

# Open Net

## Annual Report 2015

### 2015 Highlights

January 2015 through present: successfully blocked a Korean Communication Commission's bill to amend the Information and Communication Network Act's **intermediary liability provisions**, which would have further tightened Internet intermediary's obligations to take down lawful contents and "stay them down" even upon legitimate restoration request.

November 5, 2015: successfully lobbied on-site in Geneva for a UN Human Rights Committee's recommendation on the Republic of Korea that she abolish Article 83(3) of the Telecommunications Business Act authorizing **warrantless seizure of communications service subscribers' identification data**, affecting more than 10 million accounts each year.

November 1, 2015: worked with Citizen Lab, Open Technology Foundation (Radio Free Asia), and Cure53 to conduct and publish a security audit of **Smart Sheriff**, a parental monitoring and control app promoted by the government as fulfilling a statutory requirement of harmful contents filtering measure, installed in more than 500K smartphones used by Korean youths, which ultimately resulted in the voluntary shut-down of the Smart Sheriff services by its government-sponsored vendor.

July 2015: jointly developed and distributed **Open Vaccine**, a smartphone app designed to detect the traces of Remote Control System, a spyware developed by the Italian Hacking Team and purchased by the National Intelligence Service, and highly suspected of being used for surveillance on Korean citizens. Open Vaccine was downloaded by more than 50K people in Korea and the English version was released in November at Google Play

May 28, 2015: held an **international seminar on intermediary liability** with overseas experts in the laws of U.S., EU, Japan, and Australia, against which Korea's "mandatory" notice-and-takedown rules and general monitoring obligations for obscenity, copyright infringement, and child pornography were compared, which provided the theoretical platform for future legislative changes. A bill to amend the Copyright Act was introduced in October to make clear that the Internet intermediaries are not obliged to take down allegedly copyright infringing material upon notice from copyright holders

May 2015: Successfully defended upon a theory of **fair use** a civil copyright infringement claim relating to the use of a picture of halibut sashimi on a non-profit, peace movement organization's blogpost recommending vegetarian diet.

January 2015: Won a not-guilty judgment on Hong Ga-Hye, who had been indicted and arrested for about 100 days for **criminal defamation** when she criticized the Coast Guard's rescue efforts during the Sewol Ferry sinking on television.

December 2014: Won a not-guilty judgment upon a theory of **fair use in a criminal copyright infringement case**, relating the use of a picture of a CAD designer's desk on a non-profit, women's movement organization's blogpost about the working conditions in industrial design industry.

## 2015 Numbers

Criminal copyright reform petition: **881** signatures

KCSC's online defamation takedown rule change campaign: **706** participants

Ask Your Telcos Campaign: **65** participants

Open Net forums: **6** seminars, **127** participants

Open Net - National Assembly Joint Seminars: **3** seminars

Open Net – Harvard Berkman Center Seminar on Intermediary Liability: **76** participants

Internet Law and Society Academy: **6** lectures, **24** students

Number of graduate students who received scholarship: **8** students

No Active X Campaign: **11,351** signatures (begun in 2014)

Child pornography law reform petition: **9,224** signatures (begun 2014)

Total donations: **KRW 305,630,999 (7 corporate donors + 185 individuals)**

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## 1. Legislative Campaigns

### (1) Copyright Act Reform

- Proposed a bill to refine notice and takedown system under Art. 103 to accommodate international standards on intermediary liability (with MP PARK Joosun) (Oct. 14)
- Proposed a bill which bans general monitoring obligation, repeals the notorious Three-Strikes regime, and establishes the "bestseller clause" (with MP BAE Jaejung) (Apr. 30)
- **In 2014, the bill narrowing the scope of criminal provisions to infringements of KRW 1,000,000 or more in damages, passed the relevant parliamentary committee** and it is now pending at the Legislation and Judiciary Committee, which is the final parliamentary committee in the legislative process
  - 881 online signatures are collected through Copyright Reform Petition page (<http://opennet.or.kr/on-working/intellectual-property/2015copyright>)

### (2) Intermediary Liability Law Reform

- Late 2014, Korean Communication Commission submitted a bill that explicitly mandates the portals to take down all contents, lawful or unlawful, upon the request of anyone claiming to be defamed by that content and requires those contents to "stay down" until an administrative body decides to restore or until the content

posters files a suit for restoration. Such “mandatory” notice-and-takedown is an unprecedented suppression on freedom of the Internet that deviates from international standards of intermediary liability (e.g., Manila Principles, DMCA, EU E-Commerce Directive, and Japan’s Provider Liability Law). Open Net lobbied against the bill in favor of a competing bill that brings Korean law in compliance with the [international standard](#).

