

Majoritarian Oscillations and Judicial Serendipities in Korea

Global Investigative Journalism Network

Session : Staying out of Court in Korea

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Defamation and online takedowns

- 2,000 defamation indictments/ yr. –
 - About 50 people actually incarcerated /yr.
 - For one 20 months around 2005, 28% of all people incarcerated that year in the world (Article 19)
 - How many of them are for truths?
 - How many of them to protect reputation of government officials?
- 9,000 insult indictments/ yr.
 - Compare to country's total number of indictments 200K
- Internet takedowns (**not including copyright**)
 - Government initiated 200 URLs or sites /yr. – “necessary for sound communication ethics”
 - Privately initiated 500 URLs or sites /yr. (just Kakao and Naver) – “must take down at least temporarily whenever someone cries ‘defamation’, ‘privacy infringement’”

Major cases (7)

- Big Defamation Cases
 - Sewol Ferry, Coast Guard: Volunteer Rescuer criticizing front-line rescue
 - Sewol Ferry, President Park: Sankei editorial criticizing President's secrecy about her role in rescue efforts
 - ROKS Corvette Cheonan: a dissident probe raising doubts about the formal probe findings.
 - 2008-2010: MBC Mad Cow Disease Report case; Minerva false news case; Newspaper Boycotter case

Trends

- Rise of seditious libel – role of judiciary reconfirmed, NYT v Sullivan reconfirmed → but chilling effect
- Truth defamation being ever more criticized especially in the height of #MeToo movement
- “Danger of Internet” being emphasized : need education campaign – truth defamation, on-demand takedown

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

A: Tweets

Internet's social meaning as serendipities

Internet seen and promoted by G as engine of growth.

e.g., "Creative Economy", "4th Industrial Revolution"

→ second to highest Internet penetration rate. Much Gov-led investment in startups.

Internet's social meaning: Internet is catch-all communication that allows people to let steam off when mainstream media and politicians fail them.

Power of Internet – extremely distributed communication network
→ everyone's ability to speak to everyone else simultaneously without anyone's approval cf. newspaper, TV → embraces everyone's desire

Internet Subversive Communication case (2002)

- Subversive communication ban struck down.
- “most participatory marketplace (of ideas)”; “speech enhancing medium”
- Only illegal content can be subject to administrative censorship
- Reno v. ACLU (2004): indecency v. obscenity

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."

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."

Dilemma of Asian countries on freedom of speech

- **Freedom of speech is pluralistic ideal.**
- **How can STATE change state paternalism?**
(How do you maintain progressive power while being progressive?)

Majoritarian Oscillation 1: criminal defamation used as false news regulation measure

- September 2014 President Park: "Insulting the President has crossed the line" → 2 days later "Special Defamation Taskforce" – "preemptive investigation"
- November 2018 Incumbent Party "Need to restrain Fake News" → 1 week later "Special Defamation Taskforce" – e.g. "President Moon dementia" - "preemptive investigation"
- Relatively easy: Dilemma of Fake News – what good comes out of punishing clearly fake news?

Majoritarian Oscillation 2: Artists blacklisting

- Blacklisting leftist artists
 - Cf. Budgetary Guideline on demonstrators
- Response 1? – Crime of abuse of position-related power
- Response 2? – Crime of interfering with artistic activities ;
Crime of interfering with fairness of the government subsidies selection
- More difficult: Democracy v. neutrality
- Is criminal prosecution an answer? Or is jury diversity more mature solution?