

# Follow-up Information

on the Situation of Freedom of Expression and  
Opinion in Republic of Korea

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Joint Korean NGOs

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# Follow-Up Information to the April 2010 NGO Report on the Situation of Freedom of Opinion and Expression in the Republic of Korea since 2008

## 1. FREEDOM OF THOUGHT AND CONSCIENCE

*[Case 1] Court Rules in Favor of Park Won-Soon against the NIS*

In 2009, the National Interest Service sued the Director of the Hope Institute, Park Won-Soon, for two hundred million KRW in damages.<sup>1</sup> The Director of the Hope Institute, Park Won-Soon won the case against the National Intelligence Service, who filed a compensation claim against him. The Central District Court of Seoul made a decision in favor of the defendant Park Won-Soon on September 15<sup>th</sup>, 2010. The Korean Bar Association welcomed the decision of the court and made a comment stating, “Claim damages by government organizations against citizens can be a method to suppress freedom of expression of a person.” The Korean Bar Association also said that the decision of the court was very proper and is based on the Constitutional Law of Korea.

## 2. PRESS FREEDOM AND MEDIA DIVERSITY

*[Case 1] The Cancellation and Pre-Broadcast Censorship of the TV Program “MBC PD Soo Chup” or “The Secret of 6 Meters of Four-River Project”*

### 1. Overview

‘The Canal Project for 4 Rivers’ was President Lee’s presidential election pledge, but he promised that if the people were against the Canal Project, he would stop the project, given strong public opposition. However, currently, ‘The Canal Project for 4 Rivers’ was changed to ‘The 4 Major Rivers Restoration’ and massive construction is already going on in Korea. Almost 70% of Korean citizens are still against the project regardless of its name and the government is criticized for attempting to change its name superficially, while maintaining the original purpose of this project.

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<sup>1</sup> See Chapter 2, Section 3 of the “NGO Report on the Situation of Freedom of Opinion and Expression in the Republic of Korea since 2008” for background information concerning this case.

“MBC PD Soo Chup” had produced and planned to broadcast a series titled ‘The Secret of 6 Meters of the 4 Rivers Project.’ The TV program “MBC PD Soo Chup” had already been sued by the Korean government and was subject to the regime’s repression in 2008 when “MBC PD Soo Chup” broadcasted the series about the risks of mad cow disease from imported beef from America.<sup>2</sup>

2. The government requested an injunction banning the program from being broadcast.

‘The Secret of 6 Meters of 4 Rivers Project’ was supposed to broadcast on August 17, 2010. Before the broadcasting, “MBC PD Soo Chup” distributed information to major press organizations which explained that there is a secret government team to create the framework for the 4 Rivers Project. The Ministry of Land, Transport and Maritime Affairs insisted it was clearly not true and requested an injunction banning the program from being broadcasted on the morning of August 17, 2010. However, the court dismissed the request because it was impossible to determine from the available records whether the program’s contents scheduled for broadcast were true or not. Also, it was unclear whether the purpose of the broadcast was intended to harm public interest.

3. The program is banned by the president of MBC (Kim Jae- Chul) and pre-censorship

After the court dismissed the request, the president of MBC Kim Jae-Chul, who was appointed under President Lee’s regime, and the board of directors requested “prior approval by the president of MBC” twice. Since in the constitution of MBC, there is a clause that states that the acceptance of broadcasting a program will be decided by the director of a bureau, the “prior approval by the president of MBC” is clearly an act of pre-censorship. Therefore, since the production crew did not receive “prior approval,” the president of MBC decided to hold off broadcasting the program following the meeting with the board of directors. Right before the originally scheduled air date, ‘The Secret of 6 Meters of 4 Rivers Project’ was replaced by another TV program without notice.

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<sup>2</sup> See Chapter 3, Section 1 of the NGO Report for information on the case against MBC for the Mad Cow Disease program.

