발견할 수 있다.
5. 2009년 6월 열린 유엔 인권이사회의 11차 정기 총회에서 의사 표현의 자유에 관한 유엔 특별보고관인 프랭크 라 루 (Frank La Rue)씨는 의사 표현의 자유의 주요 양상과 이를 제약하는 사항들을 지적했다. 무엇보다도 그는 언론인, 학생, 인권옹호자와 노조원 등에게 가해지는 육체적, 정신적 공격에 깊은 우려를 표했다. 2008년 특별보고관에게 보고된 대다수 사안들은 명예훼손, 비방 및 중상 등의 혐의로 투옥된 개인 및 언론 종사자들의 의사 표현의 자유 침해와 관련되어 있다. 또한 많은 국가들이 언론 편집의 독립성을 침해할 수 있도록 하는 법률을 제정함으로써 부당하게 의사 표현의 자유를 제한한다는 것을 확인했다.
6. 아시아 지역에서 전통적인 통신 수단에 대한 억압이 이어지자 사람들은 의사 표현의 자유를 행사할 수 있는 대안책을 모색해왔다. 개인과 단체가 자기 검열을 하게끔 몰아가고 언론을 장악하며 자격을 박탈하기까지 하는 국가에서는 인터넷이 정보를 공유할 수 있는 중요한 대체 수단이 된다. 이메일, 블로그와 웹사이트는 시민사회와 인권 옹호자들이 그들의 이슈를 제기하고 이에 대한 우려를 표명 할 수 있는 중요한 장이 되고 있다.
7. 중국과 베트남과 같은 몇몇 아시아 국가들에서는 국가가 통제하는 언론에 대한 대안책으로써 인터넷이 유일하게 독립적인 뉴스, 정보 그리고 논평 등을 제공하는 수단이 되고 있다.

전통적인 통신 수단과는 다르게 인터넷은 사람들에게 저렴한 가격으로 정보에 직접적으로 접근할 수 있게 해주며 정부의 통제도 피해갈 수 있도록 해준다.

8. 그럼에도 불구하고 사이버 공간에서 정부에 반대 의견을 표시하는 사람들과 여러 인터넷 사용자들이 공격의 대상이 되고 있으며 정부 정책과 성과에 대해 비판적인 웹사이트들은 종종 직접 검열의 대상이 되거나 폐쇄된다. 또한 정부 정책에 대해 비판적인 견해를 밝히거나 개인의 정치적 의견을 표현한 사람들은 종종 가혹한 처벌의 대상이 되거나 감옥에 수감되기도 한다. 이러한 현상은 특히 인터넷 보급률이 세계 최고 수준인 동아시아 지역의 국가들에서 심각하게 나타나고 있다.
  
9. 예를 들어 **한국**에서는 2009년 4월에 개정된 인터넷 실명제에 따라 인터넷 사용자들이 사이버 공간에 남긴 글들에 대한 정부의 통제가 더욱 강화되었다. 많은 인권 단체들은 이 정책이 정부가 정부 정책에 비판적인 사람들을 감시하고 통제하는 도구로 악용되어 왔다고 지적했다. **싱가포르**에서는 2003년에 개정된 컴퓨터 오용법(Computer Misuse Act) 제 15(a)조에 따라 정부가 실시간 소프트웨어를 통해 인터넷 사용자를 감시하는 것이 가능하게 되었다. **말레이시아**에서는 정부가 정한 ‘민감한 사안’에 대한 글을 올리는 사이버 상에서의 인권 옹호자에게 국내안보법 (Internal Security Act, 재판 없이 2년 이하의 구금 적용 가능), 1948년 보안법 (불온하고 선동적인 발언에 대해 3년 이하의 징역이나 벌금 적용 가능) 혹은 형법 121(b)항 (국왕에 대한 명예 훼손과 공격에 대해 사형 또는 무기징역의 처벌 가능) 등을 적용할 수 있다. 또한 1998년의 통신 멀티미디어 법 (Communication Multimedia Act)은 정부에 비판적인 말레이시아 사이버 활동가들의 입을 막기 위해 사용되고 있다. 이와 비슷하게 **태국**에서는 정부와 왕실에 비판적인 몇몇 웹사이트들이 국가 안보를 보장한다는 명목 아래 폐쇄되기도 했다. 2007년에 제정된 컴퓨터 범죄법 (Computer Crime Act)는 왕실모독죄가 사이버 공간에도 적용될 수 있도록 하였으며 이에 정부에 비판적인 글을 쓴 사람 뿐만이 아니라 해당 사이트의 운영자 역시 처벌이 될 수 있도록 하고 있다. 또한 최근 **중국**에서는 한 블로거가 정부의 기밀을 불법적으로 보유하고 있었다는 혐의로 3년 징역형을 선고받기도 했다. 이 블로거는 그의 블로그를 통해 중국 전역의 인권문제를 제기하는 것으로 잘 알려져 있다. **베트남**에서는 인권 옹호자들과 블로거들이 정부에 적대적인 것으로 간주되는 정보나 뉴스를 유포할 경우 처벌받을 수 있는 내용이 담긴 형사법 제 88 조에 의해 체포되었다. 또한 올해 초에는 블로거 활동을 규제할 수 있는 Circular 7 호라 불리는 제도가 소개되었다. 이 새로운 제도의 제 7 조에 따르면 매 6개월 마다 혹은 정부의 요청이 있을 때마다 블로그 운영자들은 반드시 해당 블로그 사용자들에 대한 정보를 제공해야만 한다.



## II. 목적

10. 국제 심포지엄 "사이버상 의사표현의 자유: 동아시아 지역의 실태와 과제"의 목적은 다음과 같다.
- i) 동아시아 지역에서 사이버상 의사 표현의 자유 실태를 파악하고 이를 보호하고 증진시키는데 있어 제약이 되는 사항들에 대해 논의한다.
  - ii) 의사표현의 자유를 행사하는데 있어 동아시아의 시민 사회 단체들과 인권 옹호자들이 당면하고 있는 문제들에 대한 전략과 공동의 책임을 논의한다.
  - iii) 논의된 이슈들과 문제점들을 제기하는데 있어 의사표현의 자유에 관한 유엔 특별보고관과 긴밀하게 협력할 방법을 모색한다.

## III. 프로그램

| 10 월 13 일 화요일                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                   |
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| <p>&lt;국제 심포지엄&gt;<br/> <b>사이버상 의사 표현의 자유:<br/>                     동아시아 지역의 실태와 과제</b></p> <p><b>주최</b><br/>                     포럼아시아<br/>                     국제인권네트워크<br/>                     (공감, 국제민주연대, 민주화실천가족운동협의회, 민주사회를위한변호사모임,<br/>                     민주노총, 참여연대, 한국유엔인권정책센터)<br/>                     고려대 글로벌 리걸 클리닉</p> <p><b>후원</b><br/>                     아름다운 재단<br/>                     프리드리히 에버트 재단</p> |                                                                                                                                                                   |
| 09:30-10:00                                                                                                                                                                                                                                                                                                                                                                                                                      | <p><b>등록</b><br/>                     자료집 및 통역기 배포, 방명록 작성 등</p>                                                                                                  |
| 10:00-10:30                                                                                                                                                                                                                                                                                                                                                                                                                      | <p>오전사회: Ms. Emerlynne Gil , 포럼아시아</p> <p><b>인사말</b><br/>                     ✧ 채이식, 고려대학교 법학전문대학원 원장<br/>                     ✧ 광노현, 국제민주연대 공동대표, 방송통신대학교 교수</p> |
| 10:30-11:00                                                                                                                                                                                                                                                                                                                                                                                                                      | <p><b>기조연설</b></p> <p>✧ Mr. Frank La Rue, 의사표현의 자유에 관한 유엔특별보고관</p>                                                                                                |

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| 11:00-12:00          | <p>각국 상황 발제 I: 태국, 말레이시아</p> <ul style="list-style-type: none"> <li>◇ 태국: Ms. Chiranuch Premchaiporn, 인터넷 저널 'Prachatai' 국장</li> <li>◇ 말레이시아: Mr. K. Kabilan, 인터넷 저널 'Malaysiakini' 편집국장</li> </ul>                  |
| 12:00-13:30          | 점심식사                                                                                                                                                                                                                 |
| 13:30-14:30          | <p>오후사회: 박경신, 고려대학교 법학전문대학원 교수</p> <p>각국 상황 발제 II: 한국, 싱가포르</p> <ul style="list-style-type: none"> <li>◇ 한국: 장여경, 진보네트워크센터 활동가</li> <li>◇ 싱가포르: Mr. Martyn See, 영화 감독</li> </ul>                                     |
| 14:30-15:30          | <p>지정토론</p> <ul style="list-style-type: none"> <li>◇ 전용휘, 녹색소비자연대 상임이사</li> <li>◇ 최영목, 성공회대학교 신문방송학과 교수</li> <li>◇ Mr Brett Cole, The Economist 기자</li> <li>◇ Mr. Vincent Brossel, 국경없는 기자회 아시아 태평양 담당 국장</li> </ul> |
| 15:30-16:00          | 특별보고관 코멘트                                                                                                                                                                                                            |
| 16:00-16:30          | Coffee/Tea Break                                                                                                                                                                                                     |
| 16:30-17:30          | 플로어 토론                                                                                                                                                                                                               |
| 17:30-18:00          | 요약 및 마무리                                                                                                                                                                                                             |
| <b>10 월 14 일 수요일</b> |                                                                                                                                                                                                                      |
| <b>특별보고관과 국가별 미팅</b> |                                                                                                                                                                                                                      |
| 09:30-10:10          | <p>비공개 회의 - 말레이시아 표현의 자유 현황</p> <ul style="list-style-type: none"> <li>◇ Mr. K. Kabilan, 인터넷 저널 'Malaysiakini' 편집국장</li> </ul>                                                                                       |
| 10:10-10:25          | Coffee/Tea Break                                                                                                                                                                                                     |
| 10:25-11:05          | <p>비공개 회의 - 싱가포르의 표현의 자유 현황</p> <ul style="list-style-type: none"> <li>◇ Mr. Martyn See, 영화 감독</li> </ul>                                                                                                            |
| 11:05-11:20          | Coffee/Tea Break                                                                                                                                                                                                     |
| 11:20-12:00          | <p>비공개 회의 - 태국의 표현의 자유 현황</p> <ul style="list-style-type: none"> <li>◇ Ms. Chiranuch Premchaiporn, 인터넷 저널 'Prachatai' 국장</li> </ul>                                                                                  |
| 12:00-13:30          | 점심식사                                                                                                                                                                                                                 |

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| <p>13:30-17:30</p> | <p>&lt;의사표현의 자유에 관한 유엔 특별보고관 초청 워크숍&gt;<br/> <b>한국 표현의 자유 현황 및 유엔 특별절차의 활용</b></p> <p>본 워크숍은 포럼아시아 회원단체인 참여연대와 국제민주연대가 인권단체연석회의 및 민주노총과 함께 주최하는 회의입니다. 본 워크숍은 <b>국가인권위원회 배움터 (11층)</b>에서 진행됩니다.</p> <p>사회: 박원석, 참여연대 협동사무처장</p> <p><b>13:30-13:50 인사말</b></p> <ul style="list-style-type: none"> <li>◇ 임기란, 민가협 전 상임의장</li> <li>◇ 임성규, 민주노총 위원장</li> </ul> <p><b>13:50-14:15 유엔특별보고관의 수임사항 및 활동 방식</b></p> <ul style="list-style-type: none"> <li>◇ Mr. Frank La Rue, 의사표현의 자유에 관한 유엔 특별보고관</li> </ul> <p><b>14:15-14:30 영상물 상영 - 한국의 표현의 자유 침해 관련 영상물</b></p> <p><b>14:30-15:30 사례발표 I</b></p> <ul style="list-style-type: none"> <li>◇ <b>사상의 자유 및 국가보안법</b><br/>박지용, 민변 변호사</li> <li>◇ <b>사이버 공간상 표현의 자유</b><br/>이태봉, 언론소비자주권 국민 캠페인 개설자<br/>박대성, 인터넷 필명 '미네르바' 인터넷 논객</li> </ul> <p><b>15:30-16:00 Coffee/Tea Break</b></p> <p><b>16:00-16:40 사례발표 II</b></p> <ul style="list-style-type: none"> <li>◇ <b>언론의 자유</b><br/>최상재, 전국언론노동조합 위원장</li> <li>◇ <b>집회, 시위의 자유</b><br/>유성, 인권단체연석회의 활동가</li> <li>◇ <b>정치적 의사 표현의 자유</b><br/>동훈찬, 전국교직원노동조합 정책실장<br/>홍성호, 전국민주공무원노동조합 전 수석 부위원장</li> </ul> <p><b>16:40-17:10 토론</b></p> <ul style="list-style-type: none"> <li>◇ Ms. Norma Kang Muico, Amnesty International, 동아시아 조사관</li> <li>◇ 임지봉, 서강대학교 법학전문대학원 교수</li> </ul> <p><b>17:10-17:40 질의응답</b></p> <p><b>17:40-18:00 정리</b></p> |
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## Profiles of Speakers

### **1) Mr. Frank La Rue, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression**

Mr. La Rue has worked on human rights for the past 25 years. He is the founder of the Center for Legal Action for Human Rights (CALDH), both in Washington DC and Guatemala, which became the first Guatemalan NGO to bring cases of human rights violations to the Inter-American System. CALDH was also the first Guatemalan NGO to promote economic, social and cultural rights. Mr. La Rue also brought the first genocide case against the military dictatorship in Guatemala. As a human rights activist, his name was presented to the Nobel Peace Prize committee in 2004.

Mr. La Rue has previously served as a Presidential Commissioner for Human Rights in Guatemala, as a Human Rights Adviser to the Minister of Foreign Affairs of Guatemala, as President of the Governing Board of the Centro-American Institute of Social Democracy Studies and as a consultant to the Office of the High Commissioner for Human Rights.

Mr. La Rue holds a B.A. in Legal and Social Sciences from the University of San Carlos, Guatemala and a postgraduate degree in U.S. foreign policy from Johns Hopkins University.

### **2) Ms. Chiranuch Premchaiporn, Executive Director of Prachatai, Thailand**

Ms. Chiranuch Premchaiporn is the executive director of Prachatai, an online newspaper promoting freedom of expression in Thailand. She has been charged for violating section 15 in Computer Crime Act. After her studies in Journalism and Mass communication, she started to work as a social activist dealing with AIDS issues, particularly on the de-stigmatization as well as the enhancement of people's right to build up their own capacity in a safe supportive environment away from HIV infection, and has developed her knowledge in the field through several international trainings and conferences. Furthermore, she figures amongst the founded members of Thai Women on HIV/AIDS Taskforce in 2002 and is affiliated to the "*We Understand*" Group which aim is to raise public awareness for understanding and care of HIV positive children, and to promote the development process and protection of the rights of HIV positive children. She participates on a regular basis to workshops on People Movement's forums and Gender, Sexuality and Sexual Health issues in Southeast Asia.

### **3) Mr. K Kabilan, Chief Editor of Malaysiakini, Malaysia**

Mr. K Kabilan is the chief editor of malaysiakini.com, an online publication in Malaysia. He oversees the daily management of the various units in the editorial department. On the reporting front, he has led his team of journalists in breaking various political news as well as conducted interviews with

almost all the political leaders in the country. Part of his responsibility at this organization also requires him to participate in various conferences locally and internationally where he has presented papers on press freedom and the media generally. He is a firm believer of the new media and the participation on citizens in journalism. He started his journalism career with New Straits Times in 1994. He has completed his Masters in Law and Master in Web Journalism in England.

#### **4) Ms. Yeo-kyung Chang, Human Rights Defender, Korean Progressive Network Jinbonet, South Korea**

Ms. Yeo-kyung Chang has worked at the Korean Progressive Network 'Jinbonet' since 1998. Korean Progressive Network 'Jinbonet' is providing internet services including email, blogs and hosting in order to facilitate communications and bring about solidarity among Korean civil society. It also actively engages in the protection of the right to freedom of expression in cyberspace, data protection and privacy, and also sharing information regarding intellectual property rights and promoting fair use. (<http://www.jinbo.net>) With other human rights defenders, Ms. Yeo-kyung Chang has launched campaigns to oppose the internet rating system, abolish the Information Communication Ethics Committee and also to abolish the online Real Name registration system.

In 2002, she contributed to the Constitutional Court's decision which concluded that the Seditious Communication was unconstitutional. Recently, Ms. Yeo-kyung Chang, together with citizens whose freedom of expression has been violated, requested the Constitutional Court to decide constitutionality of the online Real-Name registration system and administrative examination of the Korea Communications Standards Commission. While supporting people's resistance to censorship on the Internet, she also endeavours to improve the system itself.

#### **5) Mr. Martyn See, Film Maker, Singapore**

Mr. Martyn See is a Singaporean filmmaker and blogger who was placed under police investigation in 2005 for an alleged violation of his country's strict censorship laws after he had made a film which documented the political career of vocal government critic Dr Chee Soon Juan. Entitled Singapore Rebel, the film was banned by the government for its political content. While undergoing police probe, he made a second film about a former political prisoner Said Zahari, who was detained for 17 years without trial. For that, See was rewarded with yet another ban. In 2006, the police eventually dropped prosecution against See. In 2009, the government lifted the ban on Singapore Rebel. His second film remains banned in Singapore.

#### **6) Mr. Eung-hwi Jeon, Standing Board Member of Green Consumers Network in Korea**

Mr. Chun Eung Hwi is a standing board member of Board of Directors in Green Consumers Network in Korea. After his study in literature and international politics, he has been engaged in

social activities for online communication - Internet in Korea. Once, he has organized network action group called as PeaceNet Korea and worked to support NGO's network activities through Internet. In 1990s, His volunteer group had supported to develop around fifty web sites which were operated by about forty NGOs including "Military Sexual Slavery by Japan", "Korean Campaign to Ban Landmines", "Anti-dioxin campaign" and etc. In 2002, he worked as council member of DNSO, ICANN as a representative of noncommercial constituency and participated in two phased WSIS (World Summit for Information Society) held by the U.N. as a civil society member in 2003 and 2005. For last one year, he was an advisory committee member (communication field) of KCSC (Korea Communications Standards Commission) which regulates broadcasting and other communication service contents. And this year, he has become a member of Special Advisory Committee for Information Society Human Rights, National Human Rights Commission. Now, he is a committee member of Privacy Protection Review Committee for National Public Institutions and Consumer Dispute Mediation Committee.

### **7) Prof. Yeong-mook Choi, SungKongHoe University, Department of Media and Communication**

Prof. Yeong-mook Choi is a professor of the Department of Media and Communication Studies at the SungKongHoe University. His researches focus on media law, media movements and citizens' media. He had previously served as a researcher at the Korea Broadcasting Institute Senior and a Member of Parliament Media Development Committee. Currently, he is the president of the Legislation Studies of Korea Broadcasting Institute and the policy officer of the Democratic Media People's Coalition.

### **8) Mr. Bratt Cole, Journalist, Journalist, The Economist**

Brett Cole has been writing for The Economist since July 2007. He is the newspaper's correspondent in Korea covering politics, business and finance.

### **9) Mr. Vincent Brossel, Head of the Asia-Pacific desk, Reporters Without Borders**

Vincent Brossel is the Head of the Asia-Pacific desk for Reporters Without Borders, a press freedom watchdog. After working in Peru and Africa, he joined the Paris-based organisation. He has been involved with on-the-spot investigations and production of reports on Afghanistan, Nepal, North Korea, Pakistan, Palestine, China, Tibet, Bangladesh, Burma and Sri Lanka. Vincent Brossel is responsible for the co-ordination of the organisation's research and other work in Asia, as well as the production of its annual report since 1999. He has a Ph.D. in Political Science from the University of Toulouse (France).

## 참가자 약력

### 1) 프랑크 라 루 (Frank La Rue) , 의사 표현의 자유에 관한 유엔 특별 보고관

라 루 특별보고관은 지난 25 년간 인권 분야에 몸담아 왔으며 워싱턴 D.C 와 과테말라에 있는 Center for Legal Action for Human Rights (CALDH)의 창설자이기도 하다. 이 단체는 미대륙간 체계(Inter-American System)에 인권 침해 사례를 처음으로 제기한 과테말라 비정부 기구이다. 또한 CALDH 는 경제, 사회, 문화적 권리 (ESCR)를 첫번째로 활성화 시킨 과테말라 비정부 기구이기도 하다. 라 루 씨는 또한 과테말라에서 군부 독재가 자행한 대량학살 문제를 처음으로 제기하기도 했다. 인권 옹호자로서, 그는 2004 년 노벨 평화상 후보에 오르기도 했다.

라 루 씨는 과테말라의 인권위원장, 과테말라 외교부의 인권 고문 및 중앙 아메리카 사회민주학회 이사회 의장, 인권 고등 판무관의 고문을 역임한 바 있다. 라 루 씨는 과테말라의 산카를로스 대학에서 법학 및 사회학 학사 학위를, 존스 홉킨스 대학에서 미국의 대외정책 관련 석사학위를 취득했다.

### 2) 치라누트 프렘차이폰 (Chiranuch Premchaiporn), 인터넷 저널 ‘Prachatai’ 국장, 태국

치라누트 프렘차이폰 씨는 태국 언론의 자유를 선도하는 인터넷 저널 프랏차타이(Prachatai)의 국장으로 재직하고 있다. 그녀는 현재컴퓨터 범죄법(Computer Crime Act) 15 항 위반으로 기소된 상태이다. 대학에서 저널리즘을 공부한 후 그녀는 에이즈 이슈와 관련된 활동들을 해왔으며 그 중에서도 에이즈 감염인들에 대한 차별 철폐와 에이즈 감염을 방지할 수 있는 환경을 만들기 위해 사람들을 교육시키는 일을 중점적으로 다뤘다. 그녀는 여러 국제 회의와 교육 프로그램 등을 통해 이 분야의 전문 지식을 쌓아왔다. 나아가 그녀는 2002 년, 태국 여성 에이즈 대책 본부 (Thai Women on HIV/AIDS Taskforce)의 설립 멤버로 활동했으며 “We Understand”라는 단체와 함께 에이즈 감염 어린이들에 대한 이해도를 높이고 그들의 인권을 신장하는 활동을 벌였다. 그녀는 정기적으로 People’s Movement 포럼과 동남아시아 젠더, 섹슈얼리티 등에 관한 워크샵에 참가하고 있다.

### 3) 케이 칼리반 (K Kabilan), 인터넷 저널 Malaysiakini 편집국장, 말레이시아

카빌란 씨는 말레이시아 온라인 저널인 말레이시아키니(malaysiakini.com)의 편집국장이다. 그는 그의 팀 소속 기자들이 말레이시아 내 대부분의 정치 지도자들과 인터뷰를 하고 다양한 정치 뉴스 속보를 전할 수 있도록 하는 등 편집부 내에서 다양한 업무를 총괄하고 있다.

말레이시아키니에서 카빌란 씨의 또 다른 역할은 다양한 국내 그리고 국제 회의에 참가해 언론의 자유와 미디어에 대한 보고서를 발표하는 것이다. 그는 새로운 미디어와 저널리즘에 있어서의 시민들의 참여에 대한 확고한 믿음을 가지고 있다. 그는 1994 년 New Straits Times 에서 언론 활동을 시작했다. 칼리반 씨는 또한 영국에서 법학 석사 학위와 웹 저널리즘 석사 학위를 취득했다.

#### 4) 장여경, 진보네트워크센터 활동가, 한국

장여경 씨는 1998 년부터 진보네트워크센터에서 활동해 왔다. 진보네트워크센터는 한국 사회운동의 소통과 연대를 위해 이메일, 블로그, 호스팅 등 인터넷 서비스를 제공하는 한편, 인터넷 표현의 자유, 프라이버시, 정보 공유 분야에서 활동해 온 민간 단체이다.

(www.jinbo.net) 장여경 씨는 진보네트워크센터의 다른 활동가들과 함께 인터넷 등급제 반대운동, 행정심의회 기관 정보통신윤리위원회 폐지운동, 인터넷실명제 폐지운동 등을 벌여 왔다. 2002 년에는 헌법재판소의 불온통신 위험 결정을 이끌어내는 성과를 낳았고, 최근에는 표현의 자유를 침해당한 시민들과 함께 선거시기 인터넷실명제와 방송통신심의위원회의 행정심의회에 대한 위헌소송을 제기하기도 했다. 그녀는 인터넷 검열에 맞서는 시민들의 저항과 불복종을 지지하는 활동을 하는 한편으로 제도적 개선을 위해서도 노력하고 있다.

#### 5) 마틴 씨 (Martyn See), 영화 감독, 싱가포르

마틴 씨는 싱가포르 출신의 영화 감독이자 블로그 운영자이다. 그는 공개적으로 정부를 비판하는 치 순 주안 (Dr. Chee Soon Juan) 씨의 정치적 일대기를 그린 영화를 제작해 싱가포르의 엄격한 검열법을 위함한 혐의로 2005 년, 경찰 조사를 받았다. ‘싱가포르의 반항자 (Singapore Rebel)’ 라는 제목을 가진 이 영화는 정치적인 내용을 다뤘다는 이유로 정부에 의해 상영이 금지되었다. 경찰 조사가 이뤄지는 동안 그는 재판 없이 17 년간 수감된 전 정치범인 사이드 자하리 (Said Zahari) 씨에 대한 영화를 만들었다. 이 영화 또한 정부에 의해 상영이 금지되었다. 결국 2006 년에 경찰은 마틴 씨에 대해 기소 명령을 내렸다. 2009 년, 정부는 ‘싱가포르의 반항자’에 대한 상영 금지 처분을 취했지만 그의 두 번째 영화는 여전히 싱가포르에서 상영이 금지되어 있다.

#### 6) 전용휘, 녹색소비자연대 상임이사

전용휘 씨는 현재 녹색소비자연대 상임이사이다. 문학과 국제정치를 전공했으며, 온라인커뮤니케이션 특히 인터넷과 관련된 사회운동을 해왔다. 인터넷 초창기 자원봉사자들을 조직하여 정신대문제대책협의회나 대인지퇴반대운동, 다이옥신 반대운동 사이트와 같은 민간단체들의 사이트 개발을 지원하였다. 2002 년에는 세계 인터넷주소관리기구인 ICANN 에서 비영리단체 대표로 도메인이름자문기구 임원으로 일한 바 있으며 유엔이 2003 년과 2005 년에 개최한 정보사회세계정상회의에도 민간단체 대표로 참여하였다. 지난 1 년간 방송통신심의위원회에서 통신분야 특별위원회 위원을 역임했고, 최근에는



국가인권위원회가 만든 정보인권 특별전문위원회 위원으로 위촉되었다. 현재 행정안전부 공공기관개인정보보호심의위원회 위원이며, 한국소비자원 소비자분쟁조정위원이다.

#### 7) 최영목, 성공회대학교 신문방송학과 교수

최영목 씨는 성공회대 신문방송학과 교수다. 언론법제와 미디어운동, 시민미디어 연구에 주력하고 있다. 한국방송진흥원 책임연구원, 국회미디어발전위원회 위원을 역임했으며 현재는 한국방송학회 법제연구회회장, 민주언론시민연합 정책위원으로 일하고 있다.

#### 8) 브렛 콜 (Bratt Cole), 이코노미스트 기자

브렛 콜 씨는 2007년 7월부터 이코노미스트 기자로 활동하고 있다. 그는 한국의 정치, 비즈니스, 그리고 경제 분야를 다루는 특파원으로 일하고 있다.

#### 9) 뱅상 브로셀 (Vincent Brossel), 국경없는 기자회 아시아 태평양 담당 국장

뱅상 브로셀 씨는 국경없는 기자회의 아시아 태평양 담당 국장이다. 페루와 아프리카에서 일한 후에 그는 파리에 본부를 두고 있는 국경없는 기자회에서 일하기 시작했다. 그는 현장에서의 조사 활동과 아프가니스탄, 네팔, 북한, 파키스탄, 팔레스타인, 중국, 티벳, 방글라데시, 버마 그리고 스리랑카에 대한 보고서를 작성하는 일에 초점을 맞추고 있다. 뱅상 브로셀 씨는 1999년부터 국경없는 기자회의 연례 보고서를 발간하는 일과 아시아 지역에서의 리서치 및 다른 관련 활동들을 펼치는 것을 담당하고 있다. 그는 프랑스 툴루즈 대학에서 정치학 박사 학위를 취득했다.

## Country Presentations

### Thailand (Ms. Chiranuch Premchaiporn, Executive Director of Prachatai)

*“We have to be able to think freely,” Suwicha said on March 4 at Klong Prem Central Prison, his eyes red with tears. “They cannot stop ideas by sending people to jail.”<sup>1</sup>*

*On April 3, 2009 Mr. Suwicha Thakor, the first person charged under the Computer Crime Act (2007) was sentenced to 10 years in jail after serving nearly 3 months in detention since his arrest on January 14, 2009. He was twice denied bail and was convicted for violating sections 8 and 9 of the Constitution, sections 33, 83, 91, and 112 of the Criminal Code and sections 14, and 16 of the Computer Crime Act.*

#### 1. Security of State vs Civil Rights and Liberty

The Constitution of the Kingdom of Thailand 2007 has the reputation of being the longest constitution in the world; it also contains the numerous sections relating to freedom and liberty

##### **Part 7 on Freedom of Expression of Individual and the Press, Section 45.**

*A person shall enjoy the liberty to express his opinion, make speech, write, print, publicise, and make expression by other means The restriction on liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.*

Although Section 45 has been written to ensure the freedoms of speech, writing, printing, publication and other means of expression this section restricts these rights to violations of the rights of the others. However the first restriction given is 'the security of State'.

The power of the concept of 'security of State' is illuminated by reading the Internal Security Act (2007) or ISA. A number of freedoms and civil liberties can be suspended if they conflict with the security of the State

*As it is appropriate to have an Act on Internal Security,  
This Act contains provisions which impose restrictions on the rights and liberties of the*

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<sup>1</sup> Thai Bloggers Face Jail Without Bail for Discussing Monarchy, Daniel Ten Kate (March 12, 2009) [www.bloomberg.com](http://www.bloomberg.com)

*people as allowable under Section 29 along with Sections 32, 33, 34, 36, 38, 41, and 63 of the Constitution of the Kingdom of Thailand by virtue of the provisions of the law.<sup>2</sup>*

These sections ensure the rights and liberties of dwelling, travel, communications, assembly and freedom from forced labour or torture. (see Annex 1) In addition to the ISA, the Emergency Decree (on Public Administration in Emergency Situations) and Martial Law seem to confirm that the constitutional protections of civil rights and liberty are mere rhetoric.

The ineffectiveness of protecting civil rights and liberty was seen in the crackdown during the Thai New Year (Songkran) festival this year (2009), the so-called Songkran bloodbath. The government led by Mr. Abhisit Vejjajiva from the Democrat party announced a state of emergency right after the collapse of the ASEAN Leaders Summit in Pattaya in the turmoil resulting from the protest by the Red-shirt movement and the encounter between the Red shirts and the unidentified blue-shirt group. The State of Emergency was declared for Pattaya, Bangkok and surrounding provinces in the central region.

The immediate consequence for cyberspace of the government's enforcement of the Emergency Decree was the blocking of numerous websites that offer viewpoints that differ from those in power, according to news reports that the Ministry of Information and Communication Technology (MICT) ordered censorship of over 60 websites (see Annex 2) which was lifted on April 24, 2009.<sup>3</sup>

## **2. Computer Crime Act**

In addition to general laws that weaken freedom of expression, the Computer Crime Act (CCA) B.E.2550 (2007) was passed by the National Legislative Assembly (NLA), the unelected legislature appointed by the military junta called the Council for National Security (CNS) which overthrew the elected government in September 2006. This law directly affects freedom of expression in cyberspace. The rationale in proposing the draft law was to prevent and punish crimes related to computer systems which the existing laws were incompetent to enforce. This law makes some acts which proceed through electronic and computer systems into crimes such as spamming, scams, spreading viruses, phishing, hacking, etc. But in fact, the law goes well beyond the provisions originally proposed.

Particular sections directly threaten freedom of expression in cyberspace.

- **Section 14** *Whoever commits the following offences, shall be punished with imprisonment not exceeding five*

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<sup>2</sup> Internal Security Act, Unofficial Translation, 1<sup>st</sup> page, <http://www.prachatai.com/english/node/1411>

<sup>3</sup> MICT lifts blocking of 71 red-shirted websites, <http://www.prachatai.com/english/node/1177>

*years and fine not exceeding one hundred thousand baht or both:*

- (1) input, into a computer system, of forged computer data in whole or in part or of false computer data in a manner likely to cause injury to another person or the public;*
- (2) input, into a computer system, of false computer data in a manner likely to cause injury to nation security or public panic; ...*

**Constraints:** Section 14, in particular clauses 14 (1) and (2) duplicates provisions of the Criminal Code. They were in fact worse, as the contents are vague and the authority can give them a broad interpretation to expressions such as 'national security' or 'public panic'. This section also authorizes competent officials to start legal proceedings on allegations that an action is seen as '*a manner likely to cause injury*'. This exceeds the powers prescribed in the Penal Code and allows officials to accuse a suspect on suspicion alone.

In the past 4 years of political conflict in Thailand, any alleged abuse of the monarchy or royal family was claimed to be an issue of 'national security'. This clearly shows that claims to 'protect the monarchy' were being used to attack opponents.

- **Section 15** *Any service provider who intentionally supports or consents to an offence under section 14 in the computer system under his control, shall receive the same punishment as that imposed upon a person committing an offence under section 14.*

**Constraints:** There are at least 2 problems in section 15. First it conflicts with the principle of protecting the intermediary. Secondly it creates a climate of fear through the decentralization of self-censorship among services providers.

- **Section 16** *Whoever inputs, into a computer system to which the public can access, photographs of another person and such photographs are developed, edited, added or altered by electronic or any other means in a manner likely to impair the reputation of such other person, to expose such other person to public hatred or contempt, or to shame, shall be punished with imprisoned not exceeding three years and fine not exceeding sixty thousand baht or both*  
*If the offence according to the first paragraph involves trustworthy computer data, such person shall not be guilty.*

...

**Constraints:** Section 16 has similar problems to section 14 about the duplication of laws concerning damage to the reputation of any person which are covered in sections of the Penal Code. In addition this section broadens the implication to the form of content like "... *photographs are developed, edited, added or altered by electronic or any other means...*".

- **Section 18** *Subject to section 19, for the purpose of investigation and inquiry, in the case where there is reasonable ground to believe that an offence under this Act has been committed, the competent official, in so*

*far as it is necessary to collect evidence concerning the offence or to identify the offender, shall have the following powers:*

- (1) to notify or summon any person related to the offence prescribed by this Act to give a statement or to send an explanation in writing or to furnish documents, information, or other evidence in an understandable form;*
  - (2) to call for traffic data concerning the communication from a service user via a computer system or from other relevant persons;*
  - (3) to order a service provider to submit, to a competent official, information related to a user which has been stored under section 26 or is in his possession or control;*
- ...

Section 18 empowers the competent official of section 18 to (4) copy data; (5) order the possessor or controller to deliver computer data or equipment; (6) inspect or access computer systems, etc; (7) for decrypt computer data and (8) for seize or attach computer systems;

Under Section 19 the competent official must file a petition to the competent Court for to grant permission for such actions.

**Constraints:** Section 18 authorizes officials to summon, copy, access and seize the computer data and equipment. Although a court order is needed they still have the power to summon traffic data or related information that has been kept without a court order and in circumstances where there is no safeguard protecting civil liberty, such as a law on data protection, which it supposes to have been drafted to balance the power of the State against civil liberties.

- **Section 20** *If the offence under this Act is the publication of computer data relating to the Security of the Kingdom as prescribed under Book II, title 1, or title 1/1 or the Criminal Code, or contradictory to the maintenance of public order or good morals of the people, the competent official by the consent of the Minister shall submit a request together with evidence to the competent Court in order to restrain such publication.*  
*In case that the Court issues an order to restrain such publication under paragraph one, the competent official himself may restrain or order a service provider to restrain such publication.*

**Constraints:** Section 20 is an official mandate for the State to block websites under court permission. However this is official recognition of censorship or in other words state regulations oblige censorship. Nonetheless MICT officials already unofficially cooperated with the Internet Service Providers (ISPs) to block access to websites before the issuance of a court order. To defend themselves against any risk of being charged under section 15, ISPs will agree to follow these notifications.

- **Section 26** *Traffic data shall be stored by the service provider for at least ninety days from the day following input into the computer system. In case of necessity, a competent official shall order on a case-by-case basis, a*

*service provider to store such data for more than ninety days, but not exceeding one year.*

...

**Constraints:** Section 26 it requires service providers to keep traffic data for 90 days. This requirement can be a burden for service providers and spreads a climate of fear among the internet users, especially while in the absence of other legislation, such as a data protection law, as a safeguard for the people.

### 3. Challenges of State policy

In the policy statement of the council of ministers delivered to the National Assembly by Prime Minister Abhisit Vejjajiva on December 28, 2008, he addressed 4 basic guiding principles. The first principle is about protecting the Monarchy.

“Firstly, to protect and uphold the Monarchy in its role as the centre of national unity and harmony among Thais, to enshrine the Monarchy in a position of reverence above all forms of political conflict; and to take all necessary measures to prevent any infringement of the royal inviolable position.”<sup>4</sup>

Today many government agencies engage in censorship in a concerted effort of extreme law enforcement on content related to the Monarchy on the internet.

MICT has created the Internet Security Operation Centre (ISOC) to coordinate with other government agencies. Another ISOC, the Internal Security Operations Command, a military agency, has full authority to control an area or situation under the ISA.

In addition to the two ISOCs there are special units for the surveillance and censorship of websites. These include a special committee under the Royal Thai Police coordinating among police units; a centre to collect and analyze internet information that endangers national security set up under an agreement of the Department of Special Investigation (DSI) under the Ministry of Justice and National Telecommunication Commission (NTC); and at least 3 parliamentary committees.

In a public speech on March 27, 2009, on the ‘Computer Crime Act: Protection or Threat’ held by the Thai Journalists Association and Isra Institute, Deputy Commander of the Cyber Crime Analysis Centre Police Colonel Bhisit Pao-in, said that 99% of charges under the CCA, such as online scams and gambling, were already crimes under the Criminal Code and the CCA was helpful when cyberspace is the crime scene.<sup>5</sup>

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<sup>4</sup> The Policy Statement of the Council of Ministers, Mr. Abhisit Vejjajiva, [http://www.thaigov.go.th/multimedia/vana/Policy\\_St2551.pdf](http://www.thaigov.go.th/multimedia/vana/Policy_St2551.pdf)

<sup>5</sup> Siam Intelligence Unit, <http://www.siamintelligence.com/computer-crime-act-tja-discussion/>

As far as information is available, legal charges under the CCA have been brought against 6 individuals related to freedom of expression concerning politics and the monarchy. 5 of these involve pseudonyms (Phaya Pichai, Ton Chan, Finn, Mafia Family, and Bento) and Mr. Suwicha Thakor was convicted and sentenced to 10 years in jail.

The webmasters of at least 4 sites face allegations under section 15 of the CCA; [www.212cafe.com](http://www.212cafe.com) , [www.gooseed.com](http://www.gooseed.com), [www.postmungang.com](http://www.postmungang.com) and [www.prachatai.com](http://www.prachatai.com). In addition to this, at least 2 webmasters have been summoned to testify about comments posted in their websites; [www.exteen.com](http://www.exteen.com) and [www.sameskybooks.org](http://www.sameskybooks.org)

Since the CCA has been implemented, various police divisions have been involved and they tend to operate in silence. Internet users in many websites are known only by their avatars and cyber names which make it easy for the police or state officials to keep things quiet.

Below 2 cases have been publicized.

#### **4. Case of Mr. Suwicha Thakor**

Suwicha Thakor, a 34-year-old engineer at a petrol company drilling in the Gulf of Thailand, was arrested on 14 January 2009 on suspicion of posting comments on the internet that insulted the monarchy. He was arrested by the Department of Special Investigation (DSI) in his hometown of Nakhon Phanom in the northeast while shopping with his wife in the market. After the arrest he was immediately transported to Bangkok by helicopter. On the same day the DSI also went to his house in Bangkok where his 16-year-old son was living alone while finishing secondary school in Bangkok before following his parents to Nakhon Phanom. DSI officers searched the house and seized the boy's personal computer.

Many media reported his arrest on January 14, showing him in handcuffs, but there was no official press statement. Suwicha denied all allegations.

On January 15, news of this arrest was reported in almost all newspapers and online news sites along the same lines. It was reported that the DSI went to his house in Bangkok but he had fled away Nakhon Phanom where the DSI finally arrested him. Mr. Phiraphan Saleeratwipak, the Minister of Justice, gave an interview, mentioning that there would be no press statement on this case as in previous cases; he also said that he had ordered his subordinates not to publicize it.

On January 16, DSI officers took Suwicha to the Criminal Court for a detention order because of his several alleged illegal acts between April 27 and December 26, 2008. He was accused of disseminating content and images that insulted the Monarchy and the Heir Apparent. The DSI asked to remand him in custody to allow further investigation of 15 witnesses, 3 computers, CDs and

many documents. DSI officers also opposed bail for 2 reasons: first he might repeat the alleged crime; and second, as he worked for a foreign company, he had the possibility to escape. However during interrogation on January 14-16, he had no lawyer with him. A few days after his arrest his company fired him for denigrating the company's reputation.

His wife, Mrs. Thitima Thakor, applied for bail with a title deed valued at 550,000 baht as guarantee. However the court dismissed the application for bail on consideration that the Monarchy is a highly respected institute throughout the nation that nobody can infringe, the case is serious and related to national security. His attorneys re-applied for bail out on January 26 and 29 and the court again refused.

On March 26, the public prosecutor charged him under Sections 8 and 9 of the Constitution, Sections 33(1), 83, 91 and 112 of the Criminal Code, and Section 14(2) and 16(1) of the Computer Crime Act. Suwicha pleaded guilty. The court on April 3, 2009 sentenced him to 5 years on each of 2 counts, so he has been imprisoned for 10 years.

Suwicha decided to plead guilty and ask for a royal pardon, which can be requested only when a case is finally closed. So he decided not to appeal in the 30 days appeal period so that he could immediately start proceedings for a royal pardon. His attorney revealed on May 14 that the public prosecutor had appealed to the court to extend the appeal period from May 3 to June 1, meaning that he could not start the process for a royal pardon right away as intended. On May 23 the public prosecutor informed to the court that the prosecutor would not appeal the verdict, allowing Suwicha to start the process of requesting a royal pardon after June 1. Currently he is imprisoned and awaiting the royal pardon he has requested.

...

At the cell of the criminal court, Suwicha was crying after the verdict that might separate him from his family for 10 years. He also complained that he had become a bad person in the eyes of society just because he had different beliefs. He had engaged in politics by joining the anti-coup movements and because of his misunderstanding he did something insulting to the King. However he changed his mind when he got the right information; he was very regretful and said that "I want to go home, I can be a farmer, I want to live in this land. I have nowhere to go" and he also said "I have never done anything wrong, the whole world please help me, I want to go back to my family..."

## **5. Case of Prachatai Online**

Prachatai (<http://www.prachatai.com/>) was launched in 2004 as an online newspaper that focuses on the production and dissemination of non-mainstream news and commentary. The website allows visitors to post comments beneath articles and exchange opinions and information on a free webboard. Prachatai feels that allowing user participation would encourage visitors to feel joint ownership of the website, which is one of the key operating principles.



Although Prachatai provides space for the free exchange of opinions and information between readers and writers and amongst readers, the website is not a completely “free” website in the sense that anyone is free to do anything he/she pleases, but operates by the following key rules and policies:

1. Legal compliance
  1. Any content that the webboard team deems violation of the law will be censored (not shown to the public). Laws that the team monitors in particular include the Computer Crime Act, and the Criminal Code, especially the defamation and *lèse majesté* laws.
  2. Compliance with the Computer Crime Act includes: storing traffic data of all users for 90 days, notifying users of the necessity or the possibility that their IP address may have to be disclosed to the authorities in cases of potential violation of the law
2. Content moderation: Prachatai will remove any content that is deemed to obstruct communication that is open, that fails to respects every user’s privacy, that is not in the public interest, or that fosters hatred e.g. offensive remarks regarding gender, race, religion, nationality, age, or appearance. Prachatai also reserves the right to moderate any content that has no relationship with the topic being discussed, as well as comment or web board “floods.”
3. Participation and community spirit: Prachatai encourages users to participate in web board moderation and management, by allowing anyone (guest visitors and web board members) to recommend the removal or blocking of any web board topic or comment with a click of the mouse.

Prachatai experienced a tremendous surge in traffic after the *coup d’état* on 19 September 2006. The number of unique visitors increased from 1,000 UIP to 10,000 UIP per day, and continues to increase during periods of intensified political conflict, up to 35,000 UIP in some instances. Prachatai recently registered the domain name [www.prachataiwebboard.com](http://www.prachataiwebboard.com) as a separate domain from Prachatai.com to facilitate better and safer management of the free web board. Currently visitors to Prachatai.com proper number around 10,000 UIP/50,000 hits per day, and visitors to the Prachatai webboard number around 20,000 UIP/300,000 hits per day. There are currently almost 30,000 registered webboard users, 300-400 new topics posted per day, and thousands of responses.

## **1) Intervention by the state in web board censorship**

After the September 19 coup in 2006, officials from the MICT contacted Prachatai, asking the team to censor certain posts on the web board. The then Minister, Dr. Sittichai Pokaiudom, personally made calls 3 times, each time claiming that the MICT was acting in response to warnings from the

National Security Council and the Council of National Security (CNS – comprising coup leaders) regarding posts on the webboard that were considered threats to national security. The MICT also claimed to have the legal authority to block websites pursuant to Order no. 5 of the CNS (announced right after the coup).

During this period before the passage of the Computer Crime Act, Prachatai's director and webboard administrator (Chiranuch Premchaiporn) would personally consider each request for censorship from the authorities. In cases where she disagreed, she did not censor the content as requested. But after the Computer Crime Act came into effect in 2007, the webboard administrator would censor all topics/content upon notification from MICT official without giving any weight to her own judgment.

To date there have been 20+ URLs in Prachatai.com that were blocked pursuant to court orders. But there have been at least 2 incidents when the entire Prachatai.com website was inaccessible, but in both cases the team could not trace the censorship to the source or uncover any formal censorship request. Prachatai was only told that this was a "technical error." In addition, Prachatai users would periodically inform the team that they cannot access the website using regular means, but only through circumvention tools such as TOR or anonymous proxies.

In addition to direct contact from MICT officials, Chiranuch, as webboard administrator, has also been contacted by the police officials from various departments, e.g. the Crime Suppression Division, the Metropolitan Police Bureau, the Central Investigation Bureau, the Technological Crime Unit, and Khon Kaen Provincial Police, to cooperate as a witness. Prachatai's policy for such case is strict adherence to legal principles and processes. Chiranuch will ask each and every contact from the police to make such request formally in writing, not verbally. She has cooperated in accordance with official summons without fail.

The vast majority of the 10+ testimonies she gave the police were in response to requests for data that was older than the 90-day legal requirement. Prachatai does not keep data beyond this legal minimum. There was only one instance in which the police requested data that was still within the 90-day limit: a webboard post that was made on 15 October 2008. The police issued a witness summons to Chiranuch on 28 October 2008; she received this summons on 3 November 2008. Subsequently, she testified to the police 2-3 times and gave IP information of the poster in December 2008.

## **2) From witness to accused**

After Chiranuch gave the police the information they requested in December, she was contacted by an official from the Technological Crime Department, one of the officials appointed pursuant to the Computer Crime Act to have the authority to request user information (Clause 18(1)). She asked

him to verify his identify and show his official ID, and subsequently sent the information he requested by fax.

Then, towards the end of January, officials from the Crime Suppression Division sent a witness summons to the editor of Prachatai.com website to give testimony as a witness in the case against Miss N, whom the police were charging with posting *lèse majesté* content on the Prachatai webboard. Subsequently, the police sent a request for cooperation to interrogate the chairperson and ex-chairperson of the Foundation for Communication Educational Media, the owner of Prachatai. The police interrogated them about the roles and policies for webboard moderation.

On 6 March 2009, close to 10 police officials from the Crime Suppression Division (CSD) went to the Prachatai office to arrest Chiranuch, Prachatai's director, in her capacity as webboard administrator, charging her with violating Clauses 14(2), 14(3), 14(5), and 15 of the Computer Crime Act. The officials showed search and arrest warrants, but did not search the office. Instead, the police asked Chiranuch to bring her notebook computer to the CSD to clone her hard disk. The police said that MICT officials were in the process of acquiring a court order to clone the hard disk, pursuant to Clauses 19 and 18(4) of the Computer Crime Act.

The news of Chiranuch's arrest quickly spread. Many friends, colleagues, academics, and Prachatai users showed up to give moral support at the CSD, and Chiranuch was released on bail the same day. Dr. Chantana Bunpasirichoke Wankaew, professor at the Political Science Department of Chulalongkorn University used her status as a public official to release Chiranuch on bail (the police had set bail at 75,000 Baht).

On 7 April 2009, Chiranuch and her lawyer went to see the police again pursuant to a telephone call. She was notified of 9 further charges against her, all using the same allegations that she was charged with earlier. The police separated 9 posts into 9 separate cases.

On 1 June 2009, the police submitted the case to the Office of the Attorney-General. The attorney set a date of 26 June for deciding whether to submit the case to court. But when Chiranuch went on the appointed date, the attorney said the date has been delayed to 29 July 2009, which was re-scheduled again to September 1 and then September 28, 2009. Presently, the public prosecutor cannot make a decision about prosecuting her. She just keeps going to report at the Office of the Attorney-General, the next appointment being for November 30, 2009

On 25 June 2009 Chiranuch submitted a letter requesting fairness to the Office of the Attorney-General. She received a reply letter in early July saying that they are considering her request.

## **Annex 1. Constitution sections ensure the rights and liberties of dwelling, travel, communications, assembly and freedom from forced labour or torture**

### **Section 29.**

The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein.

The provisions of paragraph one and paragraph two shall apply mutatis mutandis to rules or regulations issued by virtue of the law.

### **Section 32.**

A person shall enjoy the right and liberty in his life and person.

A torture, brutal act or punishment by a cruel or inhumane means shall not be made; provided that punishment under judgments of the Courts or by virtue of the law shall not be deemed the punishment by a cruel or inhumane means under this paragraph.

Arrest and detention of person shall not be made except by order or warrant issued by the Courts or there is a ground as provided by the law.

Search of person or act affecting the right and liberty under paragraph one shall not be made except by virtue of the law.

In the case where there is an act affecting right and liberty under paragraph one, the injured person, public prosecutor or any person acting for the benefit of the injured person shall have the right to bring lawsuit to the Courts so as to stop or nullify such act and to impose appropriate measure to alleviate damage occurred therefrom.

### **Section 33.**

A person shall enjoy the liberty of dwelling.

A person is protected for his peaceful habitation in and for possession of his dwelling.

The entry into a dwelling without consent of its possessor or the search of a dwelling or private

place shall not be made except by order or warrant issued by the Courts or there is a ground as provided virtue of the law.

**Section 34.**

A person shall enjoy the liberty of travelling and the liberty of making the choice of his residence within the Kingdom.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security of the State, public order, public welfare, town and country planning or welfare of youth.

No person of Thai nationality shall be deported or prohibited from entering the Kingdom.

**Section 36.**

A person shall enjoy the liberty of communication by lawful means.

The censorship, detention or disclosure of communication between persons including any other act of disclosing a statement in the communication between persons shall not be made except by virtue of the law specifically enacted for security of the State or maintaining public order or good morals.

**Section 38.**

Forced labour shall not be imposed except by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of war or armed conflict, or when a state of emergency or martial law is declared.

**Section 41.**

The property right of a person is protected. The extent and the restriction of such right shall be in accordance with the provisions of the law.

The succession is protected. The right of succession of a person shall be in accordance with the provisions of the law.

**Section 63.**

A person shall enjoy the liberty to assemble peacefully and without arms.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for the purpose of public assembling and for securing public convenience in the use of public places or for the maintenance of public order during the time when the country is in a state of war, or when a state of emergency or martial law is declared.

## Annex 2. Websites that are blocked by the Ministry of Information and Communication Technology

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| <p>1. <a href="http://www.justin.tv/nationsiam">http://www.justin.tv/nationsiam</a><br/> 2. <a href="http://www.konthai.org/">http://www.konthai.org/</a><br/> 3. <a href="http://www.thaifreenews.com/">http://www.thaifreenews.com/</a><br/> 4. <a href="http://www.thairedshirt-democracy.org/cbox/s1.html">http://www.thairedshirt-democracy.org/cbox/s1.html</a><br/> 5. <a href="http://www.democracytoday.tv/">http://www.democracytoday.tv/</a><br/> 6. <a href="http://www.thaipeoplevoice.org/">http://www.thaipeoplevoice.org/</a><br/> 7. <a href="http://freethais.com/update_13apr09.php">http://freethais.com/update_13apr09.php</a><br/> 8. <a href="http://www.wered.net">http://www.wered.net</a><br/> 9. <a href="http://www.redplus.org/">http://www.redplus.org/</a><br/> 20. <a href="http://www.rednon.com">http://www.rednon.com</a><br/> 21. <a href="http://www.chupong.org/">http://www.chupong.org/</a><br/> 22. <a href="http://www.serichon.com/">http://www.serichon.com/</a><br/> 23. <a href="http://www.nationsiam.com/">http://www.nationsiam.com/</a><br/> 24. <a href="http://www.gmm2008.com/index.php">http://www.gmm2008.com/index.php</a><br/> 25. <a href="http://thaksin.wordpress.com/">http://thaksin.wordpress.com/</a><br/> 26. <a href="http://thaiexpresslog.blogspot.com/">http://thaiexpresslog.blogspot.com/</a><br/> 27. <a href="http://thaiopinions.blogspot.com/">http://thaiopinions.blogspot.com/</a><br/> 28. <a href="http://www.newskythailand.com">http://www.newskythailand.com</a><br/> 29. <a href="http://sites.google.com/site/prachathaiclub/Home">http://sites.google.com/site/prachathaiclub/Home</a><br/> 30. <a href="http://siamfreedom.blogspot.com/">http://siamfreedom.blogspot.com/</a><br/> 31. <a href="http://www.priority-radio.com/">http://www.priority-radio.com/</a><br/> 32. <a href="http://www.cbox.ws">http://www.cbox.ws</a><br/> 33. <a href="http://www3.cbox.ws/box/">http://www3.cbox.ws/box/</a><br/> 34. <a href="http://www.no-ip.org">http://www.no-ip.org</a><br/> 35. <a href="mms://ptv.no-ip.org/mvtv_5">mms://ptv.no-ip.org/mvtv_5</a><br/> 36. <a href="mms://baygon2.no-ip.org/TPV1">mms://baygon2.no-ip.org/TPV1</a><br/> 37. <a href="mms://baygon2.no-ip.org/livetv">mms://baygon2.no-ip.org/livetv</a><br/> 38. <a href="mms://chupong.no-ip.org/chupong">mms://chupong.no-ip.org/chupong</a><br/> 39. <a href="http://www.dstation.tv/">http://www.dstation.tv/</a><br/> 40. <a href="http://365boxstv.com/tvonline_varietyone-link2.html">http://365boxstv.com/tvonline_varietyone-link2.html</a><br/> 41. <a href="http://www.redplusplus.com">http://www.redplusplus.com</a><br/> 42. <a href="http://www.salidausa.com">http://www.salidausa.com</a><br/> 43. <a href="http://www.redplusplus.com/">http://www.redplusplus.com/</a><br/> 44. <a href="http://www.window scare.in.th/index.php">http://www.window scare.in.th/index.php</a><br/> 45. <a href="http://www.norporchorusa.com/">http://www.norporchorusa.com/</a></p> | <p>10. <a href="http://thaienews.blogspot.com/">http://thaienews.blogspot.com/</a><br/> 11. <a href="http://www.prachachonthai.com">http://www.prachachonthai.com</a><br/> 12. <a href="http://www.cbnpress.com/">http://www.cbnpress.com/</a><br/> 13. <a href="http://uddtoday.ning.com/">http://uddtoday.ning.com/</a><br/> 14. <a href="http://www.thaireduk.com/">http://www.thaireduk.com/</a><br/> 15. <a href="http://www.nocoup.net/">http://www.nocoup.net/</a><br/> 16. <a href="http://downmerng.blogspot.com/">http://downmerng.blogspot.com/</a><br/> 17. <a href="http://www.jakrapob.net/">http://www.jakrapob.net/</a><br/> 18. <a href="http://www.truehaksin.com/">http://www.truehaksin.com/</a><br/> 19. <a href="http://www.chupong.com/">http://www.chupong.com/</a><br/> 46. <a href="http://www.newskythailand.com/">http://www.newskythailand.com/</a><br/> 47. <a href="http://www.sanamluang.in.th/">http://www.sanamluang.in.th/</a><br/> 48. 61.19.241.228 - Cat Telecom Sanamluang_Red<br/> 49. 61.19.241.237 - Cat Telecom Sanamluang_info<br/> 50. <a href="http://www.rednews.info/">http://www.rednews.info/</a><br/> 51. <a href="http://www.rednews.info/live/sanamluang-2.htm">http://www.rednews.info/live/sanamluang-2.htm</a><br/> 52. <a href="http://democraticthai.com/">http://democraticthai.com/</a><br/> 53. <a href="http://www.badict.2hell.com">http://www.badict.2hell.com</a><br/> 54. <a href="http://www.thairedusa.com/">http://www.thairedusa.com/</a><br/> 55. <a href="http://365boxes.com/tvonline_varietyone.html">http://365boxes.com/tvonline_varietyone.html</a><br/> 56. <a href="http://www.salidausa.com">http://www.salidausa.com</a><br/> 57. <a href="http://prachachonthai.listen2myradio.com/">http://prachachonthai.listen2myradio.com/</a><br/> 58. <a href="http://www.nationsiam.com/">http://www.nationsiam.com/</a><br/> 59. <a href="http://www.chupong-radio.com/">http://www.chupong-radio.com/</a><br/> 60. <a href="http://www.khonthai.org">http://www.khonthai.org</a><br/> 61. <a href="http://www.prachachonthai.com/">http://www.prachachonthai.com/</a><br/> 62. <a href="http://www.chubthaksin.com/">http://www.chubthaksin.com/</a><br/> 63. <a href="http://www.shinawatradio.com/">http://www.shinawatradio.com/</a><br/> 64. <a href="http://www.thairedshirt-democracy.org/">http://www.thairedshirt-democracy.org/</a><br/> 65. <a href="http://www.arayachon.org/">http://www.arayachon.org/</a><br/> 66. <a href="http://lbsapp.freewillsolutions.com/images/usbank.com/internetBanking/Cm...">http://lbsapp.freewillsolutions.com/images/usbank.com/internetBanking/Cm...</a></p> |
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### **Annex 3. Recommendation websites for more information**

- <http://thaipoliticalprisoners.wordpress.com/>
- LM Watch profile of lèse majesté cases <http://lmwatch.blogspot.com/> (in Thai) and <http://lmwatcheng.blogspot.com/> (for English version)
- Thai Netizen Network <http://thainetizen.org/>
- Prachatai.com /english <http://www.prachatai.com/english/docs> (Find the Computer Crime Act and other documents)
- Freedom Against Censorship Thailand <http://facthai.wordpress.com>

## 국가별 발제

### 태국 (치라눗 프렘차이폰, Prachatai 국장)

“우리는 사상의 자유를 가져야 합니다,” 수위차(Suwicha)씨는 3월 4일 크롱 프렘 센트럴 감옥에서 말했다. 붉게 충혈된 그의 두 눈에 눈물이 고였다. “사람들을 감옥에 보낸다고 해서 우리들의 사상의 자유를 결코 막을 수 없습니다.”<sup>1</sup>

2009년 4월 3일, 수위차 타콜 씨는, 최초로 컴퓨터 범죄법 (Computer Crime Act)에 의해 10년 형을 선고 받은 사람으로서 2009년 1월 14일에 체포된 후 3개월 간 감옥에 있었다. 그의 두 번에 걸친 보석 신청은 거부당했고 결국 헌법 제 8조와 9조, 형법 제 33, 83, 91 조 그리고 컴퓨터 범죄법 제 12장 14 및 16 조에 의거하여 유죄를 선고 받았다.

