

GLOBAL INFORMATION SOCIETY WATCH 2009

*Focus on access to online information and knowledge
– advancing human rights and democracy*



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2009

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2009

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Humanist Institute for Cooperation with Developing Countries (Hivos)
Swedish International Cooperation Agency (Sida)
Swiss Agency for Development and Cooperation (SDC)

Printed by

MONOCROMO

Printed in Uruguay

Edición hecha al amparo del Art. 79 de la Ley 13.349
Dep. Legal 350401

Global Information Society Watch

Published by APC and Hivos

2009

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ISBN 92-95049-73-X

APC-200911-CIPP-R-EN-P-0065

*Dedicated to A.K. Mahan - an activist who valued
intellectual rigour and concrete outcomes.*

APC and Hivos would like to thank the Swedish International Cooperation Agency (Sida) and the Swiss Agency for Development and Cooperation (SDC) for their support for Global Information Society Watch 2009. SDC is contributing to building participation in Latin America and the Caribbean and Sida in Africa.

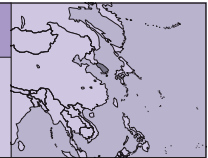


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KOREA, REPUBLIC OF

Korean Progressive Network Jinbonet
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www.jinbo.net



Introduction

There had been a candlelight vigil protest every day for over 100 days from 2 May 2008, demanding a renegotiation of a United States (US) beef import agreement. The public opposition to the government decision to lift the ban on the import of US beef – which was believed to be exposed to mad cow disease – kept growing and spread to other policy areas such as education, public health, media and privatisation. The internet played a critical role in forming public opinion against the beef deal and encouraging public protest.

As criticism over the beef import negotiation spread through the internet, the Korean government said the internet was the origin of “negative public opinion against the government.”¹ The Korean Communications Standards Commission (KCSC), a deliberation authority, issued recommendations to delete articles that were critical of the government, and prosecutors and the police investigated the articles. Since 2008, when current President Lee Myung Paik was sworn in, administrative control of internet content has been getting tighter and the number of criminal cases against authors has been increasing. This not only violates the freedom of expression of those who posted messages on the internet, but has a seriously chilling effect on the general public.

Policy and legislative environment

The Republic of Korea is one of the top-ranking countries in terms of access to broadband internet. The number of Korean internet users reached 36.19 million in June 2008. Internet users make up 77% of the whole population.²

The internet is a medium through which people’s voices can be heard – in direct contrast to traditional media like newspapers. Raw voice is communicated on the internet without being filtered by an editor, and this sometimes can threaten a government and disturb social norms. The Korean government had tried to regulate what is said on the internet. The current system for internet content regulation was established before the present government came into power.

Internet real name system

In June 2007, 37 major internet sites including information portals and government websites were forced to adopt a system that verifies a user’s identity when posting articles or comments on bulletin boards. This was under Article 44-5 of the Act on the Promotion of Information and Communications Network Utilisation and Information Protection, also

known as the Network Act. The sites subject to the Act were determined by their daily number of visitors, set at either 200,000 (for internet journals) or 300,000 visits per day (for portals). As public opinion criticising the beef import negotiation spread in 2008, the Korean government and the governing party, the Grand National Party, revised the enforcement ordinance of the law, decreasing the number of daily visitors necessary to qualify for this system to 100,000 visitors per day. This increased the number of sites to 153 in November 2008. YouTube refused to adopt the internet real name system. Instead it banned users whose country content preference was set to South Korea from posting any content in April 2009.

Temporary internet message blocking

Internet messages criticising the government and powerful individuals have been deleted indiscriminately on the grounds of defamation. This measure – so-called “temporary blocking” – has been taken under Article 44-2 of the Network Act, which requires online service providers to temporarily block messages that are subject to complaints from persons who claim their reputation damaged by the messages. “Temporary” can mean up to 30 days.

Comprehensive administrative censorship on the internet

KCSC considers the legal implications of messages posted on internet bulletin boards, and messages are routinely deleted. KCSC decides the legality of messages under Article 44-7 of the Network Act, and sub-paragraph (3) of Article 21 of the Act on the Establishment and Operation of the Broadcasting and Communications Commission. It reviews messages in terms of their harmfulness to minors, as well as according to the general objective of promoting sound communication ethics under sub-paragraph (4) of Article 21. Online service providers and others maintaining bulletin boards are notified about KCSC deliberation decisions. These are only formal recommendations, but the notified party almost always follows the instructions because the Korea Communications Commission (KCC) can issue administrative orders to delete messages without a court decision under Article 44-7 of the Network Act.