#### 4. Broadcasting of PD Soo Chup was modified due to pre-censorship

Because there were protests by both citizens against the actions of the MBC management team and the MBC union, ‘The Secret of 6 Meters of 4 Rivers Project’ was aired on August 24, 2010. However, this program was aired only after the program had been significantly modified, undergoing pre-screening twice, and receiving approval by the president of MBC

| Date / Time       | Contents  | Details  | Notes   |
|-------------------|---|--|---|
| 08/23, 11:00 a.m. | Prior approval of edited version of the program.                        | Modify all the parts that could be misunderstood. Supplement and strengthen arguments.                       | The director of the organization, the director of TV production, education director of current affairs, the department head of PD Soo Chup. |
| 8.24 pm           | Modified script review process.   | Checking corrected and supplemented script and whether the instructions were reflected. Editing the program. | Director who is in charge of the script and the director of the headquarter.  |
| 8 / 24, 20:55     | Modified and supplemented script is completed followed by instructions. | Pre-screening twice by the council.  | Deliberating council members.   |
| 8 / 24, 21:10     | Start prior approval and preview.                                       |  | The president of MBC, Kim Jae Chul.   |
| 8 / 24, 22:16     | Complete prior approval and preview.                                    | Final decision making on broadcasting.   | The president of MBC, Kim Jae Chul.   |

|                  |  |  |  |
|------------------|--|--|--|
| 8 / 24,<br>23:15 | Final correction,<br>modification and<br>broadcasting of<br>program. |  |  |
|------------------|--|--|--|

Throughout the pre-screening process, ‘The Secret of 6 Meters of 4 Rivers Project’ was modified to incorporate the views of the government’s position. Additionally, instructions were given to the management of MBC to switch the name of ‘secret team’ to ‘task force team’ and to remove the word ‘young po hui’

Moreover, the president of MBC, Kim Jae Chul, ordered that major reforms be made to the November program, including the removal of ‘Who Plus’ which is the main program focusing on current affairs at the August 30, 2010 board meeting.

*[Case 2] Queer Movie (Just Friends) Wins Case in the First Trial<sup>3</sup>*

On September 9<sup>th</sup>, the Seoul Administrative Court decided in favor of the plaintiff who requested a cancellation of the classification for the movie “Just Friends” which had been rated X.<sup>4</sup> The production of the movie filed the administrative litigation lawsuit against the Korea Media Ratings Board, requesting a cancellation of the classification, and won the case in the first trial. This movie is a short film that was produced in 2009 by the Korea Gay Rights Movement Organization ‘Friends’ and the movie production company ‘Youth Film’ in 2009. This movie is a story about a gay man Seok (Jae-Hoon Lee) who goes to see his boyfriend Min-Soo (Ji-Hoo Seo), who is in the military. The movie was rated X by the Korea Media Ratings Board. The Korea Media Ratings Board claimed that the movie might harm good morals, social norms, and social ethics. Moreover, the Board asserted that the concept of this movie may have a bad influence on youth whose gender identity is not mature enough to accept homosexuality, given that youth do not have any kind of knowledge or experience about it. These are the reasons why the Korea Media Ratings Board decided that underage people should be banned from watching this movie.

However, the court decided that this movie can offer a good opportunity for youth to understand a sexual minority group and can have an educational purpose as well. Also, it is hard to tell whether youth can understand or accept the concept of homosexuality and there is no clear evidence that guarantees that the contents of the movie would harm the personality development of youth. Moreover, censorship of the movie would be a limitation of fundamental human rights in the Constitutional Law such as the freedom of expression, equal

<sup>3</sup> See Chapter 11, Section 2 of the NGO Report for background information on this case.

<sup>4</sup> See Chapter 3, Section 4 of the NGO Report for information on compulsory movie ratings in Korea.

rights, the right of self-determination and the right to pursue people's happiness. Additionally, any attempts to limit or control information containing the idea of homosexuality can be seen as a violation of human rights of a sexual minority group. The decision of the court was forward looking and progressive. The court made a comment that "there is an opinion that homosexuality should be treated in the same manner as a heterosexual relationship and seen as a normal sexual preference." However, the court only expressed that there is an 'opinion' and this is not enough to claim that homosexual relationships are actually treated as heterosexual relationships are treated.