#### 1. 국가 안보 vs 시민권 및 자유

2007년 개정된 태국의 신(新)헌법은 세계에서 가장 긴 헌법이다. 이 헌법은 자유와 관련해 상당히 많은 부분을 할애하고 있다.

##### 제 7장 개인 및 언론의 표현의 자유, 45절

모든 사람은 자신의 의견을 표현하고, 발언하고, 저술하고, 인쇄하고, 출판하고 또한 다른 수단들을 동원하여 표현할 수 있는 자유를 향유해야 한다. 제 1단락에서 말하고 있는 자유는 국가 안보를 유지하고, 권리, 자유, 위엄, 명예, 가족 혹은 타인의 사생활을 보호하고, 공공질서 혹은 도덕을 유지, 혹은 대중의 신체 및 정신을 훼손시키는 행위를 예방 혹은 중단하기 위한 경우를 제외하고는 제한을 받지 아니한다.

비록 45절은 언론의 자유, 저술, 인쇄, 출판 및 다른 수단에 의한 표현을 보장하고 있지만 이러한 권리의 행사가 타인의 권리를 침해할 시에는 이러한 권리가 제한 받을 수 있다. 그러나, 무엇보다도 이러한 권리는 ‘국가안보’에 저촉될 시 최우선적으로 제한 받는다.

국가 안보라는 개념의 의미는 2007년의 국내안보법에서 명백하게 드러난다. 수많은 자유와 시민권은 국가 안보와 충돌할 시에는 언제든지 중단될 수 있다.

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<sup>1</sup>Thai Bloggers Face Jail Without Bail for Discussing Monarchy, Daniel Ten Kate (March 12, 2009) [www.bloomberg.com](http://www.bloomberg.com)



국내안보법은 태국 헌법 제 29, 32, 33, 34, 36, 38, 41, 63 절이 허용하는 범위내에서 인민의 권리와 자유를 제약할 수 있는 조항을 내재하고 있다.<sup>2</sup>

상기의 헌법 조항은 주거, 이동, 통신, 집회의 자유와 권리, 그리고 강제 노동 및 고문으로부터의 자유와 권리를 보장한다(부록 1). 하지만 국내안보법과 더불어 긴급 상황에서의 공공 행정에 대한 긴급 법령과 군법은 헌법에 명시된 시민권리보호는 그저 미사여구에 지나지 않는다는 것을 잘 보여준다.

이처럼 유명무실한 시민권과 자유의 보장은 올해 태국의 새해 축제인 송크란 기간 동안에 일어난 무자비한 탄압을 통해 드러났다. 여당인 민주당의 아비싯 웨짜지는 소위 빨간 셔츠로 알려진 그룹과 정체를 알 수 없는 과란 셔츠 그룹 사이의 충돌로 인해 아세안 정상 회의가 무산되자 그 즉시 국가 비상 사태를 선포했다. 비상 사태는 파타야와 방콕, 그리고 그 주변 일대에 선포되었다.

긴급 법령 시행은 국가권력과 상충하는 의견을 게시한 수많은 웹사이트들의 폐쇄로 이어졌다. 뉴스에 따르면 정보 통신 기술부(Ministry of Information and Communication Technology, MICT)는 60개가 넘는 웹사이트에 대한 검열을 명령했으나 그 지시는 2009년 4월 24일 철회되었다.<sup>3</sup>

## 2. 컴퓨터 범죄법 (Computer Crime Act)

표현의 자유를 해치는 현존하는 법에 더불어 2007년에는 컴퓨터 범죄법이 태국 국내법 의회(National Legislative Assembly)에서 통과되었다. 이 국내법 의회의 의원들은 국가 안보 이사회(Council for National Security)라 불리던 군사 독재 시절에 임명된 사람들로써 2006년 9월에 선거를 통해 선출된 정부를 전복시킨 사람들이다. 이 컴퓨터 범죄법은 사이버 상의 표현의 자유에 직접적인 영향을 미친다. 이 법의 근본 취지는 현존하는 법으로 규제하기 어려운 스팸메일, 사기, 바이러스 유포, 피싱, 해킹 등과 같이 컴퓨터 및 전자기기를 통한 범죄를 예방하고 처벌하기 위함이었다. 하지만 이 법의 당초 취지를 훨씬 벗어난 과도한 조항을 포함하여 사이버 상의 표현의 자유에 위협을 가하고 있다. (관련 섹션 14,15,16,18,20,26).

## 3. 국가 정책의 문제점

국무총리인 아비싯 웨짜지는 2008년 12월 28일 국회 정책연설에서 4가지 기본 원칙을 제시했다. 첫 번째 원칙은 군주제의 보호에 관한 것이다.

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<sup>2</sup> Internal Security Act, Unofficial Translation, 1<sup>st</sup> page, <http://www.prachatai.com/english/node/1411>

<sup>3</sup> MICT lifts blocking of 71 red-shirted websites, <http://www.prachatai.com/english/node/1177>

“첫째, 태국 국민의 화합의 중심적인 역할을 하는 군주를 보호하기 위해, 모든 형태의 정치적 분쟁 위에 군주제에 대한 경외심을 되새기고 신성불가침한 왕실의 위치에 반역을 막기 위한 필요한 모든 조치를 취한다.”<sup>4</sup>

오늘날 많은 정부 기관이 인터넷상에서 군주제와 관련된 내용에 대해 엄격하게 법을 집행하며 검열을 하고 있다.

정보 통신 기술부는 인터넷 안보 운영 센터 (Internet Security Operation Centre) 를 설립해 다른 타 정부 기관과 협력하고 있다. 같은 성격의 인터넷 안보 운영 사령부 (Internal Security Operations Command)는 군 기관으로서 국내안보법에 근거해 해당 지역과 모든 상황을 통제할 수 있는 전적인 권한을 가지고 있다.

이 두 가지 기관과 더불어, 웹사이트만을 특별히 감시하고 검열하는 부서들이 있다. 이러한 부서들은 태국 왕실 경찰 산하의 특별 위원회, 법무부와 국가 전자통신 위원회 아래 있는 특별 조사국의 동의 하에 국가 안보를 위협한다고 간주되는 인터넷 상의 정보를 수집하고 분석하는 부서, 그리고 최소 3개의 의회 위원회이다.

2009년 3월27일 태국 기자 연합과 아이스라(Isra) 연구소가 주최한 “컴퓨터 범죄법, 보호인가 위협인가?”라는 주제의 공개 토론회에서 사이버 범죄 분석 센터 경찰 경시감 부사령관인 비셋 파오인은 99퍼센트의 컴퓨터 범죄법에서 말하는 온라인 사기 및 도박과 같은 혐의는 형법에서 인정하는 범죄이고 사이버 범죄법은 그러한 사이버상의 범죄를 막는데 도움이 된다고 밝혔다.<sup>5</sup>

현재까지의 수집된 정보에 의하면 컴퓨터 범죄법에 의해 정치 및 군주제와 관련해 표현의 자유를 행사한 여섯 명이 기소되었다. 이 중 5명은 익명을 사용하였고(파야 피차이, 톤 찬, 핀, 마피 아 패밀리, 벤토)은 나머지 한 명인 수위차 타고 씨는 유죄를 판결 받고 10년 금고형을 언도 받았다.

적어도 4개의 웹사이트 웹 마스터는 상기의 법 15절에 의거한 혐의를 받고 있다. 문제의 웹사이트는 다음과 같다. [www.212cafe.com](http://www.212cafe.com), [www.gooseed.com](http://www.gooseed.com), [www.postmungang.com](http://www.postmungang.com), [www.prachatai.com](http://www.prachatai.com). 이와 더불어 적어도 두 웹사이트의 웹마스터들은 검찰에 소환되어 그들의 웹사이트에 게재된 댓글들에 대한 증언을 해야만 했다. [www.exteen.com](http://www.exteen.com), [www.sameskybooks.org](http://www.sameskybooks.org).

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<sup>4</sup>The Policy Statement of the Council of Ministers, Mr. Abhisit Vejjajiva, [http://www.thaigov.go.th/multimedia/vana/Policy\\_St2551.pdf](http://www.thaigov.go.th/multimedia/vana/Policy_St2551.pdf)

<sup>5</sup> Siam Intelligence Unit, <http://www.siamintelligence.com/computer-crime-act-tja-discussion/>

컴퓨터 범죄법이 적용된 이후 많은 경찰부서가 이를 이용해 표현의 자유를 억압하는데 관련되어 있으며 주로 이들은 비밀리에 활동한다. 또한 인터넷 이용자들은 그들이 사용하는 웹사이트에서 주로 아바타나 사이버 공간 상의 이름으로 알려져 있기 때문에 경찰이나 정부 당국이 그들에 대한 어떠한 조치를 취하더라도 대부분의 사람들이 이를 모르고 지나가게 마련이다.

아래는 대중에게 잘 알려진 두 사건들이다.

#### 4. 수위차 타콜 씨 사건

34세의 정유공장 엔지니어인 수위차 타콜씨는 2009년 1월 14일 인터넷상에 국왕을 모독한 내용을 게시한 혐의로 특별조사국에 의해 체포되었다. 체포 당시 그는 태국 동북쪽에 있는 나콘 파놈이라는 그의 고향에서 아내와 함께 장을 보고 있었다. 체포 직후 그는 곧바로 헬리콥터에 실려 방콕으로 이송되었다. 같은 날 특별조사국 직원은 16살인 그의 아들이 혼자 살고 있는 방콕의 집에 들이닥쳐 집을 수색하고 아들의 컴퓨터를 가져갔다.

같은 날 언론은 수갑을 찬 그의 모습을 보도했으나 이와 관련해 어떠한 공식적인 보도 자료도 나오지 않았다. 수위차씨는 모든 혐의를 부인했다.

1월 15일, 그의 체포와 관련된 소식은 모든 신문과 온라인 뉴스 사이트에 보도되었다. 신문들은 특별조사국이 방콕에 있는 그의 집을 방문했으나 이미 그는 나콘 파놈으로 도망간 후였고 결국 특별조사국이 그곳까지 가서야 그를 드디어 체포했다고 보도하고 있었다. 법무부 장관인 피라 판 사리라튀팍씨는 인터뷰에서 이전 사건들과 마찬가지로 어떠한 공식적인 보도 자료도 내지 않을 것이며 그의 부하들에게도 사건에 대해 함구하라는 명령을 내렸다고 밝혔다.

1월 16일, 특별조사국은 수위차씨가 2008년 4월 27일부터 12월 26일까지 수차례에 걸쳐 불법적인 행위를 했다고 주장하며 형사 재판소에 구금 명령을 내려줄 것을 요청했다. 그는 국왕과 그의 후계자를 모독하는 내용과 이미지를 유포한 혐의를 받았다. 특별조사국은 15명의 증인과 세 대의 컴퓨터, 수많은 씨디들과 문서들을 조사하기 위해 그를 구금해 둘것을 요청했다. 특별조사국은 또한 그의 보석 신청을 두 가지 이유를 들며 거절했다: 첫째, 그가 해당 혐의를 반복할 가능성이 있으며 둘째, 그가 외국계 회사에서 일하고 있으므로 도주의 우려가 있다는 것이었다. 그러나 1월 14일에서 16일에 걸친 조사 기간동안 수위차씨는 단 한명의 변호사도 만나지 못했다. 그가 체포된지 며칠 후, 그는 회사의 명예를 더럽혔다는 이유로 해고당했다.

그의 부인인 티티마 타콜씨는 550,000바트 (약 2천만원)에 달하는 보석금을 걸고 보석을 신청했으나 법원은 이를 받아들이지 않았다. 법원은 국왕은 가장 존경 받는 기관으로서 어느 누구도 그의 신성불가침성을 훼손할 수 없기 때문에 이 사건이 매우 중요하고 국가안보와 관계가 깊다고 말했다. 그의 변호사는 다시 한번 1월 26일과 29일에 보석을 신청했으나 기각되었다.

3월 26일, 검찰은 헌법 8절, 9절, 형법 33(1), 83, 91 및 112절, 컴퓨터 범죄법 14(2), 16(1)절 위반 혐의로 수위차씨를 기소했다. 수위차 씨는 유죄를 인정했고 법원은 2009년 4월 3일 그에게 두 개의 혐의당 각각 5년 형을 선고하여 총 10년 금고형을 언도했다.

## 5. 프랏차타이 온라인 사건

프랏차타이(www.prachatai.com)는 2004년 개설된 온라인 뉴스 신문으로 비주류의 뉴스와 논평들을 주로 보도하고 있다. 해당 웹사이트의 방문자는 기사에 댓글을 게시할 수 있고 자유 게시판들을 통해 의견과 정보를 교환할 수 있다. 프랏차타이는 사용자들의 참여를 허용하는 것이 방문객들로 하여금 그들이 웹사이트의 주인이라는 의식을 들게 한다고 생각하고 이것은 그들의 가장 중요한 원칙 중 하나이다.

비록 프랏차타이가 독자와 기자, 그리고 다른 독자들간의 자유로운 의견을 나눌 공간을 제공하고 있지만, 이는 완벽하게 '자유로운' 사이트라고는 볼 수 없다. 모든 이들은 자유롭게 그들이 원하는 대로 사이트를 이용할 수 있지만 다음 규칙을 따라야만 한다.

### 1. 법적 준수

1. 법을 위반한 것으로 간주된 게시물은 검열대상이 된다.(대중에 공개되지 않는다) 해당 관련 법은 컴퓨터 범죄법, 형법, 특히 명예훼손 및 왕실모독죄 관련 형법.
2. 컴퓨터 범죄 법에 대한 준수는 다음을 포함한다. 모든 통신 데이터 90일간 저장, 잠재적인 위반에 대해 당국에 IP 주소가 노출될 수 있음에 대한 필요성이나 가능성을 사용자에게 고지.

### 2. 내용 삭제

프랏차타이는 모든 사용자 개인의 사생활을 존중하지 않거나 증오를 유발하거나, 성별, 인종, 종교, 국적, 나이 혹은 외모에 대한 공격적인 내용을 담은 게시물을 삭제한다. 또한 토론 주제와 연관이 없거나 게시판의 "흐름"을 방해하는 내용에 대해서 역시 삭제할 수 있는 권한이 있다.

### 3. 참여 및 커뮤니티 정신

프랏차타이는 사용자들이 스스로 게시판을 관리할 수 있도록 모든 이가 (방문자, 게시판 회원) 게시판의 주제 혹은 댓글 등을 삭제하거나 차단할 것을 제안할 수 있도록 허용하고 있다.

2006년 9월 19일 쿠데타 이후 엄청난 수의 사람들이 프랏차타이 웹사이트를 방문했다. 하루에 방문하는 방문객의 수가 1,000명에서 10,000명으로 증가했으며 정치적 갈등이 심화되던 시기에는 35,000명까지 방문객 수가 증가하기도 했다. 프랏차타이는 최근 들어 [www.prachataiwebboard.com](http://www.prachataiwebboard.com)이라는 웹 도메인을 새로 등록했으며 이는 원래 웹사이트인

Prachatai.com 과는 구별되게 자유로운 게시판의 기능과 안정성에 더욱 초점을 맞춘 사이트이다. 현재 프랏차타이의 방문객 수는 하루에 약 10,000 명, 페이지 조회수는 약 50,000 번을 기록하고 있으며 프랏차타이 게시판의 방문객 수는 하루에 약 20,000 명, 페이지 조회수는 약 300,000 을 기록하고 있다. 현재 약 30,000 명이 게시판 등록 회원이며 하루에 약 300 개에서 400 개의 새로운 글들이 올라오고 이들 아래에는 수천개의 댓글들이 달린다.

## 1) 정부의 프랏차타이 웹 게시판 검열

2006 년 9 월 19 일 쿠데타 이후, 정보 통신 기술부 직원은 프랏차타이 게시판의 특정 게시물들을 자체적으로 검열할 것을 요청했다. 당시 정보 통신 기술부 장관이었던 시티차이 포카이우돔은 개인적으로 세 차례 전화를 걸어 매번 정보 통신 기술부는 국가 안보 이사회와 쿠데타 지도자들로 구성된 국가 안보 회의의 경고에 따라 국가 안보에 위협이 되는 게시물들 예의 주시해야 한다고 강조했다. 또한 정보 통신 기술부는 쿠데타 직후 만들어진 국가안보회 법 제 5 에 의거하여 그들에게 웹사이트를 폐쇄할 수 있는 법적 권한이 있음을 주장했다.

컴퓨터 범죄법이 통과되기 전, 프랏차타이 국장이자 웹게시판 행정관리자인 치라눗 프람차이폰은 당국의 검열요청을 숙고하였고 그녀가 동의하지 않은 부분에 대해서는 웹사이트에 게시된 내용들을 검열하지 않았다. 그러나 컴퓨터 범죄법이 2007 년 통과되어 효력이 생기자, 이 치라눗 프람차이폰의 자의적인 판단과 상관없이 정부 통신 기술부의 통보에 있을 때 마다 모든 주제와 내용을 검열해야 하는 상황이 벌어졌다.

오늘날까지 약 20 개 이상의 프랏차타이 웹사이트에 있는 링크들이 법원 명령에 의해 정지되었다. 하지만 이 중 적어도 두 번 이상 프랏차타이 전체 웹사이트가 열리지 않은 적이 있었지만 두 번 모두 프랏차타이 직원들은 검열의 주체를 찾아낼 수 없었고 정부로부터 어떠한 공식적인 검열 요청을 받은 적도 없었다. 단순히 “기술적인 문제”로 인해 웹사이트가 열리지 않는다는 대답을 받았을 뿐이다. 게다가 프랏차타이 구독자들은 일반적인 방법으로는 웹사이트가 열리지 않으며 TOR 이나 다른 프록시 서버들을 이용해야지만 사이트가 열린다고 프랏차타이에 알렸다.

정보 통신 기술부의 직접적인 연락과 더불어 해당 사이트의 웹보드 관리자인 치라눗은 범죄단속반(Crime Suppression Division), 도시 경찰부, 중앙 조사국, 기술 범죄국, 콘 카엔 지방 경찰 등 다양한 부서의 경찰관들로부터 증인으로 출석해 달라는 요청을 받았다. 치라눗은 경찰 당국에 반드시 구두가 아닌 서면 형식으로 소환을 요청할 것을 부탁했고 현재 그녀는 모든 공식적인 소환에 협조하고 있다.

경찰이 요구해서 그녀가 제공한 10 번이 넘는 증언의 대부분은 법적으로 요구되는 90 일간 저장된 내용보다 훨씬 더 오래된 데이터에 관한 것들이었다. 프랏차타이는 법에서 최소한으로 요구하는 기간 이상으로 자료들을 보관하지 않는다. 경찰이 요구한 데이터 중 단 한 건만이

90 일이 지나지 않은 게시물로서 2008 년 10 월 15 일 게시된 것이었다. 경찰은 다시 2008 년 10 월 28 일 치라넷에게 증인으로서 소환장을 발송했고 그녀는 11 월 3 일 소환장을 받았다. 그 이후 이와 관련해 두 세 번에 걸쳐 경찰에 증언했고 2008 년 12 월, 해당 게시자의 IP 정보를 제공했다.

## 2) 증인에서 피의자로

2008 년 12 월 치라넷이 경찰이 요구한 정보를 넘겨 준 후, 기술 범죄국 직원이 그녀를 찾아와 컴퓨터 범죄법 제 18(1)절에 따라 자신에게 프랏차타이 사이트 사용자의 정보를 넘겨달라고 요청했다. 그녀는 해당 직원에게 공식적인 신분 증명 서류를 보여달라고 했고 그의 신분이 확인되자마자 해당 요구 사항을 팩스로 전달해 주었다.

그 이후 1 월 말 즈음, 범죄단속반은 프랏차타이 편집자에게 소환장을 보내 왕실을 모독한 내용의 게시물을 올린 N 씨에 대해 증언을 하도록 요구했다. 이어서 경찰은 프랏차타이의 소유주인 통신 교육 미디어 재단의 사장과 전 사장에 대한 심문 협조 요청서를 보냈다. 경찰은 웹게시판 게시물 삭제 원칙에 대해 그들을 심문했다.

2009 년 3 월 6 일, 약 10 명 정도의 범죄단속반 직원이 프랏차타이 사무소를 방문해 국장인 치라넷을 웹보드 관리인으로서 컴퓨터 범죄 법 14(2), 3 5 15 절을 위반한 혐의로 체포했다. 경찰들은 수색 및 체포 영장을 가지고 있었으나 사무실을 수색하지는 않았고 대신 치라넷의 노트북 컴퓨터를 가져가 하드디스크를 복사했다. 경찰에 따르면 정보 통신 기술부가 컴퓨터 범죄법 제 19 절과 18(4)절에 따라 하드디스크를 복사할 수 있도록 법원 명령을 기다리고 있는 중이라고 말했다.

치라넷의 체포 소식은 순식간에 번졌고 그녀의 많은 친구, 동료, 학자 및 프랏차타이 사용자들은 그녀에 대한 범죄단속반에 찾아가 지지를 표했으며 이에 체포된 당일날 그녀는 보석으로 풀려났다. 출라롱콘 대학 정치대 교수인 찬타나 분파시리축 완케위 박사는 그녀가 보석으로 풀려나도록 정부에 압력을 행사하기도 했다. (보석금은 7 만 5 천 바트(약 270 만원)로 책정되었다)

2009 년 4 월 7 일, 치라넷과 그녀의 변호사가 경찰의 전화를 받고 경찰서를 다시 찾았을 때 그녀는 9 개의 또 다른 혐의가 그녀에게 씌워졌다는 것을 알게 되으나 모든 혐의의 내용은 이전과 동일한 것이었다. 경찰이 같은 혐의의 9 개 게시물들을 9 개의 각기 다른 사건으로 나누어서 대응한 것이다.

2009 년 6 월 1 일, 경찰은 이 사건을 법무 장관에게 제출했고 6 월 26 일에 이 사건이 법정에서 회부될지 여부에 대한 장관의 결정이 내려질 예정이었다. 그러나 약속된 날짜에 치라넷이 찾아가자 법무부에서는 날짜가 2009 년 7 월 29 일로 변경되었다고 이야기했으며 이 날짜는

다시 9 월 1 일로, 또 다시 9 월 28 일로 연기되었다. 현재 검찰은 그녀의 기소 여부를 결정하지 못했다. 그녀는 지속적으로 실에 찾아가고 있으며 다음 약속 일정은 2009 년 11 월 30 일로 잡혀있다.

2009 년 6 월 25 일 법무장관에게 보낸 공정한 심사를 요구하는 치라눗의 서한에 대해 장관은 그녀의 요구를 고려하겠다는 입장을 전했다.

## Malaysia (Mr. K. Kabilan, Chief Editor of Malaysiakini.com)

### 1. Introduction

The Malaysian Communication and Multimedia Commission (MCMC) is investigating Malaysiakini.com, an independent online news portal based in Kuala Lumpur, Malaysia, for allegedly posting two video clips which were deemed to be offensive and can annoy any person watching them under the Communication and Multimedia Act 1998. The investigation, if taken to the court of law, will lead to a jail term and a fine for *Malaysiakini* and its editors if they are found guilty.

*Malaysiakini's* position has been to maintain the videos on its sites on the grounds that these two clips were taken in the course of performing its duty as a credible news organisation and had no intention to offend or annoy any viewers. These clips were recordings of a protest and a news conference which followed a couple of days later on the protest. The online portal has also informed the MCMC that it had not received any complaints from its readers on the two videos. On the contrary, many readers have complimented *Malaysiakini* for putting up the videos as no other media publication in Malaysia had done so.

*Malaysiakini* editor-in-chief Steven Gan informed MCMC the reason for the videos not being taken down was because they were news events which were of public interest. "Our intent in putting up the videos was not to 'annoy' anyone, but to do our job as journalists to draw attention to the protest and to ensure action is taken so that incidents like this will not happen again in Malaysia," he had said.<sup>1</sup>

As of September 19, the MCMC has visited *Malaysiakini* office on four occasions to take statements from its editorial staff and gather digital evidence to link the videos to *Malaysiakini*. The chances of *Malaysiakini* being prosecuted over the matter look very high indeed. The order for the videos to be taken down, the investigations that followed and the possible prosecution of an online news organisation clearly run foul with the government's guarantee of no Internet censorship which was made in 1998.<sup>2</sup>

*Malaysiakini* is an independent media organisation which was established in 1999. It is a subscription based website with 65 people on its team, offering daily news and views in English, Malay, Chinese and Tamil. The news portal also delivers over 37 million page views and 750,000 video downloads per month to over 1.6 million absolute unique visitors (Google Analytics, August 2008). As of July 2008, *Malaysiakini* became the most read news website according to Google.<sup>3</sup>

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<sup>1</sup> <http://www.malaysiakini.com/news/112111>

<sup>2</sup> <http://www.mscomalaysia.my/topic/MSCom+Malaysia+Bill+of+Guarantees>

<sup>3</sup> <http://www.malaysiakini.com/news/112996>



## 2. Press freedom in Malaysia

Advocacy group Freedom House in its 2009 press freedom ranking placed Malaysia in the 143<sup>rd</sup> slot out of 195 countries surveyed. The survey stated that the press in Malaysia was “not free”.<sup>4</sup> Malaysia also fared poorly in the Paris-based Reporters Sans Frontieres (RSF) worldwide press freedom index. In its latest ranking in 2008, Malaysia fell to its lowest ranking since the start of the RSF press freedom index, dropping to 132<sup>nd</sup> position of 173 countries for that year. This was a steady decrease as Malaysia was at 124<sup>th</sup> slot in 2007, 92 (2006), 113 (2005), 122 (2004), 104 (2003) and 110 (2002).<sup>5</sup>

The Malaysian government has always rejected these survey findings, many a times calling them the work of the “western agents”. The government believes that there is press freedom in the country and that whatever actions taken and restrictions imposed is done in accordance with the proper rule of law.

There is no absolute freedom of the press in Malaysia. All print media are governed under the Printing Presses and Publications Act 1984 (PPPA) while the Broadcast Act covers the television and satellite stations. Under the PPPA, all publications must obtain an annual permit to publish their dailies. The permit is given at the discretion of the Home Minister who can revoke or suspend the publishing permit for various reasons, including when the said newspaper has published contents considered “likely to be prejudicial to public order, morality, [or] security”; or likely to “be prejudicial to... national interest”. The minister’s decision to revoke and renew the permit is not open to judicial review.

PPPA is not the only law which can restrain press freedom in Malaysia. Other laws such as Official Secrets Act 1972, the Internal Security Act 1960, the Sedition Act 1949, contempt of court and defamations laws are just some of the legislations that can be used to silence the media. There are about 35 laws in Malaysia which can be used to control the media. All these laws are applicable to the cyberspace as well and in addition there is the Communication and Multimedia Act 1998 under which *Malaysiakini* is being investigated now.

The other cause for press freedom to suffer in Malaysia is due to the ownership of Malaysian media houses where they are all either directly or indirectly controlled by ruling political parties. This definitely affects what is reported, and how it is reported.

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<sup>4</sup> [http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009\\_tables.pdf](http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009_tables.pdf)

<sup>5</sup> <http://www.rsf.org/en-rapport68-Malaysia.html>

*Malaysiakini* is different from the other media outlets as it is an independent media organisation and this could be a reason for why it faces higher pressure from the government on attempts to curtail its reporting. The latest incident is the investigation into the cow-head protest videos.

### 3. The cow-head protest videos

The background to this protest is important to explain the reason for *Malaysiakini* in not taking down the two video clips as requested by the Malaysian Communication and Multimedia Commission.

On August 28, a group of residents from a Malay-majority housing area marched to the Selangor state government office to protest against the relocation of a Hindu temple to their neighbourhood. These residents did not want the 150-year-old temple to be re-sited at the housing estate stating that they as Malay-Muslims did not want a place of worship of another religion there. In the protest, the residents brought with them a cow's head which they paraded, kicked, spat and stomped on. The cow is considered sacred among Hindus. Later, the protesters were roundly condemned by various quarters for the action.

*Malaysiakini*, along with many other media organisations, covered this protest. *Malaysiakini* also had a video team dispatched to record the protest, just as it does with any news events. Later in the day, a story and a video clip of the protest were uploaded in *Malaysiakini*. Both the news story and the video clip attracted a high number of reader and viewership. More than 150 people commented on the story with almost all of them criticising the protesters. As for the video clip, it was viewed more than 200,000 times in the *Malaysiakini* website.<sup>6</sup> This was the first video which the MCMC found to be offensive and annoying.

On September 2, Home Minister Hishammuddin Hussein held a press conference after meeting with some of the protesters, who were also members of the ruling party of which the minister is a vice-president. At the press conference, the minister defended the protesters by asking everyone not to blame them for the cow-head protest. He said that the protesters had a valid reason for bringing the cow's head for the protest. *Malaysiakini* reported this video conference and published a video clip of the same press conference too. This news article was also well-read by *Malaysiakini*'s subscribers and attracted more than 110 comments, largely criticising the minister for defending the protesters. The video was viewed by more than 37,000 times.<sup>7</sup> The MCMC also found this second video to be offensive and annoying.

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<sup>6</sup> <http://www.malaysiakini.com/news/111628> and <http://www.malaysiakini.tv/video/17689/temple-residents-march-with-cows-head.html>

<sup>7</sup> <http://www.malaysiakini.com/news/111974> and <http://www.malaysiakini.tv/video/17715/hisham-dont-blame-cow-head-protesters.html>

#### 4. MCMC swings into action

MCMC is a government agency under the Information, Communications and Culture Ministry and is empowered to regulate matters relating to communications and multimedia activities, including private TV and radio stations as well as Internet websites.

Following the publication of the second video on the minister's press conference, the MCMC telephoned *Malaysiakini* on September 3, requesting that the second video is removed on the grounds that it was offensive as it contained images of the cow-head protest. *Malaysiakini* however informed the commission that it will not remove the video but will edit it to remove some portions of the protest, which it duly did.

On September 4, a letter from MCMC arrived at *Malaysiakini's* office urging the news portal to remove the two 'provocative' videos from the site.<sup>8</sup> According to the commission, it has received "numerous complaints" on several "provocative and offensive videos" that were posted on *Malaysiakini* and its page in the YouTube site. The letter stated that these videos contained offensive contents with the intent to annoy any person, especially Indians and it was an offence under Section 211 and Section 233 of the Communication and Multimedia Act 1998.<sup>9</sup> Under the communication and multimedia law, any individual found guilty of publishing content "which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person" is liable to a fine of up to RM50,000 or a jail sentence.

*Malaysiakini* refused to remove the videos, following which MCMC officers started the investigations into the news portal. The first interviewed *Malaysiakini's* editor-in-chief Steven Gan for about three hours on a Saturday. This was followed by a marathon eight-hour questioning session on the following Tuesday, September 8, of 12 *Malaysiakini* staff, including its chief executive officer, editors, journalists, video team members and one technical staff. About eight MCMC officers were involved in the questioning process, who split into three teams to record statements from *Malaysiakini* staff simultaneously. All the editorial staff questioned was involved in the process of news gathering, editing and publishing two stories and two videos. On the same day, another group of MCMC officers had visited *Malaysiakini's* server hosting company to question and seek technical details pertaining to its video servers.<sup>10</sup>

A day later, the MCMC team returned to *Malaysiakini* to question more staff and gather digital evidence pertaining to the case, including taking a scan of *Malaysiakini's* computer hard disks and servers.<sup>11</sup> The MCMC investigating team has yet to complete their investigations and is expected to

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<sup>8</sup> <http://www.malaysiakini.com/news/112111>

<sup>9</sup> [http://www.malaysiakini.com/doc/mcmc\\_to\\_mkinitv.php](http://www.malaysiakini.com/doc/mcmc_to_mkinitv.php)

<sup>10</sup> <http://www.malaysiakini.com/news/112432>

<sup>11</sup> <http://www.malaysiakini.com/news/112674>

return to *Malaysiakini* for more questioning and gathering of evidence in the week beginning September 21.

## 5. Prosecution or persecution?

The decision by the MCMC to probe *Malaysiakini* has brought into question on the purpose of this investigation. Is it being done to teach *Malaysiakini* a lesson in failing to suppress information or does the government genuinely believe that the two videos were offensive, although *Malaysiakini* viewers did not think so?

MCMC falls under the Information, Communications and Culture Ministry whose Minister Rais Yatim had in early August said that the government will be filtering the Internet to police blogs and websites. However, this proposal was rejected by the government a few days later.<sup>12</sup> Rais had also previously spoken about registering bloggers to ensure that their identities are known to the government so that those who criticise the government can be tracked down. However, that suggestion too was put off after receiving many complaints.

While Rais had not said anything about the MCMC action against *Malaysiakini*, his deputy however said that the public expected action to be taken against *Malaysiakini* for breaching the law in putting up the two videos. The deputy minister on September 11 said that the MCMC was acting within the parameters of the law as the "issue is hot". "The MCMC is the custodian. The public won't like it if they (MCMC) did not take any action," added the deputy minister in remarks which were published in *Malaysiakini*.<sup>13</sup>

However, once again the question which rises is which public the deputy minister was talking about. The MCMC in its first session with *Malaysiakini* merely said that it had received numerous complaints about the videos but had not revealed the source of the complainants. However, it must be noted that MCMC can lodge a complaint on its own in order to start a probe. *Malaysiakini* had not received any letters of complaint from any of its subscribers over the videos. Neither had it also received any complaints about the videos in its comment boxes in the two news articles and the videos.

In fact, following the deputy minister's remarks, many *Malaysiakini* subscribers left comments in the comment boxes in the site to state that they did not find the two videos offensive and/or annoying. Almost all of them stated that the MCMC action against *Malaysiakini* seemed to be a political move to take the pressure off the ruling party whose members were involved in the cow-head protest.

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<sup>12</sup> <http://www.reuters.com/article/technologyNews/idUSTRE5763JF20090807>

<sup>13</sup> <http://www.malaysiakini.com/news/112649>

One commentator had this to say: “The (deputy minister) Joseph Salang does not speak for me. I don't think he speaks for the public. I think he is harassing *Malaysiakini* from doing their job. Report the truth and freedom of information. Say no the racism.”

*Malaysiakini* for its part is ready to face any action. It stands by its stories and the two videos, stressing that it was only doing its duty as a news organisation is reporting what was happening on the ground. The online publication has informed the MCMC that the videos were not intended to offend or annoy anyone, and they were uploaded because of their important news value and it is now preparing to defend itself in the court if and when it is charged under the Communication and Multimedia Act 1998.

*Malaysiakini* is also arguing that any action taken under the Act by the MCMC to prevent the airing of such news videos would contravene Section 3 of the same Act which states that “nothing in this Act shall be construed as permitting the censorship of the Internet”.

## 6. The support for Malaysiakini

The action by the MCMC to investigate *Malaysiakini* has brought about a huge round of support from its readers who continuously pressure the government to drop the probe and any charges.<sup>14</sup> Likewise, political parties, from the ruling side as well as the opposition, have also urged the government to stop harassing *Malaysiakini*. They have argued that the action against *Malaysiakini* ran counter to the government’s stand of ensuring freedom of speech.

A component party of the ruling government added that the MCMC probe was "against fair reporting which the public is entitled to". The party also noted that Prime Minister Najib Abdul Razak had given an assurance to the people that the government would not censor the Internet.<sup>15</sup>

The civil society movements have also urged the government not to push Malaysia further down in the global press freedom ranking by taking action against *Malaysiakini* for merely reporting what was happening.<sup>16</sup> One NGO had even threatened to stage a nationwide protest if *Malaysiakini* was charged over the two videos.<sup>17</sup>

Support has also come from international organisations including the Committee to Protect Journalists (CPJ), Southeast Asian Press Alliance (Seapa) and Pacific Islands News Association

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<sup>14</sup> <http://www1.malaysiakini.com/news/112442>

<sup>15</sup> <http://www.malaysiakini.com/news/112926> and <http://thestar.com.my/news/story.asp?file=/2009/9/11/nation/20090911142448&sec=nation>

<sup>16</sup> <http://www.malaysiakini.com/news/112827>, <http://www.cijmalaysia.org/content/view/496/> and <http://www.thenutgraph.com/cij-condemns-mcmc-censorship>

<sup>17</sup> : <http://www.malaysiakini.com/news/112773>

(Pina), calling on the MCMC to stop “its intimidating tactics and harassment of *Malaysiakini* editors and staff members”. CPJ urged the government to “stop harassing one of Malaysia’s few independent and internationally respected sources of news”.<sup>18</sup>

## 7. What’s next?

MCMC is set to wrap up its investigations into the two videos soon and following that *Malaysiakini* and its editors are expected to be charged in court. While *Malaysiakini* is ready to defend its two videos in court, it is also noteworthy that the MCMC also has powers to suspend the website from being accessed by anyone.

It has been done before against another website called *Malaysia Today*, in August last year. That website was blocked by the MCMC using its powers under Section 263 of the Communications and Multimedia Act 1998 for allegedly carrying “insensitive comments” The MCMC had said then that it acted based on complaints received from the general public.<sup>19</sup> This action of blocking the website, if taken up by the MCMC, would leave *Malaysiakini* without any options but to be forced to remain offline and being unable to function as a credible news organisation. Under such circumstances, it would definitely mean that the authorities have succeeded in censoring the Internet despite its earlier promises of not doing so.

### End notes:

The two videos that are being investigated are found at:

#### 'Temple demo: Residents march with cow's head'

<http://www.malaysiakini.tv/video/17689/temple-residents-march-with-cows-head.html>

#### 'Hisham: Don't blame cow-head protesters'

<http://www.malaysiakini.tv/video/17715/hisham-dont-blame-cow-head-protesters.html>

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<sup>18</sup> <http://cpj.org/2009/09/malaysian-news-web-site-harassed-over-protest-cove.php>

<sup>19</sup> <http://www.malaysiakini.com/news/88683>

**Annex:**

Photographs from the protest, minister's press conference and MCMC visit

**1. The cow-head protest**



**2. The minister's press conference with the protesters**



**3. MCMC officers questioning Malaysiakini journalists**



#### 4. MCMC officer collecting digital evidence



#### 5. Civil societies in support of Malaysiakini





## 말레이시아 (케이 카빌란, Malaysiakini 편집국장)

### 1. 서론

말레이시아 통신 멀티미디어 위원회(이하 위원회)는 1998 년 통신 및 멀티미디어 법에 의거해 남에게 공격적인 불쾌감을 주는 두 개의 영상을 게시한 혐의로 말레이시아 쿠알라룸푸르에 기반을 두고 있는 독립적인 온라인 뉴스 포털 사이트인 말레이시아키니 (Malaysiakini.com)에 대한 조사에 착수했다. 이 조사로 인해 법정에 가게 된다면 해당 포털 사이트의 편집자는 징역형과 벌금형에 처해 질 수 있다.

현재 말레이시아키니 측은 자신들의 뉴스의 신뢰성을 높이기 위해 촬영된 두개의 영상물을 자신들의 웹사이트에서 삭제하지 않겠다는 입장을 고수하고 있다. 또한 이 영상물을 접한 사람들에게 공격적인 불쾌감을 줄 의도를 전혀 내포하고 있지 않다. 해당 영상물들은 집회 장면과 집회 후 열린 기자 회견을 포함하고 있다. 말레이시아키니측은 이 두 영상물로 인해 독자들로부터 단 한건의 항의도 받은 적이 없다는 사실을 위원회에 전달했다. 오히려 웹사이트 방문자들은 다른 말레이시아 언론들과는 다르게 말레이시아키니만이 유일하게 해당 영상물을 게재한것에 대해 찬사를 보내고 있다.

말레이시아키니의 편집 국장인 스티븐 간(Steven Gan)씨는 해당 영상은 공익과 관련된 것이므로 해당 영상을 삭제할 수 없다고 위원회에 알렸다. “해당영상을 게시한 이유는 특정 인물을 겨냥한 것이 아니다. 우리는 시위에 대한 관심을 환기시키고 어떠한 조치가 취해졌는지 취재하여 이러한 불상사가 다시는 말레이시아에 발생하지 않도록 해당 영상을 게시한 것이다. 우리는 언론인으로서의 우리의 역할을 했을 뿐이다”라고 밝혔다.<sup>1</sup>

9 월 19 일을 기준으로 위원회는 말레이시아키니 사무소를 네 차례나 방문하여 편집부 직원의 진술을 받고 해당 영상과 관련된 디지털 증거를 수집하였다. 이 사건으로 인해 말레이시아키니가 기소될 확률은 매우 높다. 영상 게시물 삭제 명령 그리고 그 뒤를 이은 조사 및 기소 가능성 등 일련의 사건은 1998 년, 인터넷에 대한 검열을 하지 않겠다고 밝힌 정부의 입장과 대조된다.<sup>2</sup>

말레이시아키니는 1999 년에 설립된 독립적인 언론 기관이다. 말레이시아키니는 인터넷 신문 구독의 형태로 운영되고 있으며 65 명의 직원과 함께 영어, 말레이어, 중국어 그리고 타밀어로 뉴스와 사설을 제공하고 있다. 이 뉴스 포털 사이트는 3 천 7 백만쪽에 달하는 페이지 조회수를 기록하고 있으며 160 만명이 넘는 방문객들이 약 75 만 번의 영상 다운로드를 하는 것으로

<sup>1</sup> <http://www.malaysiakini.com/news/112111>

<sup>2</sup> <http://www.mscomalaysia.my/topic/MSCom+Malaysia+Bill+of+Guarantees>

조사되었다. (구글 분석, 2008 년 8 월 기준). 구글에 따르면 2008 년 7 월 기준, 말레이시아키니는 가장 구독률이 높은 뉴스 웹사이트이다.<sup>3</sup>

## 2. 말레이시아 언론의 자유에 대한 일반적인 견해

프리덤 하우스는 2009 년에 발표한 국가별 언론 자유 순위에서 말레이시아를 195 개 조사 대상국 중 143 번째로 책정하고, 말레이시아의 언론은 “자유롭지 않음”(not free)범위에 속한다고 밝혔다.<sup>4</sup> 또한 말레이시아는 파리의 국경 없는 기자회(RSF)에서 조사한 전세계 언론의 자유 지수에서도 낮은 등급을 기록했다. 가장 최근 발표된 2008 년도 조사에 따르면, 말레이시아는 국경 없는 기자회 조사 이래 최고로 낮은 지수를 기록하여 173 개국 중 132 번째를 차지하였다. 2002 년에는 110 위, 2003 년에 104 위, 2004 년에 122 위, 2005 년에 113 위, 2006 년에 92 위, 2007 년에 124 위라는 기록에서 볼 수 있듯이 말레이시아의 언론의 자유는 꾸준히 후퇴하고 있다.<sup>5</sup>

말레이시아 정부는 이와 같은 조사 결과를 부인하며 대부분의 경우 “서구 기관에 의한 조사”일 뿐이라고 치부해 왔다. 정부는 현재 말레이시아에서 언론의 자유는 보장되고 있으며 언론의 자유에 대해 취해진 모든 조치나 규제는 적법한 절차에 의해 이뤄졌다고 주장하고 있다.

말레이시아에서는 완전한 의사 표현의 자유가 보장되지 않는다. 정부는 1984 년 제정된 인쇄 언론 및 출판 법(Printing Presses and Publication Act, 이하 PPPA)에 의거하여 모든 인쇄 매체를, 그리고 방송법(Broadcast Act)에 의거하여 모든 텔레비전과 위성 방송을 관리한다. PPPA 에 따라, 모든 출판업자들은 일간 신문 발행을 위해 반드시 정부로부터 연례 허가를 받아야 한다. 이 허가는 내무부 장관의 재량에 따라 출판물이 “공공질서나 도덕, 혹은 국가 안보를 위협하려 하는 내용일 경우” 혹은 “국익에 반하는 경우” 출판 허가를 철회하거나 중단시킬 수 있다. 이러한 내무부 장관의 결정은 사법적인 심사를 받지 않는다.

말레이시아에서 표현의 자유를 저해하는 요소는 비단 PPPA 뿐만이 아니다. 예를 들어 1972 년 공적 기밀법, 1960 년 국내안보법, 1949 년 선동법, 법정모욕 및 명예훼손법 등과 같은 다른 기타 법들은 언론을 침묵시키는 수단으로 사용된다. 총 35 개의 법이 말레이시아 언론을 통제하는데 사용될 수 있다. 이와 같은 법들은 인터넷상에서도 적용될 수 있다. 앞서 언급된 법 외에 표현의 자유를 침해하는 또 다른 법령의 예로 1998 년 통신 및 멀티미디어 법을 들 수 있는데, 현재 말레이시아키니에 대한 조사가 이 법령에 의거하여 진행되고 있다.

말레이시아의 언론이 현재 탄압받는 또 다른 원인은 정부여당의 직간접적인 언론 기관 지배에 있다. 이는 언론에서 무엇이 보도되고 어떻게 보도되는지에 지대한 영향을 미치게 된다.

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<sup>3</sup> <http://www.malaysiakini.com/news/112996>

<sup>4</sup> [http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009\\_tables.pdf](http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009_tables.pdf)

<sup>5</sup> <http://www.rsf.org/en-rapport68-Malaysia.html>

말레이시아키니는 다른 언론 기관들과는 다르게 독립 미디어 기관이다. 그렇기 때문에 말레이시아키니는 보도 내용을 삭제하려는 시도와 같은 정부의 강도 높은 탄압에 맞설 수 있었다. 가장 최근의 탄압관련 사건은 “소머리 시위 영상”에 대한 정부 조사이다.

### 3. 소머리 시위 비디오 (The cow-head protest videos)

이 시위의 배경은 말레이시아키니가 위원회의 요구에 따라 두 가지 영상 게시물을 삭제하지 않는 이유를 설명하는 중요한 단서를 보여준다.

8 월 28 일, 말레이 족들이 주로 거주하는 지역의 주민들은 셀렝공(Selangor) 지방정부 사무소로 가두 행진하며 자신들의 동네로 힌두 사원을 이전하는 것에 반대하는 시위를 했다. 대다수가 말레이족 무슬림인 주민들은 자신들이 살고 있는 지역에 150 년된 타 종교 사원을 이전하는 것에 대해 반대하는 목소리를 높였다. 시위 도중, 주민들은 힌두인들 사이에서 신성한 동물로 간주되는 소의 머리를 들고 나와 이를 발로 차고 침을 뱉거나 발로 내려 찌는 등의 과격한 행위를 했다. 그날 이후, 시위 참가자들은 그들의 대한 거센 비판에 직면하게 되었다.

말레이시아키니는 다른 언론 기관들과 함께 이 시위에 대해서 보도하였다. 또한 다른 사건을 취재할 때와 마찬가지로 시위 장면을 촬영하기 위해 영상팀을 급파하였다. 그날 오후 늦게, 시위 영상과 해당 사건에 대한 기사가 말레이시아키니 웹사이트에 게시되었다. 이에 대한 뉴스 보도와 영상은 많은 구독자와 시청자들의 관심을 불러일으켰고, 150 명이 넘는 사람들이 이날 시위를 비난하는 댓글을 남겼다. 말레이시아키니 웹사이트에 등록된 소 머리 시위 영상물은 20 만 건이 넘는 조회수를 기록했다.<sup>6</sup> 위의 영상물이 위원회가 주장하는 공격적이고 불쾌감을 주는 두 가지 영상물 중 첫번째 영상물이다.

9 월 2 일, 내무부 장관 히샤무딘 후세인(Hishammuddin Hussein)은 몇몇 시위자들과 면담을 마친 후 기자 회견을 가졌다. 시위자 대부분은 내무부 장관이 부의장으로 있는 여당의 당원들이었다. 기자 회견을 통해 장관은 시위자들을 두둔하며 이번 소 머리 시위 참가자에 대한 비난을 삼가 줄 것을 요구했고, 시위자들이 소머리를 들고 시위한 데에는 타당한 이유가 있었다고 말했다. 말레이시아키니는 이날 기자회견을 보도하고 해당 영상을 함께 게시했다. 해당 기사는 많은 이목을 집중시켰고, 110 건이 넘는 기사 댓글의 대부분은 시위자를 두둔한 내무부 장관을 비난하는 내용이었다. 해당 영상은 3 만 7 천 번 재생되었다.<sup>7</sup> 이 영상물이 위원회가 주장하는 공격적이고 불쾌감을 주는 두 가지 영상물 중 두번째 영상물이다.

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<sup>6</sup> <http://www.malaysiakini.com/news/111628> and <http://www.malaysiakini.tv/video/17689/temple-residents-march-with-cows-head.html>  
<sup>7</sup> <http://www.malaysiakini.com/news/111974> and <http://www.malaysiakini.tv/video/17715/hisham-dont-blame-cow-head-protesters.html>

#### 4. 말레이시아 통신 멀티미디어 위원회의 대응

정보, 통신 및 문화부 산하의 정부기관인 말레이시아 통신 멀티미디어 위원회는 사실 텔레비전 및 라디오 방송국, 인터넷 웹사이트를 포함한 통신 및 멀티미디어 활동들을 규제한다.

내무부 장관 기자회견을 담은 두 번째 영상물 게시 이후, 9월 3일 위원회는 말레이시아키니에 전화를 걸어 소머리 시위 장면이 포함된 보도 영상 자료가 매우 폭력적이라며 게시 영상에 대한 삭제를 요청하였다. 말레이시아키니는 위원회에 영상 전체를 삭제할 수는 없으나 일부 장면은 편집하겠다고 통보하고 이를 실천에 옮겼다.

말레이시아키니가 영상을 편집했음에도 불구하고 9월 4일, 위원회는 말레이시아키니 사무소에 서한을 보내 두 가지 “도발적인” 영상을 해당 사이트에서 삭제하도록 강력히 요청했다.<sup>8</sup> 위원회에 따르면, 말레이시아키니 홈페이지와 유튜브에 게시된 “도발적이고 폭력적인 영상”에 대한 많은 불만들이 접수되었다고 한다. 또한 해당 영상은 폭력적인 내용을 담고 있으며 모든 사람, 특히 인도인들에게 불쾌감을 줄 수 있는 내용을 담고 있고, 이는 1998년 통신 및 멀티미디어 법 제 211조와 223조에 위배된다고 밝혔다.<sup>9</sup> 통신 및 멀티미디어 법에 따르면, 음란, 풍기문란, 허위, 위협적인 혹은 공격적인 내용을 출판하여 남의 기분을 상하게 하거나, 학대, 위협 혹은 괴롭힐 의도를 가진 자는 금고형 혹은 5만 말레이시아 링기에 달하는 벌금형에 처한다.

말레이시아키니가 정부의 삭제요구를 거부하자 위원회는 해당 사이트 조사에 착수하였다. 제일 먼저 해당 뉴스 포털 편집국장인 스티븐 간이 토요일 세시간 동안 인터뷰를 했고, 돌아오는 화요일에는 신문사 최고경영자, 편집장, 기자, 영상팀 직원 및 기술 직원 한 명을 포함한 12명의 말레이시아키니 직원이 연속 8시간에 걸친 질의를 받았다. 질의에 참여한 8명의 위원회 직원은 세 팀으로 나뉘어 해당 사이트 직원들의 진술을 동시 녹화하였다. 질의에 응한 모든 직원들은 문제의 2가지 기사와 영상을 수집, 편집 및 출판한 것과 관련 있는 이였다. 8명의 위원회 직원들이 인터뷰를 실시했으며 그들은 세 팀으로 나뉘어져 말레이시아키니 직원들을 동시에 인터뷰했다. 모든 편집팀 직원들은 위에 언급한 두 개의 영상물과 해당 기사에 대한 정보를 수집한 방법과 편집한 방법, 그리고 출판한 것에 대한 질문을 받았다. 같은 날, 위원회의 다른 팀 직원들은 말레이시아키니 서버 호스팅 회사를 찾아가 질의하고 해당 영상 서버와 관련 있는 기술적인 세부 항목에 대해 조사했다.<sup>10</sup>

다음날, 위원회 팀은 말레이시아키니 사무소를 다시 방문해 또 다른 직원에게 추가적인 질의를 하고 사건과 관련된 디지털 증거를 수집 하였으며 사무소의 컴퓨터 하드디스크와 서버의

<sup>8</sup> <http://www.malaysiakini.com/news/112111>

<sup>9</sup> [http://www.malaysiakini.com/doc/mcmc\\_to\\_mkinitv.php](http://www.malaysiakini.com/doc/mcmc_to_mkinitv.php)

<sup>10</sup> <http://www.malaysiakini.com/news/112432>

내용을 스캔했다.<sup>11</sup> 위원회 조사팀의 수사는 아직 마무리되지 않았으며, 9월 21일에 다시 말레이시아키니 사무소를 방문하여 질의조사하고 정보를 수집할 계획에 있다.

## 5. 기소 혹은 박해?

해당 사건에 대한 위원회 결정은 조사 목적에 대한 의구심을 들게 한다. 과연 정부는 진실을 알린 말레이시아키니를 처벌해 다른 언론의 본보기로 삼으려는 걸까? 아니면 많은 네티즌들이 부정하고 있음에도 불구하고 진심으로 위의 두 가지 영상물들이 폭력적이라고 생각하는 걸까?

