

Seven (7) Korean Court Decisions on Online Freedom of Expression

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Q: History is written by Victors.
What do losers write?

A:

1. Internet Real Name Law Decision (2012):

"Anonymous online expressions...allow people to overcome (offline) economic or political hierarchies and form public opinions free of class, social status, age, and gender, reflecting diverse opinions more equally and contributing to democracy. Despite its undesirable side effects, it should be strongly protected."

Taxonomy of Internet Real Name Law Decision

- Ex ante restriction requires '**clear public interest**' to be justified. → heightened scrutiny
- Public interest of deterring unlawful content? Not achieved b/c of "**Paradox of Trust**"
- Private interest? Great b/c of the value of anonymous communications

2. Background: Korean election law

- No campaign outside 2-3 weeks campaign periods
- Reason: reducing influence of money
- Should online campaign be subjected to the same law?

Internet Election Campaign Decision:

“Internet is a medium closest to the ideal free market of ideas because it allows people access at low cost, guarantees interactiveness of speech, and requires affirmative deliberative action on the part of the receiver of information as well. Therefore, people are likely to participate in election-related expressions online, the risk to electoral fairness due to financial inequality is prominently low, false information is subject to rebuttal, discussion, and correction there, and the diversity of opinions is secured without state participation.”

3. Third Party Phone Use Decision:

“Prohibiting a communication service user from lending the service for another’s communication will mean prohibiting the development and provision of more advanced forms of communication using the pre-existing communication services. Such prohibition is unconstitutional.”

→ Right to use the communication services for whatever purposes that he or she desires → Creation of the constitutional right to net neutrality?

4. NK Government Tweet Retweeter Case:

Background: National Security Law punishes posts promoting anti-State entity's positions.

Case: Retweeting NSL-violating tweets together with tweets making fun of them using the same tone

Decision: Tweets should be viewed together to infer the intent.

5. Administrative Censorship

Background: "Internet is dangerous because it is fast, permanent, and worldwide."

→ What is lawful on other media may not be lawful on Internet.

→ Administrative censorship - "promotion of sound communications ethics"

Decision: should be interpreted narrowly down to **unlawful contents**.

6. Temporary Blinds Case

Background: "Internet is dangerous because it is fast, permanent, and worldwide." → What is lawful on other media may not be lawful on Internet.

→ temporary blinds for up to 30 days upon demand of an allegedly injured party

Decision: "Internet is dangerous because it is fast, permanent, and worldwide."

Lessons

- Power of Internet – extremely distributed communication network → everyone's ability to speak to everyone else simultaneously without anyone's approval cf. newspaper, TV
- Should live with *at least some* unlawful content → Don't worry. People must choose from billions and billions of material. Internet is not one large space but an aggregate of billions of rooms.
- SPEECH is inherently interactive. Why put all the burden on the one poster and NOT one million viewers of the post?

- For more info on cases: read papers
- <http://opennetkorea.org/en/wp/main-free-speech/intermediary-liability-korea-2014>
- <http://opennetkorea.org/en/wp/administrative-censorship>
- <http://opennetkorea.org/en/wp/main-privacy/internet-surveillance-korea-2014>