

South Korea

Over the years, the growing sophistication and dynamism of the Internet in South Korea have also raised concerns of its power to spread harmful slander and information. In response, the South Korean government is authorized through an expansive regulatory framework to exercise significant discretion over “illegal” Internet content and “harmful” material for youth. In addition to rigorously regulating providers, government agencies also enforce real-name registration requirements for participation in Internet services and closely monitor election-related online activities.



Background

The Republic of Korea (also known as South Korea) was established in 1948 and spent most of its first four decades under authoritarian rule. In 1987, after a massive protest movement, the government enacted a democratic constitution that has endured to this day. Overall, South Korea’s human rights record has steadily and markedly improved since the 1990s. Since that time, South Korea has become one of the most

RESULTS AT A GLANCE

Filtering	No Evidence of Filtering	Suspected Filtering	Selective Filtering	Substantial Filtering	Pervasive Filtering
Political	•				
Social				•	
Conflict and security					•
Internet tools	•				

Other Factors	Low	Medium	High	Not Applicable
Transparency			•	
Consistency			•	

KEY INDICATORS	
GDP per capita, PPP (constant 2005 international dollars)	23,399
Life expectancy at birth (years)	79
Literacy rate (percent of people age 15+)	99
Human development index (out of 179)	25
Rule of law (out of 211)	53
Voice and accountability (out of 209)	69
Democracy index (out of 167)	28 (Full democracy)
Digital opportunity index (out of 181)	1
Internet users (percent of population)	77.8

Source by indicator: World Bank 2009a, World Bank 2009a, World Bank 2009a, UNDP 2008, World Bank 2009b, World Bank 2009b, Economist Intelligence Unit 2008, ITU 2007, ITU 2008.

vibrant democracies in Asia. Its citizens enjoy universal suffrage and broad constitutional freedoms, and they choose their leaders in free and fair multiparty elections.

South Korean foreign relations remain dominated by the state's relationship with the Democratic People's Republic of Korea (or North Korea), with which South Korea has technically been at war since the two sides fought to a stalemate in 1953. Since that time, the South Korean government has often been intolerant of dissident views and those espousing communism or supporting North Korea; publicly praising North Korea has been, and remains, illegal. Human rights groups charge that, since its enactment in 1948, thousands of South Koreans have been arrested under the state's anticommunist National Security Law (NSL). Those arrested over the years have included students, publishers, trade unionists, political activists, professors, and Internet users, many peacefully expressing their political views.¹ While prosecutions under the NSL have decreased significantly since the transition to democracy, there have been a few recent high-profile investigations using the NSL.² As of 2004, Amnesty International reported that 14 people were in prison under the law.³

Internet in South Korea

South Korea is one of the most connected countries in the world, with over 77 percent of South Koreans age six and older using the Internet.⁴ South Korea has also become the most penetrated broadband market in the world: by early 2008, 90 percent of households used broadband.⁵ Following heavy investment in broadband infrastructure after the Asian financial crisis in the late 1990s, South Korea now provides its citizens with a national network that carries data at speeds for the average broadband user of 50–100 Mbps.⁶ Over three-quarters of South Korean Internet users use the Internet more than once per day.⁷

By 2008, Korea's 114 Internet service providers (ISPs) were connecting at six Internet exchanges (IX) providing a total of 1,450 Gbps capacity to South Korean Internet users.⁸ However, three South Korean ISPs (KT, formerly known as Korea Telecom, Hanaro Telecom, and Korea Thrunet) control nearly 85 percent of the broadband market. The largest broadband supplier, KorNet, provides about half the ADSL lines in the country, making it the largest ADSL supplier in the world.⁹

Dedicated blog service providers, video sites, and online news sites saw the biggest growth in 2008.¹⁰ Over 50 percent of Korean Internet users have created user-generated content (UGC), with over 30 percent producing content at least once a month.¹¹ Most UGC is centered around Web portals and is text based, though over 50 percent is in video and flash-generated formats.¹² The government has acknowledged that UGC has powered social and political transformation: whereas political dialogue tends to be limited to that between politicians and major media, high-speed Internet infrastructure and social media tools have allowed users anywhere to engage in real-time dialogue.¹³ Of the 67 percent of Korean Internet users who read news online, almost 90 percent rely on news services provided by portals, followed by 60 percent viewership of Web sites of print publications.¹⁴