위원회는 정보, 통신 및 문화부 산하 기관으로 이 부서를 이끄는 레이 야탐(Rais Yatim) 장관은 지난 8월 초, 정부가 블로그 및 웹사이트를 검열할 것을 제안했다. 그러나 며칠 뒤 정부는 레이 야탐 장관의 제안을 거절했다.<sup>12</sup> 장관은 일전에 블로거의 신원을 정부에 등록하게 하여 정부를 비판하는 자를 색출할 수 있도록 해야 한다고 제안하기도 했다. 그러나 이 제안 역시 비난을 받고 무력화되었다.

레이 장관은 장관은 말레이시아키니에 대한 위원회의 조사에 대해 어떠한 언급도 하지 않았지만, 그의 대변인을 통해 두 가지 영상을 게시한 것은 법을 위반한 행위이므로 대중들은 말레이시아키니에 대한 일단의 조치를 기대하고 있다고 말했다. 9월 11일, 장관의 대변인은 사안이 사안이니만큼 위원회는 법의 테두리 내에서 활동하고 있다고 밝혔다. 그는 또한 “위원회는 관리 기관이다. 대중들은 무력한 위원회를 바라지 않는다.” 라고 덧붙였다.<sup>13</sup>

그러나 여전히 대변인이 지칭하는 대중들이 누구인지에 대한 의문이 가시지 않는다. 위원회는 말레이시아키니에 대한 1차 조사에서 문제의 영상에 대한 많은 항의가 접수되었으나 항의의 출처는 밝힐 수 없다는 입장을 고수해왔다. 그러나 위원회가 조사를 시작하려면 위원회 스스로가 말레이시아키니에 대한 고소의 주체가 되어야만 한다. 말레이시아키니는 구독자로부터 해당 영상과 관련한 어떠한 항의 서한도 받은 적이 없다. 또한 해당 영상과 기사에 유사 항의 댓글 또한 없었다.

장관 대변인의 발언 이후, 많은 말레이시아키니 구독자들은 문제의 영상을 공격적이거나 불쾌하다고 생각하지 않는다는 의견을 남겼다. 댓글을 남긴 대다수의 사람들은 말레이시아키니에 대한 위원회의 적대적인 행보는 정치적이며 이는 “소머리 시위”에 관련된 여당 인사들을 두둔하기 위해 압력을 가하는 것이라는 의견을 내놓았다.

한 네티즌은 이렇게 말했다: “조셉 살랑 장관 대변인은 나를 대변하지 않는다. 그가 대중을 대변하고 있다고도 생각하지 않는다. 그는 말은 바를 하고 있는 말레이시아키니를 괴롭히고 있다. 진실하고 자유로운 정보를 보도하라. 인종주의에 ‘아니오’ 라고 말해라”

<sup>11</sup> <http://www.malaysiakini.com/news/112674>

<sup>12</sup> <http://www.reuters.com/article/technologyNews/idUSTRE5763JF20090807>

<sup>13</sup> <http://www.malaysiakini.com/news/112649>

말레이시아키니는 현재 모든 준비 태세를 갖추고 있다. 말레이시아키니는 문제의 기사와 두 개의 영상을 삭제하지 않고 있으며 뉴스 기관으로서 해야 하는 보도를 했을 뿐이라는 입장을 강조했다. 말레이시아키니는 해당 영상은 남을 공격하거나 기분을 상하게 할 목적으로 게시된 것이 아니라 영상이 담고 있는 내용의 중요성 때문에 웹사이트에 게시된 것임을 명백히 밝혔다. 현재 말레이시아키니는 1998년 통신 및 멀티미디어법 저촉 혐의가 썬위질 것에 대비하고 있는 중이다.

말레이시아키니는 또한 만약 위원회가 상기의 법령을 통해 해당 영상 방영을 저지하려는 조치를 취한다면, “이 법령은 인터넷 검열의 수단으로 해석될 수 없다”고 명시하고 있는 동일 법령 제 3조에 저촉되는 것이라고 주장했다.

## 6. 말레이시아키니에 대한 지지

말레이시아키니에 대한 조사를 맡은 위원회의 조치는 말레이시아키니 구독자들의 많은 지지를 불러왔고 이들은 정부에 말레이시아키니 조사와 혐의를 철회할 것을 지속적으로 요구하고 있다.<sup>14</sup> 여야당 역시 말레이시아키니에 대한 더 이상의 탄압을 중단할 것을 정부에 촉구했다. 또한 말레이시아키니에 가해지는 조치는 언론의 자유를 보장한다던 정부의 입장에 반하는 것이라고 주장했다.

야당은 덧붙여 위원회의 조사는 대중들이 당연히 누려야 하는 공정한 보도에 반하는 행위이라고 말했다. 또한 정부에 의한 인터넷 검열은 없을 것이라고 단언한 국무총리 나지브 압둘 라작 (Najib Abdul Razak)의 발언을 상기시켰다.<sup>15</sup>

시민 사회 단체들 역시 정부는 단순히 뉴스를 보도한 말레이시아키니에 대한 탄압을 중지하고 말레이시아가 전세계 언론의 자유 순위에서 더 이상 낙오되지 않도록 하라고 요구했다.<sup>16</sup> 한 비정부 기구는 만약 두 가지 영상에 대한 말레이시아키니에 대한 소추가 기각되지 않는다면 전국적인 시위를 주도하겠다고 말했다.<sup>17</sup>

언론인 보호 위원회 (Committee to Protecet Journalist, 이하 CPJ), 동남아시아 언론 연합 (Southeast Asian Press Alliance) 그리고 퍼시픽 아일랜드 뉴스연합 (Pacific Islands News Association, PINA)을 포함한 국제 기구들 역시 말레이시아키니에 지지를 보내며 위원회의 “말레이시아키니의 편집인들과 직원들에 대한 위협적인 전략과 괴롭힘”을 중단하라고

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<sup>14</sup> <http://www1.malaysiakini.com/news/112442>

<sup>15</sup> <http://www.malaysiakini.com/news/112926> and

<http://thestar.com.my/news/story.asp?file=/2009/9/11/nation/20090911142448&sec=nation>

<sup>16</sup> <http://www.malaysiakini.com/news/112773> <http://www.malaysiakini.com/news/112827>,

<http://www.cijmalaysia.org/content/view/496/> and <http://www.thenutgraph.com/cij-condemns-mcmc-censorship>

<sup>17</sup> <http://www.malaysiakini.com/news/112773>

촉구했다. 또한 CPJ는 “독립적이고 국제적으로 신임 받는, 몇 되지않는 말레이시아의 언론 기관을 괴롭히는 일을 중단”하라고 촉구했다.<sup>18</sup>

## 7. 앞으로의 향방?

위원회는 해당 영상에 대한 조사를 곧 마무리 짓고 말레이시아키니 편집인들을 기소할 예정이다. 말레이시아키니 측이 문제의 영상에 대한 법적 소송에 맞대응 준비를 하고 있으나 위원회는 말레이시아키니 웹사이트를 차단할 수 있는 권한을 가지고 있음에 주목해야 한다.

작년 8월 말레이시아 투데이(Malaysia Today)라는 웹사이트에도 유사한 사건이 벌어졌다. 위원회는 1998년 통신 및 멀티미디어 법 제 263조에 의거하여 “신중하지 않은 논평”을 실었다는 이유로 이 웹사이트를 폐쇄했다. 위원회는 이와 같은 결정이 일반 대중의 의견에 따른 것이라고 주장했다.<sup>19</sup> 만약 위원회가 말레이시아키니에도 위와 같은 조치를 취한다면 말레이시아키니도 오프라인 상으로만 운영이 가능하며 뉴스 기관으로써의 이들의 신뢰도도 하락하게 될 것이다. 이러한 상황은, 인터넷 검열을 하지 않겠다던 정부의 이전 태도를 뒤집고 앞으로 인터넷 검열을 지속적으로 할 것이라는 의미를 내포하고 있는 것이다.

### ▣ 참고:

조사 중인 두 가지 영상은 아래의 주소에서 확인 할 수 있다:

**'사원 데모: 소머리와 가두시위'**

<http://www.malaysiakini.tv/video/17689/temple-residents-march-with-cows-head.html>

**'히삼: 소머리 시위자를 비난하지 마라'**

<http://www.malaysiakini.tv/video/17715/hisham-dont-blame-cow-head-protesters.html>

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<sup>18</sup> <http://cpj.org/2009/09/malaysian-news-web-site-harassed-over-protest-cove.php>

<sup>19</sup> <http://www.malaysiakini.com/news/88683>

▣ 부록: 시위, 장관 기자회견, 위원회 방문 사진

### 1. 소머리 시위



### 2. 시위자와 함께한 장관의 기자회견



### 3. 위원회 직원의 질의를 받고 있는 말레이시아키니 기자들





#### 4. 디지털 증거를 확보하는 위원회 직원



#### 5. 말레이시아키니를 지지하는 시민사회단체



## South Korea (Ms. Yeo-kyung Chang, Korean Progressive Network Jinbonet)

### 1. Background

In 2007, the number of Korean Internet users was 3,482, comprising 72.2% of the whole population.<sup>1</sup> Except for a few public access channels, the media is not easily accessible to the public.<sup>2</sup> The Internet is an indispensable medium of expression for the Korean public.

In May and June of 2008, candlelight vigils fueled a growing controversy in Korea. The public opinion protested importation of US beef feared to be infected with bovine spongiform encephalopathy, otherwise commonly known as the mad cow disease, and even students still sporting school uniforms participated in the nightly rallies. Even though school takes up most of their time, students were able to organize participation in the candlelight vigils thanks to the Internet. Through online communities and blogs, they conducted discussions, arranged their thoughts, and organized actions. The Internet provided a means to self expression and empowerment to these students who lack social and economic resources.

The progressively oppressive legal restrictions on ordinary citizens' online speech add to the growing debate on online freedom of expression. The former Korea Internet Safety Commission was founded in 1994, the same year as when commercial Internet service began, and has recently been reformed to Korea Communications Standards Commission. The administrative deliberations have imposed harsh regulations on online speech. Furthermore, online writers have been subject to criminal punishment for false communication, defamation, and other violations. The government and the ruling party abuse the 'temporary measure or deletion system' designed to provide relief to those whose rights have been violated, rights such as invasion of privacy and defamation, to deletion of numerous critical postings.

The number of freedom of expression violations reported has increased since the Lee Myung-bak administration took office in 2008, and it is expected to increase further if the Internet Law is amended so that real name requirements for online registrations is expanded and online defamation is introduced.

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<sup>1</sup> ITU, 2008.6. <http://www.itu.int>. Korean data can be found at: [http://www.kosis.kr/OLAP/Analysis/stat\\_OLAP.jsp?tbl\\_id=DT\\_2KAAA13&org\\_id=101&vwcd=MT\\_ZTITLE&path=운수·통신·관광&oper\\_YN=Y&item=&keyword=인터넷이용자수&lang\\_mode=kor&list\\_id=&olapYN=N](http://www.kosis.kr/OLAP/Analysis/stat_OLAP.jsp?tbl_id=DT_2KAAA13&org_id=101&vwcd=MT_ZTITLE&path=운수·통신·관광&oper_YN=Y&item=&keyword=인터넷이용자수&lang_mode=kor&list_id=&olapYN=N)

<sup>2</sup> Examples of Korean public access channels include <Open Channel> a viewer participatory program on public channel KBS, satellite broadcasted <Citizen Broadcasting R-TV>, and regional public access programs on cable networks.

## 2. Administrative deliberation

Administrative deliberations on online content and subsequent posting deletions are common in Korea. Established in 2008 when the new administration took office, the Korea Communications Standards Commission is the principal conductor of these deliberations.<sup>3</sup> The majority of commission members are composed of presidential and ruling party appointees and the presidential decrees establish the commission organization and administration. The state fund or the national treasury covers the management expenses. The Korea Communications Standards Commission conducts online deliberations for purposes of controlling illegal information and online content harmful to minors, as well as fostering healthy communication ethics.<sup>4</sup> Deliberation results recommend the online business and notice board operators to delete postings or request other correctional measures. These requests are officially recommendations but failure to comply can lead to an administrative order suspending services. Cases of noncompliance are rare.<sup>5</sup>

The Korea Communications Standards Commission deliberates on unlawfulness of the following matters: obscenity, defamation, threats, interference with service, material harmful to minors, fraudulent acts, state secrets, violations of the national security act, and aiding and abetting criminal acts.

It should be up to the judiciary, not administrative institutions, to determine unlawfulness of acts. The judiciary retains independence and neutrality while administrative institutions are under state control. Furthermore, the Commission deliberations are conducted with online notice board or business operators and do not guarantee the other party in the dispute the right to testify. The specific reasons for the correctional measures or the proceeding records are not easily disclosed, inviting much skepticism. It is a blatant violation of freedom of expression that the administrative

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<sup>3</sup> Before the establishment of the Korea Communications Standards Commission, Korea Internet Safety Commission was responsible for online content control. In 2007, the Supreme Court found that the Korea Internet Safety Commission determining a website to be harmful to minors constituted an administrative action. (Korean Supreme Court, 2005Do4397, *decided on* June 14, 2007)

<sup>4</sup> The Korea Communications Standards Commission applied Article 44-7 of “Act on Promotion of Information and Communications Network Utilization and Information, etc.”, applied Article 21 item 3 of “Act on Establishment and Management of the Korea Communications Standards Commission” to determine unlawfulness of online articles, Article 21 item 4 of the same act to determine how harmful an online article is to minors and what is necessary to foster healthy communications ethics.

<sup>5</sup> According to Article 44-7 of the “Act on Promotion of Information and Communications Network Utilization and Information, etc.”, the Korea Communications Standards Commission can order cessation of services for cases of obscenity, defamation, threats, interference with service, material harmful to minors, and fraudulent acts. The commission must order an injunction according to requests by other administrative institutions in cases regarding state secrets, the National Security Act, and aiding and abetting crime.

branch makes arbitrary and undemocratic determinations of the law and coerces posting deletions.

Deliberations based on standards of “fostering healthy communications ethics”, rather than on unlawfulness, are unconstitutional. Excessively regulating freedom of expression on vague standards violates the 2002 Constitutional Court decision. The former Korea Internet Safety Commission supervised the management of ‘improper communication’ and received much censure for conducting arbitrary deliberations, for example, shutting down an online community consisting of students who dropped out of school for being too critical of schools.<sup>6</sup> A decision from the Constitutional Court in June 2002 found that it is unconstitutional for the commission to conduct deliberations with the vague “improper” standard<sup>7</sup> “Fostering healthy communications ethics” is also under fire for the same reasons.

The following are specific cases of freedom of expression violation since the founding of the Korea Communications Standards Commission.

2-1. The Korea Communications Standards Commission issued a recommendation to “refine language and refrain from exaggerated expressions” to an online posting labeling the president ‘2MB’ and ‘wicked person’ among others.<sup>8</sup> The writing in dispute entitled “The Intelligent Lee Myung-bak” expressed concern on the efforts by the Lee Myung-bak administration to privatize health insurance. The Commission found that the writer used phrases such as “wicked person”, and

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<sup>6</sup> The Korea Internet Safety Commission shut down an online community website ‘I Know School’ (<http://www.inoschool.net>), founded by students who dropped out of school, in June 2001. ‘I Know School’ opened in November 2000 to provide services for discussions and information exchange between students who had already dropped out or were considering dropping out. The Korea Internet Safety Commission stated that this website was ‘too critical of schools’. They pointed out that creating a trend of dropping out of schools and disapproving of schools is harmful to society. The website operator received no prior warning or a chance to express his opinions; the communications operator hosting the website received an order for correctional measures and shut it down without consultation.

<sup>7</sup> “The Internet has become the largest and most powerful media, and regulation of expression on the Internet with emphasis on maintenance of order would be detrimental to the promotion of freedom of expression. Technological advance about the media continue to widen the scope of freedom of expression and bring about changes in the quality of such expression. In this light, new regulatory measures within Constitutional limits should be developed to keep up with the continuously changing environment in this field.” Constitutional Court, 99HunMa480, decided on June 27, 2002.

<sup>8</sup> According to the fourth proceeding records of the Korea Communications Standards Commission on May 28, 2008, this correctional measure was issued for one of 199 ‘VIP (including the president)’ related online articles requested for deliberations by the National Police Agency Cyber Terror Response Center. The former Korea Internet Safety Commission also ordered deletions of online articles containing libel about the president, for example on ‘the president’s hidden daughter’.

“Head storage space 2MB”, a pun intended on the president’s initials, to disparage his character. This was the first deliberation decision since the commission was founded.

2-2. In July 2008, the Korea Communications Standards Commission issued a decision to ‘delete’ a posting written by consumers calling for a boycott. The posting in dispute contained a list of companies with advertisement in conservative daily newspapers Chosun, Joongang, and Dong-A that reported “with a bias on US beef negotiations and candlelight vigils”. Ordinary citizens compiled the list to protest the partial reports. The commission determined the postings to be an “unlawful second boycott”.<sup>9</sup> However the court in the first instance that had convicted the online community members found the list itself to be lawful.<sup>10</sup>

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<sup>9</sup>The Korea Communications Standards Commission the 9<sup>th</sup> proceeding records on July 1, 2008. This correctional measure was issued for 80 online articles submitted for deliberations and, specifically, 21 cases were found not relevant or rejected. However the Korea Communications Standards Commission recommended for deletions of other similar articles in their notices sent out to communication operators, and the operators in turn deleted numerous articles containing the list of advertisers. Even online articles containing names of the advertising companies and their disclosed phone numbers as well as articles with links to the list of advertisers were deleted. According to media reports, the Internet website ‘Daum’ removed 600 articles containing similar content. Hankyoreh on July 8, 2009. ([http://www.hani.co.kr/arti/society/society\\_general/297599.html](http://www.hani.co.kr/arti/society/society_general/297599.html))

<sup>10</sup> “Readers who are also consumers of the press can utilize methods such as boycotting with the intent to change the editing policies of the newspaper. In such cases the participants can act to boycott newspapers Chosun, Joongang, and Dong-a by rallying to the public or express their wishes to companies to refrain from advertising on these newspapers, promote these efforts, post a list of advertisers online to boycott the products of advertisers and employ other various methods to persuade them, as long as it is still within the others’ freedom to buy or advertise on these newspapers. This may restrict the newspapers’ right to conduct business but this is a reasonable burden for the newspapers to bear as part of lawful actions by consumers to achieve their purpose. Seoul Central District Court, 2008GoDan5024, decided on February 19, 2009.

 Clean Daum에서 알려드립니다.

안녕하세요, Daum 권리침해신고센터입니다.

Daum 내 서비스를 이용하여 회원님들이 작성하신 게시물 중 일부에 대해 방송통신심의위원회에서 7월 2일자로 해당 정보에 대한 심의 결과 및 시정요구를 통보해 왔습니다. 방송통신심의위원회의 시정 요구에는 유사한 사례에 대해서도 심의사례에 따른 조치를 시행할 것이 포함되어 있는 바, 특정 언론매체의 광고주 리스트 게시글은 방송통신심의위원회의 심의 결과에 따라 삭제 조치 됩니다.

해당 게시물 등은 방송통신심의위원회의 심의를 통해 삭제 결정이 이루어졌으므로 경고 조치하며, 경고가 지속적으로 누적되면 Daum 서비스 이용에 제한이 있을 수 있습니다. 작성자께서는 아래 내용을 확인하여 주시기 바랍니다.

- 주소 : <http://bbs1.agora.media.daum.net/gaia/do/debate/read?bbsId=D003&articleId=1754196>
- 문제된 글 : 마고라>토론>자유토론  
글 번호 : 1754196 [칭찬합시다] 경향신문 7월 26일자 광고주 목록 | 2008.07.28
- 해당 게시글의 신고자 : 조선일보
- 신고접수일 : 2008년 7월 29일
- 신고내용 : 명예훼손 및 업무방해
- 삭제일자 : 2008년 7월 29일

▲ Notice of deletion ordered by the Korea Communications Standards Commission

2-3. In January 2009, the commission ordered the ‘deletion’ of a posting that criticized a Gyeonggi province governor’s pro-colonial statement and demanded his resignation.<sup>11</sup> Kim Mun-su, the Gyeonggi province governor, said on January 2, 2009 “if Japan hadn’t colonized South Korea, if there hadn’t been any war, would Korea still be like the present?” His statement was posted verbatim online and the posting condemned his antipatriotic speech and asked for his resignation. The governor requested a deliberation for defamation and the commission decided to delete the posting.

2-4. In April 2009, the commission ordered deletion of an online article written by an environmentalist criticizing ‘garbage cement’. The author has been complaining for three years on the use of garbage to make cement, and the resulting high level of toxic substances. The commission found the author’s repeated and assertive use of the phrase “carcinogenic cement” defames Korea Cement Industrial Association and other cement companies and found that one of the experiment photos posted was false.<sup>12</sup>

<sup>11</sup> The commission does not disclose decisions on defamation cases as a principle; the exact decision date is not known. ZDNet 2009.4.29. [http://www.zdnet.co.kr/ArticleView.asp?article\\_id=20090429134154](http://www.zdnet.co.kr/ArticleView.asp?article_id=20090429134154)

<sup>12</sup> As according to the 2009 9<sup>th</sup> conference by the Korea Communications Standards Commission on April 27, 2009.

2-5. In June 2009, the commission ordered deletion of an online article criticizing the policeman who battered assembly participants with a stick. On May 1, 2009, the policeman violently clubbed unarmed citizens in a subway station. The commission found the article violated “publicity rights” for posting the policeman’s picture and name.<sup>13</sup>



▲ Part of the article ordered deleted by the commission

2-6. The commission often deletes articles critical of ruling party politicians for defamation. According to commission statistics, 12 politicians and government officials requested deliberations for defamation since the commission’s beginning in 2008 and 10 of them are ruling party politicians and incumbent administration officials. The commission ordered deletion in 8 (72.2%) out of 11 defamation deliberation cases and the portal websites removed 203 related articles.<sup>14</sup>

### 3. Criminal prosecution

Since 2008, many Internet users posting articles related to candlelight vigils and criticizing the president, the government and the media have been criminally prosecuted. The public prosecutor’s office held an emergency conference after the candlelight vigils began on May 2 to announce plans for investigations on the ‘online urban legends on mad cow disease’ and the government published a list of “10 frequently asked questions and answers to the urban legends on mad cow disease” on its website.<sup>15</sup> The government pointed out such statements as “mad cow disease can be transmitted

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<sup>13</sup> As according to the 2009 12<sup>th</sup> conference by the Korea Communications Standards Commission on June 10, 2009. The deletion recommendations were forwarded to Jinbonet.

<sup>14</sup> Report on the Jong-gul Lee member of the parliament, on March 9, 2009.  
[http://www.ljk.co.kr/bbs/board.php?bo\\_table=think&wr\\_id=801&page=2](http://www.ljk.co.kr/bbs/board.php?bo_table=think&wr_id=801&page=2)

<sup>15</sup> [http://www.president.go.kr/kr/president/news/news\\_view.php?uno=104](http://www.president.go.kr/kr/president/news/news_view.php?uno=104)

through cosmetics, sanitary pads, and diapers among other products that make use of cows”, and “most Americans eat beef from Australia or New Zealand” and other such postings based on ‘groundless insecurities and misunderstandings’ to be urban legends. The government was much criticized for attempts to criminally punish these ‘assertions’.<sup>16</sup> Since the investigation on the mad cow disease urban legends till the present, there is a continuous stream of charges filed or police investigations on online articles containing material related to candlelight vigils or critical of the government. The writers are often charged with ‘spreading false information’; this law was enacted in 1983 but hasn’t been invoked until the candlelight vigil investigations.<sup>17</sup>

The following criminal prosecutions on online articles are violations of the right to freedom of expression.

3-1. The police and the public prosecutor’s office charged a youth with “spreading false information” after he sent out messages through his mobile phone and the Internet suggesting a school strike to protest the import of US beef. He was acquitted in court of the first instance and in the appeals court; the public prosecutor appealed to the Supreme Court and the case is still pending.<sup>18</sup>

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<sup>16</sup> Lawyers for a Democratic Society on May 7, 2009.

[http://minbyun.org/?mid=report&page=9&document\\_srl=17321&listStyle=&cpage=](http://minbyun.org/?mid=report&page=9&document_srl=17321&listStyle=&cpage=) Professor Changwon Pyo of the Korea National Police University approved of the investigations on the mad cow disease urban legends as having a cooling effect.

<http://news.kukinews.com/article/view.asp?page=1&gCode=kmi&arcid=0920902331&cp=nv>

<sup>17</sup> Framework Act on Telecommunications Article 47, “A person who has publicly made a false communication over the telecommunications facilities and equipment for the purpose of harming the public interest shall be punished by imprisonment for not more than five years or by a fine not exceeding fifty million won.” Minbyun, Lawyers of a Democratic Society, has criticized use of this provision which has rarely been invoked until last year when candlelight vigils began, and the provision has since been repeatedly used to prosecute mobile phone text messages calling for a strike, among other acts.

([http://minbyun.org/?mid=report&search\\_target=title\\_content&search\\_keyword=%EB%AF%B8%EB%84%A4%EB%A5%B4%EB%B0%94&document\\_srl=24906&listStyle=&cpage=](http://minbyun.org/?mid=report&search_target=title_content&search_keyword=%EB%AF%B8%EB%84%A4%EB%A5%B4%EB%B0%94&document_srl=24906&listStyle=&cpage=))

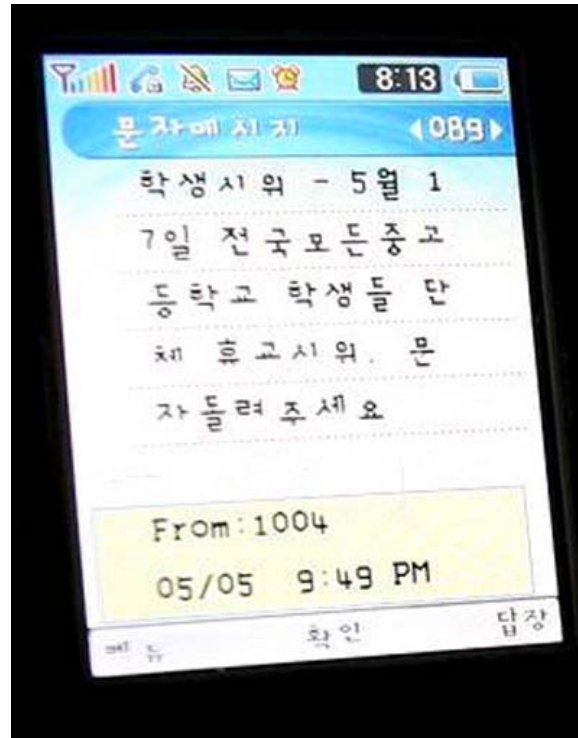
National Human Rights Commission of Korea has submitted its report to the Constitutional Court on its concerns about the provision and its potential to undermine freedom of expression.

([http://www.humanrights.go.kr/04\\_sub/body02.jsp?NT\\_ID=24&flag=VIEW&SEQ\\_ID=593476&page=4](http://www.humanrights.go.kr/04_sub/body02.jsp?NT_ID=24&flag=VIEW&SEQ_ID=593476&page=4))

<sup>18</sup> Cookie News, May 26, 2008.

<http://news.kukinews.com/article/view.asp?page=1&gCode=soc&arcid=0920918717&cp=nv> Hankook-ilbo, September 20, 2008. <http://news.hankooki.com/lpage/society/200809/h2008092002594322000.htm>





▲ The text message in question

3-2. The police and the public prosecutor's office filed charges against netizens rallying online for candlelight vigils protesting US beef imports and against netizens active in online cafes such as 'baby carriage squads', 'candlelight car coalitions', etc. Many netizens have been subject to search and seizure in their homes and workplace, to detention, and to criminal prosecution.<sup>19</sup>

3-3. The police arrested and prosecuted netizens who posted a list on the Internet of store owners that are requesting compensation for damages sustained to their store during candlelight vigils. These netizens have also made protesting phone calls to the store owners.<sup>20</sup>

3-4. The police investigated a netizen who posted an article online expressing desires to kill the president.<sup>21</sup>

<sup>19</sup> It is hard to know the truth. It can only be speculated through the various instances reported by the media. Hankyoreh, September 3 2008. [http://www.hani.co.kr/arti/society/society\\_general/308240.html](http://www.hani.co.kr/arti/society/society_general/308240.html), Omynews, October 5, 2008. [http://www.ohmynews.com/NWS\\_Web/view/at\\_pg.aspx?CNTN\\_CD=A0000987900](http://www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0000987900), Weekly Kyunghyang 806 edition, December 30, 2008. <http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=19041&pt=nv>

<sup>20</sup> Cookie News, August 13, 2008. <http://news.kukinews.com/article/view.asp?page=1&gCode=soc&arcid=0921000326&cp=nv>

<sup>21</sup> Hankyoreh, July 28, 2008. [http://www.hani.co.kr/arti/society/society\\_general/301243.html](http://www.hani.co.kr/arti/society/society_general/301243.html)

3-5. The police and the public prosecutor's office prosecuted netizens who spread rumors of police raping or killing citizens in the process of violently subduing protestors and taking them to the police station. Some have been convicted in the court of the first instance.<sup>22</sup>

3-6. The public prosecutor prosecuted and employed ruthless investigative tactics such as prohibition of departure, search and seizure, and detention on Internet café operators who posted a list of advertisers on daily newspapers Chosun, Joongang, and Dong-A as part of an effort to boycott the advertisers' products; 24 were convicted in the court of first instance in February 2009.<sup>23</sup>

3-7. The public prosecutor detained and charged a netizen under the pseudonym 'Minerva' with violating the 'false news provision' for posting articles online critical of the government's foreign currency policies. This received much attention from the Korean and foreign media and had an adverse effect on the right to freedom of expression; other netizens also critical of the government successively gave up writing altogether. The court in the first instance acquitted him in April 2009 but the prosecutor's office has appealed.<sup>24</sup>

3-8. The police filed charges against netizens who exaggerated the number of hits on their online articles expressing disapproval of the government.<sup>25</sup>

#### 4. Temporary Actions

Postings with criticisms against the President, Government, ruling party politicians, or newspapers supporting the ruling party are immediately being deleted. This is based on current law which allows Internet businesses to delete postings for up to thirty days (without any legal intervention) if one reports that a certain posting has violated his privacy or has defamed one's character.<sup>26</sup> If the internet business does not take these actions, it is liable for claims of damage. The temporary action

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<sup>22</sup> Police Report July 7, 2008.

<http://www.police.go.kr/announce/newspdsView.do?idx=92279&cPage=1&SK=ALL&SW=%B0%B3%C0%CE%C1%A4%BA%B8>, Weekly Kyunghyang edition 796 October 21, 2008.

<http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=18552&pt=nv>

<sup>23</sup> Seoul Newspaper, February 20, 2009. <http://www.seoul.co.kr/news/newsView.php?id=20090220008017>

<sup>24</sup> Segye-ilbo, April 24, 2009.

<http://www.segye.com/Articles/NEWS/SOCIETY/Article.asp?aid=20090424000283&ctg1=&ctg2=>

<sup>25</sup> Newis, March 17, 2009.

<http://news.naver.com/main/read.nhn?mode=LS.D&mid=sec&sid1=102&oid=003&aid=0002577430>

<sup>26</sup> [Law on internet use and information protection] 44 (2)

system is similar to the ‘notice and take down’ system of Copyright Law, but it differs in that the publisher does not have a right to make an objection and the rules are unclear about what happens to the posting after the temporary period of thirty days. Some businesses automatically revive the postings after thirty days, while others permanently delete the posting if there is not a request by the author. Thus, while one’s posting may be unjustly deleted, it is hard to revive the right of the author due to complicated procedures and loss of confidence. Even after thirty days has passed and the posting is revived, the effect of the posting may be over after the thirty day period. The biggest problem of the system is that the government and the ruling party are using this system to quickly hide criticism coming its way.

4-1. On May 7<sup>th</sup>, 2008, an Internet posting which criticized the younger sibling of the Police Chief of Korea was temporarily deleted according to a request by the Police Department. This posting included a video which the Daejeon Broadcasting Company released about prostitution allegations in a certain hotel which the younger brother of Police Chief, Oh Chung Soo was an investor. The Police Department immediately requested fourteen Internet sites including Google and YouTube to delete the postings, but it did nothing to the Broadcasting Company- which was the original source.<sup>27</sup>

4-2. In October 2008, a posting which described a certain politician of the ruling party as ‘a drunken public nuisance’ with an added link to his personal web page, was temporarily deleted according the request of the politician. The posting had only three lines as seen below.<sup>28</sup>



▲ The posting that was deleted

<sup>27</sup> HanKruRe 2008.7.25. [http://www.hani.co.kr/arti/society/society\\_general/300688.html](http://www.hani.co.kr/arti/society/society_general/300688.html)

<sup>28</sup> <http://wnsgud313.tistory.com/156>

4-3. In April 2009, another posting which criticized a ruling party politician as ‘a monster wearing the skin of a human’ was temporarily deleted according to that politician’s request. This posting also had only three lines and it was about the deaths of some protesters who died during a police crackdown in Yongsan. It only included links to the politicians and links to newspaper articles of their direct quotes.<sup>29</sup>

**고의방화, 도심테러라고? 민주당을 쓴 이들**

‘민주당을 쓴 짐승’이라고 표현은 이럴 때 쓰는 것이다.  
 저들은 인간의 가족만을 썼을 뿐이다.  
 아마도 앞으로도 이런 류들이 많이 쏟아져 나올 터인데, 이들을 어떻게 어떤 종자로 규정해야 할까.

[장윤석·신지호 "용산 '사고', 도심테러적 성격"](#) (프레시안, 박세열 기자, 2009-01-21 오후 4:03:06)  
[한나라 입단속... "용산 참사 관련 TV 토론 안 나가"](#)

["고의방화" "도심테러"...유족 가슴에 '대못질'](#) (한겨레, 미유주현 최혜정 기자, 2009-01-22 오후 08:06:09)

뉴라이트 출신 신지호 등 책임전가 이어  
 공성진 최고위원도 강경진압 두둔 발언  
 당내서도 "공권력 집행과정의 문제" 비판

[김석기 "결과적으로 유감"...책임회피성 발언으로 일관](#) (프레시안, 김하영 기자, 2009-01-21 오후 5:57:08)

[한나라 "철거민들, 지난4월에 민노당 집단입당"](#)

[김석기 "불법폭력시위로 경찰이 희생되는 일 없도록 하겠다"](#) (프레시안, 윤태곤 기자, 2009-01-22 오후 6:12:14)

[민주당 "사지로 몰아넣은 장본인의 후안무치"](#)

[청와대, 김석기 내정 철회 안 한다](#) (참세상, 미꽃맘 기자, 2009년01월22일 17시55분)  
[\[살민진압\] "국민 생명을 청장 자리값만도 못하게 생각"](#)

["제2의 전여옥 지향? 1000만 안티 대기 중"](#) (레디앙, 2009년 01월 21일 (수) 17:21:11 변경혜 기자)  
[청와대 김은혜 부대변인 '과격시위 발언' 파장...정치권, 네티즌 비판 폭주](#)

[악자를 위해 살겠다고 김은혜 청와대 부대변인](#) (참세상, 미꽃맘 기자, 2009년01월21일 21시15분)  
[\[기자의눈\] '역물한 죽음'을 없애겠다고 단 초심은 어디로](#)

▲ The posting that was deleted

4-4. In April 2009, some postings written by the opposition party and netizens on allegations of Chosun Ilbo’s use of prostitution were also deleted. A posting uploaded by the Democratic Party member Jong-gul Lee was temporarily deleted by the request of the Chosun Ilbo.<sup>30</sup> Politician Lee edited the posting to “XX Ilbo” but Daum temporarily erased this posting and asked the Korea Communication Standards Commission for deliberation. The commission decided that the posting did not defame the character of the individual and the posting was revived, but numerous other

<sup>29</sup> <http://blog.jinbo.net/gimche/?pid=668>

<sup>30</sup> <http://bbs1.agora.media.daum.net/gaia/do/debate/read?bbsId=D115&articleId=610524>

postings by other Internet users were deleted.<sup>31</sup>

4-5. In May 2009, many postings were reported to be deleted by the police because they criticized the use of violence by the police. These postings criticized the police officers clubbed unarmed citizens during the Labor Day Gathering, and among the deleted postings there was a courteous public questioning from a blogger to a certain police high official.<sup>32</sup> The police separately requested deliberation to the Korea Communications Standards Commission and in June a decision deleted the postings permanently.

## 5. Internet ‘Real-Name Registration’ system

Since 2004, the ‘Mandatory Internet Real-Name System’ was introduced, which is based on an individual’s social security number. This system is problematic because it violates freedom of expression which comes from anonymity, reduces the people’s participation in politics, and encourages the Internet sites to collect and misuse sensitive private personal information such as social security numbers.

5-1. According to the revised [Public Election Laws] of 2004, all online newspaper notice boards only allow registered users with confirmed real names to upload postings during election. If the newspapers do not implement the required technical processes, they must pay a fine.<sup>33</sup> In May 2006, ‘The Sound of the Masses’(Min-joong Sori) was ordered to pay a fine because they refused to follow the real name system. Also, in December 2007, ‘Real World’(Cham Sae-sang)refused to adopt the real-name system during the presidential election, received a fine, and is now awaiting trial.<sup>34</sup> This was an important time because aside from the presidential election in December 2007, there was also a nationwide dispute on the ‘Anti-Discrimination Act.’ Among the thirteen original criteria included in the bill such as gender, age, race, and face-color, the law was enacted without the following seven categories; medical history, nation of origin, sexual orientation, education, family, language, and criminal history. However, the sexual minorities were unable to participate in this

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<sup>31</sup> <http://blog.daum.net/cangmin/15706553> According to Democratic Party, MunSun Choim, there have been requests from each tabloid to erase postings- 22 to NHN and 276 to Daum 276 and a total of 298 requests. Yahoo, Nate, and Paran did not submit a report so many more cases are expected to exist. <http://blog.daum.net/moonsoonc/8494304>

<sup>32</sup> Ohmynews 2009.5.8. [http://www.ohmynews.com/NWS\\_Web/view/at\\_pg.aspx?CNTN\\_CD=A0001127658](http://www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0001127658) , Pressian 2009.5.8. [http://www.pressian.com/article/article.asp?article\\_num=60090508170951&Section=03](http://www.pressian.com/article/article.asp?article_num=60090508170951&Section=03) ,

<sup>33</sup> [Public Election Law] 82(6) and 261

<sup>34</sup> Movement against the Real Name System <http://freeinternet.or.kr/>, ChamSaeSang’s Constitutional Appeal, 2009.2.26.

argument even though they were directly affected by this law, because they had to reveal their sexual orientation according to their 'real-name'. Also, activities of a student association were significantly restrained because of the real-name policy. The student association was supposed to evaluate the Education Policies of the Candidates for Presidency in 2007. However, the association was worried about the possible negative effect on the active students because their social security numbers and age would be revealed. This is because the participation in election campaigning is currently forbidden under Public Election Law.

5-2. According to the revised law on information use on the Internet, portals, the press, and UCC Internet sites must allow only registered users on the real-name policy to upload postings. If they do not implement the necessary technical processes, they will be fined.<sup>35</sup> Since February 2009, the sites subject to this law will be increased from 37 to 153.<sup>36</sup> The government is currently talking about expanding this number. However, Google Korea announced that it would not follow this 'Real-Name Policy' and stopped user settings in 'Korea.' After this, many users have become 'cyber wanderers' and they are moving from Korean websites, which require identification, to foreign email sites or blogs.<sup>37</sup>

5-3. According to the law on Internet websites of 2009, if the user of an Internet domain does not his or her 'real name', the Internet webpage administration board is required to eliminate the domain name, or otherwise fined.<sup>38</sup>

## 6. Tracing Users

Since the 'Real-Name Registration' system, Internet businesses have been constantly retaining private information of the users and cooperating with the investigating authorities. The court issued warrant required for access to a user's private information has become a mere formality. Thus, the private information of users without any kind of criminal accusation is being handed too easily to the authorities and Internet users are constantly being spied on. The perception that the investigating authorities are watching over the average Internet user when they write critical articles about the government scares the people from writing their real opinions.

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<sup>35</sup> [Law on Information Use and Protection of Privacy] 44(5) and 76. This law refers to the Real Name policy as the 'Limited Confirmation of Identity' This policy is similar to the Real Name Policy in that others cannot see the identity, but users who do not register their real name cannot upload postings.

<sup>36</sup> According to the Korea Communication Standards Commission, this means that up to 90 percent of all the internet users in Korea will be identifiable. Currently 62 percent are identifiable.

<sup>37</sup> HanKeRe 2009.8.4. <http://www.hani.co.kr/arti/opinion/column/369454.html>

<sup>38</sup> [Law on Internet Addresses] Paragraph 11 and paragraph 27

6-1. According to the [Electric Technical Law], when the investigating authorities or information agencies ask for a user's name, social security number, address, or phone number, etc., they must make a written request. However, there is no need to prove a crime or show a court warrant - in urgent cases, the written request can be submitted after the information has been handed over.<sup>39</sup> Every year the number of requests of information from investigating agencies or governmental agencies has increased and last year the number of requests for information related to the Internet totaled 119,280. In October 2008, it became known that the government and the police had been spying on postings which criticized the government; and they had been collecting information about the authors and their IDs.<sup>40</sup>

▼ Number of cases where information was given (according to each case)

|      | Land lines | Cell Phones | Pager | PC, Internet | Total   |
|------|------------|-------------|-------|--------------|---------|
| 2004 | 46,366     | 191,649     | 20    | 41,894       | 279,929 |
| 2005 | 56,614     | 244,976     | 23    | 41,158       | 342,771 |
| 2006 | 48,462     | 204,071     | 9     | 71,024       | 323,566 |
| 2007 | 57,375     | 275,338     | 4     | 93,691       | 426,408 |
| 2008 | 58,374     | 296,913     | 1     | 119,280      | 474,568 |

\*Source : Korea Communication Standards Commission (Former Ministry of Information and Communication)

6-2. [Internet Privacy Protection Law] requires investigative agencies and government associations to ask for a court's permission before it requests sensitive information such as the poster's IP address or Internet log records. However, every year the number of requests of information from investigative agencies or governmental agencies increases and last year the amount of requests about information related to the Internet totaled 46,667 requests.<sup>41</sup>

▼ Number of Cases with Reported Use of Communication (according to each case)

|      | Land lines | Cell Phones | Pager | PC, Internet | Total   |
|------|------------|-------------|-------|--------------|---------|
| 2004 | 23,403     | 108,759     | 3     | 44,665       | 176,830 |
| 2005 | 21,636     | 118,930     | 10    | 54,793       | 195,369 |

<sup>39</sup> [Electric Communication] Paragraph 54

<sup>40</sup> Weekly Kyunghyang No. 797 2008.10.28.

<http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=18592>, Han Kye Re 2008.10.5.

[http://www.hani.co.kr/arti/society/society\\_general/314066.html](http://www.hani.co.kr/arti/society/society_general/314066.html)

<sup>41</sup> [Communication Privacy Act] Paragraph 13 and Paragraph 13(4)

|      |        |         |   |        |         |
|------|--------|---------|---|--------|---------|
| 2006 | 21,948 | 87,114  | 0 | 41,681 | 150,743 |
| 2007 | 31,337 | 110,738 | 0 | 41,584 | 183,659 |
| 2008 | 37,912 | 128,166 | 0 | 46,667 | 212,745 |

\*Source : Korea Communication Standards Commission (Former Ministry of Information and Communication)

6-3. [Internet Privacy Protection Law] requires investigative authorities to get permission from the court when they want to monitor private material such as Internet emails or private postings.<sup>42</sup> However in reality, the court does not give out the warrants as strictly as they should. In fact, only 3.6 percent of the total number of requests for a warrant was rejected by the court in 2007. Thus, the number of monitoring by investigating authorities increases every year. Since 2004, there have been warrants issued for group monitoring of an entire Internet line, not individual emails or postings.<sup>43</sup>

▼ Number of Monitorings (according to each case)

|      | Land lines | Cell Phones | Pager | PC, Internet | Total |
|------|------------|-------------|-------|--------------|-------|
| 2004 | 887        | 265         | 0     | 461          | 1,613 |
| 2005 | 621        | 1           | 0     | 355          | 977   |
| 2006 | 577        | 0           | 0     | 456          | 1,033 |
| 2007 | 503        | 0           | 0     | 646          | 1,149 |
| 2008 | 506        | 0           | 0     | 646          | 1,152 |

\*Source : Korea Communication Standards Commission (Former Ministry of Information and Communication)

## 7. Plans to revise the law

Aside from the law mentioned above, the government and the ruling party are discussing other more restrictive laws to control the Internet.

7-1. The government proposed a law which fines an Internet business which does not obey the temporary deletion requests, and makes monitoring mandatory.

7-2. The ruling party has proposed a law called “Cyber Defamation” and they have made the punishment harsher than libel charges in criminal law. Also, they plan to make investigations

<sup>42</sup> [Communication Privacy Act] Paragraph 5, 6, 7, 8

<sup>43</sup> [Communication Privacy Act] Paragraph 13 and Paragraph 13(4)



possible without the relevant party's request.

7-3. The government and the ruling party have made it mandatory for Internet businesses to buy proper equipment for monitoring. They must also have a log record system.

## 8. Conclusion

After the Lee Myung-bak administration took office in 2008, restrictions on Internet postings and prosecutions are increasing. These restrictions negatively affect the author of postings and violate an individual's freedom of speech. Also, they create a chilling effect to other people with the same opinion – others are forced to restrain themselves from criticizing.

Today's Internet is far from what early netizens expected in <Cyberspace Independence Declaration>, it's not as free as it was expected to be.<sup>44</sup> The main point of the freedom of expression controversy comes up when the 'government' starts to restrict free expressions of the people to keep power or retain the system. Korea's democracy has developed in leaps and bounds after a period under a military government but after controversies on restricting freedom of expression in newspapers, broadcasting, books, movies, and comic books this controversy has continued on to the Internet. It is also controversial that the administrative offices of the government lead the Internet inspections. It's also problematic that the government is forcing implementation of the 'Real-Name Registration' system.

On the other hand, there is also a controversy on the legal judgments of the postings. Korea has a history of vague standards such as 'lechery' or 'An Enemy under National Security' and has long been accused of violating the freedom of expression. Also, the courts have violated the freedom of expression by punishing candidates or parties during elections for uploading Internet postings or making UCC videos. Recently there is a debate that criminal charges against uploading false information or defamation undermines the freedom of criticism. Especially, as people are being punished more and more for criticizing the government and power figures, the controversy is hot. The Internet is probably the only medium everyone has access to. The freedom of expression appeared as the core right of the Modern Civil Rights Movement, but it has been hard for some citizens to enjoy this right because they could not gain access to the main tools of expression; the press and the print. Thus it was recognized worldwide through UNESCO and other international bodies that anyone can freely and equally use the media. The Internet seemed to be the medium that could solve this problem. It's true that there is a non-stop debate about the Internet, and the government's intervention is being justified for that reason. However in any case the freedom of expression of citizens must not be ruined.

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<sup>44</sup> Jack Goldsmith and Tim Wu, 2006, *Who controls the Internet?: Illusions of a borderless world*, Oxford University Press.

# 한국 (장여경, 진보네트워크센터 활동가)

## 1. 개요

한국 인터넷 이용자수는 2007년 기준으로 3,482만 명으로서 전체 인구 비율의 72.2%에 달한다.<sup>1</sup> 일부 퍼블릭 액세스 채널을 제외하고<sup>2</sup> 일반 시민의 미디어 접근이 쉽지 않은 언론 출판 환경 속에서, 인터넷은 한국의 일반 시민에게 필수적인 표현 매체이다.

2008년 5월과 6월, 대한민국은 촛불시위의 열기로 뜨거웠다. 촛불시위를 주로 이끌어간 것은 광우병 감염 우려가 있는 미국산 쇠고기 수입을 반대하는 여론이었지만, 교복을 입은 학생들도 저녁마다 촛불시위에 참가해 눈길을 끌었다. 하루의 대부분을 학교에서 보내는 청소년들이 조직적으로 촛불 시위에 참여할 수 있었던 것은 인터넷이 있었기 때문이다. 이들은 인터넷 커뮤니티와 블로그를 통해 스스로의 문제에 대하여 토론하고, 주장을 의제화하고, 행동을 조직할 수 있었다. 이렇게 사회경제적으로 동원할 수 있는 자원이 부족한 이들이 표현하고 자력화(empowerment)할 수 있는 수단을 제공하는 인터넷은 정보화의 가장 놀라운 혜택이다.

그러나 일반 시민의 인터넷 표현물에 대한 법적 규제가 강화되는 추세를 보이면서 인터넷 표현의 자유 침해 논란이 가중되고 있다. 우선 한국에 상용 인터넷 접속서비스가 개시되던 1994년 발족한 (구)정보통신윤리위원회로부터 오늘날 방송통신심의위원회로 이어지는 행정심의회가 인터넷 표현물들을 강력하게 규제해 왔다. 또한 허위의 통신, 명예훼손 등 현행법률 위반을 이유로 인터넷 게시자들이 형사처벌의 대상이 되어 왔다. 한편 사생활 침해나 명예훼손 등 권리 침해를 구제하기 위하여 도입된 '임시 조치(temporary measure or deletion)' 제도를 정부나 여권에서 이용하면서 이들을 비판한 많은 게시물들이 삭제되고 있다.

인터넷 표현의 자유 침해 사례는 2008년 현 정부가 들어선 이후 특히 많은 수가 보고되고 있으며, 인터넷 실명제 확대, 사이버 모욕죄 도입 등 최근 한국 정부와 여당이 추진 중인 법률 개정이 이루어진다면 더욱 늘어날 것으로 예측된다.

## 2. 행정 심의

한국은 인터넷에 대한 행정심의회와 그로 인한 게시물 삭제가 빈번하다. 현재 인터넷에 대한

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1 ITU, 2008.6. <http://www.itu.int>. 한글 자료는

[http://www.kosis.kr/OLAP/Analysis/stat\\_OLAP.jsp?tbl\\_id=DT\\_2KAAA13&org\\_id=101&vwcd=MT\\_ZTITLE&path=운수·통신·관광&oper\\_YN=Y&item=&keyword=인터넷 이용자수&lang\\_mode=kor&list\\_id=&olapYN=N](http://www.kosis.kr/OLAP/Analysis/stat_OLAP.jsp?tbl_id=DT_2KAAA13&org_id=101&vwcd=MT_ZTITLE&path=운수·통신·관광&oper_YN=Y&item=&keyword=인터넷%20이용자수&lang_mode=kor&list_id=&olapYN=N)

2 한국의 퍼블릭 액세스 채널은 공중파방송 KBS의 시청자참여프로그램인 <열린 채널>, 위성방송의 <시민방송 R-TV>, 케이블방송의 지역 퍼블릭 액세스 프로그램 등을 들 수 있다.

행정심의는 2008년 새정부 들어 발족한 방송통신심의위원회가 맡고 있다.<sup>3</sup> 방송통신심의위원회는 대통령과 정부 여당이 지명하는 위원들이 다수를 이루고 있으며, 심의위의 구성과 운영에 관한 사항은 대통령령으로 정하는 한편, 국가의 기금 또는 국고에서 그 운영에 필요한 경비를 지급할 수 있도록 하고 있다. 방송통신심의위원회의 인터넷 심의는 인터넷의 불법 정보와 청소년유해 정보를 규제하고 건전한 정보통신윤리를 함양한다는 목적으로 이루어져 왔다.<sup>4</sup> 심의 결과는 각 인터넷 사업자와 게시판 운영자에게 삭제 권고 등 시정 요구의 형태로 전달된다. 시정 요구는 형식적으로 권고이지만 이를 거부하였을 경우 방송통신위원회에서 서비스를 중지하는 행정명령을 내릴 수 있기 때문에 실질적으로 거부되는 일이 거의 없다.<sup>5</sup>

방송통신심의위원회가 심의하는 불법성은 음란, 명예훼손, 위협, 서비스방해, 청소년유해매체물, 사행행위, 국가기밀, 국가보안법 위반, 범죄 교사 및 방조 여부에 대한 것이다. 그러나 사법기관이 아닌 행정기관이 불법성의 판단을 하는 것이 바람직하지 않다. 중립성과 독립성이 보장되는 사법기관의 판단과, 국가권력의 영향력 하에 있는 행정기관의 심의는 그 의미가 크게 다르기 때문이다. 더구나 방송통신심의위원회의 심의는 당사자가 아닌 게시판 운영자나 인터넷 사업자를 대상으로 이루어지며 그 과정에서 게시 당사자의 의견진술을 보장하지 않는다. 시정 요구의 구체적인 근거나 회의록 공개도 사후적으로 잘 이루어지지 않는 점에 대해서도 비판받아 왔다. 행정부가 이렇게 비민주적이고 불투명한 절차 하에 자의적으로 법률적 판단을 하고 게시물의 삭제를 사실상 강제하는 것은 표현의 자유 침해이다.

불법성도 아닌 ‘건전한 통신윤리의 함양’이라는 기준에 따라 이루어지는 심의는 특히 위헌적이다. 명확하지 않은 기준에 의하여 표현의 자유를 과잉규제한다는 점에서 이는 헌법재판소의 2002년 결정에도 위배된다. 방송통신심의위원회의 전신인 정보통신윤리위원회는 과거 ‘불온 통신의 단속’을 위해 설치 운영되었는데 이들은 ‘학교에 대해 너무 비판적’이라며 자퇴 청소년 커뮤니티를 폐쇄하는 등 자의적 행정심으로 많은 비판을 받아

3 방송통신심의위원회의 설립 전에는 1994년 설립된 정보통신윤리위원회가 인터넷의 내용심의를 맡아 왔다. 2007년 대법원은 정보통신윤리위원회가 특정 인터넷사이트를 청소년유해매체물로 결정한 행위가 행정처분에 해당한다고 보았다. 대법원 2007.6.14. 선고 2005 두 4397 판결.

4 방송통신심의위원회는 [정보통신망 이용촉진 및 정보보호 등에 관한 법률] 제 44 조의 7 과 [방송통신위원회의 설치 및 운영에 관한 법률] 제 21 조 제 3 호에 따라 게시물의 불법성을 판단하고, [방송통신위원회의 설치 및 운영에 관한 법률] 제 21 조 제 4 호에 따라 게시물의 청소년유해성을 판단하는 한편 건전한 통신윤리의 함양을 위하여 필요한 사항도 심의한다.

5 [정보통신망 이용촉진 및 정보보호 등에 관한 법률] 제 44 조의 7 에 의하면, 음란·명예훼손·위협·서비스방해·청소년유해매체물·사행행위인 경우 방송통신위원회는 서비스를 중지하는 명령을 내릴 수 있으며, 국가기밀·국가보안법·범죄 교사 및 방조인 경우 방송통신위원회는 타행정기관의 요청에 따라 반드시 서비스를 중지하는 명령을 내려야 한다.

왔다.<sup>6</sup> 2002년 6월 헌법재판소는 정보통신윤리위원회가 ‘불온’이라는 모호한 기준에 의해 인터넷을 심의하는 것이 위헌이라고 결정하였다.<sup>7</sup> 현재 방송통신심의위원회의 ‘건전한 통신윤리의 함양’이라는 심의 기준 역시 같은 이유로 위헌이라는 비판을 받고 있다.

방송통신심의위원회의 발족 이후 표현의 자유 침해가 지적된 구체 사례는 다음과 같다.

2-1. 2008년 5월, 방송통신심의위원회는 대통령을 ‘2MB’, ‘간사한 사람’ 등으로 비판한 인터넷 게시물에 대하여 ‘언어순화 및 과장된 표현의 자제권고’를 내렸다.<sup>8</sup> 문제의 게시물은 “이명박 아주 지능형입니다”라는 글로 이명박 정부의 의료보험 민영화 시도를 우려하는 내용이었다. 심의위는 이 게시물에서 필자가 이 대통령의 영문 이니셜 MB를 컴퓨터 메모리 용량에 빗대 ‘머리용량 2MB’, ‘간사한 사람’ 등으로 표현한 것이 인격을 폄하하는 것이라고 보았다. 이 결정은 심의위 출범 후 인터넷 게시물에 대하여 처음으로 이루어진 심의 결과였다.