### (3) Patent Law Reform for Free Software

- Since 2005, the Korea Patent Office has tried to extend software patents to cover online distribution of software. This would endanger the free software communities. To keep free software free from patent threat or attack, Open Net drafted, in consultation with Richard Stallman of FSF, a bill to limit a scope of software patent, which was introduced in July 23, 2015. The bill makes clear that the effects any patent cannot extend to: making source code of a computer program available to the public; improving a program or making source code of the improved program available to the public, provided that the source code of the program has been made public or is legally obliged to be made public; and a program using only common hardware functionality of the apparatus with an information-processing capacity.
- Planning to propose a bill to add computer program to the list of unpatentable inventions soon.

### (4) Net Neutrality Law Reform

- Introduced a bill on Telecommunications Business Act which bans Telcos from blocking or throttling lawful content, applications, services, or non-harmful devices, if and when the content, applications, services, or devices compete with a telco’s own offerings, subject to reasonable network management (with MP YOO Seunghee) (May 1)

### (5) E-Transaction Law Reform

- Proposed a bill on Electronic Financial Transaction Act that imposes on commercial banks more obligation to prevent online fraud and heavier liability to compensate when online fraud happens (with MP LEE Jongkul) (Feb. 24)
- **Electronic Financial Transactions Act passed the National Assembly allowing online payments service not to use government-sponsored electronic certificates which only work on add-on program for Active X/ PKI** (the bill was proposed by MP LEE Jongkul together with Open Net) (Sep. 30, 2014)
  - Successfully carried out No Active X Campaign which demanded the law reform (11,351 signatures were collected)
- Proposed a bill amending the Digital Signature Act that allows non-government approved authentication system to be used online which is still pending at the relevant parliamentary committee (with MP CHOI Jaechun) (May 2013)

## (6) Mass Surveillance Law Reform

- Proposed a package bill (amendments to the Protection of Communications Secrets Act, the Electronic Communications Business Act, the Personal Information Protection Act, and the Criminal Procedure Act) that enhances the citizen's right to be notified and informed of surveillance and requires a warrant when seizing subscriber identification data (with MP JUNG Chungrae) (Dec. 9, 2014)
- Initiated **“Ask Your Telco” campaign** urging users request their telcos to disclose whether their subscriber identification data were provided to third parties including investigative agencies without warrant (Jan. 30): 65 participants
- Successfully lobbied for a UN Human Rights Committee recommendation on Korea that subscriber identification data should be accessed only upon warrant

## (7) Transparency Law Reform

- Proposed a bill which requires telecommunications service providers to report surveillance statistics (wiretapping, seizure of communications contents, and provision of communications metadata) to the government and for online publication (with MP JUNG Chungrae) (Dec. 9, 2014)
- Proposed a bill which requires information and communications service providers to report censorship statistics to the government and for publication (with MP YOO Seunghee) (Dec. 20, 2013)

## (8) Child Sexual Abuse Prevention Act Reform

- The bill proposed by MP CHOI Minhee is currently pending at the relevant parliamentary committee (2013 - present)
- 9,224 signatures are collected through Child Pornography Law Reform Campaign page (<http://opennet.or.kr/3674>) and at various offline events