Thus, it is not surprising that citizens of South Korea, one of the world's most networked countries, have come to influence and in some cases transform the political and social fabric through their online participation. In April 2008, as part of trade negotiations with the United States, President Lee Myung-bak's administration agreed to resume imports of American beef after a five-year ban.¹⁵ On April 29, 2008, a television program called *PD Notebook* on the network MBC claimed that "Koreans are 94 percent more likely to contract a human form of mad cow disease," sparking a flood of online debate, especially on the Agora forum of Korea's second-largest portal, Daum (which saw a daily page-view count spike from 40 million to 200 million).¹⁶ A group called the People's Association for Measures against Mad Cow Disease, led by organizations such as the Korean Confederation of Trade Unions and the Korean Teachers' and Educational Workers' Union, led about 100 days of protests and demanded the resignation of the Lee Myung-bak administration.¹⁷ These protests were coupled with online action, as protesters uploaded images to the Internet, sent messages on protest meet-ups and warnings on arrests via text messaging, and engaged in online debate.¹⁸ Ultimately, his entire cabinet resigned and Lee was forced to call for a "new beginning" for his government.¹⁹

The power of the Korean cyberspace was also chillingly demonstrated in the suicides of at least four celebrities in 2007 and 2008.²⁰ Korea's online community was blamed for spreading malicious rumors and attacks on actress Choi Jin Sil's character that were alleged to have driven her to commit suicide in October 2008.²¹ In hundreds of thousands of posts, Internet users circulated rumors that Choi was a loan shark who had pressured the actor Ahn Jae Hwan to repay a USD 2 million loan, and ultimately kill

himself.²² After Choi's suicide, the Cyber Terror Response Center of the National Police Agency launched a one-month probe into "false rumors and malicious postings" on the Internet, mobilizing its 900 investigators to crack down on "malpractice" conducted over the Internet as well as cell phones.²³ The police reported more than 10,000 cases of online libel in 2007.²⁴

Legal and Regulatory Frameworks

Despite Korea's democratic credentials, its free speech protections are weak relative to many other democracies. Article 21 of the Korean constitution guarantees that "all citizens shall enjoy freedom of speech and the press," but also contains the qualification that "neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics."²⁵ This caveat empowers the government to impose restrictions on a broad range of expression.

Laying the foundation for all digital and analog content regulation, Article 53(1) of the Telecommunications Business Act (1991) states "a person in use of telecommunications shall not make communications with contents that harm the public peace and order or social morals and good customs."²⁶ Harmful communications were to be determined by presidential decree,²⁷ and under the original formulation constituted contents that "aim at or abet a criminal act, aim at committing antistate activities, and impede good customs and other social orders."²⁸ Further, harmful communications could be refused, suspended, or restricted by order of the minister of the Ministry of Information and Communication (MIC), which delegated this authority to the Information and Communication Ethics Committee (ICEC).²⁹ The ICEC was established under an amended Telecommunications Business Act (1995) to regulate the content of communications and inform state policy aimed at suppressing subversive communications and "promoting active and healthy information."³⁰

In June 2002, the Supreme Court struck down the provisions of the Telecommunications Business Act defining "harmful" content and granting the government unlimited authority to regulate it.³¹ It held Article 53(1) to be insufficiently specific and clear, and Article 53(2) to violate the rule against blanket delegation.³² A student at Hankook Aviation University had posted a message in June 1999 entitled, "Exchange of Gunfire in the West Sea, Sloppy Kim Dae-jung!" on the "urgent message board" of the online community Chanwoomul, which a systems administrator deleted before suspending the student's use of the service for one month in accordance with an order from the MIC.³³ In August 1999, the student filed a constitutional complaint, arguing that the provisions infringed on his freedoms of expression, science, and arts, and violated due process and the principle against excessive restriction. However, the Supreme Court found that MIC orders to refuse, suspend, or restrict communications violated neither the principle of proportionality nor due process of law, and did not infringe

on the freedom of expression. It cautioned that under the Administrative Procedures Act, users are to be given advance notice of administrative agency decisions, should be given opportunities to submit opinions, and have the right to participate at formal or public hearings.³⁴