Moreover, at the parliamentary inspection of the Korea Media Ratings Board administration on October 6<sup>th</sup>, a representative to congressperson Jin-Hyung Jo (Grand National Party-Hannara, Ministry of Culture, Sports and Tourism Communications Commission) criticized that the movie "Just Friends" includes scenes of two men kissing and fondling and touching genitals that stimulate sexual curiosity in youth. He also insisted that youth might be affected by sexual curiosity, become homosexual, and have doubts about their gender identity. However, there is no such scene as Jin-Hyung Jo's representative describes to be in the movie. He criticized the movie and homosexuality based on an assumption that all queer movies include rebellious ideas. His criticism shows a prejudice towards homosexuality as abnormal and rebellious. He also used the term "that thing" in reference to homosexuality and this suggests that homosexuality is a bad influence that should not be exposed to youth and must be controlled.

*[Case 3] "Life is Beautiful" TV Drama*

"Life is Beautiful" has been on the air by SBS since March 20<sup>th</sup>, 2010. The purpose of this drama is to show happy and enjoyable episodes of a married couple who know the true meaning of self-esteem and have healthy and positive thoughts towards their five children and other people around them. Their oldest son is gay and the episodes show how he accepts himself as a homosexual. Many other sexuality minority group people sympathize with his character in the drama. However, there were two advertisements that criticized the drama and aggravated loathing of the gay community in the major daily newspaper in May and September 2010. Also, those two advertisements reinforced prejudices about AIDS. On August 9, 2010, the Korean government ordered a ban on broadcasting the drama on the grounds that homosexuality played a central role in the drama and this was against the idea of the church.

The decision by the Korean government clearly discriminates against the gay community and violates their human rights. Moreover, Congressman Jo's comments, the advertisements by anti-homosexual groups, and the decision of the Korean government are indicative of the harsh reality of the discriminatory treatment that the gay community experiences in Korea. Most people still face much prejudice and loathing.

### **3. FREEDOM OF ASSEMBLY AND ASSOCIATION**

#### *[Case 1] Possibility of Nighttime Demonstrations-- the Actual Effect of Article 10 of the Assemblies and Demonstrations Act*

In the case addressing the possible violation of Article 10 of the Assemblies and Demonstration Act, the Constitutional Court decided that banning nighttime outdoor assemblies was impermissible. Because the regulation that banned nighttime outdoor assemblies was passed after the deadline (June 30<sup>th</sup>, 2009) for all revisions to this legislation, the regulation that banned nighttime outdoor assemblies is now void.

In June, the Grand National Party-Hannara tried to pass a regulation that limits assemblies during a given time period during night. However, the Democratic Party, the Democratic Labor Party, the New Progressive Party, and various human rights organizations announced that the revision of the Assemblies and Demonstrations Act is a violation of the Constitution and that the revision of the Assemblies and Demonstrations Act was not passed in the National Assembly. Since this regulation was lifted, there have been many positive changes so students, housewives, and workers have been able to assemble during the night. Moreover, the charges of violation of Article 10 of the Assemblies and Demonstrations Act during the candlelight vigils in 2008 have been dismissed.<sup>5</sup>

The Grand National Party-Hannara claims that assemblies can be more violent during nighttime than during daytime. However, no violent incidents occurred during any of the nighttime assemblies that were held in July and August. According to police information, there were no illegal assemblies from July to August 24<sup>th</sup>, as this was after nighttime assemblies became legal. During July, a total of 15,882 nighttime assemblies were registered, of which 229 assemblies were actually held. 15,653 assemblies were bogus assemblies that was registered by companies but never held. Since nighttime assemblies were admitted, the freedom of assemblies and demonstrations has been limited because of “registration of bogus assemblies”.

The Grand National Party-Hannara enacted a Special Law for the G20 Summit on June 8<sup>th</sup> and this Special Law incapacitated the present Assemblies and Demonstrations Act in a way that is unconstitutional. Article 8 of the Special Law for the G20 Summit allows for the limitation of freedom of assemblies and demonstrations in the area of special guard zone. The Grand National Party-Hannara will amend Article 10 of the Assemblies and Demonstrations Act in October 2010.

In November the Constitutional Court will announce its opinion concerning nighttime assemblies.

#### *[Case 2] Suppressed Freedom of Assembly for G20*

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<sup>5</sup> See Chapter 4, Section 4 of <sup>the</sup> NGO Report for more information on the candlelight vigil demonstrations.