## 2. Lawsuits

### 2.1 Free Speech

#### (1) Virtual Child Pornography Legal Defense

- Defending several defendants indicted of distributing virtual child porn anime (cartoon) at various levels of court
  - Won a not guilty judgement on a virtual child pornography case (Nov. 13): The Appellate Court of Pusan dismissed the case where an internet user who translated sexually explicit Japanese manga was accused of distribution of child pornography under the Child Sexual Abuse Prevention Act.
- Filed a constitutional challenge on virtual child pornography law and obtained a decision that the application of the law should be limited to material that “actually

causes” sexual violence on juveniles whereas **four justices found the law unconstitutionally infringing on freedom of speech** (Jun. 25)

## (2) Lawsuits against Administrative Censorship Agency, the Korea Communications Standard Commission (KCSC)

- Filed an administrative lawsuit seeking to revoke the blocking access to **4shared.com** as copyright infringement (Mar. 3)
- Filed a lawsuit seeking to revoke taking-down of pictures of the corpse of YOO Byung-eun, the owner of the fatal Sewol ferry, which is now pending at the Supreme Court (Oct. 30, 2014 - present)
- Lawsuit seeking to revoke the blocking of a copyright infringing website, **Grooveshark.com**, was dismissed at the appellate court, based on the reasoning that an end user does not have a standing to challenge government’s measure on behalf of online service providers (May 2).

## (3) Legal Defense for Defendants of Sewol Ferry Defamation Cases

- HONG Gahye, accused of defaming the coast guards in action at Sewol ferry disaster, found not guilty at the trial court, and the case is now pending at the appellate court (Jan. 9).
- One year imprisonment sentence was finalized at the Supreme court for another anonymous defendant in another coast guard defamation case (Mar. 1).

## (4) Lawsuit on Blocking of Government Policy Mocking Website

- Filed a lawsuit seeking damages for the government’s blocking of a website parodying the government’s banking app store not consonant with open payment standards long advocated for by Open Net (Apr.30, 2013)
- **The appellate court sided with Open Net and awarded KRW 1,000,000 in damages** (Sep. 2, 2014), and the case is now pending at the Supreme Court

## 2.2 Intellectual Property

### (1) Legal Defense for BitTorrent Users

- Defending a defendant indicted for the charge of distributing copyright infringing materials (digital copies of novels) via BitTorrent at the criminal court (October - present)
- Defending several defendants in a lawsuit seeking damages amount to KRW 3,000,000 for each BitTorrent user who downloaded several digital copies of novels (August 2014 - present)

## (2) Legal Defense for YouTube Link

- **Successfully defended a suspect of copyright infringement**, who embedded several YouTube outlinks in his blog, and the criminal complaint was withdrawn (April - July 2015)

## (3) Fair Use Cases

- **Successfully defended a non-profit organization in a civil lawsuit seeking damages** amount to KRW 2,000,000 for using a photo of a fish dish without permission in an article on vegetarian diet (May. 12)
  - The trial court sided with Open Net and dismissed the plaintiff's claim on the ground of fair use under the Copyright Act, and now the case is pending at the appellate court.
- **Successfully defended a non-profit organization in a criminal copyright infringement case**, where the NGO used a picture of a CAD designers' desk in a blog posting about the working conditions in the industrial design industry (Dec. 2014)
  - The trial court dismissed the case upon fair use doctrine.

## 2.3 Privacy

### (1) Ask Your Telcos Campaign

- Open Net has long planned a suit against telcos for divulging the subscriber identifying data to the authorities. **Ask Your Telcos Campaign** resulted in identifying 16 individual potential plaintiffs + 2,200 or so potential plaintiffs who are members of a religious group targeted in the Sewol Ferry investigation, whose personal data were provided to the police and prosecutors warrantlessly.

### (2) Constitutional Complaints against Online Identity Verification Laws

- Filed constitutional complaints against the mandatory identification requirements under the Juvenile Protection Act (May 16, 2013) and the similar provision in the Game Industry Promotion Act (Jul. 23, 2013)
  - The Constitutional Court found the **Juvenile Protection Act** not infringing the internet users' right to control of their personal information (Mar 26.), whereas **one justice found the law unconstitutional**; and found the **game law** not infringing the game users' right to control their personal information (Mar 26.), whereas **two justices found the law unconstitutional**.
- Constitutional complaint against the Information and Communications Network Act for allowing certain agencies to collect Resident Registration Numbers (RRNs) for the purpose of providing identity verification services to other companies (Jun. 13)
  - The court dismissed the complaint because there is no other means of identifying a person correctly than using RRN, and the agencies collecting RRNs are limited to those which could retain RRNs securely.