In December 2002, the National Assembly amended Article 53 to prohibit content that is “illegal” rather than “harmful,” while upholding the executive powers of the MIC and the delegated regulatory authority of the ICEC.³⁵ This provision was ultimately repealed with the 2007 amendment of the Act on Promotion of Information and Communications Network Utilization and Information Protection (Information Act),³⁶ although this definition remains in place at least functionally.³⁷ Illegal information included in types of information to be reported continues to be described as that which infringes upon public interests and social order, specifically obscenity, defamation, violence or cruelty, incitement to gambling, and public order.³⁸

Specific laws to protect youth, national security, and other national priorities have informed the scope of content regulated by the government-delegated bodies responsible for filtering. For example, the NSL provides “up to seven years in prison for those who praise, encourage, disseminate or cooperate with antistate groups, members or those under their control.”³⁹ The NSL has been used to criminalize advocacy of communism⁴⁰ and groups suspected of alignment with North Korea,⁴¹ although arrests under the NSL have become much less frequent in recent years. Nevertheless, the law continues to have a chilling effect on public discussion of North Korea⁴² and provides a justification for censorship of Web sites related to North Korea and communism.

Similarly, the directive to protect the country’s youth from “harmful” Internet content, broadly described as “immoral, violent, obscene, speculative and antisocial information,”⁴³ has been one of the central planks in the development of South Korea’s filtering policy. The standard of harm in the Enforcement Decree of the Juvenile Protection Act (JPA) was developed from criteria for deliberation of media materials harmful to juveniles, which include provocative, obscene, antisocial, violent, or unethical materials that may harmfully affect their mental and physical health.⁴⁴ In accordance with the JPA, ISPs are responsible, as “protectors of juveniles,” for making inappropriate content inaccessible on their networks.⁴⁵ Web sites carrying adult content must warn visitors and require identification verification for access, measures meant to prevent minors under 19 from accessing pornographic material.⁴⁶

In February 2008, the Korea Communications Commission (KCC) was created to consolidate the MIC and the Korean Broadcasting Commission (KBC). Under South Korea’s current legal framework, regulation of Internet content is conducted primarily by two government agencies: the Korea Communications Standards Commission (KCSC)⁴⁷ (formerly KISCOM) and the National Election Commission (NEC).

The KCSC integrated the functions of the KBC and KISCOM in February 2008.⁴⁸ KISCOM’s mandate was originally established through the creation of the ICEC in

1995.⁴⁹ Accordingly, the two KCSC subcommissions deal separately with broadcasting and telecommunications standards.⁵⁰

At its inception, the ICEC was empowered to develop general principles or codes of telecommunications ethics, conduct deliberation on and request the “correction” of information declared “harmful” by presidential decree, and operate reporting centers against unhealthy telecommunications activities.⁵¹ The KCSC telecom subcommission continues to make determinations on “requests for correction” with respect to ISPs and Internet content providers (ICPs).⁵² Thus, the KCSC is empowered to make determinations on information “harmful” to youth under the Juvenile Protection Act,⁵³ as well as recommend action against Web sites containing “illegal” content, including pornography, information for cyber criminals, gambling services, and Web sites that express support for communism or for the government of North Korea.⁵⁴ The scope of its authority extends to ordering the blocking of Web sites, the deletion of a particular message identified as an improper communication, a Web site’s closure, or the suspension of the particular user identification of the individual who posted the improper writing.⁵⁵ In addition to special advisory committees, the KCSC also mediates disputes over online defamation. The KCSC said it received 156,000 complaints in 2006 about Internet postings considered inaccurate, and 216,000 in 2007.⁵⁶

With President Lee’s full support, government ministries proposed a battery of legislation beginning in July 2008 that would create a framework for addressing defamation, “false rumors,” and “malicious postings.” In July 2008, the KCC introduced the Comprehensive Measures on Internet Information Protection, which would institute 50 changes to communications and Internet regulation.⁵⁷ In amendments to the Information Act, the South Korean government further expanded the already significant regulatory authority of the KCC by adding to online providers’ liability for the acts of their users. The KCSC would be authorized to force Internet portals and peer-to-peer Web sites to delete content or suspend publishing for a minimum of 30 days upon receiving a complaint of articles accused of being “fraudulent” or “slanderous,” during which the commission would determine whether disputed articles should be removed permanently.⁵⁸ Internet portals that failed to temporarily block online postings containing defamatory information would be subject to a fine of up to KRW 30 million or could be forced to shut down,⁵⁹ while portals or individuals involved in improperly manipulating Internet search results could be subject to imprisonment for up to one year and a fine up to KRW 10 million.⁶⁰ Upon a leak of personal information, the portal must inform the victim of the privacy breach and report the matter to the KCC.