2-2. 2008년 7월, 방송통신심의위원회는 소비자들이 작성한 불매운동 게시물에 대하여 ‘삭제’ 결정을 하였다. 문제의 게시물들은, 조선·중앙·동아일보 등 보수 신문들의 ‘미국산 쇠고기 협상과 촛불 시위에 대한 왜곡 보도’에 항의하기 위하여 일반 시민들이 불매운동을 전개하면서 해당 신문사에 광고를 게재한 기업들의 명단을 자발적으로 목록화한 것들이었다. 심의위는 이

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6 2001년 6월 정보통신윤리위원회가 탈학교 청소년들의 온라인 커뮤니티 사이트 ‘아이노스쿨(<http://www.inoschool.net>)’를 폐쇄하였다. 아이노스쿨은 2000년 11월 개설되어 학교를 자퇴하였거나 자퇴를 고민하고 있는 청소년들 간에 의견과 정보를 나누던 커뮤니티 사이트였다. 정보통신윤리위원회는 이 사이트가 ‘학교에 대해 너무 비판적’이어서 폐쇄한다고 밝혔다. 자퇴 조장, 학교 비판 등이 사회에 해가 된다는 것이다. 그 과정에서 사이트 운영자에게는 사전 고지나 의견 제시 기회가 전혀 없었으며 사이트를 호스팅하고 있는 통신사업자에게 보내진 시정요구 공문에 의해 일방적으로 사이트가 폐쇄되었다.

7 “오늘날 가장 거대하고, 주요한 표현매체의 하나로 자리를 굳힌 인터넷상의 표현에 대하여 질서 위주의 사고만으로 규제하려고 할 경우 표현의 자유의 발전에 큰 장애를 초래할 수 있다. 표현매체에 관한 기술의 발달은 표현의 자유의 장을 넓히고 질적 변화를 야기하고 있으므로 계속 변화하는 이 분야에서 규제의 수단 또한 헌법의 틀 내에서 다채롭고 새롭게 강구되어야 할 것이다.” 헌법재판소 99헌마 480 결정, 전기통신사업법 제 53조 등 위헌확인, 2002.6.27.

8 방송통신심의위원회 2008년 제 4차 회의록, 2008.5.28. 회의록에 따르면 이 시정 요구는 경찰청 사이버테러대응센터에서 심의를 요청한 총 199건의 ‘VIP’(대통령) 관련 게시물 중 하나에 대한 것이었다. 방송통신심의위원회 전신인 정보통신윤리위원회에서도 ‘대통령의 숨겨진 딸’ 등 대통령 비방에 대한 게시물들에 대하여 ‘삭제’ 결정을 내려왔다.

게시물들이 ‘위법적인 2 차 보이콧’이라고 보았다.<sup>9</sup> 그러나 광고지면 불매운동을 위한 온라인 카페 회원들에 대해 이듬해 2월에 유죄판결을 내린 1심 법원은, 광고주 목록 그 자체는 원칙적으로 허용된다고 판시하였다.<sup>10</sup>



### ▲ 방송통신심의위원회의 결정에 따른 삭제 경고문

9 방송통신심의위원회 2008년 제9차 회의록, 2008.7.1. 이 시정 요구는 당시 안전으로 올라온 80개 게시물에 대한 판단이었고 그 세부 분류에 따라 21건에 대해서는 ‘각하’되거나 ‘해당없음’ 결정이 내려졌다. 그러나 방송통신심의위원회는 각 인터넷 사업자에게 공문을 보내는 과정에서 ‘유사 사례’에 대한 삭제도 함께 권고하였고, 인터넷 사업자들은 공문에 따라 ‘광고주 목록’ 게시물에 대한 대대적인 삭제를 시행하였다. 광고주 기업의 명칭, 공개된 전화번호를 게재한 게시물은 물론 ‘광고주 목록’에 대한 링크를 포함하였다는 이유만으로도 삭제되기도 하였다. 언론 보도에 따르면 이때 인터넷 사이트 ‘다음’은 ‘유사한 내용의 게시글’ 600건 이상을 지웠다.(한겨레 2009.7.8. [http://www.hani.co.kr/arti/society/society\\_general/297599.html](http://www.hani.co.kr/arti/society/society_general/297599.html))

10 “언론매체의 소비자인 독자는 언론사의 편집정책을 변경시키고자 하는 목적을 갖고 언론사에 대한 불매운동 등의 수단을 동원할 수는 있겠지만 그 경우에도 참여자들은 그들이 추구하는 목적을 달성하기 위하여 일반시민들을 상대로 조선·중앙·동아일보를 구독하지 말거나 그 광고주들에게 조선·중앙·동아일보에 광고를 게재하지 말도록 하기 위하여 그들의 의사를 전달하고, 홍보하며, 인터넷 사이트에 광고주 리스트를 게재하거나 게재된 광고주 리스트를 보고 소비자로서의 불매의사를 고지하는 등 각종 방법에 의한 호소로 설득활동을 벌이는 것은 구독이나 광고계제 여부의 결정을 상대방의 자유로운 판단에 맡기는 한 허용된다 할 것이고, 그로 인하여 위 각 신문사의 일반적 영업권 등에 대한 제한을 가져온다 하더라도 이는 정당한 소비자운동의 목적수행을 위한 활동으로부터 불가피하게 발생하는 내재적 위험으로서 상대방인 위 각 신문사가 감내해야 할 범위 내에 있다 할 것이다.” 서울중앙지방법원 2008 고단 5024 판결, 2009.2.19.

2-3. 2009년 1월 이후, 방송통신심의위원회는 경기도 지사의 발언이 식민적이라며 비판하고 사퇴를 요구하는 게시물에 대하여 ‘삭제’ 결정을 하였다.<sup>11</sup> 문제의 게시물은, 김문수 경기도지사가 2009년 1월 2일 “만약 우리 대한민국이 일제 식민지가 안 됐다면 ... 전쟁이 일어나지 않았다면, 과연 오늘의 대한민국이 있었을까?”라고 발언한 것에 대해, 김 지사의 발언을 그대로 게재하고 “망국적인 발언을 규탄한다”며 사퇴를 요구하는 내용이었다. 김 지사는 심의위에 위 게시물이 명예훼손이라며 심의를 요청했고, 심의위는 삭제를 결정하였다.

2-4. 2009년 4월, 방송통신심의위원회는 환경운동가가 ‘쓰레기 시멘트’를 비판한 게시물에 대하여 ‘삭제’ 결정을 하였다. 게시자는 3년 전부터, 시멘트 제조과정에서 폐쓰레기를 사용함으로써 인체에 유해한 성분이 시멘트에 다량 함유되었다는 문제를 제기해왔다. 심의위는 게시자가 ‘발암시멘트’라는 표현을 단정적, 반복적으로 사용한 것이 한국양회공업협회 등 시멘트업체의 명예를 훼손한 것이며, 게시된 실험사진 중 하나가 허위사실이라고 보았다.<sup>12</sup>

2-5. 2009년 6월, 방송통신심의위원회는 집회 참가 시민들을 향해 장봉을 휘두른 경찰을 비판한 게시물에 대하여 ‘삭제’ 결정을 하였다. 이 게시물들은 2009년 5월 1일 노동절 집회에 참석한 비무장 시민들에게 경찰이 지하철 역내에서 진압봉을 휘두른 폭력 행위를 비판하는 내용이었다. 심의위는 이 게시물들이 해당 경찰의 사진과 이름 등을 포함했다는 이유로 ‘초상권 침해’라고 보았다.<sup>13</sup>



▲ 방송통신심의위원회의 결정에 따라 삭제된 게시물 일부

11 심의위는 명예훼손에 대한 의결의 경우 공개하지 않는 것을 원칙으로 하기 때문에 정확한 의결 일자 는 미상이다. ZDNet 2009.4.29. [http://www.zdnet.co.kr/ArticleView.asp?artice\\_id=20090429134154](http://www.zdnet.co.kr/ArticleView.asp?artice_id=20090429134154)

12 방송통신심의위원회 2009년 제9차 회의로 알려졌다. 2009.4.27.

13 방송통신심의위원회 2009년 제12차 회의. 2009.6.10. 진보네트워크센터 앞으로 삭제 권고가 도달하여 이 결정을 알게 되었다.

2-6. 그밖에 방송통신심의위원회는 여권 정치인을 비판하는 게시물에 대하여 ‘명예훼손’을 보고 삭제하는 경우가 많다. 방송통신심의위원회 통계에 따르면 2008년 심의위 출범 후 명예훼손 건으로 심의신청한 여야 정치인과 관료는 모두 12명으로, 이 중 여당 소속 정치인과 현 정부 관료가 10명이었다. 방통심의위는 이들 여권 정치인으로부터 11건의 명예훼손 심의신청을 받아 8건(72.2%)을 삭제 결정했고, 시정요구를 받은 해당 포털 사이트는 이들과 관련한 203개의 게시물을 삭제했다.<sup>14</sup>

### 3. 형사소추

2008년 이후, 촛불시위와 관련한 인터넷 게시물이나 대통령과 정부, 언론을 비판하는 인터넷 게시물로 인하여 인터넷 이용자들이 형사소추당하는 사례가 다수 발생하였다. 5월 2일 촛불시위가 시작된 직후인 6일 검찰은 긴급회의를 열어 ‘광우병에 대한 인터넷 괴담’에 대해 수사 방침을 밝혔고 정부는 홈페이지에 “광우병 괴담 10문 10답”을 발표하였다.<sup>15</sup> “소를 이용해 만드는 화장품, 생리대, 기저귀 등의 제품을 사용해도 광우병에 전염된다”, “미국사람들은 대부분 호주나 뉴질랜드 쇠고기를 먹는다.”는 등 정부가 ‘근거 없는 오해와 불안감’으로 보는 게시물들이 괴담으로 지목되었는데, 이런 ‘주장’에 대해 형사처벌하려는 정부 입장에 대한 비판이 크게 일었다.<sup>16</sup> 그러나 광우병 괴담 수사 이후 현재까지 촛불 시위 혹은 정부 비판 게시물을 인터넷에 올렸다는 이유로 경찰의 조사를 받거나 형사입건된 사례들이 계속 발생하였고 다수가 형사처벌되었다. 자주 적용된 법률은 ‘허위의 통신’이라는 죄목이었는데 1983년 제정된 이 법률 조항은 촛불 수사에 사용되기 전까지는 사문화된 것이나 다름이 없었다.<sup>17</sup>

인터넷 게시물에 대한 형사소추로 표현의 자유 침해가 지적된 사례는 다음과 같다.

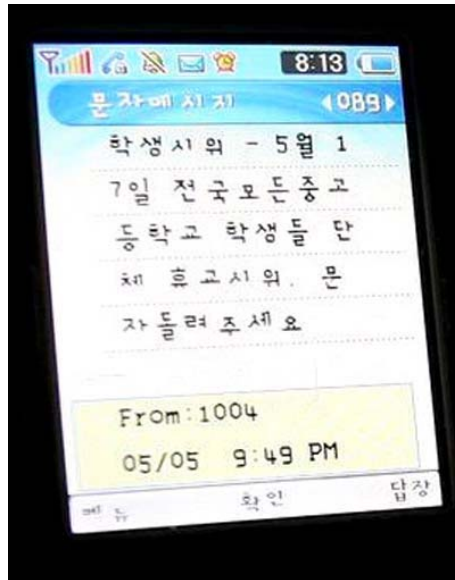
14 이종걸의원 보도자료 2009.3.9. [http://www.ljk.co.kr/bbs/board.php?bo\\_table=think&wr\\_id=801&page=2](http://www.ljk.co.kr/bbs/board.php?bo_table=think&wr_id=801&page=2)

15 [http://www.president.go.kr/kr/president/news/news\\_view.php?uno=104](http://www.president.go.kr/kr/president/news/news_view.php?uno=104)

16 민주사회를 위한 변호사모임, 2008.5.7. [http://minbyun.org/?mid=report&page=9&document\\_srl=17321&listStyle=&cpage=](http://minbyun.org/?mid=report&page=9&document_srl=17321&listStyle=&cpage=) 반면 경찰대 표창원 교수는 광우병 괴담 수사를 ‘냉각 효과’라는 이유로 긍정적으로 평가했다. <http://news.kukinews.com/article/view.asp?page=1&gCode=kmi&arcid=0920902331&cp=nv>

17 전기통신기본법 제 47 조. "공익을 해할 목적으로 전기통신설비에 의하여 공연히 허위의 통신을 한 자는 5년 이하의 징역 또는 5천만원 이하의 벌금에 처한다." 민주사회를 위한 변호사 모임은 이 조항이 거의 사문화되어 관례도 많지 않았는데, 작년 촛불집회 때부터 동맹휴업 문자 등에 대해 반복적으로 적용되기 시작했다고 비판했다. ([http://minbyun.org/?mid=report&search\\_target=title\\_content&search\\_keyword=%EB%AF%B8%EB%84%A4%EB%A5%B4%EB%B0%94&document\\_srl=24906&listStyle=&cpage=](http://minbyun.org/?mid=report&search_target=title_content&search_keyword=%EB%AF%B8%EB%84%A4%EB%A5%B4%EB%B0%94&document_srl=24906&listStyle=&cpage=)) 국가인권위원회 또한 이 법률 조항이 표현의 자유를 침해할 우려가 있다는 의견을 헌법재판소와 법원에 제출하였다. ([http://www.humanrights.go.kr/04\\_sub/body02.jsp?NT\\_ID=24&flag=VIEW&SEQ\\_ID=593476&page=4](http://www.humanrights.go.kr/04_sub/body02.jsp?NT_ID=24&flag=VIEW&SEQ_ID=593476&page=4))

3-1. 미국산 쇠고기 수입에 반대하는 동맹휴업(등교거부) 제안이 휴대전화 문자메시지와 인터넷으로 퍼지자, 경찰과 검찰은 이 문자메시지를 최초로 발신한 한 청소년을 ‘허위의 통신’ 혐의로 형사기소하였다. 이 사건은 1 심과 2 심에서 무죄판결을 받았으나 검찰이 항소하여 현재 대법원에서 재판이 진행 중이다.<sup>18</sup>



▲ 형사기소의 대상이 된 문자메시지

3-2. 경찰과 검찰이 미국산 쇠고기 수입에 반대하는 촛불시위를 인터넷으로 제안하거나 ‘유모차부대’, ‘촛불자동차연합’ 등 인터넷 카페에서 활동한 네티즌들을 입건하고 가택과 직장을 압수수색하거나 구속 혹은 형사 기소하는 사례가 다수 발생하였다.<sup>19</sup>

3-3. 경찰은 촛불 시위에 대해 손해배상을 청구한 시위장소 인근 상인 목록을 게시하고 항의전화를 한 네티즌들을 체포하고 형사입건하였다.<sup>20</sup>

18 쿠키뉴스 2008.5.26.

<http://news.kukinews.com/article/view.asp?page=1&gCode=soc&arcid=0920918717&cp=nv> 한국일보 2008.9.20. <http://news.hankooki.com/lpage/society/200809/h2008092002594322000.htm>

19 정확한 실태를 파악하기는 어렵다. 다만 언론에 보도된 여러 사례를 통해 그 추이를 짐작할 수 있다. 한겨레 2008.9.3. [http://www.hani.co.kr/arti/society/society\\_general/308240.html](http://www.hani.co.kr/arti/society/society_general/308240.html), 오마이뉴스 2008.10.5.

[http://www.ohmynews.com/NWS\\_Web/view/at\\_pg.aspx?CNTN\\_CD=A0000987900](http://www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0000987900), 위클리경향 806 호, 2008.12.30. <http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=19041&pt=nv>

20 쿠키뉴스 2008.8.13.

<http://news.kukinews.com/article/view.asp?page=1&gCode=soc&arcid=0921000326&cp=nv>



3-4. 경찰은 대통령을 죽이고 싶다는 감상을 인터넷에 올린 네티즌을 조사하였다.<sup>21</sup>

3-5. 경찰과 검찰은 무자비한 진압과 연행 과정에서 경찰의 시민에 대한 강간, 사망설 등을 제기한 네티즌들 다수에 대하여 ‘허위의 통신’ 혐의로 형사기소하였고 일부는 1 심에서 유죄 판결을 받았다.<sup>22</sup>

3-6. 검찰은 조선·중앙·동아일보의 광고지면 불매운동을 위해 광고주 목록을 인터넷에 올리고 불매운동을 제안한 인터넷 카페 운영자들에 대하여 출국금지, 압수수색, 구속 등 강도 높은 수사를 벌이고 형사기소하여 2009년 2월 24 명이 1 심에서 유죄판결을 받았다.<sup>23</sup>

3-7. 검찰은 정부의 외환 정책을 비판하는 인터넷 게시물을 올린 ‘미네르바’라는 필명의 네티즌에 대하여 ‘허위의 통신’ 혐의로 구속하고 형사기소하였다. 이 사건은 국내외 언론에서 많은 관심을 받았고 비슷한 비판글을 올리던 네티즌들이 연달아 절필을 선언하는 등 ‘위축 효과’가 확산되었다. 2009년 4월 1심 법원에서 무죄를 선고하였으나 검찰은 항소하였다.<sup>24</sup>

3-8. 경찰은 인터넷에 정부 비판 글을 게시하면서 조회수를 부풀린 네티즌들을 형사입건하였다.<sup>25</sup>

#### 4. 임시조치

대통령, 정부나 여당 인사, 여당 친화적 언론을 비판하는 게시물들이 임의적으로 삭제되고 있다. 이는 사생활 침해나 명예훼손을 당했다고 주장하는 사람이 권리침해를 신고할 경우 인터넷 사업자가 사법적 판단 없이도 해당 게시물을 최대 30일간 임시적으로 삭제할 수 있도록 한 현행 법률에 따른 것이다.<sup>26</sup> 인터넷 사업자가 이러한 조치를 취하지 않을 경우 손해배상 책임을 질 수 있다. 임시조치 제도는 현행 저작권법의 ‘고지 후 처리’ 절차(notice & take down)와

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21 한겨레 2008.7.28. [http://www.hani.co.kr/arti/society/society\\_general/301243.html](http://www.hani.co.kr/arti/society/society_general/301243.html)

22 경찰 보도자료 2008.7.7.

<http://www.police.go.kr/announce/newspdsView.do?idx=92279&cPage=1&SK=ALL&SW=%B0%B3%C0%CE%C1%A4%BA%B8>, 위클리경향 796 호 2008.10.21.

<http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=18552&pt=nv>

23 서울신문 2009.2.20. <http://www.seoul.co.kr/news/newsView.php?id=20090220008017>

24 세계일보 2009.4.24.

<http://www.segye.com/Articles/NEWS/SOCIETY/Article.asp?aid=20090424000283&ctg1=&ctg2=>

25 뉴스스 2009.3.17.

<http://news.naver.com/main/read.nhn?mode=LSD&mid=sec&sid1=102&oid=003&aid=0002577430>

26 [정보통신망 이용촉진 및 정보보호 등에 관한 법률] 제 44 조의 2

흡사하지만, 이와 달리 게시자의 이의신청권을 보장하지 않으며 임시조치 후 해당 게시물의 처리를 어떻게 할 것인지에 대해 명확한 규정을 가지고 있지 않다. 인터넷 업체에 따라, 임시조치 30 일이 지나면 해당 게시물이 자동복구되는 경우가 있는가 하면, 당사자의 복구 요청이 없으면 영구 삭제되는 경우도 있다. 따라서 부당하게 임시조치되었다 하더라도 절차상 복잡함과 위축 효과로 인하여 게시자가 권리를 회복하기가 쉽지 않으며, 설령 30 일이 지나 복구된다 하더라도 그 글의 효력은 게시가 금지되는 동안 끝났을 수 밖에 없다. 가장 큰 문제는 이 제도가 정부나 여권에서 자신에 대한 비판을 신속하게 삭제하는 목적으로 사용되고 있다는 점이다.

4-1. 2008 년 5 월과 7 월, 경찰청장의 동생을 비판한 인터넷 게시물들이 경찰청의 신고에 따라 임시조치되었다. 이 게시물들은 어청수 경찰청장의 동생이 투자한 호텔의 불법 성매매 의혹에 대해 대전문화방송이 보도한 영상을 포함하고 있었다. 경찰청은 구글 유튜브 등 14 곳의 인터넷 사이트에 대해 대량으로 게시물 삭제를 요청하였지만, 원 출처인 방송국에 대해서는 어떠한 대응도 하지 않았다.<sup>27</sup>

4-2. 2008 년 10 월, 여당 의원을 ‘만취한 채 폐끼친다’고 지적하고 그의 미니홈피를 링크한 게시물이 해당 의원의 신고에 따라 임시조치되었다. 게시물 내용은 다음과 같이 단 세 줄이었다.<sup>28</sup>



▲ 여당 의원 비판을 이유로 삭제된 게시물

27 한겨레 2008.7.25. [http://www.hani.co.kr/arti/society/society\\_general/300688.html](http://www.hani.co.kr/arti/society/society_general/300688.html)

28 <http://wnsgud313.tistory.com/156>

4-3. 2009년 4월, 여당 의원들을 ‘인두깍을 쓴 이들’이라고 비판한 게시물이 해당 의원의 신고로 임시조치되었다. 철거민들이 경찰 진압 과정에서 화재로 숨진 사건과 관련하여, 이 게시물은 여당 의원들의 발언을 담은 언론 기사를 링크한 내용이 대부분이며, 게시자는 단 세 줄을 덧붙였을 뿐이다.<sup>29</sup>

**고의방화, 도심테러라고? 인두깍을 쓴 이들**

‘인두깍을 쓴 짐승’이라고 표현은 미럴 때 쓰는 것이다.  
 저들은 인간의 가족만을 썼을 뿐이다.  
 아마도 앞으로도 이런 류들이 많이 쏟아져 나올 터인데, 미들을 어떻게 어떤 종자로 규정해야 할까.

[장윤석·신지호 "용산 '사고', 도심테러적 성격"](#) (프레시안, 박세열 기자, 2009-01-21 오후 4:03:06)  
 한나라 입단속... "용산 참사 관련 TV 토론 안 나가"

["고의방화" "도심테러"...유족 가슴에 대못질](#) (한겨레, 미유주현 최혜정 기자, 2009-01-22 오후 08:06:09)

뉴라이트 출신 신지호 등 책임전가 미어  
 공성진 최고위원도 강경진압 두둔 발언  
 당내서도 "공권력 집행과정 미 문제" 비판

[김석기 "결과적으로 유감"...책임회피성 발언으로 일관](#) (프레시안, 김하영 기자, 2009-01-21 오후 5:57:08)

한나라 "철거민들, 지난 4월에 민노당 집단입당"

[김석기 "불법폭력시위로 경찰이 희생되는 일 없도록 하겠다"](#) (프레시안, 윤태곤 기자, 2009-01-22 오후 6:12:14)

민주당 "사지로 몰아넣은 장본인의 후안무치"

[청와대, 김석기 내정 철회 안 한다](#) (참세상, 미꽃맘 기자, 2009년 01월 22일 17시 55분)

[살민진압] "국민 생명을 청장 자리값만도 못하게 생각"

["재2의 전여옥 지향? 1000만 안티 대기 중"](#) (레디앙, 2009년 01월 21일 (수) 17:21:11 변경혜 기자)

청와대 김은혜 부대변인 '과격시위 발언' 파장...정치권, 네티즌 비판 폭주

[약자를 위해 살겠다던 김은혜 청와대 부대변인](#) (참세상, 미꽃맘 기자, 2009년 01월 21일 21시 15분)

[가자의눈] '억울한 죽음'을 없애겠다던 초심은 어디로

▲ 여당 의원 비판을 이유로 삭제된 게시물

4-4. 2009년 4월, 야당 의원들과 네티즌들이 조선일보 사주의 성접대 의혹을 거론한 게시물들이 임시조치되었다. 민주당 이종걸 의원이 ‘다음’ 야고라 게시판에 올린 인터넷 게시물도 조선일보의 신고로 임시조치되었다.<sup>30</sup> 이 의원은 ‘OO 일보’로 수정하여 다시 게시물을 올렸지만, ‘다음’은 이 역시 임시조치하고 방송통신심의위원회에 심의를 요청하였다. 심의위가 명예훼손이 아니라는 결정을 내림에 따라 이 게시물은 원상복구되었지만, 같은 의혹을 다룬

29 <http://blog.jinbo.net/gimche/?pid=668>

30 <http://bbs1.agora.media.daum.net/gaia/do/debate/read?bbsId=D115&articleId=610524>

일반 네티즌들의 글 수백 건이 임시조치되었다.<sup>31</sup>

4-5. 2009년 5월, 경찰의 폭력을 비판한 게시물 다수가 해당 경찰 간부의 신고로 임시조치되었다. 이 게시물들은 노동절 집회에 참석한 비무장 시민들에게 경찰이 지하철 역내에서 진압봉을 휘두른 폭력 행위를 비판하는 내용이었으며, 삭제된 게시물 중에는 한 블로거가 해당 경찰간부에게 정중하게 쓴 공개 질의서도 포함되어 있었다.<sup>32</sup> 경찰은 이 게시물들에 대한 임시조치와 별도로 방송통신심의위원회의 심의를 요청하여 6월 삭제 결정이 내려지기도 하였다.

## 5. 인터넷 실명제

2004년부터 각 국민에게 출생시 부여되는 주민등록번호를 토대로 ‘의무적 인터넷 실명제’가 도입되었다. 인터넷 실명제는 익명 표현의 자유를 침해하고 국민의 정치참여를 위축시키며, 각 인터넷 사이트로 하여금 민감한 개인정보인 주민등록번호의 수집과 오남용을 부추긴다는 점에서 비판을 받고 있다.

5-1. 2004년 개정된 [공직선거법]에 따르면 선거운동 기간 중 모든 인터넷언론 게시판은 실명확인이 된 이용자에 한하여 글쓰기를 허용해야 하고, 관련된 기술적 조치를 취하지 않을 경우 과태료 처분을 받는다.<sup>33</sup> 2006년 5월 지방선거에서 실명제 시스템을 거부한 ‘민중의 소리’가 과태료 처분을 받았으며, 2007년 12월 대통령선거에서 실명제 시스템을 거부한 ‘참세상’이 과태료 처분을 받고 현재 재판 중이다.<sup>34</sup> 2007년 12월은 대통령 선거 시기이기도 하였지만 ‘차별금지법안’을 둘러싼 논란이 커질 때였다. 성별, 연령, 인종, 피부색 등 13개 영역에 대한 차별을 금지했던 본래 법안이 입법 과정에서 병력, 출신국가, 성적지향, 학력, 가족형태, 언어, 범죄경력 등 7개 영역을 삭제한 것을 두고 논쟁이 벌어졌다. 하지만 성소수자 등이 법안의 이해당사자들은 인터넷언론 게시판에서 벌어지는 논쟁에 참여할 수 없었다. 자신의 정체성이 실명으로 노출될 수 있기 때문이었다. 또한 대통령 후보자들의 입시 정책에 대해 공개적으로 평가할 계획이었던 한 청소년 단체의 활동이 실명제로 인하여 크게 위축되었다. 이 단체는 자신들의 활동에 호응하는 청소년들이 실명 인증을 하고 인터넷에 글을

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31 <http://blog.daum.net/cangmin/15706553> 민주당 최문순 의원에 의하면, 해당 언론사의 신고에 의해 임시조치된 건수는 NHN 22 건, Daum 276 건 등 총 298 건이고, 야후, 네이트, 파란닷컴 등 자료를 제출하지 않은 경우를 감안하면 실제 삭제되거나 임시조치된 건수는 더 많을 것으로 예상된다고 한다.  
<http://blog.daum.net/moonsoonc/8494304>

32 오마이뉴스 2009.5.8. [http://www.ohmynews.com/NWS\\_Web/view/at\\_pg.aspx?CNTN\\_CD=A0001127658](http://www.ohmynews.com/NWS_Web/view/at_pg.aspx?CNTN_CD=A0001127658), 프레시안 2009.5.8. [http://www.pressian.com/article/article.asp?article\\_num=60090508170951&Section=03](http://www.pressian.com/article/article.asp?article_num=60090508170951&Section=03),

33 [공직선거법] 제 82 조의 6(인터넷언론사 게시판·대화방 등의 실명확인)와 제 261 조(과태료의 부과·징수등)

34 인터넷 선거실명제 폐지 공동대책위원회 <http://freeinternet.or.kr/>, 참세상 헌법소원심판 청구서, 2009.2.26.

쓰는 과정에서 주민등록번호 상 나이가 노출되어 불이익을 받을 것을 우려하였다. 현행 공직선거법은 청소년의 선거운동을 금지하고 있기 때문이다.

5-2. 2007년 개정된 [정보통신망 이용촉진 및 정보보호 등에 관한 법률]에 따르면, 일일 방문자수 10만 명 이상의 포털, 언론, UCC 사이트들은 상시적으로 실명확인이 된 이용자에 한하여 글쓰기를 허용해야 하고, 관련된 기술적 조치를 취하지 않을 경우 과태료 처분을 받는다.<sup>35</sup> 2009년 2월 실명 확인 대상사이트가 37개에서 153개로 확대되었으며<sup>36</sup>, 이를 더욱 확대하기 위한 정부의 개정법률안이 현재 국회에서 논의되고 있다. 그러나 구글 코리아는 한국 정부가 요구한 본인확인제를 따르지 않겠다고 발표한 후 ‘한국’ 설정의 이용자의 글쓰기를 중단하였다. 이로 인하여 실명 인증을 하는 국내 사이트에서 구글 등 해외 사이트로 이메일 계정이나 블로그를 옮기는 ‘사이버 망명’이 늘고 있다.<sup>37</sup>

5-3. 2009년 개정된 [인터넷 주소자원에 관한 법률]에 따르면, 인터넷 도메인을 사용하려는 자가 실명이 아닐 경우 인터넷주소관리기관은 그 도메인 이름을 말소해야 하고, 관련된 조치를 취하지 않을 경우 과태료 처분을 받는다.<sup>38</sup>

## 6. 이용자 추적

인터넷 실명제 의무화 등으로 인해 인터넷 사업자들은 이용자의 개인정보를 상시적으로 보유하고 수사기관의 요청에 협조해 왔다. 수사기관이 이용자의 개인정보를 요청하는 과정에서 법원의 허가는 불필요하거나 형식적인 데 그치고 있다. 이로 인하여 뚜렷한 범죄 혐의가 없는 이용자의 개인정보들이 손쉽게 수사기관에 제공되어 왔으며, 상시적인 인터넷 사찰 의혹이 불거지고 있다. 수사기관이 인터넷을 사찰하고 있다는 인식은 일반 시민들로 하여금 권력에 비판적인 게시물을 쓸 때 중대한 위축 효과를 낳는다.

6-1. [전기통신사업법]에 따르면 수사기관이나 정보기관이 인터넷 사업자에게 이용자의 성명, 주민등록번호, 주소, 전화번호 등 통신자료를 요청할 때 서면에 의하도록 하였다. 그러나 서면 요청에는 범죄사실의 입증이나 법원의 영장이 불필요하며, 긴급할 때는 서면을 사후에

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35 [정보통신망 이용촉진 및 정보보호 등에 관한 법률] 제 44 조의 5(게시판 이용자의 본인 확인)와 제 76 조(과태료) 이 법에서는 ‘인터넷 실명제’를 ‘제한적 본인확인제’라고 지칭한다. 이 제도는 다른 이용자의 눈에 실명이 보이지 않지만, 사전에 실명 정보를 제출하지 않는 이용자에게 글쓰기 등 인터넷 이용 권한을 제한한다는 점에서 인터넷 실명제의 공통점을 공유하고 있다.

36 방송통신위원회에 따르면, 이는 본인확인제의 범위가 전체 대한민국 인터넷 이용자의 62%를 포괄하는 규모에서 90%를 포괄하는 규모로 확대되는 것이었다.

37 [http://googlekoreablog.blogspot.com/2009/04/blog-post\\_07.html](http://googlekoreablog.blogspot.com/2009/04/blog-post_07.html), 한겨레 2009.8.4.  
<http://www.hani.co.kr/arti/opinion/column/369454.html>

38 [인터넷 주소자원에 관한 법률] 제 11 조(도메인 이름 등의 등록)와 제 27 조(과태료)

제출해도 된다.<sup>39</sup> 수사기관과 정보기관의 통신자료 요청은 해마다 급증하는 추세에 있으며 지난해 인터넷에 대한 통신자료 요청은 119,280 건에 달했다. 2008년 10월, 정부와 경찰이 상시적으로 정부를 비판하는 인터넷 게시물에 대하여 사찰하고 그 게시자의 아이디 등 개인정보를 입수해온 사실이 알려졌다.<sup>40</sup>

▼ 통신수단별 통신자료 제공 건수 (문서별)

|      | 유선전화   | 이동전화    | 무선호출 | PC 통신·인터넷 | 합계      |
|------|--------|---------|------|-----------|---------|
| 2004 | 46,366 | 191,649 | 20   | 41,894    | 279,929 |
| 2005 | 56,614 | 244,976 | 23   | 41,158    | 342,771 |
| 2006 | 48,462 | 204,071 | 9    | 71,024    | 323,566 |
| 2007 | 57,375 | 275,338 | 4    | 93,691    | 426,408 |
| 2008 | 58,374 | 296,913 | 1    | 119,280   | 474,568 |

\*출처: 방송통신위원회(구 정보통신부)

6-2. [통신비밀보호법]은 수사기관이나 정보기관이 인터넷 사업자에게 글쓴이의 IP 주소와 인터넷 로그기록 등 통신사실확인자료를 요청할 때 법원의 허가를 받도록 하였으며 사업자에 협조 의무를 규정하였다. 그러나 법원에 허가를 받을 때 범죄사실을 입증할 필요가 없으며, 긴급할 때는 법원의 허가를 사후에 받아도 된다. 수사기관과 정보기관의 통신사실확인자료 요청은 해마다 급증하는 추세에 있으며 지난해 인터넷에 대한 통신자료 요청은 46,667 건에 달했다.<sup>41</sup>

▼ 통신수단별 통신사실확인자료 제공 건수 (문서별)

|      | 유선전화   | 이동전화    | 무선호출 | PC 통신·인터넷 | 합계      |
|------|--------|---------|------|-----------|---------|
| 2004 | 23,403 | 108,759 | 3    | 44,665    | 176,830 |
| 2005 | 21,636 | 118,930 | 10   | 54,793    | 195,369 |
| 2006 | 21,948 | 87,114  | 0    | 41,681    | 150,743 |
| 2007 | 31,337 | 110,738 | 0    | 41,584    | 183,659 |

39 [전기통신사업법] 제 54 조(통신비밀의 보호)

40 위클리 경향 797 호 2008.10.28.

<http://newsmaker.khan.co.kr/khnm.html?mode=view&code=115&artid=18592>, 한겨레 2008.10.5.

[http://www.hani.co.kr/arti/society/society\\_general/314066.html](http://www.hani.co.kr/arti/society/society_general/314066.html)

41 [통신비밀보호법] 제 13 조 (범죄수사를 위한 통신사실 확인자료제공의 절차)와 제 13 조의 4 (국가안보를 위한 통신사실 확인자료제공의 절차 등)

|      |        |         |   |        |         |
|------|--------|---------|---|--------|---------|
| 2008 | 37,912 | 128,166 | 0 | 46,667 | 212,745 |
|------|--------|---------|---|--------|---------|

\*출처 : 방송통신위원회(구 정보통신부)

6-3. [통신비밀보호법]은 수사기관이나 정보기관이 인터넷 사업자에게 인터넷 메일이나 비공개 글 등 통신비밀에 해당하는 내용에 대한 감청을 요청할 때 법원의 영장을 받도록 엄격히 규정하였다.<sup>42</sup> 그러나 실제로 법원에 영장을 받을 때는 그다지 엄격하게 심사되지 않기 때문에 법원의 기각률은 3.6%(2007년)에 그칠 뿐이다. 긴급할 때는 사후에 영장을 받아도 되며 36시간 이내 감청을 끝내면 영장이 불필요하다. 이 때문에 수사기관과 정보기관의 인터넷 감청은 해마다 급증하는 추세에 있다. 최소한 2004년부터는 개별 이메일이나 게시글이 아니라 인터넷 회선 전체에 대한 패킷 감청 영장도 발부되어 온 것으로 확인되었다.<sup>43</sup>

#### ▼ 통신수단별 감청 건수 (문서별)

|      | 유선전화 | 이동전화 | 무선호출 | PC 통신·인터넷 | 합계    |
|------|------|------|------|-----------|-------|
| 2004 | 887  | 265  | 0    | 461       | 1,613 |
| 2005 | 621  | 1    | 0    | 355       | 977   |
| 2006 | 577  | 0    | 0    | 456       | 1,033 |
| 2007 | 503  | 0    | 0    | 646       | 1,149 |
| 2008 | 506  | 0    | 0    | 646       | 1,152 |

\*출처 : 방송통신위원회(구 정보통신부)

## 7. 법률 개정 예정

이미 도입된 위 제도들 외에 정부와 여당은 인터넷을 규제하기 위한 법안을 다수 발의하여 국회에서 논의 중이다.

7-1. 정부는 인터넷 사업자가 신고자의 임시조치 요구를 따르지 않을 경우 과태료를 부과하고 모니터링을 의무화하는 내용의 법안을 발의하였다.

7-2. 여당 의원들은 사이버 모욕죄를 신설하여 형법상 모욕죄보다 가중처벌하고 당사자 고소 없이도 수사에 착수할 수 있도록 한 법안을 발의하였다.

42 [통신비밀보호법] 제 5 조 (범죄수사를 위한 통신제한조치의 허가요건), 제 6 조 (범죄수사를 위한 통신제한조치의 허가절차), 제 7 조 (국가안보를 위한 통신제한조치), 제 8 조 (긴급통신제한조치)

43 [통신비밀보호법] 제 13 조 (범죄수사를 위한 통신사실 확인자료제공의 절차)와 제 13 조의 4 (국가안보를 위한 통신사실 확인자료제공의 절차 등)

7-3. 정부와 여당은 인터넷 사업자에 대하여 감청설비 구비를 의무화하고 로그기록 보관을 의무화(data retention)하는 법안을 발의하였다.

## 8. 결론

2008년 이명박 정부가 들어선 이후 한국에서 인터넷 게시물에 대한 행정 규제와 형사소추가 늘고 있다. 이러한 규제들은 해당 게시자에 대한 불이익과 표현의 자유 침해로 가져오는 한편, 비슷한 의견을 가진 다른 시민들에게도 자기 검열을 강제함으로써 심각한 위축 효과(chilling effect)를 가져온다.

초기 네티즌들이 <사이버스페이스 독립선언문>에서 보여주었던 기대와 달리 오늘날 인터넷은 무한히 자유로운 매체라고 보기 힘들다.<sup>44</sup> 표현의 자유를 둘러싼 핵심적인 논란은, ‘정부’가 체제나 정권 유지를 위하여 국민의 표현물 배포를 자의적으로 금지하면서 불거진다. 오랜 군사독재정권 치하에서 벗어나 민주주의가 일정한 발전을 이루었다는 한국 사회이지만, 행정 검열을 둘러싼 논쟁은 신문·방송·서적·영화·만화 등 고전적 표현물의 뒤를 이어 인터넷에서도 계속되고 있다. 특히 인터넷 심의를 행정기관이 주도하는 것에 대한 논란이 뜨겁다. 인터넷 실명제 역시 국가가 강제하는 의무적 실명제라는 점에서 문제제기가 이루어진다.

다른 한편으로 표현물에 대한 사법적 판단을 둘러싼 논란도 끊이지 않는다. 한국에서는 과거부터 ‘음란’이나 ‘국가보안법상 이적성’에 대한 법원의 기준이 모호하여 표현의 자유를 침해한다는 지적이 계속되어 왔다. 또한 선거시기 후보나 정당에 대한 인터넷 게시물을 처벌하고 UCC 제작을 금지하는 것이 표현의 자유를 침해해 왔다. 최근에는 인터넷에서 허위의 통신이나 명예훼손에 대해서 형사처벌하는 것이 비판의 자유를 위축시킨다는 지적이 일고 있다. 무엇보다 정부나 권력자를 비판하는 글에 대하여 처벌하는 사례가 많아지면서 논쟁이 뜨겁다.

인터넷은 일반 시민이 접근할 수 있는 거의 유일한 매체이다. 표현의 자유는 일찍이 근대시민권의 핵심 권리 중 하나로 등장했지만, 주요 표현 수단인 언론과 출판 매체에 접근하기 어려운 일반 시민이 표현의 자유를 누리는 것은 쉽지 않았다. 그래서 누구나 미디어에 자유로이 접근하고 평등하게 사용할 수 있도록 표현의 자유를 실질적으로 보장해야 한다는 문제의식이 유네스코를 비롯하여 국제적으로 일었던 것이다. 인터넷은 이러한 문제의식에 답할 가능성이 있는 매체로 인류 역사에 등장했다. 최근 인터넷으로 인한 분쟁과 논란이 그치지 않는 것이 사실이고, 정부는 그러한 이유에서 신속하고 강력한 개입이 정당화하고 있다. 그러나 어떠한 경우에도 일반 시민의 표현의 자유라는 소중한 가치를 압살해서는 안 될 것이다.

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44 Jack Goldsmith and Tim Wu, 2006, *Who controls the Internet?: illusions of a borderless world*, Oxford University Press.



## **Singapore (Mr. Martyn See, Film Maker)**

The Singapore Government adopts a two-faced approach to civil and political liberties, no less encapsulated in Article 14 of the Singapore Constitution, which states that every citizen has the right to freedom of speech, expression, association and peaceful assembly. These rights are then subjected to the next two clauses which states that Parliament may by law impose restrictions on these rights in the interest of national security, foreign relations, public order or morality. Singapore has 84 Members of Parliament, 82 of whom are members of the ruling People's Action Party, which has governed the country since 1959.

There are three tiers of censorship in Singapore. The 1st tier is the legislations passed by Parliament which restricts freedom of expression. The 2nd tier of censorship is those imposed by government bodies which are authorized by law to draw up guidelines and policies pertaining to political expression. A key feature of this 2nd tier of censorship are the non-transparency and the nebulous nature of its implementation, which leads to a blurring of the the line of what is acceptable and non-acceptable speech. This in turn creates a climate where writers, bloggers, artists and politicians self-censor their speech in order that they do not overstep boundaries. This climate of self-censorship forms the 3rd tier of censorship in Singapore.

### **1. 1st tier of censorship**

**- What are some of the laws that restrict freedom of expression in Singapore?**

#### **1) Internal Security Act**

The Internal Security Act gives broad discretion to the Government to detain, without filing charges, anyone who is deemed to be a threat to national security. Detainees under the ISA have no recourse to the normal judicial system. The longest-held prisoner is Chia Thye Poh. He was an opposition Member of Parliament who was arrested and detained in 1966 and granted unconditional release in 1998, capping a 32 year incarceration. Suspicion of torture – including interrogation under freezing air-conditioned rooms, sleep deprivation, solitary confinement and physical assaults – still persists to this day. The government has repeatedly denied these charges, but acknowledged that “psychological pressure” is used on detainees. Human rights groups have been denied permission to visit detainees. At the end 2008, it was reported that 22 detainees remain under detention. The Government says they are held for terrorist-linked activities. Also, under the ISA, the Government may place restrictions on publications that incite violence, civil disobedience, threaten national interests, national security and public order. Residents in Singapore generally believe that the secret police, the Internal Security Department, monitors political speech and activity.

## **2) Newspaper and Printing Presses Act**

All publications in Singapore require a Government license. Under the the Newspaper and Printing Presses Act, the Minister has the discretion to grant and withdraw press licenses as he deems fit. Appointments and dismissal of shareholders and directors of newspaper companies are subjected to Government approval. Two companies, Singapore Press Holdings Limited (SPH) and MediaCorp, owned all nation-wide circulated newspapers, radio and TV stations. Many international newswire agencies and publications do operate out of Singapore. However, under the NPPA, the Government may limit the limit the circulation of foreign publication that it deems to be “interfering” in domestic politics. The Far Eastern Economic Review is currently banned in Singapore after it published an interview in 2006 with opposition politician Dr Chee Soon Juan. The importation and possession of FEER in Singapore is a criminal offence.

## **3) Broadcasting Act**

The Broadcasting Act authorizes the Media Development Authority to censor all broadcast media, internet sites, and all other media, including movies, videos, computer games and music. The Act also allows the minister of information to place restrictions on foreign broadcasters deemed to be “engaging” in domestic politics. The Government may also impose restrictions on the number of households receiving a broadcaster's programming, and a broadcaster may be fined up to \$100,000 SGD for failing to comply.

## **4) Seditious Act**

Another colonial-era law, the Seditious Act criminalizes any act, speech, words, publication or expression that incite disaffection against the Government or the administration of justice in Singapore, or to incite hatred amongst the citizens, or to create hostility between different races and classes in Singapore. It also allows the court to suspend any publication that is deemed to contain seditious content.

On October 7<sup>th</sup> of 2005, the Act was invoked for the first time in Singapore's history when two men were sentenced to jail terms for making racist comments on the internet. 27 year old Benjamin Koh Song Huat was convicted under two charges and jailed for one month while 25 year old Nicholas Lim Yew was given a nominal one day jail and fined a maximum \$5000 SGD. Two weeks later, another blogger, a 17 year old student, pleaded guilty to making racist remarks on his blog and was sentenced to 24 months supervised probation.

In 2006, it was reported that a 21 year old blogger with the moniker “Char” was placed under police investigation for posting cartoons of Jesus Christ on the internet.

On July 10 this year, 50 year old Ong Kian Cheong and his wife Dorothy Chan were sentenced to eight weeks jail under the Sedition Act for possessing and distributing anti-Muslim and anti-Catholic publication. They have withdrawn their appeals and are currently serving their sentences.

## **5) Civil and Criminal Defamation**

Defamation and libel suits filed by Singapore's political leaders against their critics have been so successful that it's chilling effects upon political expression in Singapore is by far the most severe.

In 1999, ten members of a Tamil-language publication, including a Government minister, filed a petition to wind up the opposition Workers' Party after the Party failed to pay over \$500,000 SGD in libel damages over an article published in the Party's newsletter. The Party did not collapse, but its leader JB Jeyaretnam (JBJ) was declared bankrupt and barred from contesting in elections. JBJ was Singapore's most sued politician. Over the course of three decades, he has paid millions of dollars to Singapore's leaders in libel damages. He had lost his house, his job and parliamentary seat. After returning to the political scene in 2008 with the formation of a new party, he passed away in September the same year.

Another opposition politician, Dr Chee Soon Juan, has been twice bankrupted by the courts for failure to pay government leaders. His party, the Singapore Democratic Party, is currently facing closure after it was found guilty of defaming Prime Minister Lee Hsien Loong and Minister Mentor Lee Kuan Yew over an article published in an election campaign newsletter in 2006. The plaintiffs sought and were awarded aggravated damages after they pointed out that the offending article was also available on the internet, and thus increasing its damage to the Lees' reputation.

Local opposition politicians are not the only ones who have faced the brunt of defamation and libel suits. Foreign publications like The Economist, Newsweek, Asian Wall Street Journal, International Herald Tribune, Bloomberg and Far Eastern Economic Review have been sued by Singapore officials or made to apologize and pay hefty fines.

Aside from civil defamation, Section 499 of Penal Code states that whoever makes or publishes any imputation intended to harm the reputation of another shall be charged for criminal defamation. In 2002, internet activist Zulfikar Mohamad Shariff had his computer seized by the police for possible criminal defamation after a posting he made had criticized Lee Kuan Yew. Shortly thereafter, Zulfikar left for Australia and the case has not been followed through. Convictions of criminal defamation may result in prison terms of up to two years.

Often, the mere prospect of libel action is sufficient deterrent for most bloggers. In 2005, student blogger Chen Jiahao, under the online moniker of Acid Flask, posted a series of articles critical of A\*Star, a government agency tasked to spearhead the development of the life sciences industry. It

was met by a stream of emails from its chairman Philip Yeo who demanded that Chen delete all postings mentioning him and A\*Star and threatened libel action if Chen did not comply. On 26 April 2005, Chen shut down his blog altogether and replaced it with a message of apology to Yeo. Other blogs who had reproduced the remarks also posted apologies or shut down out of fear of libel action.

## **6) Parliamentary Elections Act**

Singapore does not have an independent elections commission. The Elections Department comes directly the Prime Minister's office. The Parliamentary Elections Act gives the minister wide discretionary powers to regulate election advertising on the internet. During the General Elections in 2001, the Elections Department sent notices to local NGO Think Centre, the Singapore Democratic party (SDP) and Workers' Party to remove articles and links deemed to be unlawful. Government controls stepped up a notch in 2006 when a blanket ban on all political podcasts and videocasts was imposed during the General Elections. On April 25 2006, the SDP were warned that action would be taken against them if they did not remove podcasts from the party website. Within hours, the Party posted a notice on their website that the podcasts was suspended. The Act also requires that websites that "persistently promote political views" (*Sadasivan, 4 April 2006*) be required to be registered with the Government.

## **7) Miscellaneous Offences (Public Order and Nuisance) Act**

Under this Act, a police permit is required for any assembly or procession of 5 or more persons in any public space that are intended to demonstrate opposition to the views and actions of any person, to publicize a cause or campaign or to commemorate any event. Currently, there are seven ongoing trials pertaining to the alleged violation of this Act, all of which involves members of the opposition SDP. The convictions carry a maximum fine of \$10,000 SGD or six months prison terms.

## **8) Public Entertainment and Meetings Act**

The Public Entertainment and Meetings Act states that all public entertainment, including political meetings and rallies, require a police permit. In practice, while exemptions are made for events featuring cultural, arts and entertainment, the police routinely reject permit applications for outdoor political protests, demonstrations and assemblies. Opposition politician Chee Soon Juan has been charged numerous times for speaking in public without a licence: 20 days jail in 1999, \$3000 SGD fine in July 2002, five weeks jail in October 2002 and five weeks jail in November of 2006. He is currently awaiting appeal on three other convictions and awaiting trial for four more counts for alleged violation of this Act.

## 9) Undesirable Publications Act

The Undesirable Publication Act states that any material, including publication, discs, tapes, photographs, paintings, graphics, sculpture or article, which has content that are likely to deprave or corrupt a person viewing or hearing them, will be deemed objectionable. The powers of the Act allow for arrest without warrant and the conviction carries a maximum fine of \$10,000 SGD or two year prison sentence.

## 10) Films Act

Section 14 of the Films Act requires that all films and videos be submitted to the Board of Film Censors for licensing. The Act makes no exception to video formats so it would include video images stored in mobile phones and videos produced for the internet. In practice, the authorities do not enforce this law strictly except when the films are screened to an audience in a public space. In a rare operation undertaken on May 17, 2008, officers from the police and censorship board turned up in force at the Peninsula-Excelsior Hotel to disrupt a private premiere and seized a dvd copy of a film entitled *One Nation Under Lee*. Its director Seelan Palay is currently undergoing police investigations for the screening of an unlicensed film.

Section 33 of the Films Act criminalizes the making, import, distribution and exhibition of any film that makes biased references to political persons or matter in Singapore. The convictions carry a maximum sentence of \$100,000 SGD fine or a two year imprisonment. For 15 months between 2005 and 2006, I was placed under police investigation for making a film on opposition leader Chee Soon Juan, entitled *Singapore Rebel*. During that time, I was made to surrender all my tapes and even the camera to the police. Over three interrogation sessions, questions were asked about my blog, my source of funding, my meeting with opposition members, my interest in politics, my association with other political persons or groups. Meanwhile, the film was leaked onto the internet and was generating interests around the world. In August on 2006, the police dropped the investigation by issuing me a “stern warning” in lieu of prosecution. Just a month ago on Sept 11 2009, the ban on *Singapore Rebel* was lifted.

While undergoing investigations for the above, I made a second political film. Entitled *Zahari's 17 Years*, the film is a protracted interview with former political prisoner Said Zahari. On 10 April 2007, the Government issued a public statement stating that the film would be banned under Section 35 of the Films Act, which allows the Minister discretionary powers to ban any film which he deems to be against public interest. Again, I had to surrender my tapes to the authorities. But unlike the previous case, there was no police probe. Again, the video found its way on the internet. To date, there is no reported case of Government intervention to remove political videos uploaded on the internet.

## **11) Internet Freedom**

Singapore has one of the highest internet penetration rates in the world at 66.8% and its broadband capacity covers 99% of the island. All Internet Service Providers (ISPs) are government-owned or government-linked and they are subjected to Media Development Authority's (MDA) Internet Code of Practice. The MDA is empowered to order service providers to block websites that are deemed to undermine public security, national defence, racial and religious harmony, or public morals.

Although the MDA ordered ISPs to block 100 sites that the government considered pornographic, in general only a few websites are blocked. Sites that are blocked include a few pornographic URLs, an illegal drug site and a fanatical religious site. An Open Net Initiative study notes that Singapore's technical filtering system is among the most limited. However, the study concludes that while free speech in Singapore is less constrained than in China and Saudi Arabia, where there are significant internet filtering, Singapore imposes far more stringent constraints on its citizens' expression.

### **2. 2nd tier of censorship**

The 2nd tier of censorship involves a combination of rules and policies enacted by government bodies, particularly the Media Development Authority, and a general pervasive fear of being monitored by the authorities.

Indeed, the law permits Government monitoring of internet use. A range of laws, such as the Computer Misuse Act, grants the police broad powers to search any computer without a warrant. There is no general data protection or privacy law in Singapore. The US State Department Human Rights report states that "law enforcement agencies have extensive networks for gathering information and conducting surveillance and highly sophisticated capabilities to monitor telephone and other private conversations. It was believed that the authorities routinely monitored telephone conversations and the use of the Internet. It was widely believed that the authorities routinely conducted surveillance of some opposition politicians and other government critics." The Singapore Government has not refuted this allegation.

In May of 1999, after a law student complained to police that someone with an account in the Home Affairs Ministry had hacked into her computer, the Ministry disclosed that it had secretly scanned the computers more than 200,000 SingNet customers, ostensibly for viruses.

### **1) The Media Development Authority**

The Media Development Authority (MDA) is a government body which has been authorized to regulate internet use. Although it publicly advocates the use of a "light-touch" approach to governing the internet, the body has wide ranging powers to draw up subsidiary legislations for internet use. For instance, under its Internet Code of Practice, MDA can direct any Internet Content

Provider to remove any material deemed to be objectionable on grounds of public morality, public order, public security and national harmony. Under its broadcasting (Class License) Notification, the following are required to register with the authority.

1. Internet Service Providers, including localised and non-localised Internet Service Resellers.
2. Political parties' websites.
3. Any website that propagates promotes or discusses political or religious issues relating to Singapore.
4. Any website that provides online news for a subscription fee.

In August of 2001, just before the General Elections, political discussion website Sintercom came after pressure from the Government to register as a political site. Its webmaster Dr Tan Chong Kee said that registration would make the website vulnerable to libel suits and that the site would have to practise self-censorship as a result. Instead, he chose to close the site, which had operated for eight years prior to Government pressure.

Since 2001, there has been no report of any websites that has come under the same scrutiny. But due to the uncertainty of when and how such a law will be enforced, most political blogs today are created under pseudonyms, as many are unsure if they will be targeted by Government authorities for registration, which requires the applicant to disclose personal details such as name of employer and salary. Two bloggers who did identify themselves came under swift attack from the authorities.

## **2) Case of Robert Ho**

Robert Ho Chang is Singapore's leading cyber dissident. Since 2001, he has been arrested no less than on five occasions for articles posted on the internet.

During the General Elections in 2001, the 58 year former journalist posted an article on two websites entitled "Break the law and get away with it, like your PAP leaders," urging opposition candidates to enter polling stations, an act deemed illegal by law even though PAP candidates committed the same act in the previous elections of 1997. A month later after the General Elections, on 16th of November 2001, eight police officers entered his home and carted away his computer, CD ROMs, modem and cables. Next day, he was produced in court and charged for "an attempt to incite disobedience to the law," marking Singapore's first-ever prosecution of online speech. Ho was then taken to the Institute of Mental Health for "psychiatric evaluation". On 14th of December 2001, the press reported that Ho was acquitted because "he was found to be mentally ill."

On July 3, 2002, Ho was arrested again in his home and his computer seized. The alleged offense was criminal defamation over two unspecified articles which he had posted in an online forum. Three weeks later on July 26th 2002, he was forcibly taken by two policemen from his home, driven

to a prison cell in the police station and then transferred, yet again, to the Institute of Mental Health (IMH).

On 27 February 2005, Ho was again arrested after he had gone to a shopping mall to distribute anti-government leaflets. Again, he was driven to the IMH for further psychiatric tests.

More recently, on the 3rd of June 2009, after Ho had posted online a police complaint he had filed against the Government for an alleged rigging of the 1997 General Elections, three policemen entered his apartment and seized his computer.

Despite all the arrests, Ho has yet to be convicted of any of the charges leveled against him by the authorities. And despite the repeated seizing of his computers over the years, Ho has never stopped blogging, even as he currently undergoes yet another round of police investigation for possible criminal defamation.