## 1. The Introduction and Expansion of Police Equipment

Police had proposed new legislation on September 27th, which would allow for police to use equipment such as sonic weapons to stop illegal assemblies during G20, but had to reserve it due to opposition from the public and human rights organizations. Instead, on October 11th, National Police Agency Chief Cho Hyun Oh insisted that the police would stop illegal marching by using equipments like water cannons.

Even though physical confrontations during assemblies have been decreasing, police insist on their need for police equipment in order to stop violence during the protests. Physical confrontations occurred only 0.5% of total assemblies in 2007, 0.66% in 2008(there were a tremendous amount of assemblies for importing USA beef), and 0.31% in 2009.

Police seeking to expand the use of police equipment in managing assemblies is prepared strategically. Police are proposing changes to assembly managing to high-tech equipment management in 'Vision 2015'. For this reason, police are converting assembly managing policies to expand riot police and equipments.

Riot police are taking special education to deal with situations such as sit-in demonstrations, which are expected to play a pivotal role in demonstration sites. To decrease physical confrontation and secure the safety of assembly participants and policemen, the police have changed its assembly management mainly by using, developing and supplying equipments such as separation equipment, water cannons, truck barricades, etc. to bear down efficiently on demonstrators with small scale police power.

『Police White Paper, 2010』

<Current State of Main Equipment Supply, 2009>

| Section | Movable Injector | Water Cannon | Water Supply Car | Truck Barricade | Multipurpose Car |
|---------|------------------|--------------|------------------|-----------------|------------------|
| Total   | 1,726            | 3            | 13               | 9               | 1                |

『Police White Paper, 2010』

There are high standards for using police equipments in foreign countries but in Korea, police have more power to introduce and utilize equipment. The Act on the Performance of Duties by Police Officers(APDP) was always questioned because of its ambiguous and abstract regulations allowing for arbitrary decisions by police . First, there are no regulations on classifying harmful police equipment in APDP, so that police can categorize it arbitrarily. Second, if there is a Presidential Decree, police can change police equipment regulations by classifying anything as 'the rest' and introducing new equipments such as sonic cannons. Third, there is no way to control and supervise newly introduced equipment so the police can use them in a very abstract way.

Also, the research in domestic and foreign countries has very skeptical views on using police equipment to manage rallies. They point out that police equipment, which can kill people,



will eventually incite violence and they urge that police take a firm countermeasure in light of an outbreak of aggression. Expanding equipments may suppress the freedom of assembly.

## 2. 'G20 Total Plans for Public Security'--Freezing the Freedom of Assembly

On October 11th, National Police Agency Chief Cho Hyun Oh announced the 'G20 Total Plans for Public Security,' which contain management plans for assembly, controlling people and cars around event halls and hotels of head negotiators, anti-terrorism, etc. According to the G20 Special Act, during the G20 Summit, which will be held in Seoul from November 11th-12th, it is forbidden to assemble within 2km of Coex, the event hall.

As stated in the plan, police will set up three escort sectors within 2 km of Coex and notification of the exact scope of these sectors will be announced late this month. In those sectors, assembly and demonstration is prohibited from November 8th -12th. Also public access to Coex is limited from November 10th to end of the event. No one is allowed in, not even to the Coex Center on the second day of the event (12th) from 12AM-10PM and any person within 600m of Coex will be checked.

Police are planning to place the standard security wall on the outer perimeter of the Coex buildings, a green fence on the outer walls of Coex Center (except for the Hyundai Department Store), and other safety barriers which are 2.2M high within 600M of Coex. Residents and workers within 600M from Coex should get admission passes or put access stickers on their registration card. If a person does not have a sticker that is issued from Gang-Nam Gu office or Gang-Nam Police Office, his/her access may be restricted.

Police are planning to first give a general (C) alert to the whole country by October 22nd, then issue a B alert at Seoul Metropolitan Police Agency on November 1st, and order a A alert, one of the highest alerts, all over the country on the 6th to set up an all-out national security system. 30,000 policemen, 200 troops and 20,000 riot and conscripted policemen will be mobilized during the event.