## 2.4 Net Neutrality and Zero Rating

### (1) mVoIP Lawsuit

- Filed a lawsuit seeking damages against mobile communication companies for mVoIP blocking (Sep. 30, 2013 - present)
  - Initiated a lawsuit seeking damages for the telco's blocking mVoIP traffic, and the case was dismissed at the trial court and is now pending at the appellate court

### (2) Blocking of P2P Traffic by KT Corp.

- Reported to the government of blocking of P2P traffic by the largest ISP in Korea, KT Corporation
- The blocking has been made since May against at least 575 IP addresses of P2P grid servers and breaches the principles of transparency and non-discrimination set forth in the network neutrality and Internet traffic management rule.

### (3) Zero Rating

- Soon to file reports with the Fair Trade Commission and the Korean Communications Commission on the telcos' zero-rating their own content & application services, e.g., SK Telecom's shopping mall *Eleventh Street*, Korea Telecom's music streaming service *Genie*, LG U+'s video archiving services *LG Box+* (Nov.)

## 3. Seminars & Civic Education

### 3.1 Seminars

- (1) Protecting Consumers from Online Financial Fraud in the FinTech Era (Mar. 3)
- (2) Can Cartoons be Legally Obscene? Open Net Forum on Lezhin.com Shutdown (Apr. 30)
- (3) Open Net – Harvard Berkman Center Seminar on Intermediary Liability (May. 28)
- (4) Minors' Smartphone Filtering Mandate (Jun. 22)
- (5) Constitutional Court Decision on the Virtual Child Pornography Law (Jul. 3)
- (6) For Whom is KCSC's 3rd-Party-Initiated Defamation Takedown? (Jul. 20)
- (7) Hacking Team and the National Intelligence Agency Scandal and the Release of Beta Version of RCS Detect Program "Open Vaccine" (Jul. 30)
- (8) Recent Trends in Net Neutrality (Aug. 12)
- (9) Celebrating the First Anniversary of No Public Certificate Key (Sep. 23)
- (10) Peer Production of Knowledge and Culture: P2P Technology and Digital Democracy (Nov. 11)

### 3.2 Open Net Citizen's Academy "Internet Law and the Society"

- 24 students for 4th Academy (Feb. 26~Apr. 2)



- Lecture 1: KANG Jung-Soo, "Innovation, Regulation, and Technological Freedom"
- Lecture 2: K.S. Park, "Int'l Human Rights Standards on Surveillance in Digital Age"
- Lecture 3: NAM Heesob, "A New Look at Intellectual Property"
- Lecture 4: OH Byung-il, "Freedom, Innovation, Openness, and Net Neutrality"
- Lecture 5: YUN Jong-Soo, "Personal Data Protection Law"
- Lecture 6: KANG Jung-Soo, "Korean Economy, Digital Conversion and Positioning"

## 4. Domestic & International Cooperation

### (1) KrIGF

- Participating in the Steering Committee, co-hosted KrIGF 2013, 2014, 2015
- KrIGF 2015 (Oct. 31) Session Presentation: "the Manila Principles on Intermediary Liability and its Application in Korea"

### (2) People's Vaccine Project

- Jointly developed and distributed "Open Vaccine" with the Progressive Network Center and the P2P Foundation Committee for Korea, a free and open source model anti-malware software designed to detect RCS (Remote Control System), Hacking Team's spyware used by intelligence agencies in many countries including the National Intelligence Service (NIS) of South Korea
- The project was funded by crowdfunding