Following an approach taken with other emergent forms of harmful or illegal content, portals, bulletin boards, and other Internet content providers have increasingly taken on responsibility for policing slanderous content. While they would be legally compelled to set up constant in-house monitoring functions,⁶¹ Korea’s two largest

Internet portals also implemented their own measures to curb postings considered to violate privacy; for example, Naver created a simplified process for users to quickly block “groundless rumors or postings” and Daum required users to click on a different box if they want to read other users’ comments.⁶²

In July 2008, Minister of Justice Kim Kyung-hwan announced the introduction of the crime of “cyber defamation,” which would punish those who openly insult others through the Internet with up to two years imprisonment or a KRW 10 million fine.⁶³ Under this rubric, criminal law would apply to defamation and threats, while penalties for cyber defamation and “cyberstalking” would be pursued under information and communication laws.⁶⁴

Although the Lee administration denied that it had orchestrated the crackdown, government prosecutors also pursued blogger Park Dae-sung on charges of “spreading false data in public with harmful intent,” punishable by as many as five years in prison or fines of up to KRW 50 million.⁶⁵ Using the pen name Minerva, blogger Park Dae-sung had posted nearly 300 entries on Daum’s Agora Internet forum between March 2008 and January 2009.⁶⁶ His accurate predictions of financial events such as the fall of Lehman Brothers and the crash of the won gained him prophetic status, but also drew allegations that he cost the government billions of dollars by undermining financial markets.⁶⁷ Park was arrested in January 2009 but acquitted in April; prosecutors announced that they would appeal the ruling.⁶⁸

On April 1, 2009, the National Assembly adopted a “three-strikes” approach to copyright infringement, particularly file sharing and downloading movie content.⁶⁹ In an amendment to Article 133 of the Copyright Law dealing with the “Collection, Abandonment, and Deletion of Illegal Reproductions,” the Minister of Culture, Sports, and Tourism would be authorized to shut down message boards that refuse to comply with more than three warnings to remove copyrighted content,⁷⁰ while users who upload such content may also have their accounts canceled.⁷¹ These punitive measures could be taken regardless of whether a takedown request by a copyright holder has been issued.⁷²

Social media sites whose “main purpose is to enable different people to interactively transmit works, etc., among themselves” are treated as “special types of online service providers” under Article 104 of the Copyright Law.⁷³ Article 104 providers are obliged to take “necessary measures” to intercept the illegal interactive transmission of copyrighted works upon the request of rights holders. Article 142(1) lays out fines for these special providers who fail to take necessary measures at a maximum of KRW 30 million, while other providers who “seriously damage” the enforcement of copyright as a result of their failure to take down reproductions or “interactive transmissions” are also subject to fines of up to KRW 10 million.⁷⁴ Under the amended legislation, Article 104 providers who have been fined under Article 142(1) twice and have failed to take necessary measures can be blocked upon the issuance of a third fine.⁷⁵

South Korea's elections framework allows significant limits to be placed on political speech prior to and during elections, in order to prevent corruption, promote equal opportunity, and minimize the social economic losses and "side effect[s]" that "unlimited free campaigns" might cause.⁷⁶ Elections are restricted by numerous detailed prohibitions on campaign-related activities that would be standard practice in many other democracies, including endorsing a candidate if you are an elected official,⁷⁷ conducting a public opinion poll within the six days before an election,⁷⁸ and setting limits on campaign locations, the posting of campaign paraphernalia, and so on.