### *[Case 3] Enactment of the Seoul Square Ordinance and Exercise the Right of Veto by the Mayor of Seoul Se-Hoon Oh*

There was a local election in June 2010. The City Council of Seoul revised the Seoul Square ordinance<sup>6</sup> because many members from the Democratic Party were elected, so the Democratic Party took the majority of the Council. On August 13<sup>th</sup>, the Seoul Square ordinance was passed, allowing assemblies and demonstrations in the Seoul Square and replacing the permit system with a reporting system for registering assemblies

However, the Mayor of Seoul, Se-Hoon Oh, requested that the Council reconsider, stating that, "it goes against the higher law to require a permit system when concerning the use of public property." The City Council of Seoul denied his request and said that it is a significant challenge to the right of legislation. The City Council of Seoul also re-decided the Seoul

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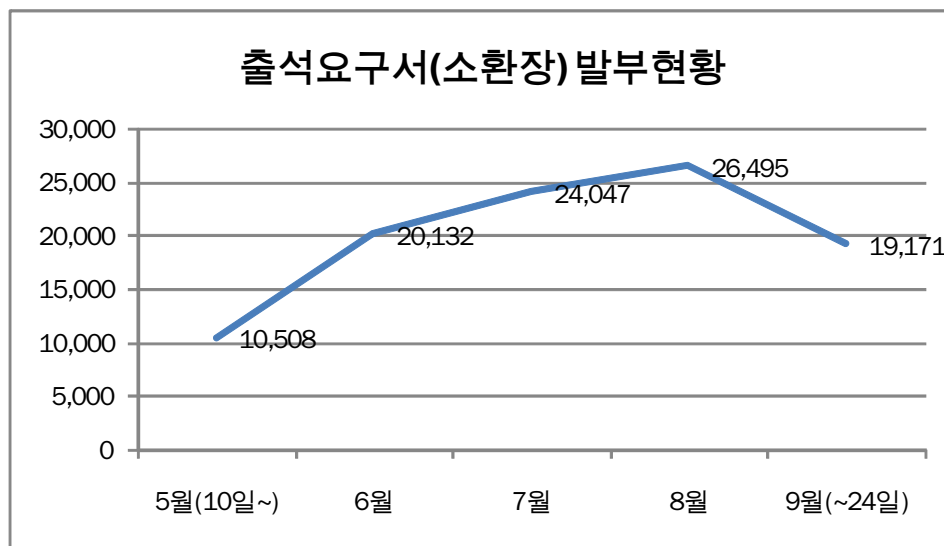
<sup>6</sup> See Chapter 4, Section 3 of the NGO Report for previous regulations of the Seoul Square ordinance

Square Ordinance on September 10<sup>th</sup>, but the mayor did not proclaim. Therefore, The City Council of Seoul proclaimed in virtue of the chairperson of the City Council of Seoul on September 27<sup>th</sup>.

*[Case 4] Criminal Prosecution against Attendants at Assemblies and Press Conferences*

From May to the present, there have been many criminal prosecutions against defenders of human rights. The police have obtained pictures from press conferences and unregistered assemblies, identified attendants, and sent a summons to the attendants by mail or phone call. Also, the police sometimes sent a summons based on assemblies or press conferences that happened two or three years ago. There was even a case where the police sent a summons to a person who had already passed away. In most cases, the police have cited a violation against the Assemblies and Demonstrations Act.

According to the information submitted by the National Police Agency, from May 10, 2010 to September 24, 2010, there have been about total of 10,353 summons were issued. This means that 667 citizens received a summons per day and 20,000 citizens received a summons per month on average. In May, 10,508 summonses were issued and in June, 20,132 summonses were issued. This is a 92 percent increase compared to May, followed by 24,047 summonses in July (19 percent increase from June), and 26,495 summonses in August (10 percent increase from July).



There is an investigation going on to look for the reasons of summonses through the National Assembly. The criminal prosecution in an act of retaliation against human rights activities seriously limits all activities of defender of human rights or Netizens. The police visit houses or offices, continuously send summons by mail, and make threats to citizens. The police say that if citizens do not accede to a summons, the police will put a person on the wanted list.

#### 4. FREEDOM OF OPINION AND EXPRESSION AND THE INTERNET

##### *[Case 1] A Parody of the Cheonanham Sinking and Consequent Arrest and Restraint of a Netizen*

###### 1. Overview

On March 26, 2010, there was an incident where the Korean naval patrol ship “772 Cheonanham” was sunk near Baek Ryung Do in the Yellow Sea. The announcement of the Korean government’s investigation of this incident did not properly answer many questions and still left room for much doubt. Netizens criticized the announcement made by the Korean government by writing their opinions about the “Cheonanham” incident, making parody videos and uploading them on the Internet.