### **3) Gopalan Nair**

59 year old Gopalan Nair was a former Singaporean opposition politician who had emigrated to the United States and taken up US citizenship. In May of 2008, he attended a three-day court hearing in Singapore to assess damages in a defamation suit that Prime Minister Lee Hsieng Loong and Minister Mentor Lee Kuan Yew had won against the opposition Singapore Democratic Party.

In his blog posting dated 29th of May 2008, Nair wrote that the presiding judge Belinda Ang was “throughout prostituting herself during the entire proceedings, by being nothing more than an employee of Mr Lee Kuan Yew and his son and carrying out their orders,” and further challenged Lee to sue him for his remarks.

A day later, five plainclothes police officers arrested Nair as he stepped out of the elevator of his hotel. After being held in a police lock up for 5 days, Nair was produced in court to face charges. Over 4 days, State prosecutors filed a flip-flop of charges against Nair, including insulting a judge in an email, insulting a civil servant in a two-year old email and the Sedition Act for insulting a judge in his blog posting. All three charges were eventually dropped in favour of Section 228 of the Penal Code for insulting a High Court judge in his blog post.

After an 8-day trial, on September 17th 2008, Nair was sentenced to three months imprisonment. Prior to the conviction, Nair had removed all postings deemed by the Attorney-General to be unlawful.

After his release from prison, on 28th November 2008, Nair wrote from the United States on his blog that he would be withdrawing all undertakings and apologies made while under Singapore



custody, and proceeded to repost all the articles which he had removed while in Singapore. He is currently barred from entering Singapore again unless he obtains prior permission from the Singapore Government. Throughout 2009, he has posted a monthly average of 15 articles on his blog, all of which highly critical of Lee Kuan Yew and the Singapore Government.

### **3. 3rd tier of censorship**

In Singapore, every time politically sensitive subjects are raised in public, there is great uneasiness that one's phone is being tapped, emails monitored, movements and speech recorded. The defense against this perceived State surveillance is often avoidance – that is to say – stay away from discussing politics in public, stay away from activities or speech that may put one under surveillance. This climate of political fear creates a culture of self-censorship, even on the internet.

### **4. Conclusion - One step forward, two steps back**

The Singapore Government adopts a one step forward, two steps back approach in calibrating space for political expression.

The rules governing Speakers' Corner, the gazette free speech zone in the city-state's downtown business district, was amended in September of 2008 to allow for protests and demonstrations. However, in July this year, the police installed five CCTVs in the vicinity of the park with a view to monitor activities on its grounds. Similarly, a Films Act amendment in March this year had allowed for some types of political films to be made, such as live recordings of political events and election manifestos, but introduced new restrictions such as the prohibition of dramatisation, animation and scenes of illegal activities in political films. A new Public Order Act exempts cultural and recreational events from police licences but tightens the noose on all cause-related activities. By the time the APEC Summit gets underway in Singapore next month, the Act will require that all public protests be licensed by the police, including those staged by one person.

In conclusion, even as the internet has provided an avenue for Singaporeans to express themselves, much of what gets said in cyberspace remain in cyberspace, as the laws governing political expression in general has not changed, and in some cases, further tightened.

## 싱가포르 (마틴 씨, 영화감독)

싱가포르 정부는 모든 시민은 언론, 표현, 결사 및 평화적 집회의 자유를 가진다고 명시된 헌법 제 14 조의 시민적 및 정치적 자유에 대해 이중적인 태도를 보이고 있다. 이러한 권리는 싱가포르 의회가 이들 권리에 대하여 국가 안보, 외교관계, 공공질서 혹은 도덕을 위하여 법률에 의하여 제한을 가할 수 있다고 규정한 이어지는 두 조항에 의한 제약을 받는다. 싱가포르에는 84 명의 국회의원이 있는데 이 중 82 명이 1959 년부터 싱가포르를 집권해 온 여당인 인민 행동당(People's Action Party)의 당원이다.

싱가포르의 검열은 세 단계로 이루어진다. 첫번째 단계는 표현의 자유를 제한하는 의회입법이다. 검열의 두번째 단계는 법률에 의하여 정치적 표현과 관련된 가이드라인과 정책을 수립할 수 있도록 허용된 정보기관들에 의한 것이다. 이 두번째 단계 검열의 핵심적인 특징은 불투명하고 모호한 그 적용인데 이는 허용가능한 표현과 허용되지 않는 표현의 경계를 불분명하게 만든다. 이는 다시 작가, 블로거, 예술가, 그리고 정치인으로 하여금 그 경계를 넘지 않기 위하여 그들의 표현에 대한 자기검열을 하도록 하는 분위기를 조성한다. 이러한 자기검열의 분위기가 싱가포르의 제 3 단계 검열을 만든다.

### 1. 1 단계 검열 (1st tier of censorship)

- 싱가포르에서 표현의 자유를 제한하는 법률 -

#### 1) 국내안보법 (Internal Security Act: ISA)

국내안보법에 따르면 정부는 국가 안보를 위협하는 사람으로 간주된 이에 대해 기소 없이 구금할 수 있는 광범위한 재량을 가진다. 이 법에 따르면 피구금자들은 일반적인 사법절차에 의지할 수 없다. 야당 의원 차이 타이 포(Chia Thye Poh)는 1966 년에 체포 및 구금되었다가 1998 년 조건 없이 석방되기까지 32 년간 투옥되었던 최장기수다. 오늘날까지도 여전히, 혹한의 에어컨 가동 방에서의 심문, 수면 박탈, 독방감금 및 신체적 공격 등 고문에 대한 의심이 계속되고 있다. 정부는 이러한 혐의에 대하여 지속적으로 부인해왔으나 피구금자들에 대해 “정신적 압박”이 이용되었음은 인정했다. 인권단체의 피구금자 방문 요청은 거부되어 왔다. 2008 년 말, 22 명이 구금상태에 처해있다고 보고되었다. 정부는 이들이 테러리스트 관련 활동을 이유로 구금되어 있다고 주장한다. 또한, 이 법에 따르면 정부는 폭력 혹은 시민적 불복종을 야기하거나, 국가이익, 국가 안보 및 공공 질서를 위협하는 출판물에 대해 제한을 가할 수 있다. 싱가포르 시민들은 일반적으로 비밀경찰과 국내안보국이 정치적 발언과 활동을 감시한다고 믿고 있다.

## 2) 신문 및 인쇄물 법 (Newspaper and Printing Presses Act)

싱가포르의 모든 출판물은 정부의 허가를 필요로 한다. 신문 및 인쇄물 법에 의하면, 장관은 그가 적절하다고 판단하면 언론에 대한 허가를 부여하거나 철회할 수 있는 재량권을 가지고 있다. 또한 신문사의 주주 및 이사에 대한 임명과 해임은 정부의 승인을 요한다. 싱가포르 프레스 홀딩스 리미티드(Singapore Press Holdings Limited: SPH)와 미디어코(Media Corp)라는 두 회사는 모든 전국 보급 신문, 라디오 및 텔레비전 방송국을 소유해왔다 많은 국제 뉴스 에이전시와 출판사는 국외에서 활동하고 있다. 그러나 이 법에 따르면 정부는 국내 정치에 “개입”하는 것으로 간주된 외국 출판물의 보급을 제한할 수 있다. 파이스턴 이코노미 리뷰(Far Eastern Economic Review)는 야당정치인 치 순 주안(Chee Soon Juan) 박사와의 2006 년 인터뷰를 발행한 뒤 최근 싱가포르에서 금지되었다. 현재 이 잡지의 수입이나 소지는 형사처벌의 대상이다.

## 3) 방송법 (Broadcasting Act)

방송법은 미디어 발전국 (Media Development Authority)에 모든 방송 미디어, 인터넷 사이트 및 영화, 비디오, 컴퓨터 게임 및 음악 등 모든 매체를 검열할 수 있는 권한을 부여하고 있다. 이 법에 따라 정보부는 국내 정치에 “관여”하는 것으로 간주된 외국 방송에 대해 제한을 가할 수 있다. 또한 정부는 방송 프로그래밍을 수신하는 가정의 수를 제한할 수 있고 해당 방송국이 이를 어길 시에는 십만 싱가포르 달러 이하의 벌금을 부과할 수 있다.

## 4) 선동법 (Sedition Act)

또 하나의 식민지 시대 유산인 선동법은 싱가포르 정부 혹은 사법당국에 대한 불만을 선동하거나, 시민들간의 혐오를 선동하거나 혹은 다른 민족 혹은 계급간의 적대감을 일으키는 모든 행동, 발언, 어휘, 출판 혹은 표현을 범죄화하고 있다. 또한 이 법은 선동적인 내용을 담고 있다고 간주되는 모든 출판물에 대해 법원이 발행/보급 정지를 할 수 있도록 하고 있다.

2005 년 10 월 7 일, 선동법이 싱가포르 역사상 최초로 적용되어 인터넷상에서 인종주의적 글을 남긴 두 남성이 징역형을 선고받았다. 27 세의 벤자민 코 송 후앗(Benjamin Koh Huat)이라는 남성은 두 가지 혐의로 유죄를 선고받고 한달 징역형에 처해졌으며, 25 세 남성인 니콜라스 임 예위(Nicholas Lim Yew)는 일일 구류형과 5000 싱가포르 달러의 벌금형을 선고받았다. 2 주 후 또 다른 17 세 학생 블로거는 인종주의적 글들을 자신의 블로그에 올린 혐의로 24 개월 집행유예를 선고받았다.

2006 년 닉네임 “차르”(Char)를 사용하는 21 세의 블로거는 예수에 대한 만화를 인터넷에 게시한 것을 이유로 경찰의 조사를 받았다.

같은 해 7월 10일, 50세 옹 키안 청(Ong Kian Cheong)과 그의 아내 도로시 찬(Dorothy Chan)은 반무슬림과 반카톨릭 출판물을 소지하고 배포한 혐의로 선동법에 의거하여 8주의 징역형에 처해졌다. 그들은 현재 항소를 취하하고 징역을 살고 있다.

## 5) 민사상 및 형사상 명예훼손 (Civil and Criminal Defamation)

싱가포르 정치지도자들이 그들의 비판하는 이들에 대하여 제기한 명예훼손 및 모욕 소송은 너무나도 성공적이었기 때문에 싱가포르 내의 정치적 표현에 대한 위축효과는 그 정도가 가장 심각하다.

1999년 정부의 한 장관을 포함한 타밀어 출판사 구성원 10명은 야당인 노동당(Workers' Party)이 그 당의 뉴스레터에 실린 기사의 모욕적인 내용을 이유로 한 손해배상금 500,000 싱가포르 달러를 지급하지 않자 이 당을 해산시켜야 한다는 청원을 제기했다. 노동당은 해산되지 않았지만 이 정당의 지도자인 제이비 제야르트남(JB Jeyaretnam, JBJ)은 파산선고를 받았고 선거에 입후보할 수 없게 되었다. JBJ는 싱가포르에서 가장 자주 피소된 정치인으로 30년 동안, 모욕을 이유로 한 손해배상금으로 정치지도자들에게 수백 만 달러를 지급했다. 이로 인해 그는 집과 직장 및 의원직을 상실했다. 그는 2008년 정치계에 다시 등장하여 새로운 정당을 수립하였으나 같은 해 9월 세상을 떠났다.

또 다른 야당 정치인 치 순 주안(Chee Soon Juan) 박사는 정부 지도자들에게 손해배상금을 지급하지 못해 두 번이나 법정 파산했다. 그의 정당인 싱가포르 민주당 (Singapore Democratic Party)은 2006년 선거 캠페인 뉴스레터에 현 수상인 리 후시안 룡(Lee Hsien Loong)과 자문 장관인 리관유(Lee Kuan Yew)에 대한 기사를 실었다가 이 기사가 명예훼손으로 인정되면서 현재 폐쇄위기에 처해있다. 원고들이 해당 기사가 인터넷에서도 볼 수 있어 두 정치 지도자의 손해를 증가시켰다고 주장한 후 법원은 원고측의 가중된 손해를 인정했다.

명예훼손과 모욕소송은 단지 국내 야당 정치인들에 국한된 것이 아니다.

이코노미스트(Economist), 뉴스위크(Newsweek), 아시아 월스트리트 저널(Asia Wall Street Journal), 인터내셔널 헤럴드 트리뷴(International Herald Tribune), 블룸버그(Bloomberg) 및 파이스턴 이코노미 리뷰(Far Eastern Economic Review)와 같은 외신 출판물 역시 싱가포르 정부관계자에 의해 소송을 당하거나 사과를 하고 고액의 벌금을 내야 했다.

민사상 명예훼손과 별개로, 형법 제 499조에 따르면 남의 명예를 훼손할 의도를 가진 비방 글의 출판 행위는 명예훼손죄에 해당하게 된다. 2002년 인터넷 활동가 줄피커 모하메드 샤리프(Zulfikar Mohamad Shariff)는 리관유를 비판한 내용을 인터넷에 게시하여 명예훼손 혐의를 받아 경찰에 의해 컴퓨터를 압수당했다. 사건 직후 줄피커는 호주로 떠났고 사건은 진척이 없었다. 명예훼손죄가 인정될 경우 2년 이하의 징역형이 선고될 수 있다.

때로는 단순히 모욕 행위로 간주될 수 있다는 예상만으로도 다수의 블로거들의 표현을 저지시키기에 충분하다. 2005년 닉네임 애시드 플랙 (Acid flack)을 사용하는 한 대학생

블로거 첸 지하오(Chen Jiahao)는 생명과학 발전 분야의 선봉장 격인 정부기관, 에이 스타(A\*Star)에 대한 일련의 비판성 글을 게시하였다. 이에 대하여 이 기관의 국장인 필립 여(Philip Yeo)는 수 차례 이메일을 보내 그와 그의 기관과 관련된 모든 게시물을 삭제하도록 요구하였으며 이를 실행하지 않을 경우 모욕죄로 고소할 것이라고 협박했다. 이에 첸은 2005년 4월 26일 자신의 블로그를 완전 폐쇄하고 그 블로그를 여 국장에 대한 사과문을 게시한 페이지로 대체했다. 다른 블로그들도 마찬가지로 모욕죄에 대한 공포로 사과 메시지를 게시하고 해당 블로그를 폐쇄했다.

## 6) 의회 선거 법 (Parliamentary Elections Act)

싱가포르 정부는 독립된 선거위원회를 설치하지 않고 국무총리 직속으로 선거국을 두고 있다. 의회 선거법에 따라 총리는 인터넷상의 선거 광고에 관한 광범위한 재량권을 가지고 있다. 2001년 총선 당시, 선거국은 지방 비정부기구인 씽크 센터(Think Centre), 싱가포르 민주당과 노동당에 불법으로 간주되는 기사와 링크를 삭제할 것을 요구했다. 2006년 정부의 통제는 강화되었는데 총선 기간 동안 모든 정치적인 팟캐스트(podcasts)와 비디오게시물이 금지됐다. 2006년 4월 25일, 싱가포르 민주당은 해당 정당 웹사이트에서 문제의 팟캐스트(podcasts)를 삭제하지 않을 경우 그에 상응하는 조치를 취하겠다는 협박을 받았다. 몇 시간 후 해당 정당은 정부 고지 내용을 정당 웹사이트에 게시하였고 해당 팟캐스트(podcasts)은 삭제되었다. 이 법에 따르면 “지속적으로 정치적인 견해를 드러내는”(살다시반(*Saldasivan*), 2006년 4월 4일) 웹사이트는 정부에 등록해야 한다.

## 7) 기타 위반 (공공질서 및 방해) 법 (Miscellaneous Offences (Public Order and Nuisance) Act)

이 법에 따르면, 다른 사람의 의견이나 행위에 대한 반대를 표명하거나 특정한 주장이나 캠페인을 선전하거나, 특정 사건을 기념하기 위하여 공공장소에서 이루어지는 5명 이상의 사람들의 모든 집회 혹은 행진은 경찰의 허가를 받아야 한다. 현재, 이 법을 위반한 혐의와 관련하여 7개의 소송이 진행 중이며 모든 사건이 야당인 싱가포르 민주당 당원과 관련되어 있다. 혐의가 인정되면 최고 만 싱가포르 달러에 이르는 벌금형이나 6개월 구금형에 처해진다.

## 8) 공연 및 행사법 (Public Entertainment and Meetings Act)

공연 및 행사법에 따르면 정치적 회합과 집회를 포함하는 모든 공연 및 행사는 경찰의 허가를 받아야 한다. 실제로, 문화적, 예술적 및 오락 행사에 대한 예외가 존재하지만, 경찰은 옥외 정치적 시위, 데모 및 집회에 대한 허가 신청서를 거부하는 경우가 다반사다. 야당 정치인인 치순 주안(Chee Soon Juan)은 허가 없이 대중 앞에서 발언하였다고 하여 여러 차례 기소되었다. 그는 1999년 20일 징역형, 2002년 7월 3천 싱가포르 달러 벌금형, 2002년 10월 5주간 징역형, 그리고 2006년 11월 5주간 금고형을 받았다. 그는 현재 이 법 위반을 이유로 한 세건의 다른 사건 유죄 판결에 대해 항소 중이고 또 다른 4건의 사건에 대한 재판을 진행 중에 있다.

## 9) 불온출판물법(Undesirable Publications Act)

불온출판물법은 남을 헐담하거나 훼손할 가능성이 있는 내용을 지닌 서적, 디스크, 테이프, 사진, 그림, 그래픽, 조각품 혹은 물품 등 어떤 물건도 문제가 될 수 있음을 규정하고 있다. 이 법에 따라 경찰은 영장 없이 체포할 수 있는 권한을 가지며 혐의가 인정될 시 최고 만 싱가포르 달러의 벌금형 혹은 2년의 징역형에 처해진다.

## 10) 영화법 (Films Act)

영화법 제 14 조에 의해 싱가포르의 모든 영화와 비디오는 영화검열위원회(Board of Film Censors)에 제출되어 허가를 받아야 한다. 이 법은 휴대폰 혹은 인터넷에 게시되는 영상을 포함한 모든 비디오 형태에 예외 없이 적용된다. 실제로, 관련당국은 공공 장소에서 상영하는 비디오를 제외하고는 이 법을 엄격하게 집행하지는 않는다. 2008년 5월 17일, 보기 드물게 이루어진 단속에서 경찰과 검열위원회 직원은 페닌술라 호텔에서 열린 한 사적인 시사회를 급습하여 “리 총리하의 하나의 나라 (One Nation Under Lee)” 라는 제목의 DVD 를 압수했다. 이 영화의 감독 시란 팔레이 (Seelan Palay)는 허가받지 않은 영화를 상영한 혐의로 현재 경찰의 조사를 받고 있다.

영화법 제 33 조에 따르면 싱가포르의 정치인사 혹은 정치적 문제에 대해 왜곡된 견해를 제공하는 모든 영화의 제작, 수입, 배포 및 전시는 범죄행위이다. 혐의가 인정되면 최고 십만 싱가포르 달러에 달하는 벌금형이나 2년의 징역형에 처해진다. 2005년에서 2006년 사이 15개월 동안, 나는 야당 정치지도자 치 순 주안(Chee Soon Juan)에 대한 영화 “싱가포르의 반역자(*Singapore Rebel*)” 를 제작했다는 이유로 경찰의 조사를 받았다. 그 당시 나는 모든 테이프와 심지어는 카메라를 경찰에 넘겨야 했다. 세 차례의 심문 동안 나의 블로그, 자금의 출처, 야당 정치 인사들과의 만남, 나의 정치적 관심, 다른 정치인 혹은 그룹과의 연계 등에 대한 질의를 받았다. 한편, 내 영화는 인터넷에 유출되어 전 세계의 관심을 끌고 있었다. 2006년 8월, 경찰은 기소 대신 “엄중 경고장(stern warning)”을 나에게 발행하며 수사를 철회했다. 한 달 전인 2009년 9월 11일, 문제의 영화 “싱가포르의 반역자”에 대한 금지가 해제되었다.

상기 사건 조사가 진행되는 동안, 나는 두 번째 정치적 영화를 만들었다. “자하리의 17년(*Zahari's 17 Years*)”이라는 제목의 이 영화는 정치범인 새드 자하리(Said Zahari)의 장시간의 인터뷰를 담고 있다. 2007년 4월 10일, 정부는 공개적인 성명을 통하여 총리에게 영화의 내용이 공익을 해치는 경우 이를 금지시킬 수 있는 재량권을 부여한 영화법 제 35 조에 의해 이 영화가 금지될 수 있다고 발표했다. 나는 다시 관련당국에 내 테이프를 넘겨야 했는데 이전 사건과 다르게 경찰 조사를 받지 않았다. 영화는 다시 인터넷을 통해 공개되었고 현재까지 인터넷에 게시된 정치적인 영상물을 삭제하려는 정부의 시도는 알려진 바 없다.

## 11) 인터넷 자유 (Internet Freedom)

싱가포르의 66.8%라는 세계적으로 높은 인터넷 보급률은 가지고 있고 광케이블 역량은 전국의 99%에 이른다. 모든 인터넷 서비스 제공자는 정부소유이거나 정부와 연계되어 있고

미디어발전국(Media Development Authorities, MDA)의 인터넷 실천규범(Internet Code of Practice)을 따른다. 미디어발전국은 인터넷 서비스 제공자들에게 공공 안보, 국가 방위, 인종적 및 종교적 조화 혹은 공중 도덕을 해칠만한 것으로 간주되는 웹사이트를 폐쇄하도록 명령할 수 있는 권한이 있다. 미디어발전국은 정부가 지목한 100 개의 포르노 사이트를 폐쇄하라고 인터넷 서비스 제공자에게 명령을 하였으나 사실상 몇 곳만 폐쇄되었다. 포르노 사이트 몇 곳과, 불법 마약 사이트 및 광신도적인 종교 사이트를 포함한 몇 개의 사이트가 폐쇄되었다. 오픈 넷 이니셔티브(Open Net Initiative)의 연구는 싱가포르의 기술적인 필터링 시스템이 가장 제한적으로 운영되는 시스템 중 하나라고 밝혔다. 하지만, 중국과 사우디아라비아에 비해 싱가포르는 언론의 자유가 덜 제한적일지라도 그 시민들의 표현에 대해서는 훨씬 엄격한 제한을 가한다고 이 연구는 결론내렸다.

## 2. 2 단계 검열 (2nd tier of censorship)

정부기관, 특히 미디어발전국이 정한 정책과 규칙의 조합, 그리고 일반적으로 광범위하게 퍼져있는 당국의 검열에 대한 공포가 2 단계 검열에 해당한다.

실제로 정부는 합법적으로 인터넷 사용을 감시할 수 있다. 예컨대 컴퓨터오용법(Computer Misuse Act)에 따르면 경찰은 영장 없이 모든 컴퓨터를 수색할 수 있는 광범위한 권한을 가지고 있다. 싱가포르에는 자료보호 혹은 사생활보호법이 없다. 미국 국무성 인권보고서는 다음과 같이 언급하고 있다. “경찰기관은 정보수집과 감시를 위한 광범위한 네트워크와 전화도청, 사적인 대화 감청을 위한 고도로 정교한 능력을 보유하고 있다. 정부당국의 전화 도청과 인터넷 사용에 대한 감시는 일상적인 것으로 알려져있다. 또한 몇몇 야당 정치인과 정부 비판자들에 대한 감시 역시 일상적으로 이뤄지고 있는 것이 알려져있다.” 싱가포르 정부는 이러한 주장에 대해 반박하지 않고 있다.

1999 년 5 월, 한 법대 학생이 내무부 소속 계정 아이디에 의해 자신의 컴퓨터가 해킹당했다고 경찰에 신고하였는데, 내무부는 이에 대해 20 만 명의 싱넷(SingNet) 방문객의 컴퓨터를 비밀리에 조사하였고 이는 바이러스 때문이었다는 표면적인 이유를 밝혔다.

### 1) 미디어발전국 (The Media Development Authority)

미디어발전국 (이하 ‘MDA’)은 인터넷 사용을 규제하는 정부기관이다. MDA 는 공개적으로는 인터넷 규제에 대한 “느슨한” 접근을 지지하고 있으나 실제로는 인터넷 사용과 관련된 부속적인 규범을 생산해낼 수 있는 광범위한 권한을 가지고 있다. 예를 들어, 그 인터넷 실천규범에 따라 MDA 는 인터넷 콘텐츠 제공자에게 공중 도덕, 공공 질서, 공공 안보 및 국가 통합을 해칠만한 근거가 있다고 간주되는 자료를 삭제하도록 명령할 수 있다. 그 방송 (등급 허가) 고시(Broadcasting (Class License) Notification)에 따르면 다음과 같은 내용이 MDA 에 등록되어야 한다.

1. 지역화 혹은 지역화되지 않은 인터넷 서비스 소매상을 포함한 인터넷 서비스 제공자

2. 정당 웹사이트
3. 싱가포르의 정치 및 종교 이슈와 관련된 내용을 논의하거나 선전 혹은 광고하는 모든 웹사이트
4. 구독료로 운영되는 모든 뉴스 제공 웹사이트

총선 직전인 2001년 8월, 정치 토론 웹사이트인 시네터컴(SINETERCOM)은 정치 사이트로 등록하라는 정부의 압력에 직면했다. 해당 사이트의 웹마스터인 탄 총 키(Tan Chong Kee) 박사는 등록을 하게 될 시 모욕 소송에 취약하게 되어 결국 자기 검열을 하게 될 것이라는 입장을 밝혔다. 그는 등록을 하는 대신 정부의 압력이 있기 전부터 8년간 운영했던 해당 사이트를 폐쇄하기로 결정했다.

2001년 이후, 동일한 감시를 받은 웹사이트는 보고된 바 없다. 그러나 언제 어떻게 관련 규정이 집행될지 불확실하기 때문에, 대부분의 정치적 블로그는 익명으로 개설되고 있다. 또한 개인 신상정보, 직원의 이름 및 임금 내역을 공개하도록 하는 정부당국의 등록의 표적이 될 수 있다고 불안해 한다. 자신들의 신상을 공개한 두 명의 블로거가 당국의 심한 공격을 받은 적이 있다.

## 2) 로버트 호 사건 (Case of Robert Ho)

로버트 호 창(Robert Ho Chang)은 싱가포르의 사이버상 반정부활동의 지도자이다. 2001년 이후 그는 인터넷에 게시한 글들로 인해 5번 이상 체포되었다.

2001년 총선 동안, 이 58세의 전직 기자는 두 개의 웹사이트에 “법을 어기고 도망가자, 여당 PAP 지도자들처럼”이라는 기사를 게시하여 야당 후보자들에게 투표소에 진입하도록 촉구했다. 이 행위는 불법이지만 여당 후보자들 1997년도 선거에서 투표소에 진입한 전적이 있었다. 총선 한 달 후인 2001년 11월 16일, 경찰관 8명이 그의 자택을 방문하여 컴퓨터, 씨디롬, 모뎀 및 케이블을 압수했다. 다음날 그는 법에 대한 불복종을 조장한 혐의로 기소되어 싱가포르 역사상 최초로 온라인상 발언으로 인해 기소된 사건으로 기록되었다. 이후 로버트 호는 정신건강 연구소로 이송되어 “정신과 분석”을 받았고 2001년 12월 14일 언론은 그가 “정신 장애 진단을 받고” 무죄 석방되었다고 밝혔다.

2002년 7월 3일 로버트 호는 다시 자택에서 체포되었고 컴퓨터 또한 몰수당했다. 이번에는 온라인 포럼에 게시한 명확하지 않은 두 기사에 대한 형사적 명예훼손이 적용되었다. 3주 후 2002년 7월 26일, 그는 경찰관 두 명에 의해 강제 연행되어 구치소에 감금되었고 다시 정신건강 연구소로 이송되었다.

2005년 2월 27일, 호는 반정부 리플렛을 배포하기 위해 쇼핑몰을 찾은 후 다시 체포되었고 정신건강 연구소로 이송되어 정신과 테스트를 받았다.

가장 최근인 2009년 6월 3일, 1997년 선거조작에 대한 정부의 혐의에 대한 그의 경찰 고소장을 온라인상에 게시하자 경찰관 세 명이 그의 자택에서 컴퓨터를 압수했다.



반복되는 체포에도 불구하고 그는 아직 당국이 주장하는 모든 혐의에 대해 유죄를 선고받지 않았다. 몇 년에 걸쳐 컴퓨터 압수가 계속되고 있고, 심지어 현재 경찰의 형사적 명예훼손에 대한 새로운 조사가 시작되었음에도 불구하고 호는 블로그를 중단하지 않고 있다.

### 3) 고팔랜 나일 (Gopalan Nair)

전직 싱가포르 야당 정치인이었던 고팔랜 나일(59)는 미국으로 이주하여 시민권을 획득했다. 2008년 5월, 그는 야당인 싱가포르 민주당을 상대로 국무총리 리 성 룡(Lee Hsieng Loong)과 자문장관인 리관유가 승소한 명예훼손 소송으로 입은 손해를 평가하는 3일간의 법정 청문회에 참석하였다.

2008년 5월 29일 그는 자신의 블로그에서 청문회의 베린다 앙(Belinda Ang) 판사에 대해 리관유 장관과 그의 아들의 허수아비 역할을 수행했다며 비판했다. 그는 심지어 리관유 장관에게 자신의 발언을 고소하지 않겠냐며 자극했다.

하루가 지난 후 그는 호텔에서 나서던 중 사복경찰 5명에 의해 체포되었다. 5일 동안 경찰에 의해 구금된 후 나일은 범죄혐의를 받고 법정에 서게 되었다. 4일 동안 검사는 나일에 대해 급격히 태도를 바꿔 이메일을 통한 판사 모독죄, 2년간 이메일을 통해 공무원을 모독한 죄, 블로그에 글을 게시하여 판사를 모독한 죄(선동법)를 포함시켰다. 이 세 가지의 혐의는 결국 자신의 블로그에 고등판사를 모독한 죄명으로 형법 제 228조에 의거하여 축소되었다.

8일간의 재판 이후 2008년 9월 17일, 나일은 3개월 징역형에 처해졌다. 유죄 확정에 앞서 나일은 검찰총장에 의해 불법으로 간주되었던 게시물을 모두 삭제했다.

감옥에서 나온 후 2008년 11월 28일, 미국으로 돌아간 나일은 싱가포르 당국의 조사를 받을 당시 했던 사과와 일련의 말들을 모두 철회하고 싱가포르에서 삭제했던 모든 기사들을 다시 게시하겠다고 밝혔다. 현재 그는 싱가포르 당국의 사전허가가 없이는 싱가포르 입국이 불가능하다. 2009년, 그는 매달 평균 15개의 기사를 블로그에 게시하고 있으며 기사의 대부분은 리관유 장관과 싱가포르 정부를 강도 높게 비판하는 내용이다.

### 3. 3 단계 검열 (3rd tier of censorship)

싱가포르에서는 정치적으로 민감한 주제들이 공개적으로 드러날 때마다, 전화 도청, 이메일 감시, 그리고 행동과 발언이 기록될 것이라는 불안감이 있다. 이런 식으로 인식되는 정부의 감시에 대한 방어는 종종 '회피'로 들어난다. 즉, 감시의 대상이 될 수 있는 공개적인 정치토론, 활동 또는 발언을 기피하게 되는 것이다. 이러한 정치적 공포의 분위기는 심지어 인터넷상에서조차도 자기검열의 문화를 형성시킨다.

#### 4. 결론-일보 전진 이보 후퇴 (Conclusion - One step forward, two steps back)

싱가포르 정부는 일보전진, 이보 후퇴 접근방식을 채택하여 정치적 표현의 장을 규제하고자 한다.

도심 경제지구에 위치한 자유 발언 구역(Speakers' Corner)에 대한 관리법이 2008년 9월 개정되어 시위나 데모가 가능하게 되었다. 그러나 올해 7월, 경찰은 그 지역 근처에 관련 활동을 감시할 목적으로 5개의 CCTV를 설치하였다. 그 비슷한 예로 올해 3월 영화법이 개정되어 정치적 행사 생방송 녹화 및 선거 공약 녹화 등 정치적 내용을 담은 영상 제작이 가능해졌으나 정치적 불법 활동에 대한 극화, 애니메이션, 장면에 대한 제한 규정을 두었다. 새로이 제정된 공공질서법(Public Order Act)은 문화 및 오락 행사에 대해 경찰 허가를 면제했으나 모든 어떤 주장과 관련된 활동에 대한 제한은 더욱 강화하였다. 싱가포르에서 열리는 APEC 정상회담이 진행될 즈음부터는 일인 시위를 포함한 모든 공개 시위는 이 법에 따라 경찰의 허가를 받아야 한다.

결론적으로, 비록 인터넷이 싱가포르인들에게 자신의 의견을 표현할 수 있는 장을 마련해준 것은 사실이지만, 일반적으로 정치적 표현을 관리하는 법은 여전히 그대로이며 몇몇 사건들에 대한 강도는 오히려 더 높아짐에 따라 인터넷상에서 거론되는 내용들은 대부분 그대로 인터넷상에만 존재할 뿐이다.

## Discussant Papers

**Mr. Eung-hwi Jeon, Green Consumers Network in Korea**

### **Network Society and Communication Rights - Some comments on Asian country reports**

For the last few decades in Asia, most societies have sought for freedom of speech as one of the most significant values to accompany economic growth and political democratization. Although economic growth and political democratization have not always developed in parallel, it seems that when socio-economic development is supported by political democratization, there is an opportunity for a take-off in qualitative (and sustainable) socio-economic development

Changes in communication technology and communication services are bringing about various kinds of conflicts within the political environment and within the socio-cultural values of society. New media has made more information available, made it easier to share information and views, and created new communication tools for people to speak out. Today's communication environment, as represented by the Internet, provides more opportunities and possibilities for people to convey their opinions than ever before. In Asian modern history, the freedom of expression has been continuously addressed in relation to political democratization, but it has been usually raised as the freedom of the press, the rights and freedom of the press to criticize governments and their policies, as well as to convey opposing political views. However, in today's Internet environment, users are for themselves setting the agenda for public discourse, speaking out and commenting on public concerns, forming public opinions and proactively participating in socio-political issues. This requires the freedom and rights to communication and expression which go further from traditional freedom of the press.

In reading country reports, the tension and conflicts surrounding freedom of speech in today's Asian societies still turn out to be demanding the traditional freedom of the press, but we are also looking at the limit and the oppression of people's expression over the Internet – bloggers, commentators on online bulletin board services, critical artists or filmmakers, people's feedbacks on socio-political issues. Accordingly, we should particularly keep note on the general users' communication environment and people's freedom of speech in view of the rights to communication.

One of the main topics regarding the freedom of expression is what the extent to the freedom of expression should be allowed. Those who argue the necessity of the limitation of the freedom of speech always note that the freedom of speech should not tolerate the infringement of other's freedom and rights or to harm public interests. Most people would accept this argument. However,

the issue is what criteria should be applied to those personal infringements or social harmfulness and who should govern this and how to impose those restrictive measures. On the one hand, authoritative powers argue all illegal communicative behaviors and expressions should be prohibited in the name of the “rule of law.” They also note that with the rapid propagation and potentially severe damage of online communication, administration authorities should promptly judge whether some expressions are illegal or not and immediately implement those restrictive measures. On the other hand, network users think that in principle, if it is personal expression, all possible expressions should be allowed and the limitation of personal expression should be self-regulated by its community constituents on the basis of community consensus. And they think that in any occasion, the power of state, particularly the administrative power (but not judicial courts) should not intervene with the limitation of the freedom of expression, which could happen to exercise its power depending on subjective criteria or distorted political intention.

We believe that where some kinds of expression are simply not accepted by society and also not allowed by law, such expression should be prohibited by laws that define which specific expressions are not allowed. Such laws should then be interpreted only by the judgment of courts and not by administrative measures. If the administrative power is left to interpret such laws, it could easily lead to censorship and moreover it could have a damaging effect on people’s expression. Ultimately, it could lead to “chilling effect” on people’s voices. We believe that the international community, particularly the UN Human Rights Commission, in a changing communication environment and in the spirit of the Universal Human Rights Declaration, should make it a priority to observe and evaluate what communication polices, institutions and customary practices are becoming factors which have a chilling effect on people’s free expression and to recommend constructive suggestions to improve this situation.

One of the most frequently addressed and most sensitive issues regarding freedom of expression is defamation. As the communication environment is expanding the opportunity and the possibility for people to communicate or express their views, the rigid application of defamation could bring about a substantial threat against people’s freedom of speech and lead to “a chilling effect” on society. Therefore, we should review the defamation principle in the context of the new communication environment of the Internet and seek new solutions to possible conflicts.

Still, some societies apply defamation principles to those critical expressions on public figures or government policies. The quarrel of defamation essentially becomes a private persons’ conflict. In fact, the criminalization of defamation means that the state power intervenes with private quarrels. Thus, in a society with criminal defamation law, civil action seeks monetary compensation, with the result that state power is being exploited by private interests. Moreover, the criminalization of defamation, the state power’s direct intervention in an individual person’s expression or behavior can occasionally bring about far-reaching “chilling effect” in a network society rather than in a society where individual expression could be hardly disseminated.

Defamation debates usually concentrate on whether the expression problem is concerned with fact or falsehood, private or public issues, malicious intent or not. However, these questions cannot be easily and clearly answered in the Internet environment. Firstly, what is fact or falsehood or subjective opinion is not easily distinguished or separated on the internet. Secondly, in a network society, occasionally some private issues have abruptly emerged as public concerns by the internet user communities; while in a mass media society, public issues of social discourse have been selected and set as an agenda by mainstream mass media. Given that a traditional “public figure” has been defined as “a person who can easily access and speak out through communication media”, it should not be ignored that almost all people could be “public figures” in relation to “public affairs” in the Internet environment. Thirdly, in a network environment, even individual expression is frequently a collective output which is produced through various forms of communicative interactions among many users. Due to the two-way or multi-way and cumulative interaction of communication, the characteristics of the Internet, in online communication, one opinion naturally involves some exaggeration or more or less harsh expressions throughout the process of response or rebuttal or criticism. This could be regarded as malicious intentional expression regardless of the speaker’s real intention.

Therefore, given the character of network communication environment, civil monetary compensation is not always a good solution. Rather, usually, those who are personally damaged by bad or harmful expression want to prove what is really the truth and to protect their own privacy. In line with these needs, we should sort out the problem of defamation in a way which provides for the opportunity of the damaged person to be able to express the truth and ensure the protection of the damaged person’s identity – possibly by erasing the person’s real name or by removing some distinguishable information about that person. As such, the right of anonymity is a prerequisite for the protection of privacy or the freedom of speech. UN Human Rights Commission should explore how to effectively ensure the individual’s choice rights of anonymity in view of universal human rights.

## 토 론 문

### 전응휘, 녹색소비자연대 상임이사

#### 네트워크 사회와 커뮤니케이션 관리 - 아시아 국가보고서에 대한 몇가지 논평

지난 몇십년간 아시아 상황에서 경제 성장과 정치적 민주화 속에서 언론의 자유는 사회의 가장 중요한 가치로 추구되어 왔다. 경제적 발전과 정치의 민주화가 항상 일치하여 나타나는 것은 아니지만 사회의 경제적 발전은 정치적 민주화를 수반할 때에야만 사회의 질적인 도약을 이루고 지속적인 경제사회적 발전으로 나아가게 된다는 것이 우리의 경험이다.

커뮤니케이션 기술과 서비스의 변화는 불가피하게 한 사회의 정치적 환경, 사회문화적 환경과 충돌하여 수많은 갈등을 일으키지만 점차로 일반 시민들의 정보에 대한 접근, 정보와 의견의 공유, 의견 개선의 기회와 가능성을 확대하고 있다. 인터넷을 통해 나타나는 오늘의 커뮤니케이션 환경은 과거 어느때와도 다르게 시민들에게 의사표현의 기회와 수단을 제공하고 있다. 아시아의 역사 속에서도 표현의 자유는 정치의 민주화와 관련하여 지속적으로 제기되어 왔지만 그것은 주로 언론기관의 자유, 언론의 정치적 반대 의견, 기존 권력에 대하여 비판할 수 있는 권리와 자유의 문제로 제기되어 왔다. 그러나 인터넷 환경에서 오늘 인터넷 이용자들은 스스로 의제를 설정하고, 사회의 공공적 관심사에 대하여 발언하고, 코멘트하고, 적극적으로 여론을 형성하고, 사회정치적으로 참여하고 있다. 이것은 이제까지 언론의 자유와는 다른 일반 시민의 표현의 권리, 커뮤니케이션의 자유와 권리를 요구하고 있다.

오늘 아시아 사회에서 나타나는 표현의 자유를 둘러싸고 나타나고 있는 긴장과 갈등은 한편으로는 여전히 전통적인 언론의 자유, 언론기관의 자유의 문제를 드러내지만, 다른 한편으로는 일반 시민들, 블로거들, 게시판에 대한 단순한 코멘테이터들, 비판적인 예술가들이나 영화 제작자들, 정치 사회적 이슈에 대한 일반 시민의 피드백에 대한 제한과 억압으로 나타나고 있다. 따라서 이제 우리는 일반 이용자들의 인터넷 이용 환경, 일반 시민의 의사표현의 자유를 커뮤니케이션의 권리라고 하는 인권차원에서 특별히 주목해야 한다.

표현의 자유에 대한 논란의 핵심적인 주제의 하나는 표현의 자유를 어디까지 허용해야 하느냐 하는 것이다. 표현의 자유를 제한하려 하는 이들은 표현의 자유가 타인의 자유와 권리를 침해하거나 사회 공공이익에 해를 입히는 것까지 관용하는 것은 아니라는 점을 강조한다. 많은 이들이 이러한 주장에 동의한다. 다만 문제는 표현의 자유의 제한을 무엇을 기준으로 하여 누가 어떠한 방식으로 부과하느냐 하는 데에 있다. 권위주의적 권력은 대체로 법을 내세워 불법적인 의사소통행위는 규제되어야 한다고 주장하며, 네트워크가 가진 급속한 전파력과 영향력을

핑계로 하여 불법적인 의사소통에 대한 판단을 행정 권력이 신속하게 내리고 집행해야 한다고 주장한다. 이에 반하여 네트워크의 이용자들은 개인 표현의 제한은 원칙적으로 어떠한 표현이든 허용되어야 하나 표현에 대한 제한은 커뮤니티의 내적 합의에 따른 자율적인 규제에 의해서 이루어지는 것이 바람직하며, 어떠한 경우에도 국가의 권력, 특히 행정 권력이 법원의 판결에 의해서가 아니라 정치적 목적이나 행정자의적인 기준에 의해서 이뤄져서는 안된다고 생각한다.

사회적으로 전혀 용납할 수도 없고, 법으로도 인정되지 않는 어떤 표현행위가 있다면 그러한 표현행위에 대한 금지는 명확히 법에 의해 규율되어야 하고, 법원의 판결에 의해서만 제한되어야 한다. 행정권력에 의한 표현의 자유 제한이 문제가 되는 것은 그것이 검열이기 때문이며 행정 권력에 의한 이같은 위협은 일반 이용자들의 표현행위에 현저한 위축효과를 초래하기 때문이다. 국제사회는 그리고 유엔 인권이사회는 유엔인권선언의 정신에 따라 어느 사회에서나 특히 변화된 정보통신환경속에서 어떠한 커뮤니케이션 정책이나 제도, 관습적 행태가 이처럼 일반 시민들의 표현 행위를 위축시키는 요인이 되고 있음을 관찰하고, 인권 차원에서 평가하고, 개선방안을 권고하는 것을 우선순위로 삼아야 한다.

표현의 자유에 대한 논란에 있어 가장 빈번하게 제기되며 가장 민감한 주제의 하나는 명예 훼손에 대한 금지이다. 그러나 개개인의 의사표현의 기회와 가능성이 갈수록 확대되어 가고 있는 커뮤니케이션 환경에서 전통적인 명예훼손 법리를 엄격하게 적용하는 것은 실질적으로 개개인의 의사표현의 자유에 대한 실제적인 위협이 되고 결과적으로 표현의 냉각효과를 결과하게 될 가능성이 높다. 오히려 전통적인 명예훼손 법리는 인터넷이라고 하는 새로운 커뮤니케이션 환경 속에서 새롭게 검토되고 새로운 해결 방식을 찾아야 할 필요가 있다.

여전히 일부 사회에서는 공인이나 국가정책에 대한 비판에 명예훼손 논리를 적용하는 경우가 없지는 않지만 무엇보다도 명예훼손 다툼은 사인간의 분쟁이다. 명예훼손을 형사법 적으로 다루는 것은 실제로 사사로운 분쟁에 국가권력이 개입하는 것이 된다. 명예훼손에 대한 민사적인 분쟁은 금전적인 보상청구가 되기 때문에 명예훼손에 대한 형사법적인 결과는 사적인 이익추구에 국가의 공공적인 권력이 활용되는 결과를 낳게 된다. 개개인의 의사표현이 공적으로 표출될 수 있었던 기회가 극히 제한되었던 네트워크 이전 사회에서보다 훨씬 더, 명예훼손 분쟁에 대한 형사법적인 국가 개입은 표현의 자유에 대한 광범위한 냉각효과를 결과할 수 있는 위험이 있다.

명예훼손 여부에 대한 다툼에서 문제가 되는 것은 사실과 허위의 문제, 사적인 것과 공적인 것의 구별 문제, 표현 당사자의 명예훼손 의지의 여부 문제 같은 것이다. 그러나 이러한 요소들은 인터넷과 같은 네트워크 환경에서는 대부분 확정이 쉽지 않다는 문제를 가지고 있다. 첫째로 인터넷 환경에서 이용자들은 수없이 많은 사실에 대한 정보와 의견을 접하며 대부분 사실과 의견이 혼재된 상황에서 사실이라 믿어지는 것에 대한 의견을 또한 마치 사실처럼 표출하게 된다. 둘째로 대중매체 시대에는 사회의 공적 이슈가 주로 주류언론에 의해서

의제설정이 되어 왔으나, 네트워크 사회에서는 때로는 사사롭게 여겨져 왔던 이슈가 이용자들의 커뮤니티에 의해 쉽게 공적 관심사로 부상하게 된다. 전통적으로 “공인”이 “표현 수단에 쉽게 접근할 수 있는 사람”으로 간주되어 왔다는 점을 고려할 때, 네트워크 사회에서는 거의 모든 개인이 공적 사안에 관련된 “공인”이 될 수 있다는 점이 간과되어서는 안된다. 셋째로 네트워크 환경에서 개개인의 의사표현은 빈번하게 특정한 관심 사안에 대한 여러 이용자들의 다양한 형식의 상호 작용을 통해서 나타나는 집단적인 의사표현이 되는 경우가 많다. 인터넷의 쌍방향적이며 다자간의 의사소통, 누적적인 의사소통이라는 특성 때문에 하나의 의견은 반박과 재반박, 비판 등의 과정을 통해서 과장과 다소 거친 표현들을 수반하게 되며, 이것은 쉽게 의견상 악의적인 표현처럼 나타나게 된다.

이같은 네트워크의 특성을 고려한다면 명예훼손 문제의 해결책을 민사적 피해보상으로 해결하는 것 역시 제한점을 갖는다는 점을 생각해야 한다. 오히려 명예훼손의 피해를 입은 사람이 가장 필요로 하는 것은 진실에 대한 항변과 프라이버시의 보호이다. 따라서 문제 해결은 표현의 자유의 제한이나 해로운 표현에 대한 금지나 처벌이 아니라 표현으로 인한 피해자가 진실을 최우선적으로 표출할 수 있는 기회를 적극적으로 부여하고, 개개인의 신분이 노출되지 않도록 철저히 익명성을 보장하는 방향으로 모색되어야 한다. 이처럼 네트워크 환경에서 익명성에 대한 권리는 프라이버시 표현을 위해서나 자유로운 표현행위를 위해서 필수불가결한 요소이다. 인권위원회는 네트워크 사회에서 개개인의 익명선택권을 보편적인 인권의 차원에서 보호할 수 있도록 하는 방안을 강구할 필요가 있다.



**Prof. Yeong-mook Choi, SungKongHoe University**

**Government's tightening of regulations,  
freedom of expression and civil rights**

1. Internet Media policy is a hot issue in every country. Companies use the Internet as a tool for marketing and selling directly to customers. At the same time, Governments use the Internet as a publishing tool for effective governance. And finally, individuals consider the Internet as a new and alternative space to enjoy and fully experience their freedom of opinion and expression.

Asian countries including South Korea, Singapore, Indonesia, Malaysia, Taiwan, and Thailand share common experiences of development under dictatorship, Confucianism and patriarchy. Even though there are some differences, Asian governments still share a culture of patriarchy. When the countries were developing under dictatorship, most major media were controlled and used by the government as a ruling tool. As a result, strong ties between governments and media have continued to exist even after the end of development dictatorship.

For the past ten years, the Internet has grown and spread out rapidly in these Asian countries. Sharing information and creating a forum to discuss social issues through portal websites and blogs has become a part of people's daily life. As the Internet has rapidly developed as a public media, it has become an urgent issue for politicians to regulate it. This is because these new forms of networking have created new opportunities for resistance, which could make it difficult to continue authoritarian leadership.

For this reason, South Korea and other Asian countries including Singapore, Malaysia and Indonesia have continuously tried to regulate portal sites and Internet media through legal and non-legal regulations. Dominant political powers have grown more conservative with the globalization of neo-liberalism since the economic crisis in the late 90's and last year's US-triggered international financial crisis.

2. In Asia, the Internet and cyberspace are mostly controlled by new laws and integrated regulatory bodies which are effectively government organizations. As stated in the presentation of Singapore, there are three main ways in which Asian governments have limit freedom of opinion and expression in cyberspace.

First, cyberspace has been controlled by various laws and regulations such as Media Law, Information and Communication Law, and Copyright Law. In South Korea, Cyber Defamation Law and Real name registration system were highly controversial because of their vague terms. The meaning of words like public morals, soundness, dignity, insult, human rights violations, anti-social

contents and inappropriateness can be interpreted arbitrarily by the Government, the Prosecutor's Office or the police.

Secondly, cyberspace can also be controlled by government organizations (e.g. the Korea Communications Standard Commission) which are in charge of screening the content of media, internet and multimedia. This organization can deliberately set criteria on its own in order to delete certain video clips or articles on the internet. If the webhost refuses to follow their orders, they can investigate the case and punish them, or even close down the website. In fact, the public prosecutor and the police frequently carry out investigations legally and even illegally.

In addition, citizens, the press and media can be induced to tighten voluntary internal inspection as a countermeasure against complicated and vague regulations, and inspections of the governmental bodies. Individuals and journalists, who experienced government's strict regulations and prosecutor's investigations, can become inspectors themselves.

3. The unjust oppression of Malaysiakini by the Malaysian Communication and Multimedia Commission (MCMC) and the subsequent struggle by Malaysiakini conveys many implications. This struggle is particularly meaningful in the sense that citizens and civil society are fighting with Malaysiakini in solidarity. Authorities always try to control media that is against governments; however, the only way to prevent it is through civil society.

Regulations and suppression of the Internet and civil media are not likely to be eased in the near future as far as authoritarian governments exist in Asia, including South Korea. It is a matter for civil society and expert groups how they can confront such governments. It is crucial for them to inform the people about unjust regulations, censorship, surveillance and suppression, and in turn gain support from the people.

Needless to say, it is very important for Internet users to establish voluntary regulation systems to filter Internet content as an alternative to the government's arbitrary and authoritarian regulations. In order to overcome harsh and suppressive regulations by political and governmental bodies, we should consider the following measures; development of an Internet filtering programme, acquiring independence through voluntary regulation, including media education in regular school curriculum, raise awareness of portal sites as a new media, preparing Internet policy based on full understanding of portal sites, and continuous discussion on the meaning of right to freedom of opinion and expression and its importance.

4. Internet networks empower people to produce and distribute information. Therefore, people should become critical information consumers in response to this change. Every individual has to put their effort in. The importance of people and civil society will grow with this change, and with this effort, the basic rights of people will develop accordingly.

I would like to close my note with a quote from Noam Chomsky:

“It is not clear if there is a future for human beings. The answer is up to the outlook of civil movements devoted to values (community solidarity, interests in environment, voluntary creativity, independent thinking and democratic participation in each field) which have been suppressed or/and marginalized within the current order of the society. (p247)

## 최영목, 성공회대 신문방송학과 교수

### 정부규제 강화와 표현의 자유, 시민권의 위축 문제

1. 인터넷미디어 정책은 세계 모든 나라에서 ‘뜨거운 감자’다. 기업들은 인터넷을 상품판매나 소비자 설득을 위한 통로로 이용하려 하고, 정부는 효과적인 통치를 위한 홍보수단으로 만들고 싶어 한다. 반면 시민은 인터넷을 표현의 자유를 만끽할 수 있는 새로운 ‘공론장’으로 인식하는 경향이 있다.

한국과 싱가포르, 인도네시아, 말레이시아, 대만, 태국 등과 같은 아시아 국가들은 개발독재, 유교문화, 가부장주의라는 공통의 경험을 가지고 있다. 정도의 차이는 있지만 지금도 아시아 각국의 정부는 가부장주의적 성격이 두드러진다. 개발독재 과정에서 대부분의 제도권 미디어들은 ‘통치수단’으로 장악이 되었고, 이후에도 강한 유대관계를 형성하고 있다.

이들 아시아권 국가에서도 지난 10년 사이에 인터넷이 아주 빠른 속도로 확산되었고, 포털이나 블로그 등을 통해 정보를 공유하고 사회적 이슈 등에 대한 공론을 형성하는 것이 일상생활의 일부가 되고 있다. 정치권력 입장에서 새로운 대중미디어, 공공미디어로 성장하고 있는 인터넷 미디어에 대한 규제는 시급한 문제일 수 있다. 대중적 저항의 네트워크 기능이 이어질 경우 권위주의적 지배는 불가능해 질 수 있기 때문이다.

이런 이유로 한국을 비롯한 싱가포르, 말레이시아, 인도네시아와 같은 아시아 국가들은 포털사이트나 인터넷 매체에 대하여 지속적으로 법적, 법외적 규제를 시도해왔다. 특히 1990년대 말의 경제 위기 상황 이후 ‘신자유주의’ 세계화와 지난해 미국발 ‘금융위기’는 정치권력의 보수화를 부추겼다.

2. 아시아 국가에서 인터넷과 사이버스페이스에 대한 통제는 대체로 새로운 법과 ‘국가기구’인 통합규제기구를 통해서 이루어진다. 싱가포르의 발표문에서 드러나듯이 아시아 국가들이 인터넷 공간에서 표현의 자유를 제약하는 방법은 크게 세 가지다.

첫째, 여러 미디어법이나 정보통신법, 저작권법 등 여러 관련법을 통한 규제다. 한국에서는 ‘사이버 모욕죄’ ‘인터넷 실명제’ ‘삼진아웃제’와 같은 규정들이 큰 사회적 논란거리가 되기도 했다. 미풍양속, 건전, 품위, 모욕, 인권침해, 반사회적 내용, 부적성과 같이 국가기구나 검찰과 경찰이 자의적으로 해석할 수 있는 의 모호한 규제 내용이 문제다.

다음은 방송과 인터넷, 멀티미디어 등의 내용에 대한 국가기구(가령 한국의 방송통신심의위원회)의 검열, 심의를 통한 규제다. 대체로 스스로 만든 ‘심의규정’ 등을 통해 인터넷에 올라온 영상이나 기사의 블라인드 처리나 삭제를 요구할 수 있고, 이를 거부할 경우

직접 조사하여 징계하거나, 심한 경우 사이트 자체를 폐쇄하기도 한다. 합법 혹은 불법으로 검찰과 경찰이 수사하는 경우도 비일비재하다.

세 번째로 복잡하고 모호한 법과 정부기관에 의한 검열에 대응하는 방식으로 시민이나 언론인, 언론사에서 스스로 내부검열을 강화하는 것이다. 국가의 강력한 규제와 검찰의 수사 등으로 위축된 언론인이나 개인들이 스스로 검열관이 되는 것이다.

3. 말레이시아의 Malaysiakini.com 에 대한 말레이시아 커뮤니케이션 위원회 (MCMC)의 부당한 탄압 시도와 이에 대한 해당 언론사와 시민의 연대투쟁 사례는 많은 함의를 준다. 권력은 어느 경우에도 자신에 반하는 언론을 통제하려하고, 이를 무력화시킬 수 있는 힘은 오직 시민사회에서 나올 수밖에 없다는 점이다.

향후에도 한국을 비롯한 권위주의 정부가 온존하는 아시아국가에서 이후에도 인터넷을 비롯한 ‘시민 미디어’에 대한 규제와 탄압은 줄어들지 않을 것으로 본다. 문제는 이에 대응하는 시민사회, 전문가집단의 대응능력이다. 부당한 규제와 검열, 감시, 탄압을 널리 알리고 가능한 방법을 통한 대응이 얼마나 시민의 지지를 이끌어 낼 수 있느냐에 달려있다는 것이다.