The Election Law also extends these restrictions to campaign activities conducted on information and communication networks. As the prohibition with the greatest impact on Internet speech, Article 93 of the Public Official Election Law ("Election Law") makes it illegal for noncandidates to distribute information supporting, recommending, or opposing any political party or candidate.⁷⁹ Election commissions that discover information posted online that violates the Election Law may demand that the Web site or hosting service delete, restrict, or suspend the relevant information; the service provider must promptly comply or raise an objection.⁸⁰

The NEC is responsible for controlling all aspects of Korean elections, from counting votes to monitoring the media and tracing campaign contributions.⁸¹ The NEC monitors and censors domestic online media platforms in order to maintain the country's restrictions on election-related political speech,⁸² especially its ban on public advocacy of candidates prior to an election period. It has used this power to remove more than 100,000 election-related articles, comments, and blog entries from the Internet,⁸³ as well as more than 65,000 movies posted to video-sharing Web sites.⁸⁴ The NEC began censoring the Internet in the early 2000s, partly in reaction to the significant role the Internet played in the 2002 presidential election. It currently has two divisions that are devoted to Internet regulation and censorship: the Internet Election News Deliberation Commission (IENDC), which handles newspaper Web sites and other online media sources (or "Internet press"),⁸⁵ and the Cyber Censorship Team (CCT), which monitors personal blogs, videos, message board comments, and other Web sites.⁸⁶

The IENDC's mission is to ensure that newspaper Web sites, online news agencies, and other semiofficial online news sources are impartial in their campaign coverage and do not violate election laws.⁸⁷ The IENDC has a great deal of discretion to decide what constitutes a violation of these rules and to censor the Internet press accordingly. Generally, it does so by contacting the relevant Internet press organizations and telling them to change their content or to issue a correction.

Started in 2002, the CCT has the formidable task of policing everything else on the Internet, including blogs, personal Web sites, video postings, and message boards.⁸⁸ The CCT has three main tasks: first, to prevent people from making damaging and

untrue statements about the candidates in an election; second, to maintain the prohibition against campaigning at any time other than the officially sanctioned two- to three-week election period; third, to ensure that all message board users only make comments during the election using their full, real names. All three tasks are usually executed by requesting the Web site's hosting service to delete or change offending content, and if the hosting service refuses to delete it, the CCT will open an investigation and press charges. Monitoring is carried out by about 1,000 part-time workers, who are hired nationwide 120 days before every election to run a search program to find and flag suspicious content.⁸⁹

Violation of the law against advocating a candidate prior to the election period can be punished with a fine of up to KRW 4 million or two years in prison.⁹⁰ Offending acts include posting long opinions on Web portals and Web sites of political parties, posting comments on online news articles, or any similar acts on personal Web sites or blogs.⁹¹ However, the NEC has stated that "there is small chance that citizens will face legal charges for posting their opinion as they will be viewed flexibly in actual crackdowns."⁹²

The line between campaigning and normal discussion is extremely vague, and the decision to censor is made at the discretion of the CCT's officers. This vagueness has had a chilling effect on online political discourse, especially at video-sharing sites, whose election-related content has been reduced to little more than videos produced by the campaigns themselves.⁹³ Between the 2004 and 2007 presidential elections, the total number of deletion requests for early campaigning skyrocketed, from 2,425 to 76,277. Media have also reported that from June 2006 to May 2007, up to 19,000 online election-related messages were deleted, while legal punishment was pursued against 13 messages containing false rumors about candidates.⁹⁴

Surveillance

The South Korean constitution guarantees that the privacy (Article 17) and the privacy of correspondence (Article 18) of citizens shall not be violated.⁹⁵ While most scholars believe that Article 17 forms the basis of a right to privacy,⁹⁶ the Supreme Court has also held that together with Article 10, guaranteeing human dignity and the right to pursue happiness, "these constitutional provisions not only guarantee the right to be let alone, which protects personal activity from invasion by others and public exposure, but also an active right to self-control over his or her personal information in a highly informatized modern society."⁹⁷

Internet service providers are generally directed to gather the minimum amount of information necessary and are restricted from disclosing personal information beyond the scope of notification or from collecting certain personal information, such as "political ideology, religion, and medical records," that would likely infringe the user's

privacy without consent.⁹⁸ However, these protections do not apply where special provisions apply or other laws specify otherwise.