###### 2. Criminal penalty for the Internet article

The netizen “Yanse” who posted many of his opinions about the “Cheonanham” incident on the Internet website 'Daum Agora (<http://agora.media.daum.net>)' and the viewers' board of the TV show ' Surprise ( <http://www.seoprise.com> )' was investigated by police on May 27<sup>th</sup>, 2010.

Moreover, another netizen “Noroogui” was arrested and held in police custody on August 16, 2010. He was released the next morning. The reasons for his arrest were that he posted a video called “Restoration of the Deleted Records TOD Video” which was a parody video of the “Cheonanham” incident uploaded by another person on Youtube and that he posted an article criticizing the Korean government. (The video URL: <http://youtu.be/ZEjxgQN2ri0>)

The netizen “Noroogui” received a call from the police on May 26<sup>th</sup>, 2010 which was the same day the netizen “Yanse” had received a call from the police. The cyber crime investigation department of the National Police Agency issued a summons against the netizen “Noroogui” and “Noroogui” was arrested on August 16<sup>th</sup>, 2010, after the police called to confirm his whereabouts and detectives visited his place of residency.

Right after the UN Special Rapporteur Frank La Rue left Korea after visiting to investigate the level of freedom of expression in Korea, there were extensive police investigations of all comments and opinions about the “Cheonanham” incident that were uploaded on the Internet. These investigations took place immediately prior to the 6.2 local election in Korea.

Netizens “Yanse” and “Noroogui” are currently under police investigation and the case has been forwarded to the public prosecutor’s office. They are still waiting to hear whether or not they will be prosecuted.

After being arrested and interrogated under police custody, “Noroogui” said that he was not free from the police and the prosecutor and he could not express his opinion as freely as he had when he uploaded his comments and wrote articles on the Internet. Also, while waiting for the legal process from the police, he felt that our society has been going back to the days of dictatorship. The last question which was asked during the investigation was, “Were you attempting to abuse the head of state (the President of Korea) and harm the public interest when you uploaded those written articles and comments on the Internet?”

*[Case 2] A Judgment of Acquittal on False Information about Mad Cow Disease*

In May 2008, 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. On September 9<sup>th</sup> 2010, the Supreme Court acquitted him on this issue. In the ruling, the justice department said that even though the text message sent by the defendant included details about the student demonstration on May 17<sup>th</sup>, this is an expression of personal opinion on the candlelight vigil. Moreover, it is not the spread of false information or false communication and the defendant does not have the intention of causing a disturbance in the administrative duties of schools. The defendant means no harm to public interests either.

*[Case 3] Cheonanham incident and False Communication*

The Cheonanham incident occurred in March 2010. The Korean government made an interim report and reached a tentative conclusion that the sinking of Cheonanham was caused by a torpedo from North Korea. On May 25<sup>th</sup>, at the war memorial, President Lee released a statement to the public that concluded that the Cheonanham incident was caused by an obvious provocation by North Korea. This statement was released right before the June 2<sup>nd</sup> local election, causing many Korean citizens to doubt the legitimacy of the interim report from the government. According to survey results from the Department of Peace and Unification at Seoul National University, only 32.5% of citizens trusted the government’s

announcement. However, when people posted opinions that differed from the government's findings on the Cheonanham incident, they were charged with false communication and criminal prosecutions were filed.

In May 2010, the police requested relevant departments such as the Korea Communications Commission to review or delete opinions on the Internet that expressed doubts about the government's announcement and also asked to prosecute according to the relevant law because those opinions might have bad influences on the June 2<sup>nd</sup> local election and the upcoming G20 Summit. Moreover, the police requested reinforced monitoring and deletion of posts with contents related to the Cheonanham incident. The police also wanted to set up a hotline with those related departments and organizations to monitor any false information posted about Cheonanham incident.