Prosecutions based on dissemination of false information

Since 2008, punishment for the dissemination of false information has increased under Article 47 of the Framework Act on Electronic Communications. According to the law, a person who publicly makes a “false communication using

1 Korean Communications Standards Commission (KCSC): www.kocsc.or.kr

2 Internet Statistics Information System (ISIS), National Internet Development Agency of Korea (NIDA): isis.nida.or.kr/eng

electronic communication facilities for the purpose of derogating public interest” shall be subject to imprisonment of up to five years or a fine of KRW 50 million (almost USD 42,000).

A violation of freedom of expression

The internet content regulation system in Korea has been criticised as being unconstitutional and violating users’ rights to freedom of expression.

Internet real name system

Korean human rights groups say the internet real name system violates the freedom of expression and the right to anonymity of all users. The right to anonymity has been one of the essential tools of free speech. Forced self-identification will curtail opinions critical of the government and powerful individuals. The National Human Rights Commission of Korea (NHRC) objected to the internet real name policy in February 2004, pointing out that “the internet real name policy is clearly censorship, presuming that all people who would post to a bulletin board would circulate false information and/or libel. [It] violates freedom of expression under Article 19 of the Universal Declaration of Human Rights and Article 21 of the Constitution by restricting freedom of expression and the right to form opinions based on anonymity on the internet.”³

Temporary internet message blocking

An emergency measure like temporary blocking may be necessary in that messages on the internet can be copied and disseminated in real time, or are always accessible. However, the current temporary blocking measure system is problematic in that there is no way for posters to file objections against the measure. Even Korean copyright law guarantees the right to object when messages are deleted on grounds of copyright infringement.

The temporary blocking measure has been misused by the government and powerful individuals to control critical expressions. Temporary blocking measures have been applied to:

- Messages containing a video from a television report which criticised the brother of the police chief. This was done on request of the police in May and July 2008.
- A three-line message describing a governing party lawmaker “dead drunk and causing a nuisance” and including a link to his personal homepage (blocked in October 2008).
- A message that criticised government party lawmakers and contained scraps from news reports on an eviction gone wrong. The reports detailed how a person evicted at a redevelopment project was accidentally burnt

to death during a police raid sent to break up a sit-in (blocked in April 2009).

- Many internet messages criticising violent methods used by the police to suppress this year’s May Day demonstrations on the grounds that they defame policemen (blocked in May 2009).
- Internet messages posted by lawmakers of opposition parties and citizens criticising the owner of a government-friendly newspaper, based on the allegation that he had been offered sexual intercourse with an actress who killed herself in March 2009 (blocked in April 2009).

Comprehensive administrative censorship

Korean human rights groups have said that deliberations by an administrative body on messages posted on the internet and their deletion without a court decision would be unconstitutional. KCSC can censor a potentially unlimited range of materials, including but not limited to defamatory materials and materials aiding and abetting a crime. This makes freedom of speech in Korea vulnerable to government suppression as suggested below:

- In May 2008, KCSC made a recommendation to an online site to “purify language and refrain from exaggerated expressions” on the grounds that a message called the president “2MB”⁴ and a “sly person”.
- In July 2008, KCSC recommended deleting lists of advertisers who had advertised in three major pro-government newspapers. The lists were made by citizens who wanted to promote an advertising boycott of the newspapers. The users who posted the lists, together with human rights groups, launched a suit against the deliberation of KCSC and Article 44-7 of the Network Act on the grounds that they were unconstitutional. They were in turn accused of interfering in business operations and charged. In February 2009, 24 of the accused were convicted of this at their first trials. However, the judge decided that posting lists of advertisers and promoting a boycott on the internet was legal, which means KCSC’s decision could be different from that of the judge. The Constitutional Court’s decision is still pending.
- In January 2009, KCSC recommended the deletion of a message that criticised remarks by the governor of Gyeonggi province, requesting him to step down from office, on the grounds that they defamed him.
- In April 2009, KCSC recommended the deletion of messages by environmental activists criticising waste cement, on the grounds that they defamed cement companies.