Real-name registration requirements have been a part of the South Korean Internet landscape since 2003, when the MIC sought the cooperation of four major Web portals (Yahoo Korea, Daum Communications, NHN, and NeoWiz) in developing real-name systems for their users.⁹⁹ While implicating deeper privacy concerns, the purported goal of these real-name measures is to reduce abusive behavior on the Internet, and a number of prominent cases (such as the suicides of a number of actresses) have made this a major issue for the Korean public.¹⁰⁰

In 2004, election laws began requiring individuals who post comments on Web sites and message boards in support of, or opposition to, a candidate to disclose their real names.¹⁰¹ In 2005, the government implemented a rule that requires anyone who creates an account with an e-mail or online chat service to provide detailed information that includes name, address, profession, and identification number.¹⁰² This policy was tightened further by the MIC on July 27, 2007, when users were required to register their real names and resident identification numbers with Web sites before posting comments or uploading video or audio clips on bulletin boards.¹⁰³ In December 2008, the KCC extended its reach to require all forum and chat room users to make verifiable real-name registrations.¹⁰⁴ Furthermore, in April 2009 an amendment to the Information Act took effect, requiring Korea-domain Web sites with at least 100,000 visitors daily to confirm personal identities through real names and resident registration numbers.¹⁰⁵ Previously, real-name registration was required for news Web sites with more than 200,000 visitors a day or portals and user-generated content sites with over 300,000 daily visitors.¹⁰⁶ On April 9, reportedly citing freedom of expression as “the most important value to uphold on the Internet” as justification, Google disabled the features on its Korean language YouTube site (kr.youtube.com) for uploading videos and comments.¹⁰⁷

Amendments to the Protection of Communications Secrets Act put forward in 2007 would establish extensive data retention requirements and also expand the government’s surveillance capabilities. First, it would require telecommunications companies and ISPs to retain access records and log files (online transactions conducted; Web sites visited; time of access; and files downloaded, edited, read, and uploaded) for at least three months, along with date and time stamps, telephone numbers of callers and receivers, and GPS location information for 12 months.¹⁰⁸

The National Human Rights Commission of Korea (NHRCK) recommended that a number of proposed amendments be removed, including the inclusion of GPS information to locate users.¹⁰⁹ It also questioned the need for additional penalties for telecommunication service providers that refuse to comply with requests to provide communications records, despite existing provisions allowing investigators to obtain evidence by search and seizure in ordinary investigations.¹¹⁰ In 2008, three years after

a scandal over the illegal wiretapping of the cell phones of influential political figures forced them to destroy their equipment, the National Intelligence Service asked for permission to resume the practice.¹¹¹ E-mails (after submission and receipt) are already considered by law enforcement authorities to be “objects,” subject to ordinary search and seizure requirements, rather than “means of communications” requiring wiretapping warrants and notification to parties within 30 days.¹¹²

ONI Testing Results

OpenNet Initiative testing conducted in 2007 and 2008 confirmed that South Korea filters political and social content, specifically targeting Web sites containing North Korean propaganda or promoting the reunification of North and South Korea, as well as a handful of Web sites devoted to gambling. These findings are consistent with 2006–2007 analysis, with one exception: in 2007 and 2008, Korean ISPs were also shown to selectively filter the Korean-language pornography Web sites tested.

Testing was conducted on three of the largest South Korean ISPs—KT’s KorNet, LG Dacom, and Hanaro Telecom’s Hananet—from May to August 2008 and in November 2008. On each ISP, ONI detected DNS tampering, which prevents Internet domain names from resolving to their proper IP addresses. All Web sites blocked resolved to a block page jointly hosted by the police and the KCSC.

The ONI determined that a significant number of pro–North Korea or pro-unification Web sites on ONI’s testing list were blocked, along with a selected number of gambling-related Web sites. The blocking was extremely consistent across the three ISPs tested, although KorNet and LG Dacom blocked more of the same Web sites as compared to Hananet.

The ONI testing suggests that the extent of filtering in South Korea is still not commensurate with other measures the government has taken to cleanse the Korean Web of illegal or harmful social content. At the same time, the relatively low rate of filtering is consistent with the government’s approach to regulating content, which is far more reliant on ordering content and Web-hosting providers to police their own content directly through deletions, suspensions, and takedowns.

Conclusion

Although South Korea is a world leader in Internet and broadband penetration, its citizens do not have access to a free and unfiltered Internet. South Korea’s government maintains a wide-ranging approach toward the regulation of specific online content and imposes a substantial level of censorship on elections-related discourse and on a large number of Web sites that the government deems subversive or socially harmful.

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