On June 24<sup>th</sup>, 2010, the prosecution indicted three citizens on charges of dissemination of false information about the Cheonanham incident via cell phones and internet messengers. A citizen "A" was prosecuted for sending text messages that said "from now on there is going to be an urgent conscription" to ten of his friends and a student "B" was prosecuted for sending text messages that said "North Korea declared war" to seventy-three people include his colleagues. There are two criminal trials going on right now. A teenager "C" also told his friends that "a war will break out at 2 o'clock" by using an Internet messaging system and he was found guilty and was sent to a juvenile court. All three people were prosecuted on May 25<sup>th</sup> --the day right after President Lee's statement to the nation was released. Also, the prosecutions coincided with an announcement made by a representative of the ruling party that North Korea should pay for what they did.

Moreover, many other people have been prosecuted, summoned, and investigated for the spread of false facts that are related to the Cheonanham incident. On June 8<sup>th</sup>, 2010, the police summoned a sixteen-year old teenager for the spread of Cheonanham- related false facts by using Internet messenger. Also, a person who wrote an article titled "The Captain of Cheonanham is Responsible for the Incident" was summoned for false communication and defamation and the police searched and confiscated his five e-mails from January 2009 to June 2010. The police also summoned and investigated another individual who wrote articles on the Internet denying the "explosion of a torpedo" and raising the possibility of a collision with a U.S. nuclear-powered submarine. The police searched and confiscated this person's four e-mails dating from January 1<sup>st</sup>, 2009 to May 2010. When another individual disobeyed a summons, the police got a warrant of arrest, took him to the police station, held him in custody, and released him the following day.

One individual posted his opinions on the viewers' bulletin board of MBC and SBS and after posting the articles, the police came to his house, summoned him, and investigated him. After he found out that these two TV stations gave his personal information to the police, the People's Solidarity for Participatory Democracy filed a constitutional appeal and claimed damages based on Article 45 of the Telecommunications Business Act.

*[Case 4] The Minister for Culture dropped charges against a citizen who posted a video clip with Kim Yuna in it.*

In March 2010, the Minister for Culture prosecuted an Internet user on charges of defamation. The defendant had produced a media file of the figure skater Kim Yuna avoiding being hugged by the Minister for Culture. All charges have been now dropped.

*[Case 5] Inspection of a personal blog for posting a video clip criticizing President Lee*

In November 2008, the Ethnic Commission of the Prime Minister's Office requested a police investigation into a personal blog because the person posted (not made) a video clip that criticized President Lee with the title "Geo Ko". The police also visited related enterprises, and forcibly made them suffer disadvantages. After all suspects were released by the police, there were supplementary investigations and the case was sent to the public prosecutor's office. However, the public prosecutor's office also suspended the indictment. The defendant Kim filed a constitutional appeal in December 2009 and requested a trial to cancel the suspension. On August 11<sup>th</sup>, 2010, the public prosecutor's office prosecuted three of the employees from the Ethic Commission of the Prime Minister's Office for unlawful search and enforcement, interruption of citizens' freedom to exercise rights, and interruption of work by abuse from official authority.

*[Case 6] Korea Communications Standards Commission--Feedback from June<sup>7</sup>*

If the internet service provider (ISP) rejects recommendations made by the KCSC, the KCSC can issue administrative orders to suspend the websites, and thus cases of non-compliance are rare. Based on Article 44-7 of the Network Act, the Korea Communications Commission (KCC) holds an authority of administrative order that can stop the services of ISPs that defy orders from Korea Communications Standards Commission (KCSC).

In addition, Article 44-7 of the Network Act lists the types of information that can be deleted or censored on the Internet and can encompass a broad range of crimes, including the obstruction of business, which itself is problematic.

States should never delegate the responsibility of censorship to private entities on such matters. Any guidelines and decisions determining what articles can be deleted or temporarily blocked should be made by an independent State body.