물론, 정부의 자의적이고 권위적인 규제정책의 대안으로 시민들이 스스로 인터넷을 정화할 수 있는 자율규제 시스템에 대한 고민도 중요하다. 억압적인 법, 권위적이고 정치적인 규제기구의 검열에 가까운 인터넷 규제를 극복하기 위해서는 다음과 같은 대안적 규제 방안을 모색해 볼 필요가 있다. 인터넷 필터링 프로그램의 개발, 자율규제를 통한 규제의 자율성을 확보, 미디어교육의 중고교 정규 교과과정에 편성, 새로운 미디어로서의 포털에 대한 인식 전환, 포털의 매체적 특성 이해를 바탕 한 정책의 마련(의원 발의 법 등), 표현의 자유의 의미와 우월적 지위에 대한 지속적인 여론화 등이 검토될 수 있다.

4. 네트워크에서는 시민도 정보를 생산하고 배포할 수 있는 힘을 준다. 따라서 이러한 변화 속에서 시민은 비판적인 정보 소비자가 되어야 한다. 이는 시민 개개인의 노력도 필요함을 알려준다. 그럴 경우 네트워크사회에서의 시민과 시민사회의 역할은 커지게 될 것이고 이런 노력 속에서 시민 기본권도 균형을 유지하면서 발전할 것이다. 노엄 촘스키의 말로 마무리에 대신한다.

“인간이 미래를 가지고 있는 지는 그리 분명치 않다. 그 대답은 기존의 질서 안에서 억압받거나 변두리로 밀려나 있는 가치들(공동체연대-환경에 대한 관심-자발적 창조성-독립적 사고-각 부분의 민주적 참여)에 헌신하는 대중운동의 전망에 있을 것이다.”(247 쪽)

## **Mr. Vincent Brossel, Reporters Without Borders**

### **Internet in Asia**

The time has come for Asia to decide how to develop the Internet, because there are two conflicting models. One, of which China is unfortunately the main architect, is the model of an Internet that serves the economy but is widely censored as regards political matters. It is the model of control, surveillance and propaganda. The other, of which South Korea could be one of the main architects, is the model of a free Internet, accessible to all and a vehicle for social and political transformation. It is the model that respects the Internet's very essence as a revolutionary communication tool enabling citizens to make themselves heard.

But, unfortunately, South Korea has not completely chosen the model of freedom. A blogger was recently detained and tried for disseminating information. Other Internet users have been arrested or tried for launching citizen campaigns online. The authorities actively monitor the content of the most popular websites and reserve the right to intervene.

Why so much control in a democratic country? It is obviously necessary to have laws that regulate the Internet, above all to prevent cyber-crime, pedophilia and cyber-terrorism. Some countries have also chosen to apply defamation laws to the Internet. But there is a strong temptation for authoritarian countries to apply restrictive rules to the entire Internet and endanger the principles of freedom.

The Internet scares governments, especially conservative politicians, because information gets there very quickly and there is much less respect for the standard journalism codes. A blogger does not have the same relationship with an established politician or businessman as a mainstream media journalist. This is why we are seeing more and more lawsuits, defamation trials, intimidation and criticism of bloggers.

What is most striking about the Internet is how it continues, despite everything, to be a much freer space than the traditional press. In Malaysia, what is written and shown on Malaysiakini is completely inconceivable in the newspapers or on TV. And bloggers such as RPK, now in exile, have raised incredibly sensitive issues. Online political discussions have taken place in Singapore that would have been unimaginable in a public space or in the street. In Vietnam, despite a wave of arrests and trials, bloggers continue to defy censorship on burning issues such as bauxite mining and relations with China.

It is very important to be here in Seoul to talk about these subjects, because we must do all we can to ensure that the South Korean government and South Korea's IT sector companies make every

effort to be the leaders of a free Internet. This is why the arrest of the blogger Minerva is so shocking. We need South Korea, Japan, Taiwan and Indonesia to be the engines of online freedom.

Very important negotiations are under way internationally. Internet oversight, until now assigned to an American non-profit organisation, ICANN, is going to evolve under pressure from various governments. Are we going to let authoritarian governments participate in Internet oversight? That would be very dangerous. And China has been trying, especially at United Nations summits, to impose its model.

Unlike North Korea, South Korea has forged ahead with development of the Internet. Around 80 per cent of South Koreans go online. The government has responded to this success by resorting to disproportionate regulations. Blogs and websites that get more than 300,000 visitors a day to their discussion forums would be required by a bill to clearly identify all those posting messages, by asking them for their name and social security number. On 1 April 2009, the application of this regulation has expanded, requiring all internet website more than 100,000 visitors per day instead of 300,000 visitors.

Since October 2008, around 1,000 policemen have been assigned to inspecting the content of chat rooms and online forums. The biggest web portals such Daum and Naver have decided to form an alliance to resist the government's attempts to restrict criticism.

We cannot ignore the dangers arising from the dissemination of false information. As you know, two South Korean celebrities took their own lives in 2007 as a result of the rumours about them that were circulating online. The number of online defamation cases has soared, but that must not be used as an excuse for restricting freedom of expression.

Last year, Reporters Without Borders compiled a list of countries to be placed under surveillance because they had adopted worrying measures that could open the way to violations of the free flow of information online. Australia and South Korea are on this list.

Not only is the Internet subject to ever-increasing controls, but new forms of censorship are emerging based on the manipulation of information. Repressive regimes orchestrate hacker attacks or the posting of comments on popular websites in order to scramble or block online content.

At least 80 cyber-dissidents and bloggers are currently detained worldwide because of what they posted online. China is the world's biggest prison for cyber-dissidents, followed by Vietnam and Iran. The 12 countries identified by Reporters Without Borders as "Enemies of the Internet" are Burma, China, Cuba, Egypt, Iran, North Korea, Saudi Arabia, Syria, Tunisia, Turkmenistan, Uzbekistan and Vietnam.

The world, including Asia, faces a choice. Either an Internet that is useful for the economy and communications, and at the same time free for expressing opinions. Or an Internet that is useful, but also monitored and censored. We must deploy all our energies to defend the choice of freedom.



## 뱅상 브로셀, 국정없는 기자회견 아시아 태평양 담당 국장

### 아시아에서의 인터넷

아시아 국가들은 현재 향후 인터넷을 어떠한 모습으로 발전시킬 수 있을 것인지를 결정해야 하는 중요한 시기에 있다. 여기에는 두 개의 상반된 모델이 있다. 하나는 중국이 중심이 되어 형성되어 온 모델로 인터넷을 통해 경제발전은 도모하면서 정치적인 사안에 관해서는 검열을 시행하는 모델이다. 이는 통제와 검열의 모델이라고 할 수 있다. 한편, 대한민국이 중심이 되어 형성될 가능성이 있는 인터넷의 발전 모델은 모든 사회적, 정치적 의견을 교류하는 장으로써의 인터넷의 자유를 보장해 주는 것이다. 이는 모두가 접근가능하고, 사회적, 정치적 변혁의 수단이 되는 인터넷의 장을 가리킨다. 시민 스스로가 주체가 되는 혁신적인 의사소통 도구로서의 인터넷의 근본적인 특성을 지켜나가는 방식이 바로 이 모델 아래에서의 인터넷인 것이다.

그러나 유감스럽게도 한국은 완전한 인터넷 자유 모델을 택하지 않았다. 어떤 블로거는 최근에 정보 왜곡을 했다는 이유만으로 체포되었다. 또 다른 인터넷 사용자들은 온라인에서 시민 캠페인을 전개했다는 명목 아래 체포되었다. 정부는 지속적으로 주요 웹사이트들을 감시하고 있으며 이들에게 관여할 수 있는 권리를 가지고 있다.

그렇다면 왜 민주국가에서 이렇게 강력한 통제가 일어나는가? 사이버 범죄, 아동성범죄, 사이버 테러리즘을 방지하기 위한 목적으로 인터넷을 규제하는 법을 제정하는 것은 명백하게 필요하다. 또한 몇몇 국가에서는 명예훼손죄를 인터넷 상에서도 적용 가능케 했다. 그러나 이러한 필요성을 넘어서서 정부 당국은 인터넷 전반에 강력한 규제를 가해 표현의 자유의 원칙 자체를 위협하려 하는 의도를 가지고 있다.

인터넷은 정부를, 특히 보수적인 정치인들을 공포에 떨게 만든다. 이는 인터넷 상에서의 정보의 빠른 유포성과 인터넷 사용자들이 기존 언론의 보수적인 성향을 비판하는데 주저하지 않는다는 인터넷의 특성 때문이다. 블로거들은 기존 주요 언론사의 언론인들처럼 유력 정치인이나 재계 인사들과 유착되어 있지 않다. 이러한 인터넷 및 인터넷 사용자들의 특징으로 인해 블로거들에 대한 위협과 비난, 그리고 이와 관련한 명예훼손 관련 사건들이 지속적으로 증가하고 있다.

인터넷의 가장 놀라운 점은 이 모든 장애에도 불구하고 그 발전이 지속되고 있다는 점이다. 인터넷은 기존 언론 매체들보다 더 자유로운 언론의 장이 되고 있다. 말레이시아 인터넷 언론인 Malaysiakini 웹사이트에서 볼 수 있는 글들은 일반 TV 나 신문에서는 찾아볼 수 없는 내용의 것들이다. 현재 망명 생활을 하고 있는 RPK 와 같은 말레이시아 블로거들은 민감한 사안에 대한 여론을 인터넷을 통해 환기시켜 왔다. 싱가포르 온라인 상에서 벌어지는 정치 토론회는 싱가포르 길거리나 공공 장소에서는 상상할 수 없었던 것들을 가능케 하고 있다. 베트남의 경우 거듭되는 체포와 그 위협에도 불구하고 블로거들은 마구잡이 식으로 이뤄지는 광산 산업 및 중국과의 관계와 같은 뜨거운 논쟁에 대한 검열에 지속적으로 대항하고 있다.

지금 현재, 우리가 이곳 서울에서 인터넷에서의 표현의 자유에 대해 논의하는 것은 매우 중요한 의미를 갖는다. 우리는 한국 정부와 한국 IT 회사들이 자유로운 인터넷 문화를 선도하는 역할을 할 수 있도록 모든 노력을 다해야 한다. 이에 블로거 미네르바의 체포는 우리에게 심한 충격을 가져다 주었다. 아시아 국가들 중 한국, 일본, 대만, 인도네시아와 같은 국가들은 온라인에서의 표현의 자유를 선도하는 국가가 되어야만 한다.

지금 현재 매우 중요한 논의가 국제적으로 이뤄지고 있다. 미국의 비영리 단체인 ICANN 에서 담당하고 있던 인터넷 모니터링은 이제 정부의 압력 아래서 이뤄지게 될 것이다. 우리가 과연 정부 당국이 인터넷 모니터링을 하는 것을 묵인해야 하는가? 만약 이렇게 된다면 매우 위험할 수 있다. 게다가 중국은, 특히 유엔 협약에서 위에서 언급한 중국식 모델을 적용시키려는 시도를 해왔다

북한과 달리, 남한은 인터넷의 발전을 촉진시켜왔다. 대한민국 국민의 약 80%가 온라인에 접속한다. 안타깝게도 정부는 이러한 인터넷 발전에 대응해 규제들을 강화시켰다. 법에 따라 하루에 30 만명 이상이 접속하는 블로그 및 인터넷 사이트의 게시판은 글을 올리는 사람들의 이름과 주민등록번호를 적어야지만 글을 쓸 수 있는 기능을 만들어야만 한다. 2009 년 4 월 1 일부터는 해당 법 개정예에 의해 30 만명 이상이 아니라 10 만명 이상이 접속하는 모든 블로그 및 인터넷 사이트는 이 법에 의해 제재를 받게 된다.

2008 년 10 월 이후로 약 1,000 명의 경찰들은 온라인 대화게시판과 토론 게시판들의 내용을 철저히 검사해왔다. 다음, 네이버와 같은 가장 큰 웹 포탈들은 사람들로 부터의 비판을 모면하기 위해 정부의 이러한 시도에 연합해 맞서기도 했다.

우리는 왜곡된 정보의 유포로 인한 명예훼손의 위험성을 간과할 수 없다. 우리는 모두 2007 년에 두 명의 유명 인사가 온라인 상에 유포된 루머로 인하여 그 생을 마감한 사건을 알고 있다. 그렇지만 온라인 명예훼손 소송의 건수가 늘고 있다고 해서 이것이 표현의 자유를 제한하는 충분한 이유가 될 수는 없다.

지난 해, 국경없는 기자회는 온라인 상에서의 자유로운 정보의 흐름을 방해할 수 있는 제도들을 마련한 국가들의 목록을 작성해서 이들 국가들을 모니터링하기 시작했다. 이 국가들에는 호주와 대한민국이 포함되어 있다.

인터넷에 대한 통제가 증가하고 있을 뿐만 아니라, 정보 조작에 근거한 새로운 형태의 검열 또한 등장하고 있다.

현재 전세계적으로 적어도 80%의 사이버 반체제 인사들과 블로거들은 그들이 게재한 글들로 인해 위협받고 있다. 중국은 사이버 반체제 인사들의 가장 거대한 감옥이다. 그 뒤를 베트남과 이란이 따르고 있다. 국경없는 기자회는 12 개 국가들은 “인터넷의 적”으로 지목했으며

이들은버마, 중국, 쿠바, 이집트, 이란, 북한, 사우디 아라비아, 시리아, 튀니지아, 투르크메니스탄, 우즈베키스탄, 베트남이다.

아시아를 포함해 현재 전세계는 선택의 기로에 서있다. 인터넷을 경제발전과 의사 소통에 유용한 공간인 동시에 표현의 자유가 보장되는 공간으로 만들 것인가, 아니면 유용하기는 하나 검열되고 모니터 되어야만 하는 공간으로 만들 것인가. 우리는 이 선택의 자유를 지키기 위해 모든 힘을 다해야 한다.

## Reference Documents

- 1) UN Human Rights Council Resolution 7/36 - Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression
- 2) Annual Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Frank La Rue (A/HRC/11/4)
- 3) Selected cases related to the Freedom of Expression in Cyberspace in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue - Summary of Cases Transmitted to Government and Replies Received (A/HRC/11/4/Add.1)
- 4) UN Human Rights Council Resolution 12/L.14 – Freedom of Opinion and Expression
- 5) UN Committee on Civil and Political Rights (Human Rights Committee) General Comment No. 10 - Freedom of Expression, Article 19 of the ICCPR



## Human Rights Council

### **Resolution 7/36. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

*The Human Rights Council,*

*Guided* by the Universal Declaration of Human Rights, which affirms the right to freedom of opinion and expression,

*Mindful* of the International Covenant on Civil and Political Rights, which reaffirms, in article 19, the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice and noting that these rights and freedoms are among those which give meaning to the right to participate effectively in a free society,

*Mindful also* that article 19 of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of expression carries with it special duties and responsibilities and may therefore be subject to certain restrictions, but that these shall be only such as are provided by law and are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order (*ordre public*), or of public health and morals, and that article 20 provides that any propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law,

*Reaffirming* resolution 2005/38 on freedom of opinion and expression adopted by the Commission on Human Rights on 19 April 2005, and recalling all its previous resolutions on this issue,

*Recognizing* that the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society; is enabled by a democratic

environment which, inter alia, offers guarantees for its protection; is essential to full and effective participation in a free and democratic society; and is instrumental to the development and strengthening of effective democratic systems,

*Recognizing also* that the effective exercise of the right to freedom of opinion and expression is an important indicator of the level of protection of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated,

*Deeply concerned* that violations of the right to freedom of opinion and expression continue to occur,

*Stressing* the need to ensure that invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression,

*Stressing also* the importance of full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information, to democratic participation, to accountability and to combating corruption,

*Recognizing* the importance of all forms of media, including the print media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression, and also the importance for all forms of media to report and to deliver information in a fair and impartial manner,

*Bearing in mind* paragraph 6 of General Assembly resolution 60/251 of 15 March 2006,

*Recalling* Council resolutions 5/1 entitled “Institution-building of the United Nations Human Rights Council” and 5/2 entitled “Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council” and stressing that the mandate-holder shall discharge his/her duties in accordance with these resolutions and the annexes thereto,

1. *Reaffirms* the right of everyone to hold opinions without interference, as well as the right to freedom of expression, and the intrinsically linked rights to

freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs;

2. *Takes note with appreciation* of the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (E/CN.4/2006/55, A/HRC/4/27 and A/HRC/7/14), invites all relevant actors to consider the recommendations contained therein, and welcomes his important contribution to the promotion and protection of the right to freedom of opinion and expression, in particular his ongoing and increasing cooperation with other mechanisms and organizations;

3. *Decides* to extend for a further three years the mandate of the Special Rapporteur whose tasks will be:

(a) To gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information;

(b) To seek, receive and respond to credible and reliable information from Governments, non-governmental organizations and any other parties who have knowledge of these cases;

(c) To make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations;

(d) To contribute to the provision of technical assistance or advisory services by the Office of the United Nations High Commissioner for Human Rights to better promote and protect the right to freedom of opinion and expression;

4. *Requests* the Special Rapporteur, within the framework of his/her mandate:

(a) To draw the attention of the Council and the United Nations High Commissioner for Human Rights to those situations and cases regarding the right to freedom of opinion and expression which are of particularly serious concern;

(b) To integrate the human rights of women and a gender perspective throughout the work of his/her mandate;

(c) With a view to greater efficiency and effectiveness in promoting and protecting the right to freedom of opinion and expression, to continue his/her efforts to cooperate with other relevant United Nations bodies, including the High Commissioner for Human Rights, the human rights treaty bodies, special procedures and mechanisms, specialized agencies, funds and programmes, regional intergovernmental organizations and their mechanisms, and national human rights institutions, and to develop and extend his/her network of relevant non-governmental organizations, particularly at the local level;

(d) To report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination, taking into account articles 19 (3) and 20 of the International Covenant on Civil and Political Rights, and general comment No. 15 of the Committee on the Elimination of All Forms of Racial Discrimination, which stipulates that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression;

(e) To consider approaches taken to access to information with a view to sharing best practices;

(f) To continue to provide his/her views, when appropriate, on the advantages and challenges of new information and communication technologies, including the Internet and mobile technologies, for the exercise of the right to freedom of opinion and expression, including the right to seek, receive and impart information and the relevance of a wide diversity of sources, as well as access to the information society for all;

5. *Calls upon* all States to cooperate fully with and assist the Special Rapporteur in the performance of his/her tasks, to provide all necessary information



requested by him/her, to react promptly to his/her urgent appeals and other communications and to consider favourably his/her requests for visits and for implementing his/her recommendations so that he/she may carry out his/her mandate more effectively;

6. *Invites* the United Nations High Commissioner for Human Rights, relevant special procedures of the Council and the human rights treaty bodies to pay attention, within the framework of their mandates, to the situation of persons whose right to freedom of opinion and expression has been violated with a view to avoiding unnecessary duplication;

7. *Requests* the Secretary-General to provide the assistance necessary to the Special Rapporteur to fulfil his/her mandate effectively, in particular by placing adequate human and material resources at his/her disposal;

8. *Requests* the Special Rapporteur to submit each year to the Council a report covering activities relating to his/her mandate;

9. *Decides* to continue its consideration of the issue of the right to freedom of opinion and expression in accordance with its programme of work.

*42nd meeting  
28 March 2008*

Adopted by a recorded vote of 32 to none, with 15 abstentions. The voting was as follows:

*In favour:* Angola, Azerbaijan, Bangladesh, Bolivia, Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Gabon, Ghana, India, Indonesia, Jordan, Madagascar, Malaysia, Mali, Mauritius, Mexico, Nicaragua, Nigeria, Pakistan, Peru, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Uruguay, Zambia.

*Abstaining:* Bosnia and Herzegovina, Canada, France, Germany, Guatemala, Italy, Japan, Netherlands, Philippines, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland.



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Eleventh session  
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Report of the Special Rapporteur on the promotion and protection of  
the right to freedom of opinion and expression, Frank La Rue\***

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\* The present report was submitted later than the indicated deadline, in order to incorporate the latest available information on the subject matter.

## Summary

This report is submitted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, pursuant to Human Rights Council resolution 7/36. This is the first annual report to be submitted by the current mandate-holder, whose term began on 1 August 2008. The report focuses on the Special Rapporteur's main vision and priorities for the mandate. It reviews the terms of reference of the mandate as outlined in resolution 7/36 of the Human Rights Council and then describes the working methods of the Special Rapporteur.

Chapter I of the report provides a summary of the mandate, and refers to Human Rights Council resolution 7/36, in which the mandate on the right to freedom of opinion and expression was reviewed and extended in March 2008. Chapter II presents a brief account of the main activities undertaken by the Special Rapporteur since the beginning of his tenure in August 2008, including an analysis of communication trends in that period. Chapter III presents an overall review of the main issues to be addressed by the Special Rapporteur, and presents his vision and priorities for the mandate. In this context the Special Rapporteur makes preliminary reflections on the issue of limitations to the right to freedom of opinion and expression. He also focuses on the right of access to information in situations of extreme poverty, and the safety and protection of media professionals, including the protection of journalists working in conflict zones. Chapter IV presents the general conclusions and recommendations of the Special Rapporteur.

This report contains, as an addendum, the summary of communications sent by the previous Special Rapporteur from 1 January to 1 August 2008 and thereafter by the current Special Rapporteur until 31 December 2008, including replies received thereto from Governments by 15 February 2009. A second addendum includes a report completed by the former Special Rapporteur, Ambeyi Ligabo, on a country visit he undertook to Honduras in November 2007, and the third addendum includes a report outlining the findings of the Special Rapporteur following an official country visit to the Republic of the Maldives in March 2009, his first official country mission as mandate-holder.

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## I. THE MANDATE

1. The Human Rights Council reviewed the mandate of the Special Rapporteur on the right to freedom of opinion and expression at its seventh session in March 2008. As a result, the mandate was extended for a further three years by virtue of resolution 7/36, in paragraphs 3 and 4 of which the Council outlined the terms of reference of the Special Rapporteur, who is mandated:

(a) To gather all relevant information, wherever it may occur, relating to violations of the right to freedom of opinion and expression, discrimination against, threats or use of violence, harassment, persecution or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information;

(b) To seek, receive and respond to credible and reliable information from Governments, non-governmental organizations and any other parties who have knowledge of these cases;

(c) To make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations;

(d) To contribute to the provision of technical assistance or advisory services by the Office of the United Nations High Commissioner for Human Rights to better promote and protect the right to freedom of opinion and expression.

2. The Council, through this resolution, recognizes that the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society, and in paragraph 5 it calls upon all Governments “to cooperate with and assist the Special Rapporteur in the performance of his tasks, to provide all information to respond to communications transmitted by the mandate-holder without undue delay and calls upon Governments to seriously consider responding favourably to the requests of the Special Rapporteur to visit their countries in a spirit of constructive dialogue”.

3. The Special Rapporteur notes with appreciation the request in resolution 7/36 to continue to provide his views, when appropriate, on the advantages and challenges of new information and communication technologies, particularly the reference in paragraph 4 (f) to the right to access to the information society for all. The Special Rapporteur considers access to information as one of the priority issues for the mandate and as such wishes to focus part of this report on access to information in situations of extreme poverty.

4. In paragraph 4 (d) of resolution 7/36, the Council further requests that the Special Rapporteur report “on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination, taking into account articles 19, paragraphs 3 and 20 of the International Covenant on Civil and Political Rights, and general comment No. 15 of the Committee on the Elimination of All Forms of Racial Discrimination, which stipulates that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression”.

5. The Special Rapporteur will continue to pursue the provisions outlined in the resolution in addition to the International Covenant on Civil and Political Rights and other relevant international and regional instruments, which continue to provide the legal framework for the mandate.

## II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

### A. Analysis of information, communications and trends

6. For the effective implementation of his mandate, the Special Rapporteur focuses on information received from a variety of sources, including Governments; local, national, regional or international governmental and non-governmental organizations; associations of media professionals and writers; and trade unions. The communications received from various sources are a means to identify trends, reiterate issues already discussed in previous reports and bring to the attention of the international community a number of policies, practices and measures having an impact on the respect for freedom of opinion and expression.

7. Information received is a significant indicator of the degree of implementation of the right to freedom of opinion and expression in a given country. The Special Rapporteur may also decide to take initiative *motu proprio* on issues of general concern that he considers relevant to his mandate.

8. The majority of cases received by the Special Rapporteur concern threats, aggressions, harassment, murder or other sorts of attacks on the physical and psychological integrity of journalists, students, human rights defenders and unionists in retaliation for the exercise of their right to freedom of opinion and expression. In many cases, these attacks are linked to the repression of peaceful protests conducted to express disagreement with a particular governmental policy, at the national or local level, or with the actions of large corporations. While the extent of the repression, its duress and length may substantially vary, allegations received are not confined to countries where the political, social and economic situation is particularly difficult, but also concern violations occurring in transitional or long-established democracies.

9. Analysis of communications also shows a large number of cases of prosecution or imprisonment of individuals including media professionals on charges of defamation, libel and slander, despite the decriminalization of these offences by some countries. Another important trend in many regions has been the adoption of legislation that unduly limits freedom of expression by fostering State interference in editorial independence; by creating subjective licensing procedures that are used to close media outlets; by restricting the ability of journalists, particularly foreign correspondents, to perform their work freely; and by imposing severe limitations on the operation, including funding, of civil society organizations.

10. From 5 December 2007 to 31 December 2008, 433 communications were sent on behalf of the Special Rapporteur, 365 of which were signed jointly with other special-procedures mandate-holders. The geographical division of the communications was as follows: 30 per cent in Asia and the Pacific; 20 per cent in Africa; 20 per cent in Latin America and the Caribbean; 17 per cent in the Middle East and North Africa; and 13 per cent in Europe, North America and Central Asia.

## B. Press releases

11. Within the scope of his mandate the Special Rapporteur may issue press releases<sup>1</sup> in order to highlight his particular concern about current events in relation to freedom of opinion and expression. Since the beginning of his term in August 2008 the Special Rapporteur has issued four joint press statements concerning restrictions on the right to freedom of opinion and expression.

12. On 18 November 2008, the Special Rapporteur, together with the Special Rapporteur on the situation of human rights in Myanmar, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on freedom of religion or belief, issued a joint press release condemning the severe conditions and unfair trials of prisoners of conscience in Myanmar. The experts noted that peaceful demonstrators arrested in 2007 were being tried after one year of arbitrary detention, with dozens of the detainees being sentenced to 65 years' imprisonment; others were given 25-year sentences. Moreover, defence lawyers had also been sentenced to several months' imprisonment or were barred from representing their clients. The experts strongly urged authorities in Myanmar to cease these acts of harassment and detention against individuals who were exercising their human rights. They stipulated that all the detainees should be retried respecting fair trials guarantees and that all the defence counsels be released.

13. On 27 November 2008, the Special Rapporteur, along with the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on violence against women, issued a press release regarding the ongoing harassment and intimidation of members of the One Million Signatures Campaign in the Islamic Republic of Iran. The experts noted that peaceful demonstrators had been arrested, detained and persecuted with prison sentences, while women's rights activists involved in the campaign had been continuously harassed and prevented from travelling. The experts stipulated that women's participation in public life, to promote equal treatment of women and men in the Islamic Republic of Iran, should be encouraged as a means to build a stronger and healthier society, in which women's unique contributions can flourish. As such, the Special Rapporteurs urged the Government of the Islamic Republic of Iran to abide by its obligations under the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Discrimination against Women, and to respect the rights of women's rights activists to freedom of association and peaceful assembly, and to freedom of opinion and expression.

14. On 10 December 2008, the Special Rapporteur, along with 35 other special rapporteurs and independent experts, issued a press release welcoming the adoption by the General Assembly of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which enables those suffering from violations of their economic, social and cultural rights to seek remedies and hold those responsible to account for their actions. The experts expressed their hope that views adopted by the Committee under the Optional Protocol procedures would be used by the human rights community to assist States in taking concrete steps to realize the rights

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<sup>1</sup> The full text of the press statement is available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/875F9C3B794E9AB3C125750500497FDD?opendocument>.

of all and to reach out to the most marginalized and disadvantaged, who are the most likely to see their rights violated. The experts called on all States to sign and ratify the instrument swiftly, so as to secure a speedy entry into force and wide application.

15. On 9 February 2009, the Special Rapporteur, together with 10 other independent experts, issued a press statement expressing their deep concern about the deteriorating human rights situation in Sri Lanka, particularly the shrinking space for critical voices and the fear of reprisals against victims and witnesses. The experts noted that impunity for human rights violations continues unabated throughout the country with a climate of fear and intimidation reigning over those defending human rights, especially over journalists and lawyers. The experts also noted the serious and fatal aggression against journalists and the media as now a common occurrence as witnessed in the killing of the journalist Lasantha Wickremetunga and attacks on major media outlets. The experts shared the deep concern of the High Commissioner for Human Rights over the rapidly deteriorating conditions facing those civilians and the significant number of civilian casualties. They also deplored the restrictions on humanitarian access to conflict areas which exacerbate the ongoing serious violations of the most basic economic and social rights. The experts strongly urged the Government of Sri Lanka to immediately take measures to ensure that effective remedial action can be pursued in support of the victims of human rights abuses and their families. They also highlighted that thorough reforms of the general system of governance are needed to prevent the recurrence of further serious human rights violations. The experts called for an immediate end to impunity and to refrain from any reprisals. To strengthen the rule of law and to help ensure the safety and protection of the human rights of all persons in Sri Lanka, the experts noted that they would continue to extend their offer of assistance to the Government.

### **C. Participation in meetings and seminars**

16. From 2 to 3 October 2008, the Special Rapporteur participated in the “Expert seminar on the links between articles 19 and 20 of the International Covenant on Civil and Political Rights: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence”.<sup>2</sup> The seminar was organized by the Office of the High Commissioner for Human Rights and was attended by over 200 observers, including representatives of Governments, other United Nations agencies, regional organizations, the media and non-governmental organizations. The aim of the event was to clarify the links between articles 19 and 20 of the International Covenant on Civil and Political Rights on freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence. The Special Rapporteur presented a paper on the differences and links between permissible limitations under article 19, paragraph 3, in particular when it comes to restrictions aimed at protecting the rights of others, and States’ obligations under article 20 of the Covenant. The Special Rapporteur noted through his participation in the event the importance of resolving tensions based on genuine cultural or religious differences through

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<sup>2</sup> Details of the event can be viewed at [www2.ohchr.org/english/issues/opinion/articles1920\\_iccpr/](http://www2.ohchr.org/english/issues/opinion/articles1920_iccpr/).



open debate, emphasizing that free speech is therefore a requirement for, and not an impediment to, tolerance. The Special Rapporteur's participation in the event falls within the realms of his mandate as outlined in resolution 7/36 of the Human Rights Council.

17. From 7 to 8 October 2008, the Special Rapporteur participated in the information session for newly appointed special-procedures mandate-holders, held in Geneva. The meeting primarily discussed the institution-building process conducted by the Human Rights Council and the new methods of work of mandate-holders, as well as issues such as cooperation with civil society, national human rights institutions and among special-procedures mandates.

18. While in Geneva to attend the aforementioned events, the Special Rapporteur met with representatives of the Organization of the Islamic Conference (OIC) and the Group of Latin American and Caribbean Group States (GRULAC). The Special Rapporteur is keen to maintain open dialogue with all regional groups and plans to meet with those he did not have the opportunity to meet with during his future visits to Geneva.

19. On 10 October 2008, the Special Rapporteur participated in a seminar at the European Court of Justice in Strasbourg entitled "The European protection of freedom of expression: reflections on some recent restrictive trends". The event was organized jointly by Robert Schumann University of Strasbourg, Ghent University and the Open Society Justice Initiative.

20. On 26 October the Special Rapporteur met with members of the World Association of Newspapers (WAN) in London.

21. On 28 October, the Special Rapporteur attended the International Symposium on Freedom of Expression organized by UNESCO in Paris. The event, entitled "Freedom of expression: development, democracy and dialogue", was organized to commemorate the sixtieth anniversary of article 19 of the Universal Declaration of Human Rights. While in Paris for this event, the Special Rapporteur also met with representatives of Reporters Without Borders.

22. On 7 November 2008, the Special Rapporteur attended the international symposium "25th anniversary of AMARC: Development and empowerment through community radio" organized by the World Association of Community Radio Broadcasters (AMARC) in Montreal.

23. From 13 to 15 November 2008, the Special Rapporteur participated in an event organized by the Latin American Association for Educational Radio (ALER), in Buenos Aires. The international conference focused on "Freedom of expression, pluralism and diversity in radio".

24. Following a meeting on 9 December 2008, as part of the Global Forum on World Media Development (held 7-10 December 2008 in Athens), the Special Rapporteur, along with the Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, Miklos Haraszti, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, Catalina Botero, and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, Faith Pansy Tlakula, issued a joint declaration on defamation of religions, and anti-terrorism and anti-extremism legislation. The declaration noted that the concept of "defamation of religions" did not accord with international standards regarding defamation and that restrictions on freedom

of expression should be limited in scope to the protection of overriding individual rights and social interests. Restrictions should never be used to protect particular institutions or abstract notions, concepts or beliefs, including religious ones. The declaration further noted that restrictions on freedom of expression to prevent intolerance should be limited in scope to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and it encouraged the General Assembly and the Human Rights Council to desist from further adoption of statements supporting the idea of defamation of religions.

25. On 11 December 2008, the Special Rapporteur attended an event in London organized by the non-governmental organization Article 19, on “Promoting equality within a free speech framework”, and from 12 to 14 December he participated in an International Expert Roundtable event on freedom of expression organized by the Center for Media and Communication Studies at Central European University in Budapest.

26. On 5 February 2009 the Special Rapporteur participated in an event entitled “The Agenda for Change: A free speech framework for Nepal” which took place in Kathmandu. A report (“Agenda for Change on Right to Freedom of Expression in Nepal”) prepared as a joint initiative of the non-governmental organizations Freedom Forum, Article 19 and Federation of Nepali journalists (FNJ) was launched as part of the event by Prime Minister Puspa Kamal Dahal.

27. On 23 January, the Special Rapporteur addressed the Wilton Park Conference on “the relationship between freedom of expression and freedom of religion: a victim’s perspective”. The event, entitled “Contemporary and future human rights challenges”, took place from 22 to 24 January in London.

28. From 25 to 29 January, the Special Rapporteur participated in the regional meeting of Latin American organizations on freedom of expression, organized by the International Freedom of Expression Exchange (IFEX) in Antigua, Guatemala.

29. From 13 to 16 March, the Special Rapporteur participated in a round-table event organized by the International Press Society (SIP) in Asunción.

30. From 22 to 25 March 2009, the Special Rapporteur participated in an international seminar entitled “Latin America in the 21st century: communication and power”. The event was organized by the Latin American Association for Educational Broadcasting (ALER) and the Universidad Andina Simón Bolívar. The seminar took place in Quito.

#### **D. Country visits**

31. From 1 to 5 March 2009, the Special Rapporteur undertook an official country visit to the Maldives. This was the Special Rapporteur’s first country mission as mandate-holder. The visit was carried out at the invitation of the Government in order to examine issues of relevance to his mandate. In his conclusions on the visit, the Special Rapporteur highlighted the importance of the ongoing democratic transition in the Maldives and made preliminary recommendations on how to strengthen this process. An addendum (A/HRC/11/4/Add.3) to this report includes the full mission report of the Special Rapporteur on his visit to the country.

32. The Special Rapporteur notes that country visits will remain central to the activities of the mandate. Visits previously undertaken by the former Special Rapporteur, along with requests made to Governments for official country visits, and the emerging trends as they result from the analysis of communications on freedom of expression and opinion form the basis of requests sent to countries requesting an invitation from various Governments. Requests for invitations to visit a number of countries have been sent by the Special Rapporteur, taking into consideration the importance of achieving a geographical balance. The Special Rapporteur hopes that visit requests will be met favourably by the concerned Governments.

### **III. VISION AND PRIORITIES**

#### **A. Main priorities and working methods**

33. As this is the first report of the Special Rapporteur to the Human Rights Council, this chapter highlights his vision for the mandate along with proposed working methods. The Special Rapporteur will also make some preliminary reflections on the issue of limitations to the right to freedom of opinion and expression. The report elaborates on two priority areas identified by the Special Rapporteur, including the right of access to information in situations of extreme poverty, and the protection of journalists and the media working in conflict situations.

34. The Special Rapporteur will build on the accomplishments achieved by his predecessors holding the mandate and he presents this report in a spirit of transparency and openness. While recognizing the immutable independence inherent to the position of a special-procedures mandate-holder, the Special Rapporteur believes that open dialogue with all stakeholders should be encouraged and that such interaction will be of fundamental importance to the implementation of the mandate.

35. The Special Rapporteur will continue to analyse trends and challenges facing the right to freedom of opinion and expression, and will aim to develop methods with interested Governments, national institutions, regional mechanisms, diplomatic representatives and relevant branches of international and regional organizations to enhance this fundamental right. The Special Rapporteur would also like to further reinforce follow-up to individual cases brought to his attention through the mandate, and in doing so, will enhance collaboration with stakeholders, including Governments, human rights communities at the national, regional and international levels, regional mechanisms, national institutions, the Office of the United Nations High Commissioner for Human Rights, including its field presences, human rights components of United Nations country teams and peacekeeping missions, the media, treaty bodies and other special procedures.

36. In fulfilling some of the requirements cited in Council resolution 7/36, which calls upon the mandate of the Special Rapporteur “to make recommendations and provide suggestions on ways and means to better promote and protect the right to freedom of opinion and expression in all its manifestations”<sup>3</sup> and “to contribute to the provision of technical assistance or advisory services by the Office of the United Nations High Commissioner for Human Rights to better

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<sup>3</sup> Paragraph 3 (c).

promote and protect the right to freedom of opinion and expression”,<sup>4</sup> the Special Rapporteur has proposed developing an online training programme for media personnel on freedom of expression, human rights and multiculturalism. The aim of the programme is to identify ways to strengthen professional commitments to high-quality journalism, while also fostering greater respect for diversity, multiculturalism and human rights education. The programme will aim to address some of the main concerns voiced by various stakeholders in relation to hate speech, intolerance and discrimination.

37. The Special Rapporteur participated in the Durban Review Conference held in Geneva from 20 to 24 April 2009. The Conference was meant to provide an opportunity to review progress made in the combat against racism, racial discrimination, xenophobia and related intolerance and the actual implementation of the Durban Declaration and Programme of Action at the national, regional and international levels since 2001, as well as to share best practices. The Special Rapporteur’s participation in the event highlights the indivisible link between the promotion of the right to freedom of expression and the fight against racism, racial discrimination, xenophobia and related intolerance.

### **B. Limitations to the right to freedom of opinion and expression**

38. The exercise of the right to freedom of opinion and expression is a significant indicator of the level of protection and respect of all other human rights in a given society. Democratic institutions, while not preventing all violations of the right to freedom of opinion and expression, do offer guarantees for its protection as well as an enabling environment for its exercise. Freedom of opinion and expression not only benefits from a democratic environment; it also contributes to, and is indeed instrumental to, the emergence and existence of effective democratic systems. However, violations of the right to freedom of opinion and expression may occur in all regions and countries, whatever their system, and may have various forms.

39. The Special Rapporteur notes that freedom of expression is the manifestation of cultures, cultural diversity, religion and ideologies. Therefore, the right to freedom of expression should be approached with a positive view to defending it. Existing international instruments establish a specific limit on freedom of expression. In particular, the International Covenant on Civil and Political Rights provides that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. The main challenge thus lies in identifying at which point these thresholds are reached. A broad interpretation of these limitations, which has recently been suggested in international forums, is not in line with existing international instruments and would ultimately jeopardize the full enjoyment of human rights. Limitations to the right to freedom of opinion and expression have more often than not been used by States as a means to restrict criticism and silence dissent.

40. Limitations on freedom of expression should be clearly defined and provided by law. Limitations should not threaten the exercise of the right itself. In addition, they ought to be

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<sup>4</sup> Para. 3 (d).

necessary and proportionate to the objective they propound to achieve, and should include the least intrusive means insofar as freedom of expression is concerned, to prevent a chilling effect. The adjudication of such limitations should be made by an independent judiciary.

41. The right to freedom of expression cannot be exercised passively, but requires a lasting commitment by States to ensure the mechanisms that guarantee and protect it. Mechanisms for criticism, including of political leaders, are deemed important to hold individuals accountable. Freedom of expression is not limited to statements that are considered appropriate or beneficial; any boundaries should directly adhere to the wording of the International Covenant on Civil and Political Rights.

42. In many countries, overbroad rules in this area are abused by the powerful to limit non-traditional, dissenting, critical or minority voices, or discussion about challenging social issues. Furthermore, resolution of tensions based on genuine cultural or religious differences cannot be achieved by suppressing the expression of differences but rather by debating them openly. The Special Rapporteur notes that free speech is therefore a requirement for, and not an impediment to, tolerance.

### **C. Safety and protection of journalists and media professionals in conflict zones**

43. The protection of journalists engaged in dangerous missions during an armed conflict is a major concern for the international community and in the last year remained a key obstacle for achieving the full implementation of the right to freedom of opinion and expression. In 2008, a total of 60 journalists were killed, some 29 media professionals were kidnapped and 929 were physically attacked or threatened throughout the year.<sup>5</sup>

44. Violent conflicts in many parts of the world, and specifically in Afghanistan, Iraq, the Middle East, Somalia, the Sudan and recently Ossetia, have a serious impact on the ordinary population, including journalists and media professionals. Large numbers of journalists are either assassinated, wounded by direct armed attacks during the fighting or deliberately targeted and kidnapped by the parties to the conflict. The proliferation of small arms, the use of increasingly sophisticated weapons by belligerents and the concern to win the war of images worsens the situation of physical safety for civilians and media professionals. Such attacks, in blatant violation of international humanitarian and human rights law, are committed in an environment of almost total impunity.

45. The Special Rapporteur received numerous reports concerning deliberate attempts to target journalists, particularly in areas of ongoing armed conflict. The evolution of modern warfare has a serious impact on the freedom of expression, the freedom of the press, and on the quality and independence of information, which are the basic components of a free media. Factors contributing to this are, among others, the loss of the civilian status of media professionals that

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<sup>5</sup> Reporters Without Borders, *Press Freedom Round-up*; see [www.rsf.org/article.php3?id\\_article=24909](http://www.rsf.org/article.php3?id_article=24909).

results in the restriction of their movement and of their access to reliable and objective sources of information, the increasing use of embedded journalists and the insecurity that exists regarding their status of protection.

46. In 2008, the Special Rapporteur received reports that lawyers investigating the killing of Radio Okapi journalist Serge Mahese, were subjected to ongoing threats and harassment. Serge Mahese was shot dead in Bukavu in the Democratic Republic of the Congo on 13 June 2007. He was a respected journalist with Radio Okapi, a national radio station sponsored jointly by the Swiss Hironnelle Foundation and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).

47. The main provisions protecting journalists and other media professionals in situations of armed conflict come from humanitarian law, in particular from special measures contained in article 79 of Protocol I to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts. This article establishes that “journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians” and “shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians”. The civilian status of journalists transcends any type of contractual arrangement that the journalist may have; equal protection is granted to freelance, independent or to journalists belonging to any media.

48. The Security Council passed resolution 1738 (2006) to express its deep concern “at the frequency of acts of violence in many parts of the world against journalists, media professionals and associated personnel in armed conflict”, and it condemned intentional attacks against this group. The Security Council also underlined the obligation under humanitarian law to grant civilian status to journalists during armed conflicts, as established by the Geneva Conventions.

49. The Special Rapporteur supports this Security Council resolution, adopted on the joint initiative of Greece and France, and would encourage States to give renewed attention to the fact that the media, its personnel and its equipment as long as they are not making an effective contribution to military action cannot be considered a legitimate target and attacks against them are illegal under international humanitarian law.

50. Journalists and media professionals are not only at risk during times of conflict, but many are targeted during public crises and states of emergency. In such cases, journalists are often victims of abuse and harassment by the security forces, and are subjected to arrests and detention. Throughout 2008, the Special Rapporteur has received reports of such human rights violations against journalists, particularly those covering public demonstrations opposing government policies.

#### **D. Implementing the right of access to information in situations of extreme poverty**

51. Extreme poverty, often described as multidimensional and not limited to income, but also touching livelihood, health, education and housing as well as social, cultural and political participation, affects millions of people worldwide. This multidimensional approach to poverty is paralleled by an integrated understanding of human rights, in which civil and political rights are indivisible from social, economic and cultural rights.

52. The impact of the global financial crisis of 2008 has had a considerable impact on the developing world, with slowdowns expected in all emerging economies. These growth declines could have significant effects on the world's poorest populations.

53. The concept of human poverty that focuses on the denial of opportunities and choices most basic to human development and the lack of respect of others, also highlights a lack of participation in decision-making and in civil, social and cultural life. The Commission on Human Rights, in its resolution 1997/11, reaffirmed that "in accordance with the Vienna Declaration and Programme of Action, it is essential for States to foster participation by the poorest people in the decision-making process in their communities, in the promotion of human rights and in efforts to combat extreme poverty". The Special Rapporteur notes that people affected by chronic extreme poverty risk becoming socially excluded from full participation in the society in which they are living. Often the poor, the unemployed and people belonging to ethnic minorities and other vulnerable groups, remain marginalized in the social hierarchy. As such, the Special Rapporteur emphasizes the need for access to information to be guaranteed as a means towards securing participation and accountability.

54. Strengthening the voices of people living in poverty improves understanding and actions aimed at addressing poverty, injustice and inequality and can inform and influence public agendas locally, nationally and internationally. Adequate access to knowledge and information helps communities work for a better future. The Special Rapporteur believes that the media can play an important role by ensuring the dissemination of information and raising awareness of poverty as well as of a community's role in eliminating poverty and improving living standards.

55. The inability of some people to command the processes and benefits of globalization, communications and information included, is a key concern. For many poor people, for whom globalization and the information revolution is still a slow-moving process, careful thought must be given as to how best to include them in local, national, regional and international information flows. The Special Rapporteur urges the international community to address the exclusion of marginalized and vulnerable groups from the media. Minorities, indigenous peoples, migrant workers, refugees and many other vulnerable communities have faced higher barriers, some of them insurmountable, to be able to fully exercise their right to impart and also to access information. For these groups, the media plays the central role of fostering social mobilization, participation in public life and access to information that is relevant for the community. Without a means to disseminate their views and problems, these communities are in effect excluded from public debates, which ultimately hinders their ability to fully enjoy their human rights.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

**56. This report outlines the vision and priorities of the Special Rapporteur for his mandate that he wishes to share with Member States and other stakeholders in a spirit of openness and transparency. The Special Rapporteur hopes that this same spirit will characterize his relationship with them throughout his tenure.**

**57. The Special Rapporteur will interpret the mandate by building on the achievements of his predecessors and the knowledge base developed and methods of work used.**

58. **Given that this is his first report, the Special Rapporteur has focused on two areas only which he deems as priority for the mandate. Future reports will aim to further develop thematic issues related to the fundamental right of freedom of opinion and expression. As such, the Special Rapporteur will be in a position to present more detailed recommendations based on the activities and trends which he will identify during his first year as mandate-holder.**

**A. Access to information in situations of extreme poverty**

59. **Rights to information and freedom of expression should be encouraged at all levels. The Special Rapporteur urges Governments to deregulate the communications and media environment to allow free and fair information to flow more effectively to civil society. Support for enhancing such flows and targeted interventions that support the most vulnerable and marginalized groups within society at large should be given priority.**

60. **The Special Rapporteur further encourages States to uphold the rights to freedom of expression and access to information stipulated within article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Public access to information can be systematically denied by Governments and, similarly, Governments can place restrictions on free speech and freedom of expression via legislation and activities that deny rights of political and cultural association. Openness of government and the free flow of information are enshrined within the principle of “maximum disclosure” through which Governments and public institutions become more answerable to the general public. A civil society that is empowered with open information is better placed to advocate for more impartial and transparent service delivery and has a greater sense of participation and ownership in decision-making processes.**

61. **Governments may be poorly placed to systematically disseminate information to the public or may not be inclined towards such transparency because of high levels of corruption. The Special Rapporteur recommends that in such cases support for the media during times of conflict and deregulation of the communications and media environment be seen as mechanisms for increasing the plurality and diversity of information flows in poor and conflict-prone countries.**

62. **The Special Rapporteur encourages Governments to strengthen public broadcasting and to introduce anti-monopoly legislation in order to achieve a diverse broadcasting system which is accessible to all. Policies should promote freedom of expression and public participation.**

63. **Community-based broadcasting provides an alternative social and economic model for media development that can broaden access to information, voice and opinion. People faced with economic exclusion also face systemic obstacles to freedom of expression that are associated with the conditions of poverty, including low levels of education and literacy, poor infrastructure, lack of access to electricity and general communications services. The Special Rapporteur recommends that Governments consider community broadcasting as a vital tool for the voiceless, which would enable them to exercise their right to freedom of**



**expression and access to information. Such programmes should encourage active participation of the community in their initiation, production and presentation to empower the poorest people and communities and as a means of reducing poverty.**

#### **B. Safety and protection of media professionals**

**64. The Special Rapporteur reiterates the recommendations of his predecessors that Governments should translate their formal concerns about the safety of journalists, elaborated in international forums and treaty law, into concrete measures for enhancing the safety of journalists and other media personnel including at the legislative, administrative and judicial levels. Measures should be taken to protect all media personnel regardless of their professional and political affiliation. The protection of journalists and media workers must be ensured at all times, particularly during armed conflicts, states of emergency and public disorder and electoral processes. Governments are also urged to ensure the protection of other groups at risk, such as trade unionists, social workers, students and teachers, writers and artists.**

**65. Creating a culture of safety for journalism adds to the capacity of media to contribute to building prosperous and confident democracies. The Special Rapporteur urges Governments and State institutions to provide support and an assurance that all acts of violence against journalists are fully investigated. Limiting impunity for the perpetrators of crimes against media professionals will function as an important deterrent against the repetition of these crimes.**

**66. The Special Rapporteur encourages Governments to develop protection schemes for media personnel. News associations should be supported in promoting actions that secure the safety of journalists, including safety training, health care, life insurance, and equal access to social protection for freelance employees and full-time staff.**

**67. The Council may wish to consider the opportunity, as previously suggested by his predecessor, of entrusting the Special Rapporteur with the preparation of a study on the causes of violence against media professionals, based, inter alia, on information from and the experiences of Governments, intergovernmental and non-governmental organizations, and including a comprehensive set of conclusions and recommendations and the drafting of guidelines for the protection of journalists and other media professionals. This study could represent the first step towards a debate, within the Human Rights Council, on this crucial issue, following the discussions held by other bodies, including the Security Council.**

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**3) Selected cases related to the Freedom of Expression in Cyberspace in the Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue - Summary of Cases Transmitted to Government and Replies Received (A/HRC/11/4/Add.1)**

**China (People's Republic of)**

**Case 1. Letter of allegations sent on 22 February 2009  
– Case of Mr. Lu Gengsong, a freelance-writer**

421. The Special Rapporteur, together with the then Special Representative of the Secretary-General on the situation of human rights defenders, sent a letter of allegations in relation to the situation of Mr. Lu Gengsong, a prominent freelance-writer who has published several pro-democracy internet articles and books on political reform. Mr. Lu Gengsong was the subject of an urgent appeal, sent by the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, on 30 August 2007.

422. According to information received, on 5 February 2008 Mr. Lu Gengsong was sentenced to four years in prison and one year of deprivation of his political rights after being convicted on charges of 'incitement of subversion of state power' by the Hangzhou City Intermediate People's Court, following a closed trial on 22 January 2008 which lasted 15 minutes. A number of supporters and friends of Mr. Lu Gengsong were reportedly prohibited by the Hangzhou Public Security Bureau (PSB) from attending the sentencing by being placed under house arrest or from entering the court building.

423. Mr. Lu Gengsong has been detained since his arrest at his home on 24 August 2007. Reports at the time of his arrest stated that the police had informed Mr. Lu's family that the reason for his detention had been articles he had written which were critical of the Chinese Communist Party. Mr. Lu Gengsong is currently detained at the Xihu (West Lake) Detention Center in Hangzhou City pending appeal of his case.

424. Concern was expressed that the conviction and sentencing of Mr. Lu Gengsong may be directly related to his activities in defense of human rights, particularly his exercising of to freedom of expression.

**Response from the Government**

425. In a letter dated 24 April 2008, the Government replied to the communication above. At the time this report was finalized, the reply of the Government had not been translated.

## **Case 2. Urgent appeal sent on 16 May 2008**

### **– Case of Messrs. Chen Daojun, Xin Wu, Shi Jianhua and Lin Yong who posted articles online criticising the government**

514. The Special Rapporteur, together with the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government regarding Messrs. Chen Daojun, Xin Wu, Shi Jianhua and Lin Yong, internet writers and human rights defenders.

515. According to the information received, on 9 May 2008 Messrs. Chen Daojun, Xin Wu, Shi Jianhua and Lin Yong were detained for posting articles online criticizing the construction of a petrochemical plant in Chengdu, capital of Sichuan Province. Mr. Chen Daojun was detained for “inciting subversion of state power”. Messrs. Xin Wu, Shi Jianhua and Lin Yong were placed under administrative detention.

516. On 10 May 2008 a police spokesperson stated at a press conference in Chengdu that the four internet writers were detained for posting articles that “created, spread and stirred up rumor” and for using the internet to spread harmful information. It was further maintained that they had incited the manifestation that took place in Chengdu on the 4 May 2008, where about 200 people had participated to protest against the construction of the chemical plant.

517. Concerns were expressed that the detention of Messrs Chen Daojun, Xin Wu, Shi Jianhua and Lin Yong might be solely connected to their peaceful activities in defending human rights and the exercise of their right to freedom of opinion and expression. Further concerns were expressed at this apparent emerging trend of repression against human rights defenders in China.

#### Observations

518. The Special Rapporteur regrets that at, the time of the finalization of this report, the Government had not transmitted a reply to their communications.

## **Case 3. Urgent appeal sent on 6 June 2008**

### **– Case of Mr. Ren Shangyan, Assistant Director of website**

536. The Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders and the Special Rapporteur on the question of torture, sent an urgent appeal to the Government regarding the situation of Ms. Ren Shangyan, Assistant Director of the China Justice Advocacy Web (Zhonghua Shenzheng Wang), a website which frequently has reported on cases related to alleged corruption and social justice.

537. According to the information received, on 16 May 2008 Ms. Ren Shangyan was arrested by several Shuangyashan Public Security Bureau (SPSB) officers in Shuangyashan City, Heilongjiang

Province. Her current whereabouts are unknown, and her family has not been informed by the police of her detention. The current conditions of her detention and whether she has formally been charged remain unclear. Shortly before her arrest, Ms. Ren Shangyan had been investigating accusations against the Vice-Chief of the Anti-Corruption Bureau under the Procuratorate of Lingdong District, Shuangyashan City. In March 2008, shortly after the China Justice Advocacy Web initiated to investigate the case, the website was temporarily closed by the internet police. In 2007, the website was repeatedly blocked following various reports on corruption cases in Shanghai.

538. Concern was expressed that the arrest and detention of Ms. Ren Shangyan may have been directly related to her reportedly peaceful human rights activities, particularly her advocacy of an end to corruption and social injustice. Further concern was expressed for her physical and psychological integrity while in detention. Finally, concern was expressed that the above mentioned allegations may form part of a pattern of harassment against human rights defenders in the country.

#### Observations

539. The Special Rapporteur regrets that at the time of the finalization of this report, the Government had not transmitted a reply to their communications.

#### **Case 4. Urgent appeal sent on 24 November 2008**

##### **- Case of Mr. Chen Daojun, freelancer writer and cyber activist**

631. The Special Rapporteur, together with the Special Representative of the Secretary-General on the situation of human rights defenders, sent an urgent appeal to the Government regarding the situation of Mr. Chen Daojun, a freelance writer and cyber activist based in Sichuan. Mr. Chen Daojun, together with Messrs Xin Wu, Shi Jianhua and Lin Yong, were the subject of an urgent appeal sent on 16 May 2008 by the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders. A response of the Government of Your Excellency has not yet been received.

632. According to new information received, on 21 November 2008, the Chendu Intermediate People's Court in Sichuan convicted Mr. Chen Daojun of "inciting subversion of state power" (after having been initially charged with "inciting secession"), and sentenced him to three years of imprisonment and deprivation of political rights. This was reportedly in response to internet articles written by Mr. Chen Daojun, in which he supported the protests held in March 2008 in Tibet. During the trial, Mr. Chen Daojun pleaded "innocent", and he may appeal the decision. 633. Concern was expressed that the sentencing of Mr. Chen Daojun may be linked to his non-violent activities in defence of human rights. Further concern is expressed for Mr. Chen Daojun's physical and mental integrity while in detention.