### (3) Smart Sheriff Audit Reports

- Collaboration with the Citizen Lab of Toronto University on the security audit of "Smart Sheriff," a filtering app for smartphones funded and promoted by the government
- 1st Press Release: "[Researchers Find Major Security and Privacy Issues in Smart Sheriff Parental Monitoring Application](#)"
- 2nd Press Release: "[The Kids are Still at Risk: Update to Citizen Lab's 'Are the Kids Alright?' Smart Sheriff report](#)"
- News articles:
  - 15 May 2015, "[South Korea's 'Smart sheriff' app lets parents monitor kids' phones](#)", *Associated Press*
  - 15 June 2015, "[Smartphone Sheriff app in South Korea](#)", *BBC News*
  - 16 June 2015, "[South Korea is forcing parents to keep track of their kids using smartphones](#)", *Independent*
  - 21 September 2015, "[Smart Sheriff surveillance app leaves South Korean kids vulnerable to hackers](#)", *CBC News*
  - 2 November 2015, "[Privacy concerns force South Korea to pull plug on child monitoring app](#)", *Fox News*

## 5. International Efforts

### (1) [RightsCon 2015](#) in Manila

- 24 - 25 March 2015, Manila, Philippines
- Session Presentations (8):
  - “Rulings over Freedom Online: the Justice Sector”,
  - “Asia Chats: Security & Privacy of Asian Messaging Apps”,
  - “Human Rights in Action: A Global Survey (on Necessary and Proportionate Principles)”
  - “Technology, Entrepreneurship and Asian Values”,
  - “Intermediary Liability Principles”,
  - “Strength in Numbers: Transparency Reporting & the Search for Meaning”;
  - “Cease and Desist: Pushing Back Against Government Demands”,
  - “The Internet’s Monster under the Bed: the so-called “Rights to be Forgotten”, “SEA’s Infrastructure”
- Promulgated the [Manila Principles on Intermediary Liability](#) together with EFF, Article 19, and other organizations in the Steering Committee

### (2) [Freedom Online \(FO\) Conference 2015](#) in Ulaanbaatar

- 4 - 6 May 2015, Ulaanbaatar, Mongolia
- Plenary Session: [“Seven Recommendations for Progressive Policy-making”](#)

### (3) [Citizen Lab Summer Institute 2015](#) in Toronto

- 24 - 26 June 2015, Toronto, Canada
- Panel presentations on Smart Sheriff and the Korea Internet Transparency Report
- Jointly formulated a Korean case study for the Ask for My Info Campaign

### (4) [APrIGF 2015](#) in Macau

- 1- 3 July 2015, Macau, China
- Online petition to amend Korean law in line with the Manila Principles: <http://opennetkorea.org/en/wp/1393>

### (5) Media Convergence “New Thinking for New Media” in Bangkok

- 24 July 2015, Bangkok, Thailand
- Session Presentation: [“Technology Neutrality in Media Regulation”](#)

### (6) WSIS +10 Review in Pattaya

- 3 - 4 September 2015, Pattaya, Thailand
- Participated in the NGO’s input paper on WSIS+10 recommendations

## (7) [Open Government Partnership](#)

- 7 - 8 September 2015, Manila, Philippines / 27-29 October 2015, Mexico City, Mexico
- Session Presentations:
  - “RTBF and Access to Justice”;
  - “Privacy and Open Data”

## (8) [UN Human Rights Committee](#) 115th Session

- 22 - 23 October 2015, Geneva, Switzerland
- Lobbied to Members on decriminalization of defamation, warrantless access to subscriber identification data, Smart Sheriff and obtained successful recommendations on the first two

## (9) [IGF 2015](#) in João Pessoa

- 9 - 13 September 2015 João Pessoa, Brazil
- Session Presentations (5) :
  - [“The Right to be Forgotten Rulings and their Implications”](#);
  - [“Cases on the Right to be Forgotten, what have we learned?”](#)
  - [“The Manila Principles on Intermediary Liability”](#);
  - [“Building Internet Observatories: approaches and challenges”](#);
  - [“Benchmarking ICT Companies on Digital Rights”](#)

## 6. Donations

Period: Jan. 1 - Oct. 31

Total donations: KRW 305,630,999

- Donations from Companies: 290,249,770 KRW
- Donations from Organizations: 3,537,778 KRW
- Donations from Individuals: 11,843,451 KRW