

# Freedom of Expression Cases in Korea 2015

K.S. Park

Korea University Law School

Open Net Korea/ PSPD Law Center

[kyungsinpark@korea.ac.kr](mailto:kyungsinpark@korea.ac.kr)

# Defamation and online takedowns

- 2,000 defamation indictments/ yr. –
  - About 50 people 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?
- 9,000 insult indictments/ yr.
  - 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. – “must take down at least temporarily whenever someone cries ‘defamation’, ‘privacy infringement’”

# Major cases (7)

- Three Big Defamation Cases (all 1<sup>st</sup> level)
  - Sewol Ferry: Volunteer Rescuer criticizing front-line rescue
  - Sewol Ferry: 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.
- Three Big Constitutional Cases
  - UPP dissolution – Abrams-like decision
  - Truth Defamation – Danger of Internet
  - Virtual Child Pornography – “clear and present danger”
- One case on intermediary liability
  - 4Shared.com

# 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 communication ministry's recent botched flirting with RTBF
  - Reality: a consumer protection guideline recommending all portals to allow the users to delete the contents they posted on the respective portals even if they lost access (i.e. misplaced passwords)
  - **Need Education**
- "Danger of Internet" being emphasized : need education campaign. **What education?**

Q: History is written by Victors.

What do losers write?

A:

**Lesson 1:** Internet is catch-all communication that allows people to let steam off when mainstream media and politicians fail them.

**Lesson 2:** 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 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."

# Response to “Dangerous Internet” Argument

- Internet is a billion of rooms. → “Putting something on Internet does not mean “publicly disclosed”
- Google Spain decision → (1) need to draw lines of public/private → (2) However, the discussion should be about privacy, not data ownership, which makes data subjects censorers. If someone writes a novel about me, who owns that novel, me or the writer?



# Response to Truth Defamation

- A campaign to remove from the books the already dead truth defamation laws
- A campaign of constitutional challenges against the active truth defamation laws