#### Response from the Government

634. In a letter dated 17 February 2009, the Government responded to the communication of 24 November 2008, providing the following information: “Chen Daojun, male, born on 3 January 1968, was arrested on 13 June 2008. On 21 November he was sentenced by the Chengdu Intermediate People’s Court to three years’ imprisonment and deprived of his political rights for three years for the crime of inciting subversion of State political power. Following the hearing in the court of first instance, Chen accepted the verdict and did not file an appeal. The judgement of the court of first instance has become effective. The court in question conducted the trial in this case in strict compliance with the law. During the trial, not only did Chen himself exercise his right to a defence, but his designated counsel also made a full submission in his defence. While the Chinese Constitution stipulates that citizens enjoy the right to freedom of opinion and expression, it also provides that when exercising this right, citizens may not harm the interests of the State, society or the community, or the legitimate freedoms and rights of other citizens. The articles which Chen signed and published on the Internet employed rumour mongering and libel to incite others to repudiate the State’s political power and social system. Under article 105, paragraph 2, of the Criminal Law of the People’s Republic of China, such acts constitutes the crime of inciting subversion of State political power. China’s judicial authorities investigated Chen’s criminal responsibility in accordance with the country’s laws and cannot be reproached”.

#### Observations

635. The Special Rapporteur is grateful for the Government’s reply.

### **Indonesia**

#### **Case 1. Letter of allegations sent on 29 April 2008**

##### **- Electronic Information and Transaction law**

1136. The Special Rapporteur sent a letter of allegations concerning reports that a new law on “Electronic Information and Transaction” was passed on 25 March 2008. While the main purpose of the law is to combat online crime, pornography, gambling, blackmail, lies, threats and racism, it is reported that provisions in the law prohibit citizens from distributing in any electronic format information that is defamatory, allegedly punishing transgressors with a maximum of six years in prison or a fine of one billion Rp (approx. US\$ 109,000) or both.

#### Response from the Government

1137. By a letter dated 27 May 2008, the Government responded to the letter of allegations, providing the following information: “the “Economic information and Transaction Law” is a national law that was passed on 25 March 2008. Primarily, this law was established to cover the use of the Internet and focuses on issues such as web content, information technology and business transactions. The Ministry of Communications and Information was the agency placed in charge of the draft which is formally known as the “UU ITE’ Undoing Undang Informasi and Transaksi Elektronik” or Law No. 11/2008 on Economic Information and Transaction Law. This law was

issued to ensure that there is a full and complete coverage of many issues such as intellect property rights, economic transfers and consumer protection measures. After five years of consultations and consolidation, in March 2008, the government officially ratified the Undang-undang Informasi and Transaksi Elektronik (UU ITE) and it was expected to come into force as of 1st of April 2008.

1138. This new legislation also forms part of the Government of Indonesia's effort, to establish and enact comprehensive legislation on cyberspace uses while taking into account the UNCITRAL model law requirements on e-commerce. It was also created to cover issues such as the communications, information technology and cybercrime. It is intended to complement the existing Undang-undang Hak Cipta (the Indonesian Copyright Law) as well as other such related laws. Therefore, while it is true that one of this new law is intended to restrict access to pornographic websites because such sites raise serious questions on morality and public order, it should also be noted that the new law was however not created exclusively for this purpose but also to encompass, in an updated manner, other aspects of internet use and the defamatory or negative use of information technology.

1139. Moreover, it must be understood that it is was in fact at the instigation and request of concerned members of the general public that the government decided to block access to sites with violent and pornographic content. To this end, the Information and Communications Ministry has made available to the public, software which blocks websites with pornographic content and which is also be available for download from its official website. This is software which the general public can choose to obtain for their personal use or on the other hand, choose not to. It was important to impose sanctions to discourage access to such sites and to this effect, there is the possibility that a maximum imprisonment term of three years may be imposed on those found guilty before a court of law of violating this law as well as a possible fine amounting to a maximum of one billion rupiah.

1140. The Government of Indonesia considers it important to reiterate at this point its commitment to the promotion and protection of human rights and fundamental freedoms. Indeed, Law No. 9/1998 regarding freedom of expression in public as well as the Indonesian Constitution guarantees the freedom of opinion and expression of its citizens. This is evident from the provisions of Article 28 E sub-paragraph (3) and Article 28 F whereby the protection and fulfilment of human rights are considered as the responsibility of the State, especially that of the government. In addition, Article 28 J sub-paragraph (2) provides that "In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes at guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society."

1141. In addition, the government is of the view that such legally binding restrictions will also be beneficial to the wellbeing and social upbringing of the most vulnerable group to such uncensored exposure, which are the children in the country. In this particular reference, the Indonesian Constitution of 1945 as well as its most recent amendments expressly protects the rights of children.

In Article 28 B. it is clearly stipulated that every child has the right to grow and develop, and has the right to protection from violence. Therefore, as in several international laws such as the “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”, it must be clearly underlined that violations to constitutional freedoms in Indonesia are thus contrary to the provisions of the national constitution.”

#### Observations

1142. The Special Rapporteur is grateful for the Government’s reply.



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Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,  
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,  
INCLUDING THE RIGHT TO DEVELOPMENT**

**Egypt, United States of America: draft resolution**

**12/... Freedom of opinion and expression**

*The Human Rights Council,*

*Recalling* Council resolution 7/36 of 28 March 2008 and all previous resolutions of the Commission on Human Rights on the right to freedom of opinion and expression,

*Recognizing* that the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society, is enabled by a democratic environment which offers, inter alia, guarantees for its protection, is essential to full and effective participation in a free and democratic society, and is instrumental to the development and strengthening of effective democratic systems,

*Recognizing also* that the effective exercise of the right to freedom of opinion and expression is an important indicator of the level of protection of other human rights and freedoms, bearing in mind that all human rights are universal, indivisible, interdependent and interrelated,

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*Deeply concerned* that violations of the right to freedom of opinion and expression continue to occur, including increased attacks directed against, and killings of, journalists and media workers, and stressing the need to ensure greater protection for all media professionals and for journalistic sources,

*Stressing* the need to ensure that the invocation of national security, including counter-terrorism, is not used unjustifiably or arbitrarily to restrict the right to freedom of opinion and expression,

*Stressing also* the importance of the full respect for the freedom to seek, receive and impart information, including the fundamental importance of access to information, democratic participation, accountability and combating corruption,

*Recognizing* the importance of all forms of the media, including the printed media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression,

*Recalling* that the exercise of the right to freedom of expression carries with it special duties and responsibilities, in accordance with article 19 (3) of the International Covenant on Civil and Political Rights,

*Recalling also* that States should encourage free, responsible and mutually respectful dialogue,

1. *Reaffirms* the rights contained in the International Covenant on Civil and Political Rights, in particular the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice, and the intrinsically linked rights to freedom of thought, conscience and religion, peaceful assembly and association and the right to take part in the conduct of public affairs;

2. *Takes note* of the report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/11/4), as well as his presentation and the interactive dialogue thereon at its eleventh session;

3. *Expresses* its continuing concern that:

(a) Violations of the rights referred to in paragraph 1 above continue to occur, often with impunity, including extrajudicial killing, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender-based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders;

(b) These violations are facilitated and aggravated by the abuse of states of emergency;

(c) Threats and acts of violence, including killings, attacks and terrorist acts, particularly directed against journalists and other media workers in situations of armed conflict, have increased and are not adequately punished, in particular in those circumstances where public authorities are involved in committing those acts;

(d) High rates of illiteracy continue to exist in the world, especially among women, and reaffirms that full and equal access to education for girls and boys, women and men, is crucial for the full enjoyment of the right to freedom of opinion and expression;

(e) Media concentration is a growing phenomenon in the world and can limit a plurality of views;

4. *Also expresses* its concern that incidents of racial and religious intolerance, discrimination and related violence, as well as of negative stereotyping of religions and racial groups continue to rise around the world, and condemns, in this context, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, and urges States to take effective measures, consistent with their international human rights obligations, to address and combat such incidents;

5. *Calls upon* all States:

(a) To respect and ensure the respect for the rights referred to in paragraph 1 above;

(b) To take all necessary measures to put an end to violations of these rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their international human rights obligations and is effectively implemented;

(c) To ensure that victims of violations of these rights have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible in order to combat impunity;

(d) To ensure that persons exercising these rights are not discriminated against, particularly in employment, housing, the justice system, social services and education, with particular attention to women;

(e) To facilitate the full, equal and effective participation and free communication of women at all levels of decision-making in their societies and in national, regional and international institutions, including in mechanisms for the prevention, management and resolution of conflicts;

(f) To enable children to exercise their right to express their views freely, including through school curricula that encourage the development and respect for different opinions, and to have their views taken into account in all matters affecting them, the views of the child being given due weight in accordance with the age and maturity of the child;

(g) To respect freedom of expression in the media and broadcasting, in particular the editorial independence of the media;

(h) To promote a pluralistic approach to information and multiple points of view by encouraging a diversity of ownership of media and of sources of information, including mass media, through, inter alia, transparent licensing systems and effective regulations on undue concentration of ownership of the media in the private sector;

(i) To create and permit an enabling environment in which training and professional development of the media can be organized in order to promote and protect the right to freedom of opinion and expression and can be carried out without threat of legal, criminal or administrative sanction by the State;

(j) To refrain from the use of imprisonment or the imposition of fines for offences relating to the media, which are disproportionate to the gravity of the offence and which violate international human rights law;

(k) To adopt and implement policies and programmes that aim to effectively raise awareness of, and disseminate information and education on, prevention and treatment of HIV/AIDS and other diseases through effective and equal access to information and all appropriate means, including through the media and availability of information and communication technologies, and targeted at specific vulnerable groups;

(l) To adopt and implement laws and policies that provide for a general right of public access to information held by public authorities, which may be restricted only in accordance with article 19 of the International Covenant on Civil and Political Rights;

(m) To facilitate equal participation in, access to and use of information and communications technology, such as the Internet, applying a gender perspective, and to encourage international cooperation aimed at the development of media and information and communication facilities in all countries;

(n) To review their procedures, practices and legislation, as necessary, with a view to ensure the full and effective implementation of all their obligations under international human rights law, including to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals;

(o) To refrain from using counter-terrorism as a pretext to restrict the right to freedom of opinion and expression in ways that are contrary to their obligations under international law;

(p) While noting that article 19, paragraph 3, of the International Covenant on Civil and Political Rights provides that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions that are not consistent with paragraph 3 of that article, including on:

- (i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;
- (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;
- (iii) Access to or use of information and communication technologies, including radio, television and the Internet;

6. *Stresses* that condemning and addressing, in accordance with international human rights obligations, including those regarding equal protection of the law, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is an important safeguard to ensure the enjoyment of human rights and fundamental freedoms of all, particularly minorities;

7. *Calls on* all parties to armed conflict to respect international humanitarian law, including their obligations under the Geneva Conventions of 12 August 1949 and, where applicable, the Additional Protocols thereto of 8 June 1977, the provisions of which extend protection to journalists in situations of armed conflict, and to allow, within the framework of applicable rules and procedures, media access and coverage, as appropriate, in situations of international and non-international armed conflict;

8. *Recognizes* the moral and social responsibilities of the media and the importance that the media's own elaboration of voluntary codes of conduct can play in combating racism, racial discrimination, xenophobia and related intolerance;

9. *Encourages* consultations among media professionals through relevant associations and organizations at the national, regional and international levels, with the assistance of the Office of the United Nations High Commissioner for Human Rights, with a view to exchanging views on this subject and sharing best practices, taking into account the independence of the media and international human rights law;

10. *Recognizes* the positive contribution that the exercise of the right to freedom of expression, particularly by the media, including through information and communication technologies such as the Internet, and full respect for the freedom to seek, receive and impart information can make to the fight against racism, racial discrimination, xenophobia and related intolerance and to preventing human rights abuses, but expresses regret at the promotion by certain media of false images and negative stereotypes of vulnerable individuals or groups of individuals, and at the use of information and communication technologies such as the Internet for purposes contrary to respect for human rights, in particular the perpetration of violence against and exploitation and abuse of women and children, and disseminating racist and xenophobic discourse or content;

11. *Reaffirms* the positive role that the exercise of the right to freedom of opinion and expression and the full respect for the freedom to seek, receive and impart information can play in strengthening democracy, combating racism, racial discrimination, xenophobia and related intolerance, in line with relevant provisions of international human rights law;

12. *Recognizes* that the open public debate of ideas, as well as interfaith and intercultural dialogue at the local, national, and international levels, can be among the best protections against racism, racial discrimination, xenophobia and related intolerance, and can play a positive role in strengthening democracy and combating national, racial or religious hatred;

13. *Invites* the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, within the framework of his mandate, to carry out his activities in accordance with its resolution 7/36 and all relevant Council resolutions and

decisions, in particular his cooperation with other mechanisms and human rights treaty bodies and organizations, including regional organizations and non-governmental organizations;

14. *Appeals* to all States to cooperate fully with and assist the Special Rapporteur in the performance of his tasks, as contained in its resolution 7/36, to provide all necessary information requested by him and to consider favourably his requests for visits and for implementing his recommendations;

15. *Invites once again* the United Nations High Commissioner for Human Rights, the working groups, representatives and special rapporteurs of the Council and human rights treaty bodies to pay attention, within the framework of their mandates, to the situation of persons whose right to freedom of opinion and expression has been violated;

16. *Reminds* States of the possibility of seeking technical assistance if needed, including from the Office of the High Commissioner, to better promote and protect the right to freedom of opinion and expression;

17. *Requests* the Secretary-General to provide the assistance necessary to the Special Rapporteur to fulfil his mandate as contained in its resolution 7/36 effectively, in particular by placing adequate human and material resources at his disposal;

18. *Requests* the Special Rapporteur to submit an annual report to the Council and the General Assembly on the activities relating to his mandate;

19. *Decides* to continue its consideration of the issue of the right to freedom of opinion and expression in accordance with its programme of work.

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OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS



**General Comment No. 10: Freedom of expression (Art. 19) : . 29/06/83.**  
**CCPR General Comment No. 10. (General Comments)**

Convention Abbreviation: CCPR

GENERAL COMMENT 10

Freedom of expression

(Article 19)

(Nineteenth session, 1983)

1. Paragraph 1 requires protection of the "right to hold opinions without interference". This is a right to which the Covenant permits no exception or restriction. The Committee would welcome information from States parties concerning paragraph 1.
2. Paragraph 2 requires protection of the right to freedom of expression, which includes not only freedom to "impart information and ideas of all kinds", but also freedom to "seek" and "receive" them "regardless of frontiers" and in whatever medium, "either orally, in writing or in print, in the form of art, or through any other media of his choice". Not all States parties have provided information concerning all aspects of the freedom of expression. For instance, little attention has so far been given to the fact that, because of the development of modern mass media, effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for in paragraph 3.
3. Many State reports confine themselves to mentioning that freedom of expression is guaranteed under the Constitution or the law. However, in order to know the precise regime of freedom of expression in law and in practice, the Committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. It is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.
4. Paragraph 3 expressly stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself. Paragraph 3 lays down conditions and it is only subject to these conditions that restrictions may be imposed: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State party for one of those purposes.



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Office of the United Nations High Commissioner for Human Rights  
Geneva, Switzerland



## **ANNEX 1. Compilation of Relevant Statements** **(NGOs, Media Groups, UN Agencies etc)**

- 1) Report of the UNESCO Thematic Meeting for the Preparation of the Second Phase of the World Summit on the Information Society (WSIS)
- 2) Background Paper – Free Expression in Asian Cyber space: A Conference of Asian Bloggers, Podcasters and Online Media, *prepared by The Southeast Asian Press Alliance (SEAPA)*
- 3) Internet Censorship and Freedom of Expression: A Critical Appraisal of the Regulation of Hate Speech on the Internet – *Paper by Mr. Ronald Kakungulu-Mayambala*
- 4) The Intensifying Battle Over Internet Freedom – From China to Syria, repressive nations are cracking down hard on digital dissidents - *Paper by Human Rights Watch (24 February 2009)*
- 5) Statements on China
  - Government Blocks Access to YouTube: *Reporters Without Borders (25 March 2009)*
  - ‘Big Brother’ Fear as China Prepares to Filter PCs for “Unhealthy” Content: *Reporters Without Borders (8 June 2009)*
  - Bloggers Who Denounced Gang-Rape Now Face Up to 10 Years in Prison: *Reporters Without Borders (12 August 2009)*
- 6) Statements on Indonesia
  - Indonesia’s Online Law a Threat to Freedom of Expression, say Journalists, Activists: *Southeast Asian Press Alliance (14 August 2009)*
- 7) Statements on Malaysia
  - Two Court Cases Test Online Free Expression: *Reporters Without Borders (11 February 2009)*
- 8) Statements on South Korea
  - Blogger Arrested for Allegedly Destabilizing Currency Markets: *Reporters Without Borders (12 January 2009)*
  - More Journalists Arrested, Pressure increases on Media: *Committee to Protect Journalists (7 May 2009)*
- 9) Statements on Thailand
  - Is Thailand a New Enemy of the Internet?: *Reporters Without Borders (12 January 2009)*
  - Time to Talk Openly about Lese-Majesty: *Asian Human Rights Commission (12 February 2009)*
- 10) Statements on Vietnam
  - Government Frees Cyber-dissident While Keeping Online Activities Under Strict Control: *Reporters Without Borders (20 February 2009)*

## **1) Report of the UNESCO Thematic Meeting for the Preparation of the Second Phase of the World Summit on the Information Society (WSIS)**

### **Introduction**

The conference was organized based on the UNESCO mandate and firm belief that the free flow of information is a fundamental premise of democratic societies where individual freedom is respected and honoured. As embodied in Article 19 of the Universal Declaration of Human Rights, freedom of expression and information must be promoted without exception; this also implies in new media. Freedom of expression is an individual right and the implementation of it is a precondition for a democratic society. A corresponding recognition of freedom of expression has been expressed by the WSIS in the Declaration of Principles, paragraphs 4, 55 and 56-59 and Action Plan, paragraph 24 adopted during the Summit of the first phase of the WSIS in Geneva, December 2003.

Furthermore, the conference took its departure from UNESCO's declaration of four principles that must be guiding the development of knowledge societies and that are direct consequences of the organisation's mandate, freedom of expression, universal access, cultural and linguistic diversity, and quality education for all.

As was made clear by the Director General of UNESCO, Mr. Koïchiro Matsuura in his opening speech to the conference, the first and most fundamental of these is the principle of freedom of expression, which must apply not only to traditional media but also to new media, including those distributed via the Internet. The challenges of creating inclusive knowledge societies in which all have the chance to participate, be they in the developed or in the developing world, be they man or woman, old or young, rich or poor, is inseparable from ensuring freedom of expression in cyberspace. What kind of universality would it be if censorship were to rule the Internet and what would universal access mean if it were access to only some information, only some ideas, only some images, only some knowledge?

Furthermore, how long can knowledge economies prosper or even function, especially in a competitive global environment, if they are starved of ideas and information, asked Mr. Matsuura, and continued, how can knowledge societies become or remain democratic if their citizens are misinformed or ill-informed? How can knowledge societies be secure if the bonds of social identity and belonging are broken by fear, distrust and mutual ignorance?

In both industrialized and developing countries, new digital technologies have the potential to strengthen the institutions of representative democracy and civil society, to enable citizens to gather information and mobilize coalitions around policy issues, and to improve government efficiency and transparency through better communication with citizens.

In cyberspace, everybody can be a content provider; the Internet is a vast and in principle unlimited information and communication network and this potential must be realized. The Internet is fast and simple to use. It also reaches much beyond traditional news content and whole new “media outlets”, the bloggers, have been developed. Probably it is exactly these features, together with the speed and the global character of the Internet that has made so many governments worry about granting all citizens full access to the whole World Wide Web.

There is still far to go. In her presentation, Agnes Callamard drew attention to the fact that while North America holds 6% of the world population and 41% have on-line access to the Internet, less than 1% of the African population, which is 10% of the world’s population, has the same. Furthermore, the 29 OECD states contain 97% of all Internet hosts, 92% of the market in production and consumption of IT hardware, software and services, and 86% of all Internet users. The digital divide is a reality and concerted and targeted efforts are needed to bridge it. All such efforts must however be put in the context of freedom of expression and universal access in order to seriously address global poverty, democratic governance and sustainable development.

The conference agreed that with the rise of the Internet, the fundamental right to freedom of expression is challenged in new ways. The global net holds great potential as a resource for free distribution and reception of information and the creation of dialogue across borders and cultures; however, these qualities may sometimes be undercut by attempts to regulate both access and content. Tools for regulating cyberspace are increasing, as is the impact of the Internet. Even in democratic countries, violations of freedom of expression are growing, and the need to discuss how to prevent undesired side effects of new regulation techniques has become urgent. The press meets barriers on the Internet that would and should not be accepted in traditional media. Free media are essential in creating development and prosperity and in upholding democratic societies and should be hindered neither on a local nor on a global level. A great risk is posed by the institutionalization of constraint, especially in the formative stages of new social development. This is why deliberate restrictions imposed upon the free flow of information are so damaging. Short-term and short-sighted decisions today are perhaps compromising our capacity for effective decision-making tomorrow.

Still, the Internet is through its very architecture a robust, flexible and very resourceful invention that allied with human ingenuity and creativity – and the human instinct for freedom – will prove to be very resilient and will develop in ways that were unimaginable just a few years ago. This is important to bear in mind when discussing the many challenges before us.

The debate on freedom of expression as an absolute human right does not take place in a vacuum and there are legitimate discussions needed to nuance the very complex legal and practical wickerwork of cyberspace regulations and governance. How for example to assure the protection of Article 19 while respecting individual privacy, national laws and at the same time promoting cultural and linguistic diversity in the global network? How to establish special laws to block Internet sites which are considered to offer ways of obtaining information contrary to certain political, sexual, or moral standards or legislative acts that deal with security or confidentiality laws to protect personal

data? How to address cyber crime in all its aspects? Another difficult challenge is the connection between the Internet and protection against terrorism. The balance between measures required for fighting terrorism and respect for fundamental human rights, especially the right to information, is indeed very difficult to find.

## **Freedom of Expression on the Internet**

In the introductory session on Freedom of Expression on the Internet, Sandy Starr, Agnes Callamard and Sjoera Nas dealt with elements related to the fact that the Internet provides great opportunities to facilitate the use of the freedom rights at low costs and without the obstacles of access and economic barriers common to traditional mass media in the interest of development of prosperity. Still, the Internet is not free of obstacles.

Sandy Starr took his point of view in the libertarian tradition where freedom of expression is non-negotiable and absolute. He warned against many of the regulation and co-regulation initiatives being advocated as he found that enforcing rights leading to restrictions often came from good motives. He also warned against any legislation trying to oppose hate-speech as such legislation inevitably would create a grey zone that could be abused by those parties in society that wanted to curtail freedom of expression.

Sjoera Nas listed a series of issues that legislators legitimately would have to deal with at the same time as they should respect all fundamental freedoms as laid out in the UDHR. She underlined that online freedom of expression starts with offline respect for human rights, including privacy and the right to a fair trial; she mentioned privacy issues, intellectual copy-right issues to avoid piracy on the Internet, spam and RFID. She warned against the fact that many commercial parties, most notably Internet providers were de facto put in a position, often through co-regulation measures, that they should exercise legal assessments on the content they put on the net for third parties. To avoid the haphazardness this could imply she strongly advocated for a set of basic international rules to guide the responsibilities of commercial Internet providers. In this context, transparency is crucial and all ISPs should be obliged by law to publish their rules for notice and take-down as well as yearly statistics about the number of requests and the resulting actions.

Agnes Callamard stressed the digital divide while pointing to the fact that the divide is not just about technology and thus cannot be addressed by technology solely. Indeed, she said, showering of developing countries with technological gifts might further increase their dependence on the technology and the providers of the industrialized countries. She underscored that freedom of expression is not just about expression but also comprises the right to seek and receive information from others, including the right to freely obtain and read newspapers, to listen to broadcasts, to surf the Internet and to participate in discussions in public and private as a listener. She stressed the right to access publicly held information (freedom of information). She advocated a right to communicate that included access to diverse and pluralistic media; equitable access to the means of communication as well as to the media; the right to use the language of one's choice; the right to

participate in the public decision-making process; the right to access information, including from public bodies; the right to be free of undue restrictions on content; and privacy rights.

## **Between Security and Openness: Should There be Limits to Freedom of Expression and Freedom of Information?**

The second panel had interventions by Helen Darbishire, Roberto Saba, Jane Kirtley, and Indrajit Banerjee and asked the question whether there are any situations that legitimate limiting openness, such as security issues and the threat of terrorism and insecurity, at the expense of freedom of expression and freedom of information?

Helen Darbishire also stressed the human rights base for all legal frameworks necessary to regulate the Internet. She pointed to the dangerous trend after September 11 where several traditional democracies had compromised the freedom of expression. She underlined that it is the obligation of governments to both defend freedom of expression and to protect the exercise of this right by all individuals.

Much greater efforts must be made in focussing on defining and strengthening governmental obligations with regard to this right. Equally important is to ensure the legal underpinning of the commercial dimensions of cyberspace. Internet providers, for instance, should not be empowered to make decisions amounting to censorship, outside any due process, transparency, and legal framework.

The current practice is unaccountable and seriously compromises self- and co-regulation systems. She elaborated further on freedom of information acts and announced a global campaign for ensuring citizens' access to publicly held information.

Roberto Saba explained how the freedom of information acts had been passed in Argentina and how these acts also comprised online material. He understood access as a non-negotiable human right that should be protected and referred to several decisions of the Inter-American Court.

Jane Kirtley also took her departure in the changes to fundamental freedoms in the US after 9/11. One would expect that information in digital form would be easier to achieve but that was not the case in the US as Congress had passed limiting amendments to the Freedom of Information Act. She appealed to governments to disclose public interest information to ensure a working participatory democracy.

The last panellist, Indrajit Banerjee, explained how many countries in Asia were still keeping media un-free; particularly Internet media and how it was still basically governments that were censoring access to the Internet for ordinary citizens. He acknowledged the need for regulation and control when it came to issues of national security but warned against using this as a pretext to exercise even stronger censorship on the media. It was the overall feeling that when needed special national

legislation and international police considerations that put restrictions on freedom of expression must be made public so that the authorities can be held accountable.

## **Open Internet – Open Media**

The speakers in the third panel were Miklos Haraszti, Geoffrey Robertson, Yuri Oulianovsky, and Julien Pain. They concentrated on news and information media and agreed that free media have imperative significance for democratic societies, ensuring an informed public and facilitating the free flow of information. Freedom of the press is an application of the individual human rights principle of freedom of expression and has a long history. It is however still far from being implemented all over the world.

Miklos Haraszti gave examples of how, both in traditional and new media, journalists are meeting major challenges when trying to uphold the right to press freedom, particularly on the increasingly important platform of the Internet. He gave a comprehensive overview of the historic developments in Central and Eastern Europe and concluded that in spite of the many obstacles still existing to fully fledged freedom of the press, huge progress has been made.

Earlier, the media were state owned and governments exercised strict control. Today, many media outlets were privately owned and most of these functioned professionally according to reasonable professional standards. More so, there was a beginning understanding of what public service media really implies, also when it comes to ensure freedom of expression in cyberspace. Media are not just commercial outlets and should not be treated like that by their proprietors; media are first of all important channels for the democratic debate.

Geoffrey Robertson, who is one of the world's leading experts in media legislation, gave some concrete examples of the new legal challenges, the Internet has raised for mass media, especially for internationally oriented media. There were still many attempts to restrict information by simply trying to shut off access the same way as before cows were kept by shutting the gate; but in today's high-tech globalized media environment this would have no lasting effect.

He also discussed the country-of-origin legal issue that is still not clarified and he strongly advocated that any legal process against Internet media should be established in the country where the content originated. He also warned against establishing just one set of laws and one regulatory framework for both the media's use of Internet and private individual usage. It is essential that Internet media are granted the same freedoms as print and broadcast media. Likewise, it is important to differentiate limits on freedom of expression of private information and access to public information. The Internet actually provides for cheap and speedy rebuttal procedures. He found the online right to reply a reasonable way forward, also because of the high libel costs.

Youri Oulianovsky gave an overview of the challenges that traditional news agencies have had to comply with when developing into Internet based media. Internet operations were much cheaper and faster but the risk in the Internet press agencies was that traditional validation of sources was discharged in order to keep up with the speed. He also explained how the 24-hours a day dead-lines were detrimental to the quality of journalism. He warned against unprofessional so-called media outlets on the Internet and many of the news bloggers that did not provide seriously vetted information. He also informed about the fast leap forward in Internet usage in Russia. He showed understanding for governments wanting to exclude certain sites from the net, like in Russia sites that were promoting separatist Chechen interests and in France, sites that were promoting Nazism.

Julien Pain was very critical towards the Russian attempts to cut off access to Chechen Internet sites and he described how similar censorship manoeuvres were being put to work in many countries all over the world. He particularly mentioned Tunis as he found it regrettable that the host country for the second phase of the WSIS did not allow for full freedom of expression on the Internet. He encouraged all press freedom institutions and UNESCO to be steadfast in defending the principle of freedom of expression. He also wanted freedom of the press to comprise the new generation of bloggers. As it was now, they were very exposed to violations from the side of censoring governments. Despite the problem some of them had living up to established professional standards for good journalism; they should be protected like any journalist from Le Monde or The Financial Times.

## **Freedom of Expression, Codes and Creativity**

Finally, the last session looked at the Internet's decentralized structure, which provides a unique platform for every kind of user to contribute to the production of content and to make use of their right to freedom of expression and which should be safeguarded in any Internet governance system.

The four speakers, Gus Hosein, Yaman Akdeniz, Chris Kabwato, and Ronald Koven all warned against using the term "harmful content" as an excuse for new regulation of content, not least because it will be extremely difficult to establish solid definitions hereof.

Gus Hosein also drew attention to the fact "harmful content" is something quite different than "illegal content", which is clearly defined by national and/ or international legislation and against which stake holders need to take appropriate measures. Still, he argued, it was much more important to make efforts to foster creativity on the Internet and to stimulate and promote local content production.

Hosein focussed on the paradox of the Internet: never before has the world seen such a powerful information and communication mechanism that was cheap and easy to use and that had a huge potential in the fight against poverty, but at the same time, many governments, including those of the developing countries, concentrated their efforts on restricting and regulating this mechanism

with the result that its potential could not be realized. He especially identified two areas that gave reason for concern: the weakening of legal protections of both freedom of expression and – at the other end of the scale – the right to privacy; the surveillance chill reaching from mobile phone tracking to Internet cookies and public cameras. The real challenge is to fully exploit the potential of the Internet while not compromising civil liberties.

Chris Kabwato spoke from the point of view of the developing countries and he agreed strongly with Mr. Hosein in the identification of the potential of the Internet for creating knowledge societies and for giving voice to indigenous societies. He warned governments of developing countries of giving in to the “contrary spirit” dominated by the fears of the net: fear of technology and fear of free and public debate in the public sphere. On the contrary, one should encourage the development of technical standards for digitally processing local or international languages on the Internet. He commended UNESCO for the Organisation’s firm stand for freedom of expression during the WSIS process and for its assistance in adopting the Marrakech Declaration, which he quoted extensively.

He also described how Internet creativity and cultural diversity must find a new and internationally accepted interface with existing intellectual property rights agreements by balancing the moral and economic interests of the creators on the one hand and the provision of access to the socio-economic and cultural benefits of such creativity world-wide on the other hand.

Finally, he promoted open source and free software, as it was not only cheaper for developing countries but also did not create the same degree of expert dependence as proprietary software. Journalists, knowledge workers, artists and teachers want the space, freedom and platform to share their stories, ideas and experiences, he said, and the Internet can be such a space and platform if it can be freed from the increasing usurpation of corporate interests and the increasing regulations and restrictions by anxious governments.

Yaman Akdeniz also underlined the decisive distinction between illegal and harmful content and warned against assigning any legal status to the latter. Illegal content is criminalized by national laws while what is defined as harmful content is considered as offensive or disgusting by some people, but is generally not criminalized by national laws. Child pornography, for instance, falls under the illegal content category while adult pornography, in those countries where it is not forbidden by law, falls under the harmful content category.

He listed the various responses to both illegal and harmful content: first of all, government regulation, and secondly, self- and co-regulation. The government regulation includes laws at the national level, directives and regulations at the supra-national level (European Union or conventions of the Council of Europe, for example) and UN-level. Self and co-regulation comprises measures such as development of hotlines, codes of conduct, filtering software and rating systems. Although self and co-regulation can provide less costly, more flexible and often more effective alternatives to prescriptive government legislation, there are a number of problems connected to their functioning.



Firstly, they do not apply to all organisations or enterprises; secondly, only a very limited range of sanctions is available in case of breach of rules; and finally, one may question the accountability and impartiality of self-regulatory bodies. For filtering software the problems are even bigger. Most often, the filters cause massive over-blocking leading to both wished and not-wished censorship. A credible self and co-regulation system can only work if it is based upon respect for fundamental human rights such as freedom of expression and privacy and has a strong external consultation and involvement with all relevant stakeholders in the design and operation of the scheme; furthermore the scheme must be based upon clear and intelligible statements of principles and measurable standards, which address real consumer and user concerns.

Ronald Koven warned against all kind of regulation of the flow of information. He mentioned that codes of conduct and co-regulation measures might be established with the best intentions but that they in the real world often turned against the fundamental freedoms.

He also questioned whether keep inter-governmental bodies such as the Council of Europe labelled as self-regulation was in reality different from restrictions inflicted on freedom of expression and freedom of the press. He had no confidence in enforcing journalistic standards and ethics through legislation. Ethics are by definition freely adopted by a category of persons. Once they are embodied in laws, rules or regulations, they can no longer be described as ethics and they become part of a legal system that the group of practitioners no longer has the freedom to interpret and apply for itself.

He commended UNESCO for having been firm on stating that ethical standards is something which is completely up to the various groups of professionals to define and develop. He strongly advocated the view that there is no need for any special legislation for the Internet media. There are in fact, he said, a number of existing constraints on freedom of expression in the offline world, such as copyright and other intellectual property arrangements, libel and defamation laws, laws against fraud and other criminal activities, like the sexual abuse of children. Such existing laws in legally developed jurisdictions need only to be adapted and applied to cyberspace. He agreed with Geoffrey Robertson on which jurisdiction should get to try offences: it should normally be in the country where the alleged offence is first published, in keeping with the position that press freedom groups and the lawyers who work in this field have generally favoured. Finally, he warned strongly against introducing new systems for Internet governance that would impede on freedom of expression and the free flow of information.

## **Conclusion**

Being an experts' meeting, no official Declaration was adopted by the participants, but there was a strong endorsement of the four principles that lay the base for UNESCO's concept of knowledge societies and for assigning to Internet media the same freedoms as print and broadcast media have. The conference was also in agreement to warn against looking at possible necessary Internet regulation as a question of balancing different human rights against each other. Like the rule of law,

the Internet should be based upon full human rights, and it is the responsibility of all states to respect and defend these rights when it comes to their application for cyberspace. This message should be clearly included in any new declaration from the countries participating in the WSIS process. Finally, the participants encouraged the development of guidelines that could ensure legal underpinning of commercial Internet enterprises, in particular Internet service providers, and to examine how international legal systems that did not infringe on freedom of expression could be established to minimize spam.

The meeting was concluded by the Assistant Director General for Communication and Information, Abdul Waheed Khan, who expressed UNESCO's gratitude to the speakers and the participants and promised that the Organization would continue along the route that had been laid out and that was commended by the conference. It is part of UNESCO's mandate to provide a platform for open discussion and to promote the free flow of ideas, he said, and went on that this is exactly what has been happening over the last two days. The debate has contributed to clarify some of the complex challenges that the international community has to address in order to ensure that free, open and inclusive knowledge societies may flourish, grounded upon the universal principle of freedom of expression.

He strongly underlined that the Internet media, as traditional media which still plays maybe the most important role in the developing world, first of all could play an important role in fighting poverty and encouraging human creativity by contributing to the development of democratic knowledge societies. Along this line, community radio and community multimedia centres must receive greater attention and focus as crucially important communication and information tool in developing communities, bringing them together.

## 2) Background Paper – Free Expression in Asian Cyber space: A Conference of Asian Bloggers, Podcasters and Online Media, *prepared by The Southeast Asian Press Alliance (SEAPA)*

There is a building and urgent need to call for a conference of online news and commentary providers in Asia, as a crucial step to securing what—to much of the world’s most populous region—is the newest and most crucial medium for expressing independent thought and reaching out to the larger world. SEAPA would like to hold this conference in April of 2006.

Since its founding in 1998, much of SEAPA’s work has revolved around the print and broadcast media. SEAPA supports free expression advocates in Malaysia, Singapore, and East Timor, helping to build the capacities of groups and to provide protection for individuals. In Chiang Mai, the alliance is helping to nurture a community of journalists that have exiled themselves from Burma. In the Philippines, Thailand, Indonesia, Cambodia, and East Timor—in the handful of Southeast Asian countries where free and independent media have begun to take root and flourish— SEAPA offers training on everything from basic to investigative journalism as well as the importance of ethical standards and self-regulation. SEAPA also regularly conducts conferences on a range of issues confronting the region’s press.

Nowadays SEAPA finds its attention repeatedly being drawn to cyberspace. Much of the threats to free expression that it has documented in the past year have increasingly been occurring in the realm of new media. The Internet and blogging, in particular, have not only taken off in Asia; for much of the region the technology now stands as the only viable medium for offering independent news, information, and commentary, as alternative to state-controlled news and information regimes. Consequent to its boom, however, cyberspace in the past year has thus also stood as its own flashpoint, a venue in itself as crucial to monitor as any actual nation.

New issues emerge with every new medium. In cyberspace, SEAPA sees a challenge to strengthen and protect the blogosphere and cyberspace in general, while reaching out to its denizens with a call to discuss needs, threats, trends, ethics, responsibility, and the demands and meaning of growing up as a potent force as well as a community at risk.

Such a conference for alternative Internet-based news and commentators providers would be timely. Even urgent. In Asia, the topic has taken on added urgency in the past year. Consider:

- In **Thailand**, the information ministry has clamped down on two independent websites that were known to be critical of the government. These websites have been experimenting not only with more aggressive commentary, but also with bold technical innovations linking a fledgling community radio movement with cyberspace. When the Thai government fired

across the bow of independent community radio stations earlier this year--resulting in the closure of dozens of stations--one commentator brought her radio program—and government's scorn-- to the Internet.

- In **Vietnam**, cyber dissident Pham Hong Son remains imprisoned for having posted pro-democracy essays online.

- In **China**, a cyber-dissident has been jailed for five years for posting essays and reports--including the lyrics of a punk song--on the net. Meanwhile, the world's biggest market struggles against its own economic potential, as new economy businesses like Yahoo, Microsoft, and Google compromise on people's access to information in exchange for the opportunity to do business in the mainland.

- In **Singapore** and **Malaysia**, government officials have been going after individual bloggers and even webmasters with threats of criminal defamation and the Internal Security Act--bringing their crude but long preferred weapons of choice to uncharted territory.

- In **Singapore** and **Thailand**, oppositionists have launched their own "podcasts"--downloadable radio programs--to skirt government regulations on broadcasting.

- In the **Philippines**, bloggers have gotten much credit for the dissemination of audio files that brought the presidency of Gloria Arroyo to its worst crisis.

- From **South** and **Southeast Asia**, exiled Burmese journalists have been exploiting Internet tools—from blogging to VoIP—to circumvent one of the harshest and most restrictive regimes in the world.

- In **Nepal**, where media as a whole is fighting to exist, the Internet is the only remaining link to the outside world.

- In **South Korea**, citizen journalism is being defined as a potent force for truly independent news and commentary.

Given the rapid pace of innovation and the quick build up of confrontations between online news/commentary providers and states, SEAPA's intention is to tag cyberspace as a crucial frontier for free expression in Asia as soon as possible, and to lend early support to bloggers, podcasters, and online news media now that they're growing but highly vulnerable. Equally important, there is a need to gather the region's new breed of online communicators, to start speaking about their common protection, as well as to start crucial discussions on their evolving roles, responsibilities, and even ethics, all in the context still of protection.

## **Why Now?**

### **More confrontations**

Cyberspace has become a battleground for those seeking to exploit its vastness, openness, or (at the very least) inevitable cracks to promote free expression, and those seeking to control it as they've clamped down on traditional mass media. Bloggers are trying to push the cyber envelope there as anxiously as the governments have begun sensing the potency of the medium. SEAPA therefore foresees that as far as the freedom of expression/press movement is concerned, the latter part of 2005 and the entire 2006 will be defined by more landmark showdowns and stare-downs in cyberspace.

### **New, younger allies**

Blogging, podcasting, and the Internet in general represent an opportunity to popularize the cause of free expression among a younger generation for whom the Internet has become a natural fabric of life. Internet-control is an oxymoron for today's younger set, and a blogging conference would be able to express and illustrate that point quite naturally. Undertaking a freedom of expression campaign that specifically revolves around the Internet may provide us with a tremendous and exciting opportunity to popularize the cause for free expression, perhaps bringing in a younger demographic that can better relate to new media, and, draw the interest of other sectors not traditionally associated with our campaigns.

### **A new entry point for campaigning**

The Internet is the newest and best entry point for campaigning for more openness in restricted countries—from Malaysia and Singapore to Vietnam, China, and even Burma. The Internet brings its own culture of inevitability: information is bound to flow, and all governments are now resigned to the fact that you can never shut down cyberspace completely.

### **Building a community for common protection**

There is virtue in networking and encouraging a closer sense of community among bloggers. There is strength in numbers, which they already have, but there is greater power in building relationships beyond trading hyperlinks. This conference will provide an opportunity for bloggers to share experiences, exchange technologies and tactics, and ultimately build a more genuine community where its members look out for each other.

### **Related events/developments**

Reporters Sans Frontiers on September 2005 launched a new Handbook for Bloggers and Cyber-Dissidents. RSF has expressed interest in supporting SEAPA's proposal for a conference that can discuss its findings and manual on cyber-reporting in the context of the Asian environment. In January 2006, Malaysiakini held in Kuala Lumpur a conference on Online News Media, bringing together Asian organizations similar to itself. Malaysiakini sees a subsequent conference that will

include individual bloggers, podcasters, and cyber-dissidents alongside more established organizations as a logical and necessary step towards further securing cyberspace for proponents of free speech and access to information. Malaysiakini has expressed interest and support SEAPA's proposal.

In the second-half of 2006, the Philippine Center for Investigative Journalism will be looking to hold a regional training workshop for Southeast Asian Journalists interested in blogging. The PCIJ supports SEAPA's proposal, and is positioned to be SEAPA's co-organizer of its proposed conference. PCIJ sees a conference with a program for assessing the needs of Asian bloggers as contributing to enhancing the relevance of the training it wants to conduct. Meanwhile, the Open Net Initiative continues to release timely and updated reports on the evolving regimes for controlling content in cyberspace, with special focus on countries like Burma, China, and Singapore. Asia is proving ground and battleground all at once for the potentials and limitations of free expression in cyberspace.

## Internet Censorship and Freedom of Expression: A Critical Appraisal of the Regulation of Hate Speech on the Internet\*

Ronald Kakungulu-Mayambala\*\*

**Email:** kakungul@interchange.ubc.ca

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### 1 0 Introduction

One of the most contemporary issues facing the world today especially in the area of cyberspace is the regulation of hate speech which has been widespread on the Internet without infringing on the long established fundamental right to freedom of expression and without causing what has come to be known as Internet censorship. This paper shall inform the discourse as to whether regulation of hate speech on the Internet suppresses the right to freedom of expression and thereby results into censorship on the Internet. The conceptual and normative let alone the philosophical underpinnings relating to the regulation of hate speech on the

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\* This paper is dedicated to Professor Shigenori Matsui of the Faculty of Law, University of British Columbia, Vancouver, Canada.

\*\* *LL.M.* (with Distinction) Lund; *LL.B.* (Hons.) Mak; *Dip. LP.* (LDC); Advocate High Court of Uganda & East Africa.

Internet shall be discussed alongside the major tenets of free speech/freedom of expression.<sup>1</sup> How to strike a balance between freedom of expression and regulation of hate speech on the Internet in order to avoid internet censorship forms the underlying thesis in this paper and is core to the discussion. The debate shall be limited to whether regulation of the Internet (including regulation of hate speech) should be kept to the minimum in order to empower individuals to make up their own minds on important issues which increases the likelihood that they will become active participants in democracy as opposed to regulation of the Internet which may result into total curtailment of freedom of expression on the Internet and thereby create Internet censorship. The paper shall discuss the extent to which the government(s) should be allowed to ban hate speech on the Internet, without necessarily infringing the right to freedom of expression and causing Internet censorship.

## **2.0 Background to the Paper**

The Internet is every where and the Internet is the new blessing to mankind to reach out to everyone in the world and to foster easy communication amongst the people of the world. However, the Internet which was initially seen as a blessing to mankind has turned out to be a curse to the very mankind it sought to save from the hassles of communication in this era of globalization. Though originally lauded and praised as a wonderful medium of communication and the epitome of freedom of expression, the Internet as a medium of communication has produced increased tensions especially in relation to the hate speech, defamation, indecent speech, and pornography among others. In this paper, I will in the interest of space and relevance to the topic under study restrict my discussion to hate speech on the Internet. The Internet provides purveyors of hate materials with a new method of distribution, and has left some questioning whether current laws are obsolete. Hate groups around the world have embraced the potential of the Internet, with the current estimates (as of 2002) being well over 1,000 hate sites online per Professor Geist.<sup>2</sup> The legal approaches to hate speech vary very considerably in real space, and those differences are reflected online. For example, the hate speech law in Canada varies from that of the United States or the European Union. Since the Internet is global and is borderless, having different laws in the different jurisdictions to apply to one and the same thing (the Internet) presents difficulties to regulation of hate speech on the of the Internet. This further brings about the problem of agreeing on the boundaries of hate speech to be restricted/regulated. The differences between Canada and the United States shall also be highlighted and the rationale underlying this difference will be given. Other parts of the world where Internet usage is very limited (and thus the absence of any meaningful laws relating to Internet governance) such as Africa and a larger part of Asia will be

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<sup>1</sup> Nowak, M., *'U.N. Covenant on Civil and Political Rights CCPR Commentary'*, N.P. Engel, 2<sup>nd</sup> Revised Ed., 2005.

<sup>2</sup> Geist M., *Internet Law in Canada*, Captus Press, Ontario, Canada, Third Edition, 2002,p.170.



discussed clearly bringing out the implications this has to the regulation of hate speech on the Internet at the global level since internet is borderless. There are divergent views in relation to the efforts to regulate use of the Internet with differing theories that the regulation of the Internet may not necessarily restrict hate speech but will only serve as Internet censorship and a threat to freedom of expression which represents a clear and present danger to the robust political debate on the Internet. The Internet has been heralded as the novel medium of communication to be used for the exchange of ideas to advance the goal of combating bias and prejudice.

### **3.0 Freedom of Expression on the Internet**

#### **3.1 Introduction**

The modern roots of freedom of expression may be found in the struggle for the freedom of speech for legislators during the 17<sup>th</sup> century.<sup>3</sup> Sweden-Finland was one of the forerunners of giving legal guarantees to the freedom of speech in the 18<sup>th</sup> century. The 1766 Freedom of Print Decree of Sweden-Finland included the most highly developed protections for free expression in Europe.<sup>4</sup> In the liberal democracy, freedom of opinion and expression serves both the personal autonomy and self-realization of the individual and guarantees the democratic process of the society. A free responsible citizen is protected from any outside intervention in order to enable him/her to form and express his/her opinions without any outside threat or coercion. Freedom of expression and opinion is a typical "first generation" human right with very classical individual emphasis.<sup>5</sup>

#### **3.2 Relevant Provisions on the Right to Freedom of Expression in International Human Rights Instruments**

The UN Charter<sup>6</sup> obliges all Member States in the promoting and encouraging respect for human rights and for fundamental freedoms. These human rights are well spelt out in the Universal Declaration of Human Rights.<sup>7</sup> At the apex of international human rights instruments lies the Universal Declaration of Human Rights of 1948. Its provisions dealing expressly with freedom of expression are set out in Art 19, which states:

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<sup>3</sup> As early as 1688, the English Bill of Rights provided 'that the freedom of speech and debate or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament'.

<sup>4</sup> Kortteinen J, *et al*, 'Article 19', in G. Alfredsson and A. Eide (eds.), *The Universal Declaration of Human Rights*, 1999, Kluwer, 393-415, at p.394.

<sup>5</sup> *Ibid*.

<sup>6</sup> art.1(3).

<sup>7</sup> On 10 December 1948, the UN General Assembly adopted the UDHR as an Instrument of "a common standard of achievement." Though not binding, many scholars, however, believe that the Declaration has over the years acquired a binding character.

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

The right to freedom of opinion and expression as proclaimed in article 19 of the UDHR constitutes a cornerstone of democratic society. This is the reason why many human rights instruments adopted by the UN bodies since 1948 elaborate principles set out in this article.

According to paragraphs 1 and 2 of article 19 of the 1966 International Covenant on Civil and Political Rights (CCPR), everyone shall have the right to hold opinions without interference and to freedom of expression. The latter right includes freedom to seek, receive and impart information and ideas of all kinds, through any media (*including the Internet*) and regardless of frontiers (*without limitation to jurisdiction or borders*). Unlike article 19 of the UDHR, article 19(3) of the CCPR expressly allows for restrictions and limitations upon the freedom of expression. According to paragraph 3, the exercise of the rights provided for in paragraph 2 carries with it special duties and responsibilities and may therefore be subjected to certain restrictions. These limitations doubtlessly draw on article 29(1) of the UDHR, and they presumably include the duty to present information and news truthfully, accurately and impartially. On the other hand, these limitations shall only be such as provided by law and are necessary: a) for the respect of the rights or reputations of others; b) for the protection of national security or of public order (*ordre public*); or c) for public health or morals.

While article 29(3) of the UDHR contains a general provision that the rights and freedoms defined by it may in no case be exercised contrary to the purposes and principles of the United Nations, the rights laid down in article 19 of the CCPR are further restricted by article 20, according to which any propaganda for war and any advocacy of national, racial, or religious hatred that constitutes incitement of discrimination, hostility or violence shall be prohibited by law.<sup>8</sup>

Principle 2 of the Siracusa Principles obliges member states to restrict freedom of expression only when the threat is so big and the ban on freedom of expression is intended to secure the territory against the external source/or internal threat. Using this principle, a government would then be able to ban freedom of expression in any media (*including the Internet*) basing on the likely effects of hate speech which the government can comfortably call a threat to its national security.

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<sup>8</sup> See the Siracusa and Johannesburg Principles on National Security, freedom of Expression and Access to Information which provides under Principle 1.2 that any restriction on expression or information that a government seeks to justify on grounds of national security must have genuine purpose and demonstrate effect of protecting a legitimate national security interest.

Discrimination with regard to freedom of expression is prohibited in all circumstances according to Principle 3. Expression may be punished if it is intended to incite imminent violence, or is likely to incite such violence, or if there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.<sup>9</sup>

Special studies done by the UN on the *Right to Freedom of Opinion and Expression* clarify the distinction between these two freedoms and consider the freedom of opinion as more or less absolute right. The freedom to express an opinion is still under certain limitations.<sup>10</sup> As one of democracy's most cherished rights, the right of free speech is at the foundation of the rights enjoyed by citizens in a free society.

As Prof. Geist observes:

“Contrary to popular belief, however, it is not an absolute right, as all countries establish some limitations to free speech. Certain limitations, such as criminal speech consisting of death threats or defamatory speech, are relatively unconventional. Other forms such as hate speech or obscenity, are subject to differing rules in different countries. At the one end of the spectrum, the United States has adopted perhaps the most permissive free speech legal framework, with even the most hateful material enjoying constitutional protection. By contrast, Canada and many European countries have set limitations on hate speech, rendering certain forms illegal.”<sup>11</sup>

Given the free flow of information on the Internet, these differing approaches to speech regulation assume a heightened level of importance, since speech legal in one jurisdiction may be illegal in a neighboring jurisdiction, even though the material is readily available in both places via the Internet. An understanding of the different approaches to speech regulation is therefore essential within the context of Internet law, since a harmonized International legal framework for much of the controversial speech is highly unlikely.<sup>12</sup> I will later in this paper canvass several international approaches to Internet speech regulation ranging from the North American (United States/Canada) perspectives to the EU perspective which is more similar to the Canadian North American approach in relation to Canada as opposed to the US. Other advanced jurisdiction such as the Asian Pacific i.e. Australia and Japan will also be highlighted.

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<sup>9</sup> It is upon this background that hate speech or incitement of violence as it is called in other jurisdictions in any media (including the Internet) is punished.

<sup>10</sup> UN Doc. E/CN.4/Sub.2//1990/11.

<sup>11</sup> Geist, M., *Supra*, p. 130.

<sup>12</sup> *Ibid.*

Not only have the principles laid down in article 19 of the UDHR of 1948 had effects on the elaboration of United Nations instruments, but the content of this article, in somewhat modified form, appears in many regional human rights instruments as well. Provisions concerning the freedom of information are included in article 10 of the European Convention on Human Rights (1950, ECHR), article IV of the American Declaration on the Rights and Duties of Man (1948), articles 13 and 14 of the American Convention on Human Rights (ACHR, 1969, in force in 1978), and article 9 of the African Charter on Human and Peoples' Rights (African Charter, 1981, in force in 1986).

According to article 10(1) of the ECHR, everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (including the Internet). Article 10(1) does not, however, prevent States from requiring the licensing of broadcast, television or cinema enterprises. In conformity with article 19 of the ICCPR, article 10 of the ECHR also permits certain restrictions of the freedom of information. As the exercise of freedoms set forth in article 10(1) carries with it duties and responsibilities according to article 10(2), they may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, *for the prevention of disorder of crime*, for the protection of health and morals, for the protection of the reputation or rights of others, for the preventing of disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The right to freedom of opinion and expression, including the freedom of information, is an absolute prerequisite for a democratic society. Under no circumstances should a person be imprisoned for expression of his views.<sup>13</sup> Article 19 of the CCPR maintains a clear distinction between freedom of opinion and freedom of expression. While the first right is subject to no restrictions, the freedom of expression is subject to certain restrictions, but only in keeping with the principles of legality and necessity.<sup>14</sup>

Thus, any interference with the right to freedom of expression as laid down in article 19 of the ICCPR, by imposing sanctions against participating in, or censoring, radio and television programs or content on the Internet would tantamount to Internet censorship which is a clear violation of freedom of expression on the Internet like any other medium of communication.

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<sup>13</sup> Unfortunately, such guarantees have not been given in all UN Member States. Through article 19 of the 1966 Covenant, the proclamations concerning the freedom of information in the UDHR have now, however, become part of a legally binding treaty for nearly 100 States.

<sup>14</sup> Kortteinen, J., *Supra*, p.410.

### **3.3.0 Rationale for Protection of Freedom of Expression on the Internet**

The Internet has been heralded as the modern medium of communication due to its borderless nature. The Internet has a wide publication and it is the best mode of communication worldwide now. Applicability of the notion of freedom of expression onto the Internet can be an interesting issue; with such questions as to whether there is such a right like freedom of expression on the Internet just like there is in other mediums of communication. The Canadian Charter of Rights and Freedoms (hereinafter CCRF), states that everyone has the fundamental right to freedom of expression including freedom of press and other media of communication.<sup>15</sup> The Canadian Charter right to freedom of expression is almost verbatim with art. 19 of the UDHR, art. 19 of the ICCPR, and art. 10 of the ECHR.

Democracy has always respected and cherished the fundamental importance of an individual. A democratic society, therefore, has an interest in ensuring that its members can enjoy and protect the fundamental right to freedom of expression which is core to any democratic and free society.<sup>16</sup> From the foregoing we can see that a central theme through the ages has been a strong desire to uphold the individuals right to freedom of expression irrespective of the medium of communication/expression. This prompts me to discuss the rationale for freedom of expression on the Internet.