It was recommended that decisions of deletion or limitation of postings on the Internet need to be made by independent government bodies. However, many NGOs in Korea do not agree with the fact that the main agent of decision making is the administrative body. This is also against the policies in other countries that try to balance the freedom of expression and limitation of contents. Public network broadcasting allows administrative bodies to limit contents because of a scarcity of electronic resources and potential invasion of broadcasting. For these reasons, public network broadcasting and the Internet have different characteristics. The Internet guarantees interactive expression and has the lowest barrier of entry for all citizens. In the United States, Japan, the EU, the United Kingdom, France, and Germany, government administrative bodies very rarely control the Internet. However, there is one

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<sup>7</sup> See Chapter 6, Section 2 of the NGO Report.

exception and that is in the case of child pornography. Minbyun agrees with the need for legal evaluations for self-regulation of the Internet service providers and defamation, but the review or deletion of contents by government administrative bodies must be stopped. The National Human Rights Commission of Korea has made a decision that will recommend a review of the administrative powers of the Korea Communications Commission and the NHRC of Korea will announce the decision soon.

Pastor Byung-Sung Choi was investigated for defamation by the police and the prosecution, but he was freed without charges. Regardless of the results of the police investigation, Korea Communications Standards Commission (KCSC) still claims legitimacy.

*[Case 7] Statistics that are related to the Korea Communications Standards Commission and cases of review*

Starting from the establishment of the KCSC on May 16<sup>th</sup>, 2008 to July 31<sup>st</sup>, 2010, there have been 73,423 of total cases of review of Internet postings and 50,360 cases were asked for corrections. 1,900 correction requests occur each month and an average of 63 Internet postings are deleted or controlled every day.

The rate and frequency of corrections ('09.5.16~'10.7.)

| Classification            | 2008<br>5.16.~12.31 | 2009<br>1.1~12.31. | 2010<br>1.1.~7.31. | Total         |
|---------------------------|---------------------|--------------------|--------------------|---------------|
| Review                    | 29,589              | 24,346             | 19,488             | 73,423        |
| Asking for correction (%) | 15,004 (50.7)       | 17,636 (72.4)      | 17,720 (90.9)      | 50,360 (68.6) |

With each new year, the frequency of reviews has been sharply increasing, as has the rate of reviews asking for a correction. The rate was 50.7% in 2008 (5.16~12.31), 72.4% in 2009 (1.1~12.31), and 90.93% in 2010 (1.1~7.31) and this increased rate shows that the targets of review have actually led to deletions or partial censorship. The rate of compliance by ISPs with correction was 100% in 2008 (5.16~12.31) and 99% in 2009 (1.1~12.31).

The subjects of requests for review were public institutions (14.4%) and ordinary citizens (85.4%) in 2008. However, in 2009, the percent public institutions that were subjects of review requests jumped to 43.4%. Moreover, the rate of the types of review has been changed to control expression on the Internet and this could be explained by looking at the rate of review types such as violation of orders in society. Previously, it was only 5.3% and now the rate is 14.7%, which is three times higher than before. Therefore, there might be a possibility that public institutions misuse these policies.

The specific types of review used by the Korea Communications Standards Commission are deletion, cancelation of use, and blocking access. These types of review were cited 28,339 times (99.5%) out of 28,468 of total requests for review. Most of the postings that were subjected to a review request were ultimately deleted.

The objects of review by the Korea Communications Standards Commission include personal blogs and comments on news articles, PSP, web hard, UCC, and social networks. Below are

four examples of various postings that were either deleted or blocked. The first posting was deleted because it explained how to fight (the 11<sup>th</sup> Communications Standards Subcommittee in 2009), the second posting was deleted for describing how to curse (the 11<sup>th</sup> Communications Standards Subcommittee in 2009), the third posting was also deleted because there were too many swear words (the 60<sup>th</sup> Communications Standards Subcommittee in 2009), and the last video clip posting on the Youtube was blocked because there was a dispute between a father and son (the 71<sup>st</sup> Communications Standards Subcommittee in 2009). These cases show that the Korea Communications Standards Commission uses excessive standards that exceed their legal boundaries. According to the Article 44-7(1) of the Network Act, the review that follows ‘standards for illegal information’ decides whether an offense against the law is defamation or not. Also, there is a serious problem when some postings are related to the National Security Law. All the requests for the National Security Law review come from the police or the National Intelligence Service and the rate of implementation of review was 100% in the last 2 years. This is considered censorship by the administration.

*[Case 8] Real Name Identification System (feedback from June<sup>8</sup>)*

‘Real World’ was fined 5 Million won for denying the use of the Internet real-name system during the presidential election.

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<sup>8</sup> See Chapter 6, Section 6 of the NGO Report for more on the Real Name Identification System.