3 National Human Rights Commission (2004) Opinions to the National Assembly about Politics-related Law and its Revision, 17 February. www.humanrights.go.kr/04_sub/body02.jsp?NT_ID=24&flag=VIEW&SEQ_ID=554728&page=1

4 “2MB” has two meanings. One is the initials of President Lee Myoung Baik (“two” and “Lee” are pronounced the same in Korean, which gives you “2MB”). The other insinuation is that the president is not intelligent, because the memory capacity of his brain is only two megabytes.

Prosecutions based on dissemination of false information

Article 47 of the Framework Act on Electronic Communications, which was enacted in 1983, was hardly used for over twenty years until the current president took power in 2008. His prosecutors began to use the law, but applying it only against citizens critical of his policies.

A teenager was prosecuted because he proposed a student strike by posting messages on the internet and sending out mobile text messages. The court found him not guilty at his first and second trials. The case is now in the Supreme Court.

Citizens who posted rumours, such as allegations of the rape and murder of citizens by policemen during violent crackdowns, were criminally charged on the grounds of circulating fabricated stories. Some of them were found guilty.

A citizen known to the public by his user name “Menerva”, who posted articles on the internet criticising the government’s foreign currency policy, was arrested and detained with the charge of spreading fabricated stories. He was found not guilty by the court in his first trial in April 2009, and is now being charged in a high court.

New trends

New legal provisions which would violate freedom of expression and make it easier for investigation agencies to trace citizens’ activities on the internet were awaiting approval at the time of writing this report.

Expansion of the internet real name system

In 2008, the government proposed an amendment to the Network Act in order to expand the scope of sites subjected to the Act. According to the bill, the criterion of sites, which is set as the sites whose daily average users exceed 100,000, is subject to the enforcement ordinance. If the bill is passed, the government can expand the scope of sites arbitrarily by revising the enforcement ordinance without recourse to the National Assembly.

Cyber insult offence

In 2008, amendments to the Criminal Code and the Network Act were proposed by the governing party to control the internet through the creation of a so-called “cyber insult” offence. This punishes the crime of insulting a person on the internet more heavily than the crime of insulting a person elsewhere, which is already provided for in the Criminal Code. A criminal investigation could also be initiated without complaints from the victims. Korean human rights groups argue that the insult law itself should be abolished because it could be misused to suppress speech critical of the government or powerful individuals. Moreover, under the cyber insult law, police and prosecutors could monitor the internet looking for messages insulting others, especially the government and powerful individuals, and apply pressure on the posters through investigations without any complaints being lodged.

Obligation of online service providers to monitor content

In 2008, the government proposed an amendment to the Network Act which would impose an obligation on service providers to monitor the content of their services. This would mean online service providers have a legal responsibility for any illegal content or statement. This would inevitably strengthen private censorship to avoid their legal responsibility.

Action steps

To protect users’ rights to freedom of expression on the internet, Korean human rights groups have made the following demands:

- Abolish the internet real name system.
- Abolish KCSC’s administrative deliberation of internet messages.
- Abolish prosecution and punishment for the dissemination of false information.
- Stop criminal prosecution against internet messages which criticise the government and powerful individuals.
- Amend the temporary blocking measure system by agreeing to allow objections.
- Stop legislation which violates freedom of expression or restricts free expression, such as the cyber insult offence and the proposed obligation on online service providers to monitor content. ■

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GLOBAL INFORMATION SOCIETY WATCH (GISWatch) 2009 is the third in a series of yearly reports critically covering the state of the information society *from the perspectives of civil society organisations across the world.*

GISWatch has three interrelated goals:

- **Surveying** the state of the field of information and communications technology (ICT) policy at the local and global levels
- **Encouraging** critical debate
- **Strengthening** networking and advocacy for a just, inclusive information society.

Each year the report focuses on a particular theme. **GISWatch 2009** focuses on *access to online information and knowledge – advancing human rights and democracy*. It includes several thematic reports dealing with key issues in the field, as well as an institutional overview and a reflection on indicators that track access to information and knowledge. There is also an innovative section on visual mapping of global rights and political crises.

In addition, 48 country reports analyse the status of access to online information and knowledge in countries as diverse as the Democratic Republic of Congo, Mexico, Switzerland and Kazakhstan, while six regional overviews offer a bird's eye perspective on regional trends.

GISWatch is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

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2009 Report
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