The uninhibited exercise of the right to freedom of expression can allow it to play a crucial role in the furtherance of say anti-racism strategies which is often touted as being one of the main reasons to regulate/curtail freedom of expression the world over. Freedom of expression is considered a fundamental political freedom, and is zealously guarded in Western society/democracies.<sup>17</sup>

Freedom of expression on the Internet or in any other media, is very helpful in building a culture of tolerance to divergent views and acceptance of opposing ideas. It is also asserted that the best way to fight prejudices is through freedom of expression through which people of different cultures and backgrounds exchange views and ideas in a more human and tolerant way especially on the borderless

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<sup>15</sup> Article 2 paragraph b of the Canadian Charter of Rights and Freedoms. It can, therefore, be argued that the Internet is one of the other media of communication to which everyone enjoys the fundamental freedom of expression.

<sup>16</sup> Nowak M., *An Introduction to International Human Rights Regime*, Nijhoff, 2003.

<sup>17</sup> Section 2b of the CCRF gives every Canadian the fundamental right to freedom of expression. This clause is meant to protect citizens of Canada from censorship, defined here as the suppressing of opinions expressed through written word, theatrical performance, or artistic media, usually by the government.

Internet. The right to freedom of expression is a fundamental right that safeguards the exercise of all other rights and is a critical underpinning of democracy.<sup>18</sup>

John Stuart Mill identifies a number of reasons why it is morally important to protect freedom of expression. One reason is that freedom of expression is a freedom that intrinsically matters a lot to most people. It involves both the freedom to express our beliefs and values, and the freedom to be informed by the publicly expressed beliefs and values of others. A second reason that it is morally important to protect freedom of expression is that freedom of expression typically promotes the discovery of, and the respect for, the truth. The knowledge gained matters both in its own right and because it leads to better decisions and thus a better quality of life.<sup>19</sup> Although there are other reasons for the protection of freedom of expression, according to Stuart, these two establish the moral importance of such protection. The true value of freedom of expression lies in keeping true beliefs from becoming dogmatic. Since the personal is political, freedoms of thought and discussion are essential to the justification of one's beliefs and actions, because individuals are not cognitively self-sufficient.<sup>20</sup>

In those open ways, open and vigorous discussion with diverse interlocutors imposes the quality of one's deliberations. This being so, censorship, even of false belief, can rob both those whose speech is suppressed and their audience of resources that they need to justify their beliefs and actions. Thus, it is often wrong to censor even false beliefs.<sup>21</sup>

The deliberative rationale for freedom of thought and discussion or expression is a special case of a more general defense of basic liberties of thought and action Mill offers. A good human life is one that exercises one's higher capacities; a person's higher capacities include her deliberative capacities, in particular, capacities to form, revise, assess, select and implement her own plan of life.<sup>22</sup> A more robust rationale for various liberties of thought and action; they are important as

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<sup>18</sup> *Guardian Unlimited Comment*, Thursday February 2, 2006.

<sup>19</sup> Mill, John Stuart. *On Liberty* (1859).

<sup>20</sup> Scanlon, T.M., 'A Theory of Freedom of Expression', 1 *Philosopher & Public Affairs*, 1972, 204-26 and Ten, C.L., *Mill on Liberty*, Oxford Press, New York, 1980.

<sup>21</sup> Dworkin, G., 'Is More Choice Better than Less?' in *The Theory and Practice of Autonomy*, Cambridge Press, New York, 1988.

<sup>22</sup> The value of deliberative capacities, within Mill's brand of perfectionism, certainly provides the basis for criticizing some lives as shallow and undemanding, even when these lives are contented and successful in their own terms. But because capacities for practical deliberation can be realized and expressed equally or incomparably well in many different kinds of lifestyles, Mill can and does recognize very diverse kinds of valuable lives. We might say that Mill's brand of perfectionism respects *moderate pluralism* about the good, even though it rejects *content-neutrality* about the good. See Brink, *Mill's Deliberative Utilitarianism*, 79-80.

necessary conditions for exercising our deliberative capacities and so for producing the chief ingredients of human happiness.<sup>23</sup>

### 3.3.1 The Internet as a Platform for Cyber democracy

The Internet is the new medium through which democracy can be fostered: the Internet can generate places that facilitate interaction over time. Giving three reasons, Zatz, has heralded the cyberspace as a hall maker:

- "Cyberspace which has the heralded characteristic of erasure of *distance*. Cyberspace, like many communications and transportation technologies before it in significant ways eliminates and therefore equalizes distance which hitherto was a big barrier to effective communication a necessary prerequisite to the democratic process.
- *Adjacency*, except that there is no street to cross, the lack of direction and continuity in cyberspace means that there are no fixed places that lie between any other two; nor is the environment of one place affected much by any other. There are no neighbours in cyberspace and, therefore, no blockades, no loud noise bothering you from the disco next door, and no neighbour's tree dropping fruit on your side of the fence.
- *Fixity*, having built an information superhighway without sidewalks, we can still add them on without displacing either the roadway or the places abutting it."<sup>24</sup>

Then, this communications technology offers us the perfect medium of communication necessary for the proper functioning of the democratic process. The new era now requires that we take advantage of new technologies to embrace democracy. The Internet has the potential to create access (by the speakers) to a wide array of people because of its borderless nature. In a democratic society, underlying issues are best approached through two different routes i.e. the 'public forum' and the deliberative democracy.<sup>25</sup> On the speakers' side, the public forum doctrine thus creates a right of general access to heterogeneous citizens. On the listeners' side, the public forum creates not exactly a right but an opportunity, if perhaps an unwelcome one: shared exposure to diverse speakers with diverse views and complaints.<sup>26</sup>

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<sup>23</sup> These are very strong reasons to compel the protection of freedom of expression on the Internet one would think.

<sup>24</sup> Zatz, N.D., 'Sidewalks in Cyberspace: Making Space for Public Forums in the Electronic Environment', 12 *Harvard Journal of Law and Technology*, 149.

<sup>25</sup> However, this is in the ideal, the Internet can have a backlash with a decline in the common experiences and a system of individualize filtering that might compromise the ideal. The understanding that lies behind the notion that a free society creates a set of public forums, providing speakers' access to a diverse people, and ensuring in the process that each of us hears a wide range of speakers, spanning many topics and opinions.

<sup>26</sup> Under the public forum doctrine increases the likelihood that people generally will be exposed to a wide variety of people and views. Under the public forum doctrine, speakers are thus permitted to

As Sunstein argues, the Internet is the modern technological environment that seems greater than streets and parks. He argues that the public forum should be expanded in the modern era from merely the traditional public forums to the mass media, including the Internet, which have been far more important than the streets and parks as arenas in which expressive activity occurs.<sup>27</sup>

Though heralded by many as the modern medium of communication, the Internet has several limitations as an instrument which may inhibit its proper use as a medium of exchange of ideas to replace the streets and parks. These constraints basically relate to the Internet itself as a technology and the jurisdiction within which it operates.

### **3.3.2 Limitations to Freedom of Expression on the Internet**

There are several limitations to freedom of expression on the Internet. Though touted by many as the new technological environment to promote cyber democracy and the freedom of expression, the Internet has several bottlenecks in relation to itself as a technology and the regulations governing it that may severely limit freedom of expression. The assumption that the Internet will be used as a tool for the promotion of democracy and freedom of expression are both premised on the assumption that the jurisdiction within which the Internet operates is fully democratic and cherishes some of the great societal and democratic values like the freedom of expression and ideas. This is not the case always, many jurisdictions, and actually a big part of the world especially the third world/least developed parts of the world like Africa and Asia; though very big continents with at least half of the total world population and land mass/human habitation are yet to fully embrace the democratic values and principles being espoused and cherished by their counterparts and contemporaries in the west.

This in itself sets a bad precedent and premise for the smooth operation of the Internet as a medium of cyber democracy and freedom of expression. Thus, whereas, the Internet can be indeed touted and heralded as the wonderful medium of communication for freedom of expression, that is only true as in as far as North America and North and Western Europe is concerned, otherwise, it can not be claimed to be true of the global hemisphere.

There is a lot of Internet censorship in Asia and Africa which is a major hindrance to cyber democracy and indeed a threat to freedom of expression. Major studies

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have access to particular audiences, and particular listeners can not easily avoid hearing complaints that are directed against them. In other words, listeners have a sharply limited power of self-insulation.

<sup>27</sup> Sunstein, C. R., "Chapter 2: An Analog and an Ideal." *Republic.com.*, Princeton, Princeton Press, 2001, 23-50, at p.28.



done on democratic governance and Internet governance on Asia and Africa paint a very gloomy picture: that the use of Internet as a medium of communication is far from taking off.<sup>28</sup> The Chinese government for example with a population of about 2 billion people uses a very strong Internet censorship regime.<sup>29</sup> In Africa, if I may take, the example of my home country Uganda, at the height of the February 2006 Presidential and Parliamentary Elections, the Government of Uganda banned Radio Katwe an Internet satellite TV and Radio for allegedly spreading malicious propaganda against the government through the Uganda Communication Council (UCC), the body mandated to regulate communication in Uganda including Information, Communication Technology (ICTs) like the Internet.<sup>30</sup>

Though the Internet can indeed be used as a major tool in the democratic process not only as a technologically friendly medium for the exchange of ideas/freedom of expression but also in key democratic exercises such as voting and say referenda, the Internet has a limited coverage of the global: not everyone has access to the Internet even here in the developed world say in North America. Still many of our people can not afford computers and yet even the computers in the public libraries which such people would use are not easily accessible. Without a computer, Internet usage is very limited. In places like Asia and Africa, Internet usage is still very low and the Internet connections and user fees are indeed prohibitively higher almost ten times higher than it is in the developed world. This type of scenario makes Internet use as a medium of cyber democracy and freedom of expression an illusion to the vast majority of the world population on the bigger continents of Asia and Africa.<sup>31</sup>

In the developed world, the changing role of general access in cyberspace can not be ignored. One of the basic functions of the public forum doctrine in the cyber democracy debate is to provide mass access to the general public. Speakers seeking general access, hoping to sway public opinion or support a particular candidate or referendum on an election ballot, can use the Internet to reach these people simultaneously.<sup>32</sup>

The existing bottlenecks to the use of cyberspace in the promotion of democracy greatly hamper the smooth running of the Internet as the major medium of cyber democracy and freedom of expression leaving us to our mostly ancient ways of

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<sup>28</sup> [http://network.idrc.ca/acacia/ev-113431-201-1-DO\\_TOPIC.html](http://network.idrc.ca/acacia/ev-113431-201-1-DO_TOPIC.html) accessed 18.12.2007.

<sup>29</sup> [http://en.wikipedia.org/wiki/China\\_Page](http://en.wikipedia.org/wiki/China_Page) accessed 18.12.2007.

<sup>30</sup> See the *New Vision*, 21<sup>st</sup> February, 2006 at <http://www.newvision.co.ug/D/8/13/483221>. This just serves as an iceberg of how the repressive regimes in the less democratic societies in Asia and Africa are far from embracing the Internet as being part of the democratic process.

<sup>31</sup> [http://network.idrc.ca/en/ev-6091-201-1-DO\\_TOPIC.html](http://network.idrc.ca/en/ev-6091-201-1-DO_TOPIC.html) accessed 18.12.2007. Though it is now possible to vote on the Internet through for example vote.com, with limited Internet access this is not possible.

<sup>32</sup> Zatz, *Supra*, para. 201.

freedom of expression and democracy especially the streets and parks. However, even if the Internet were to be free of any restrictions in the form of censorship and limited access as is the case in Asia and Africa, the cyberspace if used as a medium for the promotion of cyber democracy and freedom of expression and its attendant limitations: it would mean that in the event of future breakdown of cyberspace (which is not a far fetched idea), democracy too would suffer a similar fate since the two would be intertwined and interwoven.<sup>33</sup> This would surely be a very dangerous trend the world over: it is thus advisable that we keep other avenues for the promotion of democracy and the much cherished right to freedom of expression such as the streets and parks, which are technology free or at least use very limited technology so that even in the event of a technological breakdown (which would be enough to kill cyber democracy and freedom of expression on the Internet), we would still have other mediums through which to access the public and practice our democracy and the right to freedom of expression.

#### **4.0 Justifications for Regulation of Hate Speech on the Internet**

Freedom of expression on the Internet if misused can indeed be disastrous. The borderless nature of the Internet and the mask of anonymity which the Internet bestows upon its users can indeed be a wonderful avenue for the spread of harmful propaganda and most especially the dangerous hate speech.

Hate speech is defined in the Additional Protocol to the Convention on Cyber crime, concerning the criminalization of acts of a racist and xenophobic nature committed through the compute systems as:

“racist and xenophobic material” means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.”<sup>34</sup>

For mainly the above reasons and the others, here below, governments the world over have sought to regulate hate speech especially through the censorship of the content on the Internet, increased Internet Service Provider (ISP) liability and total criminalization of all content that falls within the definition of hate speech.

It is important to note that there are significant differences in dealing with the question of hate speech or what has come to be known as incitement of violence especially in the African context between say North America (with the United

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<sup>33</sup> *Ibid.*

<sup>34</sup> See Article 2 paragraph 1 of the Additional Protocol. This Protocol is a Council of Europe document.

States taking a very liberal approach to hate speech while Canada has taken a somewhat hard stance similar to that taken by the European Union on hate speech) and the EU. The reasons that account for the differences are largely historical and cultural.<sup>35</sup>

One of the major justifications for regulation of hate speech on the Internet is the harm principle. The State has not only the power but also the responsibility to prevent harm to members of its society.<sup>36</sup>

Hate speech too is inconsistent with the underlying values of liberal democracy to brand some citizens as inferior on the grounds of say race, colour, descent or national or ethnic origin or religion if used as a pretext for any of these factors. The EU for example, obliges a member State to take appropriate measures not limited to adopt such legislation and other measures as may be necessary to establish as criminal offenses under its domestic law, when committed intentionally and without right, the following conduct:

Distributing, or otherwise making available, racist and xenophobia material to the public through computer system.<sup>37</sup>

The dangers and risks posed by hate speech to any society, helps the society to determine proper limits of free expression; so as not to harm itself or members. The liberty of the individual must thus be limited; he/she must not make himself a nuisance to the other members of society and wrack havoc onto the society unabated.

Equally, why should haters or promoters of hate speech be held high above the society they expose to risk through their reckless actions? The victims of hate speech desire more support and help than may be the right to freedom of expression by the haters on the Internet.<sup>38</sup>

Restrictions on freedom of expression through the regulation of hate speech on the Internet must be formulated in a way that makes clear its sole purpose is to protect individuals holding specific beliefs or opinions, rather than to protect belief systems from criticism. The right to freedom of expression implies that it should be possible to scrutinize, openly debate, and criticize, even harshly and unreasonably,

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<sup>35</sup> Europe with a horrible history of the holocaust has been tough on any actions on the Internet or in its society that tends towards genocide or the much dreaded holocaust, and Canada, being an extremely heterogeneous Nation with many immigrants especially from Europe and Asia, not surprisingly has legislation similar to that of the EU on hate speech. On the other hand, the US has no history of holocaust and it can not be said to be having as many immigrants as Canada does.

<sup>36</sup> <http://plato.stanford.edu/entries/freedom-speech/> accessed 10.29.2007.

<sup>37</sup> See Article 3 paragraph 1 on dissemination of racist and xenophobic material through computer systems of the Council of Europe Additional Protocol, *Supra*.

<sup>38</sup> See for example the Stanford University Discriminatory Harassment Provisions.

belief systems, opinions, and institutions, as long as this does not amount to advocating hatred against an individual.<sup>39</sup>

Though regulation of hate speech on the Internet has been condemned by certain circles as being a threat to freedom of expression, and cyber democracy, both the potential and actual threat posed by hate speech on the Internet to any society can not be ignored nor be underestimated. It is true, Internet regulation has the potential to inadvertently result into Internet censorship, but also the risk hate speech or the unregulated Internet exposes to its society members is magnanimous.

#### **4.1 Other Jurisdictions like the EU and Africa and Lessons for North America**

The EU, like Canada, has succumbed to Talmudic interferences; with the former having a fragile history of violence resulting from hate speech whereas the latter has an extremely heterogeneous society which is a very fertile ground for the cultural of intolerance, a good course for violence. In the EU, it is now an agreed position that the European Commission has a duty to protect shared European values such as the broad consensus that hate speech rules should also apply to the Internet.<sup>40</sup>

Canada through the Criminal Code of Canada (CCC), criminally punishes anyone who promotes genocide, incites hatred of an identifiable group in a public place, or promotes hatred and any body found guilty of such an offence will be imprisoned for two to five years.<sup>41</sup>

The Internet provides haters with a new method of distribution of their hate speech or materials. Hate groups around the world have embraced the potential of the Internet, with current estimates of over 2000 hate sites online. Canada uses both the CCC and the CCRF to address these challenges. This came into play in the *R. v. Keegstra* case<sup>42</sup> in which the Supreme Court of Canada faced with a teacher indicted for spreading hate speech among his pupils had to deliberate on S. 319 (2) of the CCC and also the CCRF of the teacher to freedom of expression and also academic freedom in S.2 b of the Charter. The teacher was found guilty of hate speech under the CCC and punished accordingly.

In *Zundel v. Canada* (Attorney General)<sup>43</sup> in which the complainants alleged that Mr. Zundel was violating s.13 of the Canada Human Rights Act (CHRA), R.S.C.

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<sup>39</sup> See Guardian Unlimited Comment, *Supra*.

<sup>40</sup> <http://www.nationalvanguard.org/printer.php?id=6245> accessed 10.03.2007.

<sup>41</sup> See S. 15 of the CCC for example.

<sup>42</sup> [1990] 3 S.C.R. 697.

<sup>43</sup> 67 C.R.R. (2d) 54(F.C.T.D. 1999).

1985, c. H-6 by causing hate messages to be communicated through computer website known as the "Zundelsite", which can readily be accessed through the Internet the USA/California and Canada claiming that the figures in the holocaust had been greatly exaggerated to draw sympathy for the Jews. The Complainants objected to the website arguing that it is likely to draw hatred to the minority Jewish community in North America. This case is also a landmark on the controversial issue of spread of hate speech through the computer/Internet, though the case was later determined on the basis of the Anti-Terrorism Act of Canada.

The issue of transmission of hate messages through telephone has also been dealt with in the case of *Sabina Citron and Canadian Human Rights Commission v. Zundel, Canadian Human Rights Tribunal*<sup>44</sup>, which discussed the transmission of data or communication on the Internet operating over a telephone network. The respondents were ordered to stop their communication which allowed the spread of hate speech and discrimination contrary to s.13 (1) of the CHRA.

In the US, the *Commonwealth of Pennsylvania v. Alpha HQ* in the Court of Common Pleas of Berks County, Penn. Civil Action-Equity, 1998, threatening email through the Internet with discriminatory remarks was held to be violation of the law on hate speech.

However, the Supreme Court of the US, in the *Virginia v. Straka*<sup>45</sup> case held that cross-burning of hate speech would be intimidation. The Court then upheld the constitutionality of the prohibition against hate speech.

Europe and especially Germany and France due to their long time history of the holocaust, have very strong and prohibitive laws against hate speech. In the *UEJF and Licra v. Yahoo! Inc. France, Trib. Gr. Int Paris Case*<sup>46</sup> in which yahoo provided access to computer screens with Nazi objects, which is criminal under the article R. 645-2 of the French Penal Code; awards were awarded to the plaintiffs on the complaint of hate speech.

In Africa, the law is basically on incitement of violence as opposed to the hate speech. In say my County, Uganda, many politicians have been charged for incitement of violence under the Uganda Penal Code Act.<sup>47</sup> In the neighboring

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<sup>44</sup> T.D. 1/02, 2002/01/18.

<sup>45</sup> US Supr. Crt

<sup>46</sup> (22 May 2000).

<sup>47</sup> See the New vision Newspaper, 9 Sept. 2007. See the cases of *Uganda v. Betty Anywar, Hussein Kyanjo and Ken Lukyamuzi* is still on mention and the file number is CRT 403/07, *Uganda v. Erias Lukwago and Odongo Otto* is for further hearing on 4th/03/2008 and the file number is 430/07, on the recent developments in Uganda, there is a recent case involving

Rwanda, the Radio was used to incite violence leading to a major genocide in 1994 in which close to two million Tutsi and moderate Hutu died.<sup>48</sup>

It can thus be seen that the justifications for regulation of hate speech on the Internet vary from society to society, and people to people. What is clear, however is that the cultural history of a particular people let alone their composition; whether heterogeneous or homogeneous greatly influences the need or otherwise no need for such legislation. The EU (mostly Germany/France), African (mostly Uganda/Rwanda) and the divided North American examples (of a liberal US) versus a strong legislation on hate speech north of its border in Canada are glaringly clear examples.

## **5.0 Distinction between Internet Censorship and Regulation of the Internet**

One of the key debates of our times is the issue of Internet governance/regulation. The sober view is that the Internet if unregulated can lead to disastrous activities among which is hate speech which I have discussed in this paper. And that therefore, acts which would be illegal in our day to day lives should equally be illegal on the Internet as seen in the criminalization of hate speech on the Internet in the various jurisdictions looked at above. There are however wide spread well founded fears that this regulation of the Internet which is good for some of the reasons I have given above may actually result into Internet censorship which will in turn unfortunately erode all the achievements that have been gained through the Internet like cyber democracy and the freedom of expression on the Internet.

This is indeed a very big dilemma posing the question: should we regulate the Internet or leave it to anarchy?

This very controversial and disturbing question in the law of cyberspace can be answered by distinguishing Internet censorship from Internet regulation. In a sober world, the Internet should be regulated/governed in order not to breed anarchy on the Internet itself. However, regulating some of the activities on the Internet does not in itself result in Internet censorship. Though Internet hate speech ban may have a chilling effect on freedom of expression on the Internet, we can not have the Internet as a medium for the unabated spread of hate speech.

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Hon. Erias Lukwago on Incitement of Violence. i.e *Uganda v. Erias Lukwago* CRT no. 116/08 before the grade one magistrate of Buganda road court.

<sup>48</sup> The International Criminal Tribunal for Rwanda has tried cases like Akayesu, and Bilej in this respect and conviction have been given.

What seems clear therefore is that there is a strong need and desire to balance Internet speech with regulation; where Internet Speech is harmful to society then it should be regulated.

But total bans on the Internet sites for merely expressing opposing views to those of the government like in Asia and Africa like the ban of Radio Katwe in Uganda should be discouraged.

## **6.0 Ending Remarks**

As discussed in the paper, the Internet, though heralded as the modern medium of communication through which the entire world can be reached in a matter of seconds and which has demystified the hassles related with distance in the world, the same Internet that can be used for cyber democracy and freedom of expression can be very harmful and indeed kill through genocides and the spread of hate speech. It should therefore be regulated to the extent it is harmful and be unregulated to the extent it is not harmful and not be used by the governments to suppress opposing/divergent views. The clear cut between Internet censorship and regulation/governance has also been given in the paper.

#### **4) The Intensifying Battle Over Internet Freedom – From China to Syria, repressive nations are cracking down hard on digital dissidents - *Paper by Human Rights Watch (24 February 2009)***

Eleanor Roosevelt never imagined the Internet.

Neither did the other framers of the Universal Declaration of Human Rights 60 years ago when they enshrined the right to freedom of expression. Yet they wisely left room for just such a development by declaring in Article 19: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Today, the Internet is both the vehicle and the battleground for freedom of expression around the world. The struggle between writers and governments over this free flow of information has escalated this past year and promises to intensify. Those supporting open frontiers for ideas and information need to be on high alert and take steps necessary to protect those silenced and to keep the Internet unencumbered.

Last year became the first time that more Web journalists were jailed than those working in any other medium, according to the Committee to Protect Journalists.

China, Burma, Vietnam, Iran, Syria, and Zimbabwe have led the clampdown. They have arrested writers, blocked websites and Internet access, set strict rules on cyber cafes, and tracked writers' work. In response, some writers have used proxy search engines, encryption, and other methods to try to get around censorship and detection.

"As in the cold war [when] you had an Iron Curtain, there is concern that authoritarian governments, led by China, are developing a Virtual Curtain," says Arvind Ganesan, director of the Business and Human Rights Program at Human Rights Watch. "There will be a free Internet on one side and a controlled Internet on the other. This will impede the free flow of information worldwide."

In the past year, writers in general have been arrested and imprisoned for such alleged charges as "inciting subversion of state power" (China), "insulting religion" (Iran), "threatening state security" (Burma), "defaming the President of the Republic" (Egypt), "storing cultural products with contents against the Socialist Republic" (Vietnam), and "spreading false news" (Syria).

"The Internet is reshaping society from the ground up," notes Larry Siems, the director of the Freedom to Write program at PEN American Center. "For instance there are two new novels from girls who are housebound in Saudi Arabia, but these were published on the Internet." The question remains whether the writers can maintain their freedom in cyberspace, which they do not have in their physical space.

International PEN's Writers in Prison Committee regularly tracks approximately 900 cases of writers around the world who are under threat, arrested, attacked, or killed, with roughly 150 new cases each year. "There has definitely been a rise in the numbers of Internet writers, editors, and bloggers attacked," notes Sara Whyatt, director of International PEN's Writers in Prison Committee. "The



Internet has caused an explosion of free speech. Governments of all sorts are finding this a challenge."

China, which is particularly adept at blocking Internet use, leads the list of countries with long prison terms and the highest number of writers in prison. China's crackdown on writers before the Olympics and the arrest in December of leading dissident writer Liu Xiaobo, one of the authors of Charter 08, which advocates democratic reform in China, contradicts the government's claim that it is easing up on restrictions. In spite of Liu's detention, Charter 08 has circled the globe via the Internet, gathering signatures of Chinese from the mainland and the diaspora.

Because the Internet operates outside the structures of government, it challenges hierarchies of power and empowers the individual voice as never before. As many as 40 countries are engaged in some kind of Internet filtering and censorship, according to OpenNet Initiative. To counter these restrictions, human rights organizations and private companies, including Google, Microsoft, and Yahoo launched the Global Network Initiative (GNI) this fall. GNI, which sets voluntary standards to safeguard privacy and curtail censorship, is worthy of support.

The US Congress is watching its implementation closely and will also be considering legislation (the Global Online Freedom Act) to prevent Internet companies from assisting foreign governments in censoring content and revealing user information.

There are legitimate concerns about those who misuse the Internet, but a balance is possible between privacy and a government's ability to track criminal and terrorist networks. Authoritarian governments should not use law enforcement needs as an excuse to shut down opposition and muzzle free expression. Keeping the digital highway open for the hundreds of millions of legitimate users is vital to freedom of expression and the free flow of information worldwide. It will take vigilance, agreed standards, and technological innovations to protect the Internet's open structure.

One can imagine Eleanor Roosevelt today sitting at her computer sending out protests, even blogging as she and others frame the principles to keep this corridor of communication unfettered and free.

• *Joanne Leedom-Ackerman, a former Monitor reporter, is a vice president of International PEN and a board member of Human Rights Watch.*

## 5) Statements on China

### - Government Blocks Access to YouTube: *Reporters Without Borders (25 March 2009)*

Reporters Without Borders deploras the blocking of video-sharing website YouTube (<http://www.youtube.com>) in China since 23 March because of content critical of the ruling Communist Party. The foreign ministry's spokesman said the same day: "Many people have a false impression that the Chinese government fears the Internet. In fact it is just the opposite."

"If the Chinese government is not afraid of the Internet's influence, why block all the websites that carry criticism of the Communist Party and why create a national filter designed to 'clean up' the Internet?" Reporters Without Borders said. "China's leaders are extremely intolerant of Internet content and its creators."

The press freedom organisation added: "We firmly condemn this blocking, which not only prevents the world's biggest group of Internet users from accessing certain online content but also constitutes a very negative message regarding online free expression in China."

Google-owned YouTube's website is inaccessible in most of China's provinces, Internet users say. When anyone tries to connect, the following message appears: "This page is not available. The Internet page corresponding to the address <http://www.youtube.com> is not accessible. The site may have changed its address."

Google spokesman Scott Rubin told Reporters Without Borders: " We are looking into this and working to restore access to YouTube as soon as possible. I can't confirm the reason for the block, but I do know that the Chinese Ministry of Foreign Affairs held a press conference today in which it confirmed that the government is responsible for the block."

Many videos showing Chinese repression of the Tibetan population were posted on YouTube in the run-up to the 50th anniversary of the Tibetan uprising of 10 March 1959. A popular video called "Cao Ni Ma" (Grass Mud Horse) was also posted at the start of the month that exploited the possibilities of word play and double entendre in Chinese to defy government censorship.

It prompted the following ban, which the authorities sent to Internet forums: "It is forbidden to promote any content related to Grass Mud Horse or to misinterpret its content. This video has been elevated to a political level and overseas media have turned it into a story about confrontation between netizens and government." It was removed from YouTube, which was already blocked from 5 to 7 March. In October 2007, YouTube was also blocked when it launched a Chinese-language version aimed at residents of Taiwan and Hong Kong.

The Communist Party exercises a great deal of control over audio and video content on the Internet. Under rules that took effect in January 2008, websites are supposed to obtain prior permission from the authorities before posting audio and video files.

Government control is facilitated by the fact that the Chinese public uses the Internet services created by Chinese companies much more than foreign ones. The Chinese search engine Baidu.cn

(which carefully filters out “subversive” content), is used for 60 per cent of searches as against 20 per cent for Google and fewer still for Yahoo!.

China’s most popular blog platform is Sina, which was the first website to obtain a government licence to post news content. It is subject to a self-discipline pact that was imposed by the Internet Society of China (ISC), an offshoot of the information industry ministry, in August 2007. The pact “encourages” websites to register users before letting them post content online and to keep their personal data. In practice, the courts have the power to close sites.

Google’s Chinese-language search engine, Google.cn, has been censored since 2004.

### **- ‘Big Brother’ Fear as China Prepares to Filter PCs for “Unhealthy” Content: *Reporters Without Borders (8 June 2009)***

Reporters Without Borders voiced concern today over China’s plan to force computer manufacturers to install software on personal computers to filter information seen by the Communist Party as “unhealthy”.

The ‘Green Dam’ software, which must be installed from 1st July onwards will filter pornographic content, the industry and information and technology ministry has decided. “It is a scenario worthy of Big Brother that is unfolding in China,” the worldwide press freedom organisation said. “First comes the arrests of dissident bloggers and now the time for surveillance built into computers themselves.”

“This Chinese-style filtering will go well beyond pornographic content that it is supposed to deal with and represents a threat to free expression. Until now, Internet-users have been able to access blocked websites using software for getting round censorship. Green Dam is designed to stop that.

“We urge companies that sell computers on the Chinese market not to comply with the instruction, which will make them accomplices to censorship”, the organisation said.

The industry and information technology ministry said today that companies in the computer market were in May given six weeks to install the new software, paid for by the government. According to the *Wall Street Journal*, it would link PCs with a regularly updated database of banned sites and block access to those addresses.

The Chinese government said that Green Dam was intended to protect young people from “harmful” content online. The software has since March already been downloaded three million times, is reportedly used in 2,279 schools and has been installed in some 518,000 computers. The companies Lenovo, Inspur and Hedy have apparently already installed the software in 52 million computers.

“The appearance of such a strict directive shows the need to protect foreign companies operating in China, who are forced to comply with local laws. This is why we support the need for a law like the Global Online Freedom Act, that makes it possible to stand up to the Chinese government in this kind of situation”, said Reporters Without Borders.

A wave of online censorship linked to the 20th anniversary of the Tiananmen Square massacre on 4 June is still being felt within China. Scores of websites such as *Twitter, YouTube, Bing, Flickr, Opera, Live, Wordpress and Blogger* were left inaccessible in the country. *Twitter, Flickr, Hotmail, Wikipedia and Radio Free Asia* were accessible again from 8th June.

“How long is the government going to continue using censorship against the Web 2.0? The authorities are showing the extent to which they are calmly seeking to control the flow of information reaching Internet-users” it concluded.

### **- Bloggers Who Denounced Gang-Rape Now Face Up to 10 Years in Prison: *Reporters Without Borders (12 August 2009)***

Reporters Without Borders is concerned to learn that more serious charges have been brought against three bloggers and activists who have been held since 26 June in the southwestern province of Fujian for reporting that a young woman died after being gang-raped in February 2008 and that some of the rape participants had links with local officials.

The three detainees – Fan Yanqiong, Wu Huaying and You Jingyou – were originally charged with defamation, which carries a maximum sentence of three years in prison. But the charges were changed on 31 July to “false allegations with intent to harm,” for which the jail term is three to ten years. They currently being held in the Mawei district prison.

Reporters Without Borders is also worried that, according to Chinese Human Rights Defenders (CHRD), two of the three bloggers, Fan Yanqiong, a cosigner of Charter 08, and Wu Huaying, both women, have been mistreated. CHRD says Wu was handcuffed and interrogated for more than 30 hours while Fan was forced to defecate in her cell and has not received appropriate treatment for her kidney and heart ailments.

Three other bloggers who were arrested for the same reason at the end of June – Chen Huanhui, his wife and Guo Baofeng (also known as Amoiist) – were released by the Mawei police on 31 July. Guo subsequently reported on his blog that he was released because of a campaign on the Chinese blogosphere. While held, he managed to send a message via Twitter on 16 July saying: “*Pls, help me, I grasp the phone during police sleep.*”

As a result, Michael Anti, an influential blogger and former New York Times journalist, learned about his detention and, on 21 July, issued an appeal to Internet users to send postcards to his prison with the message: “Guo Baofeng, your mother is calling you home for dinner.” The appeal was so successful that it has since been repeated with other detained dissidents such as Xu Zhiyong and Huang Qi.

## 6) Statements on Indonesia

### **- Indonesia's Online Law a Threat to Freedom of Expression, say Journalists, Activists: *Southeast Asian Press Alliance (14 August 2009)***

Indonesia's Information and Electronic Transactions Law, despite its good intentions, might be used as a tool to censor the media, journalists and lawyers attending a regional seminar organized by the Alliance of Independent Journalists (AJI) said on 13 August 2009.

The "Jakarta Post" quoted AJI's Kurie Suditomo as saying, " I believe there will be many 'free riders' on this law, which is meant to ensure the protection of online and electronic business transactions." Free riders, Suditomo explained, are those who could misuse the law to suppress freedom of expression.

Lawyer Todung Mulya Lubis said the law, passed in 2008, stipulated that printed material from the Internet and electronic media could be used as evidence in court.

"However, the law was made by lawmakers who have mixed defamation into a law that supposedly regulates only business transactions," he said.

The International Federation of Journalists (IFJ) warned the law could be used as a political censorship tool.

"This has happened in authoritarian countries where governments have made online defamation laws because they were worried about the free political discussions on the Internet," Jim Nolan, IFJ legal consultant, said.

Nolan said that under the law, a defamatory story published in print could earn a writer a year's imprisonment, while the same story online carries a separate six-year sentence. Indonesian publications with both print and online editions, he said, might find these provisions troublesome.

Bayu Wicaksono, co-founder of the Press Legal Aid Foundation, said the law had not been initially drafted with censorship in mind. According to him, one of the legislators who drafted the bill said the law had been recommended by Bank Indonesia, which wanted to protect electronic business transactions.

"My institution is worried this law will cause trouble for journalists," he said, adding that at least six people had been charged with online defamation under the law. The most notorious case is that of Prita Mulyasari.

"Most of the defamation cases are linked to personal insults posted on networking websites," he said. According to Bayu, the law is open to several interpretations: the specific article on defamation has a very limited explanation of its usage, and does not differentiate between the various kinds of defamation.

Nolan said the law is draconian because it has a very dramatic effect on individuals. He said it is not fair to jail people for expressing opinions, no matter how wrong their opinions might be.

## 7) Statements on Malaysia

### - Two Court Cases Test Online Free Expression: *Reporters Without Borders* (11 February 2009)

Reporters Without Borders calls for the withdrawal of the charges against blogger **Raja Petra Kamaruddin**, also known as “RPK”, and human rights lawyer **P. Uthayakumar**, whose cases were heard in appeal hearings yesterday before the federal court in Putrajaya, the country’s highest court. Both Kamaruddin and Uthayakumar have run afoul of the draconian Internal Security Act (ISA), under which suspects can be held for two years without trial.

“Both RPK and Uthayakumar are victims of a law that openly violates the right to free expression,” Reporters Without Borders said. “RPK spent 56 days in detention at a minister’s pleasure. Uthayakumar is still being held in this manner in appalling conditions, and has been so for the past 426 days. If the judicial system dared to question what has happened, it would demonstrate some impartiality. We hope it can rise to the challenge posed by these cases.”

Kamaruddin’s case was postponed yesterday until 17 February at the request of his seven lawyers, who have challenged the partiality of one of the three judges, Augustine Paul. At the next hearing, a new panel of judges will consider the interior minister’s appeal against a 7 November high court decision to free Kamaruddin, who had been held at the minister’s behest following his arrest on 12 September under article 73 (1) of the ISA for allegedly spreading confusion and insulting “the purity of Islam.”

Kamaruddin edits the Internet Malaysia Today website (<http://mt.m2day.org/2008/>), in which he often criticises government policies. There are two other cases currently pending against him, one on a charge of defamation, and the other on a sedition charge. An hearing in the defamation case is to be heard before the Kuala Lumpur high court tomorrow.

The federal court in Putrajaya yesterday rejected a request for the release of Uthayakumar for the second time. Held under the ISA since 13 December 2007, his case was heard at the same time as those of four other members of Hindu Rights Action Force (Hindraf).

Uthayakumar is accused of violating the ISA by posting a letter he wrote to British Prime Minister Gordon Brown on his website asking Brown to support a UN security council resolution condemning the Malaysian government’s “atrocities” and “persecution” of the country’s Hindu minority and referring the case to the International Criminal Court.

Reporters Without Borders reiterates its call for the release of Uthayakumar, who is diabetic and has been mistreated while in detention.

“Throughout these 14 months of my imprisonment under the ISA, my health condition has deteriorated,” he wrote in an open letter on 10 February that was posted online. “Sometime on or about January 2008, I believe I had suffered a silent heart attack at a time when I was denied my diabetic medication (...) sugar is being added to my food from time to time.”

## 8) Statements on Thailand

### **- Is Thailand a New Enemy of the Internet?: *Reporters Without Borders* (12 January 2009)**

Reporters Without Borders is very concerned about online free expression in Thailand following the new government's decision to make monitoring the Internet a priority in order to prevent insults to the monarchy. Ranongrak Suwanchawee, minister of information and communications technology in the government that took over on 15 December, says more than 2,300 websites have been blocked and 400 are being investigated. Nearly 2 million euros (80 million baht) have been earmarked for web filtering.

"We condemn these measures taken by the People's Alliance for Democracy, which represent a grave attack on free expression for the sake of combating a poorly defined crime," Reporters Without Borders said. "It is surprising that this has suddenly become a priority although Internet access is far from being general in Thailand. It is important the government should agree to debate the online activities of the country's Internet users."

Giles Ji Ungpakorn, a political science professor at Bangkok's Chulalongkorn University, was yesterday ordered to appear on 20 January at a Bangkok police station to be charged under the lese majeste law in connection with his book "A Coup for the Rich," which can be downloaded at no cost from his blog, <http://www.wdpress.blog.co.uk>.

An Australian writer from Melbourne, Harry Nicolaides, has been detained on a lese-majeste charge since his arrest on 31 August as he was about to board a flight back to Australia. He used to teach at Mae Fah Luang university in the northern city of Chiang Rai and wrote for magazines and websites. His four requests for provisional release have all been rejected.

Suwanchawee, the new minister of information and communications technology, announced on 29 December that blocking websites that insult the monarchy would be her ministry's main task. She added that her predecessor in the post was "mistaken in believing that little could be done to control sites originating overseas."

Two days before that, members of the Democrat Party-led government called for the lese-majeste legislation to be made tougher, while the army's commander in chief, Gen. Anupong Paojinda, told his officers to make sure there were no attacks on the king. Speaking to more than 800 battalion commanders, he urged each battalion to monitor one to two websites for negative content about the monarchy.

Thailand has 14 million Internet users, which is about 20 per cent of the population. An association called Thai Netizen is to meet the new prime minister tomorrow in order to submit a petition for the defence of online free expression and propose a compromise on this issue. Created at the initiative of media advocate Supinya Klangnarong, Thai Netizen groups bloggers and Internet users who campaign for online free expression in Thailand.

When websites are blocked in Thailand, it is done by means of informal requests from the authorities to Internet Service Providers - request without any legal status.

Lese majeste is defined by article 112 of the criminal code, which says that defamatory, insulting or threatening comments about the king, queen or regent are punishable by three to 15 years in prison. Under a cyber-crime law adopted in 2007, the individual records of Internet users must be kept by ISPs for 90 days and can be examined by the authorities without referring to a judge. The police can also confiscate any computer if they suspect it has been used for illegal purposes.

### **- Time to Talk Openly about Lese-Majesty: *Asian Human Rights Commission (12 February 2009)***

The Asian Human Rights Commission (AHRC) has closely followed with growing concern the increasing number of lese-majesty cases being filed against people from all walks of life in Thailand for written comments on the royal family. At present, dozens of persons are known to be facing charges or have already been convicted of the offence, which is the equivalent of treason against the crown. They include citizens of Thailand and foreigners, journalists and academics, bloggers and web board discussants. At least two are presently imprisoned and another has fled abroad, rightly fearing that he would not obtain a fair trial. The number is small in terms of the total number of people passing through the criminal justice system in Thailand, but it is large for the nature of the offence and particularly given that the purpose of these cases is to frighten other persons from making similar remarks and thus stifle debate about a key institution of the state at a time that an army-backed unelected government is doing everything possible to further undermine the already battered rule of law in Thailand.

Indeed, many others could conceivably have charges brought against them at any time, given the insignificant comments on the monarchy that landed some of these persons in the courts, and also given the characteristic of lese-majesty in Thailand that allows for any private citizen to bring the charge against another person. According to some information, in addition to the proceedings brought through the formal inquiries of government agencies, certain members of the police force and others have taken it upon themselves to hunt for contents in publications and websites that may give rise to an allegation of lese-majesty and thereafter initiate charges. Even more disturbingly, a new website apparently set up on the parliamentary server is calling upon citizens to inform upon anyone whom they believe has criticized the monarchy.

The rising incidence of lese-majesty cases, coupled with the ham-fisted attempts at Internet censorship of the Ministry of Information and Communication Technology and the continued widespread use of criminal defamation all speak to the extremely regressive trend in political behaviour and social discourse on important national issues in Thailand since the 2006 military coup. From the day after that event, the AHRC warned that failure to strongly oppose the takeover simply out of dislike for the unsavoury deposed government of Thaksin Shinawatra would invite the reactionary and ultra-right-wing forces back into power that dominated politics in Thailand up to the 1990s. Regrettably, the events of late-2008 have demonstrated just how much ground extremist ideologues and lawless elements have gained thanks to the army's reassertion of its prerogative to have the final say on what goes in Thailand. The recent shocking treatment of boatloads of people captured by the country's navy off the western shoreline and the pathetic official denials and



obfuscations it generated is yet another illustration of the extent to which these backwards-looking forces have entrenched themselves at all levels in the present administration.

The current spate of lese-majesty cases is but one manifestation of this turn away from the nascent democratic and social developments of the 1990s and back towards the outdated authoritarianism of earlier decades, but it is also one that goes to the heart of how the plotters and strategists responsible for this turn for the worse want to represent their state. It is clear that the charging and convicting of persons in Thailand with lese-majesty is not, as they would disingenuously have it, an issue of cultural relativity, but one of social control. It is not about encouraging respect, but stifling dissent.

One of the enormous changes between the old Thailand and the new is in the field of technology and communications. It is no coincidence that many of the persons now accused of lese-majesty have been accused of it because of their use of computers. As domestic media outlets are cowed or reduced to serving as propaganda mouthpieces for this party or that alliance, it is not surprising that more and more people are turning to alternative sources of news and commentary on the Internet and through other forms of fast, modern communication. No matter how much the authorities try, they will find it impossible to stop these exchanges, short of shutting off these technologies completely, and the more that they try to do this the more likely they are to provoke more persons to access and use them.

Notwithstanding, it is clear that in the coming period it will be increasingly difficult and risky for people in Thailand to speak openly, evenly and honestly about a wide range of issues, including the role and activities of the royal family in their country, and even more importantly, about the work of the people who claim to represent it and act on its behalf. At a time that these risks are posed not only by officialdom but also by the self-appointed vigilantes who in the last year dominated social and political space and committed innumerable crimes apparently without fear of prosecution, it would be foolhardy of anyone in Thailand to think that they are today living in a society that tolerates, let alone encourages, free expression and opinion.

Under such circumstances, a special responsibility falls on persons and agencies located outside of a country to speak out directly and clearly in the interests of those inside who cannot. It is for this reason that the Asian Human Rights Commission unequivocally condemns, as a matter of principle and without regard to other factors, the application of lese-majesty in Thailand in its current form as contrary to international human rights standards. It calls upon the Government of Thailand, through the offices of the public prosecutor, to at once cease all proceedings pending against persons charged with lese-majesty, and speed arrangements to see that those persons already convicted are promptly released from prison. It also demands that the futile censorship of websites that government functionaries deem offensive to the royal institution cease. Failure to do these things, the Government of Thailand must understand, will only retard the prospects for recovery of its damaged political life and international reputation in the wake of the fiascos in 2008, and will in the long term only make addressing the deep systemic flaws in its country's institutional and social fabric that much more difficult to mend.

The AHRC also takes this opportunity to make a special call to all concerned persons and organisations outside of Thailand. First, it congratulates those that have already taken up the issue of lese-majesty and strongly encourages them to continue their efforts, be they through the mainstream media or other lobbies. Second, it urges all those that have not yet done so to make statements,

begin campaigns and publish and speak widely on it as a matter of urgency. As in the present circumstances an intelligent and unhindered debate on lese-majesty and related concerns is impossible in Thailand itself, for the time-being it falls upon those working and residing outside the country to break open the many heavy silences that are hanging around the topic there until such a time that people in the country are able to do the same without fear of arrest and jail, or worse. This appeal goes out especially to fellow human rights organisations that have not yet spoken up on this matter. If we are unable or unwilling to say with clarity and certainty that a law is wrong and those persons prosecuted under it have been unjustly treated then we shall soon find ourselves unable or unwilling to speak with clarity and certainty about anything at all.

## 9) Statements on South Korea

### **- Blogger Arrested for Allegedly Destabilizing Currency Markets: *Reporters Without Borders* (12 January 2009)**

Reporters Without Borders calls for the release of Park Dae-sung, a widely-read blogger better known by the pseudonym of “Minerva,” who was arrested on 7 January on the grounds that his blog posts “affected foreign exchange markets and the nation’s credibility.” Park faces a possible five-year prison sentence and fine of 27,000 euros (50 million won).

“The authorities seem to want to blame Park for the speculation prompted by his blog entries when all he did was exercise his right to express his personal views,” Reporters Without Borders said. “Park is being tried for rumours which he did not create. His arrest is a serious violation of free expression and bodes ill for the Internet’s future in South Korea.”

Park pleaded not guilty when brought before a Seoul court on 10 January. Among the blog entries that upset the government was one on 29 December in which he said seven of South Korea’s most important finance institutions and export companies had been ordered not to trade in US dollars in order to stabilise the won (<http://bbs1.agora.media.daum.net/ga...>).

A finance ministry official said at the hearing that Park was fully aware that his Internet posts could push up the rate of the dollar and that South Korea would then have to spend much more to stabilise the market. He intended to harm the public interest, the official added. Judicial officials have said that his blog posts from July to December led to 2 billion dollars in losses in currency reserves for South Korea.

Many of Park’s widely-read articles were posted on the forum of Daum.net, one of South Korea’s most popular web portals. In one of his posts, he forecast the collapse of the US bank Lehman Brothers a week before it happened. He also predicted the current worldwide financial crisis. His real identity was unknown until his arrest.

Park claimed in one of his articles that he had an economy degree, had worked on Wall Street and had helped to devise the subprime financial products that are blamed for the current crisis (<http://bbs1.agora.media.daum.net/ga...>). The authorities are trying to establish whether he personally profited from South Korea’s financial crisis.

### **- More Journalists Arrested, Pressure increases on Media: *Committee to Protect Journalists* (7 May 2009)**

The Committee to Protect Journalists (CPJ) wrote a letter to the President Lee Myung-bak on 7 May 2009, presenting facts of arrest of journalists critical of the government. The letter, below, also notes increasing pressure on media in the country since March this year.

Dear President Lee:

The Committee to Protect Journalists is concerned by your administration's increasing pressure on the Republic of Korea's media. The arrest on April 28 of four staff members with your country's second-largest broadcaster, Munhwa Broadcasting Corporation (MBC), is only the most recent step in what appears to be a broader effort to stifle independent reporting critical of government policies.

On May 1, prosecutors told reporters at a Seoul press conference that the four MBC staffers -- reporters Cho Neung-hee and Song Il-jun and newsroom writers Kim Eun-hee and Lee Yeon-hee -- were arrested the day before in connection with a report by the station last year. They were charged with spreading false rumors that said U.S. beef caused mad cow disease in humans. They were arrested soon after they left the MBC building, where they had protested their prosecution for a month.

On April 13, MBC fired Shin Kyung-min, anchor of its primetime news program "News Desk". South Korean media gave extensive coverage to ensuing protests of the May 1 arrests by staff of your country's four major broadcasting stations. Shin had been the anchor when the mad cow story aired on the channel's investigative show "PD Notebook", and had a reputation for being openly critical of your government.

MBC President Ohm Ki-young denied charges that Shin was fired because of his role in reporting the story or his anti-government positions. Ohm was widely quoted as saying that the firings were carried out to "regain" political balance and credibility and to better compete with the rival 9 p.m. news at the state-run Korean Broadcasting System.

We are concerned because the prosecutions, sackings, and protests come amid a broader set of disputes with the government and the station's management. In 2008 your government said it would accelerate its plan for deregulation of the republic's vibrant media industry. The TV networks resisted the plan, because they were worried about more restrictive media rules after corporate takeovers and cross-ownership by newspaper publishers. Some media analysts say the government is behind the move because only three right-leaning pro-government Korean-language papers are wealthy enough to buy up the stations. Unionized workers at three stations, the state-owned Korean Broadcasting System (KBS), Seoul Broadcasting System, and MBC went on strike in protest.

The situation escalated in March this year, when four journalists at the 24-hour news channel YTN were arrested for "interfering with business". Even though they were quickly released on bail, they are still being prosecuted. They protested the appointment of your former aide Ku Bon-hong to head YTN. About 58 percent of YTN stock is owned by four state-run companies--shares the government wants to sell off to the private sector.

It is not just broadcasters who have been subjected to government restrictions. In early April, the government passed legislation requiring South Korean Internet users to submit their real name and residence registration number before using any major Web site that has more than 100,000 distinct users each day -- a law first proposed by the preceding government of President Roh Moo-hyun. The law allows people to use anonymous names when surfing the Web or posting comments, but must supply their full identity to Internet service providers who then have to turn it over when

requested by the government. Journalists and bloggers can no longer write without revealing their identities to authorities.

At a press conference in Seoul on April 22, The Korea Times reported that Lee Won-jin, the managing director of Google Korea, was openly critical of the new law. "We believe that the real-name requirements do not benefit users in any way and do not contribute to creating a vibrant Internet culture", the daily quoted Lee as saying.

Google, which owns YouTube, has managed to avoid the restrictions by not allowing users to upload videos and comments on the Korean-language kr.youtube.com site, while allowing users to still upload material by setting their country preference to other countries, Hankyoreh reported. Your government's attempts to control the Internet were handed another setback on April 20, when a Seoul court acquitted Park Dae-sung, who blogged under the name Minerva on the locally operated Daum.net site. The 31-year-old Park had been charged with "spreading false information with the intent of harming the public interest" in a December 29, 2008, posting saying the government had tried to dissuade local bankers from buying U.S. dollars, a change in official policy. Your government denied the story and sought an 18-month sentence. Park was widely read after many of his financial predictions, mostly negative, turned out to be accurate.

We are also concerned that a law that criminalizes slander with a jail term not to exceed two years and a 10 million won (US\$7,890) fine is still pending in the National Assembly. While slander is a serious charge, it should not be criminalized and should be dealt with in civil courts. In many countries criminal defamation serves to stifle free speech and the open expression of ideas, and is used to silence outspoken critics of those in power.

South Korean journalists continue to tell of us harassment and threats of prosecution when they travel to Afghanistan, Iraq, or Somalia without prior permission from the Foreign Ministry. Last year, your government criminalised such travel with possible punishment for violating the law of up to one year in prison or a fine of up to 3 million won (US\$2,300). While we understand your government's concerns for the safety of its citizens, such laws for journalists are onerous. Your government must balance its concern between security and the right of journalists to pursue a story wherever it will take them.

All of these actions are a step backward for South Korea. We call on you to ensure that journalists are able to travel without restriction and work without fear of losing their jobs or going to jail as political retribution. We look forward to your response to these pressing issues.

## 10) Statements on Vietnam

### - Government Frees Cyber-dissident While Keeping Online Activities Under Strict Control: *Reporters Without Borders (20 February 2009)*

Reporters Without Borders is relieved to learn that journalist Huynh Nguyen Dao was freed on 15 February on completing a 30-month jail sentence for circulating Internet material criticising the government. The organisation regrets that respect for the right to online free expression continues to be rare in Vietnam.

"We are happy for Dao and his family," Reporters Without Borders said. "His imprisonment was unjust and we deplore the fact that this kind of arbitrary detention can still take place. All the time he was held, Dao continued to insist on his innocence and on the right of Vietnamese to express themselves. But the government is doing everything possible to intimidate activists who use the Internet, as evidenced in the recent directives restricting online free expression."

As he left prison, Dao told journalists he did not request an amnesty because he "did not do anything wrong." He added: "What I told the prison officials and security officials many times, and what I want to share with everybody, is my call for dialogue. I think that the foundation of democracy is dialogue."

A founder member of the banned Democratic Party, Dao was arrested on 15 August 2006 and was sentenced by a Ho Chi Minh City court to three years in prison on 10 May 2007. Two other members of the party, Nguyen Bac Truyen and Le Nguyen Sang, were tried with him and were given jail sentences of four and five years respectively.

They were convicted on charges of "propaganda against the Communist government" for distributing material downloaded from the Internet. The judge ruled that their activities were "dangerous for society" and "undermined the government's authority." Six months were taken off Dao's sentence on 17 August 2007.

Meanwhile, new measures were introduced on 20 January to regulate blogging. Article 1 of a directive called "Circular No. 7" says blogs must henceforth provide only strictly personal information. Article 2 says blogs must not be used to disseminate press reports, literary works or publications banned by the press law.

Article 6 stipulates that every six months, or at the government's request, blog platform hosts must provide information about the activities of their clients, including the number of blogs they are operating, their statistics and any blog details that having violated the platform's rules. Approved on 18 December, these rules are designed to curtail the development of Vietnam's blogosphere, which has been challenging the state media as a source of news and information.

## **ANNEX 2. Guidelines for the submission of information to the Special Rapporteur on Freedom of Opinion and Expression**

### **1. Allegation regarding a person or persons:**

- As detailed a description of the alleged violation as possible, including date, location and circumstances of the event;
- Name, age, gender, ethnic background (if relevant), profession;
- Views, affiliations, past or present participation in political, social, ethnic or labour group/activity;
- Information on other specific activities relating to the alleged violation.

### **2. Allegation regarding a medium of communication:**

- As detailed a description of the alleged infringement on the right as possible, including date, location and circumstances of the event;
- The nature of the medium affected (e.g. newspapers, independent radio); including circulation and frequency of publication or broadcasting, public performances, etc.;
- Political orientation of the medium (if relevant).

### **3. Information regarding the alleged perpetrators:**

- Name, State affiliation (e.g. military, police) and reasons why they are considered responsible;
- For non-State actors, description of how they relate to the State (e.g. cooperation with or support by State security forces);
- If applicable, State encouragement or tolerance of activities of non-State actors, whether groups or individuals, including threats or use of violence and harassment against individuals exercising their right to freedom of opinion and expression, including the right to seek, receive and impart information.

### **4. Information related to State actions:**

- If the incident involves restrictions on a medium (e.g. censorship, closure of a news organ, banning of a book, etc.); the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, and steps taken to seek domestic remedy;
- If the incident involves arrest of an individual or individuals, the identity of the authority involved (individual and/or ministry and/or department), the legal statute invoked, location of detention if known, information on provision of access to legal counsel and family members, steps taken to seek domestic remedy or clarification of person's situation and status;
  - If applicable, information on whether or not an investigation has taken place and, if so, by what ministry or department of the Government and the status of the investigation at the time of submission of the allegation, including whether or not the investigation has resulted in indictments.

**5. Information on the source of the communications:**

-Name and full address;

-Telephone and fax numbers and e-mail address (if possible);

-Name, address, phone/fax numbers and email address (if applicable) of person or organization submitting the allegation.

**Note:** In addition to the information requested above, the Special Rapporteur welcomes any additional comments or background notes that are considered relevant to the case or incident.