

# **New Censorship and Economic Governmentality through Platforms**

## **- A Critical Analysis about 'Temporary Measures' Since 2008 in South Korea**

**Nam-hee Hong<sup>1</sup> & Ki-heon Kang<sup>2</sup>**

### **Abstract**

*In this paper, we explored South Korea's system of so-called 'temporary measures' that block online content. The scheme blocks content within 30 days if there is a complaint of private right infringement by specific content. This system is a kind of new censorship in the name of 'self-regulation' and way of 'economic governmentality' by platforms based on Michelle Foucault's work.*

*We will first analyse the 'temporary measures' to show how the state governs individuals through the platforms. Second, we explore the historical background of internet content regulation before the introduction of this system. Third, we point out that this system has deleted, on several occasions, public documents about public figures, institutions, or major companies from public archives. Finally, we recommend that this system be used to block content automatically because platform owners do not want to be linked to legal conflicts between private citizens.*

**KEY WORDS:** platform, self-regulation, content regulation, governmentality, new censorship, temporary measure, public archive, history

### **1. Introduction**

In this paper, we analyse 'temporary measures' that block online content in South Korea especially. The scheme blocks content within 30 days of receiving a complaint about private right infringement by specific contents. This system performs a dual role. It solves Internet-related negative acts in South Korea. An essential system is needed to prevent the rapid spread of infringement information about personal rights such as in the dog faeces or X-file celebrity cases. In other words, this system is used to block content criticizing the public, state institutions (or institution warden), or major companies. This study will review the historical background and operation

---

<sup>1</sup> Ph.D., Yonsei Communication Research Center, namheehong777@gmail.com

<sup>2</sup> Journalist, JoongAng Daily Newspaper, emckang@gmail.com

method of the temporary measure. In addition, subject requesting the temporary measure, blocked content, and the meaning of this system are critically analysed. This article will especially suggest that the ‘temporary measure’ is a kind of censorship through ‘platforms’.

Governance to prevent anti-government discourses through platforms has been a noticeable phenomenon in South Korea since 2008, when the conservative party came into power. This is related to some changes in the South Korean media landscape since 2008. First, as the Media Law was passed in the National Assembly, major newspaper companies, such as Cho-sun, Joong-Ang, Dong-A Ilbo, and Mae-il Economic could expand their business to broadcasting, meaning conservative discourses prevailed. Along with this institutionalization of traditional and conservative media groups, social media such as Facebook, Twitter, and smartphones became increasingly popular. Moreover, Afreeca TV, a South Korean personal live online broadcasting channel, emerged as an alternative media channel reporting a live ‘candle-virgil’ at Gwanghwamun protesting the South Korea—U.S.A. free trade agreement. This proved that public broadcasting services and major conservative newspapers could not criticize the government, and new media increased the amount of anti-government discourses, thus revealing the conflict between traditional and new media prominently<sup>3</sup>.

This conflict can be traced to a lack of understanding about new media and tolerance of critical expressions concerning politicians and the President. Thus, some human rights organizations and international press emphasized the decrease in free expression and the censorship problem in South Korea since 2008. Freedom House assessed that the Korean internet was only ‘partly free’ and Reporters without Borders included Korea in the ‘the countries under surveillance’ lists under ‘Enemies of the Internet’. The New York Times (2012.8.12.) and Economist (2014.2.10.) critically emphasized censorship issues in South Korea.

In this situation, this paper determines that the traditional and legal meaning of censorship cannot include its real and substantial practice, and thus studies how power works online through the theoretical frame of ‘new censorship’, because ‘new censorship’ is based on the Foucauldian concept of power and the ‘constructive’ role of censorship. Thus, this paper emphasizes various kinds of censorship of newer technologies and media as well as the direct punishment of infringement by specific law. In addition, we focus to manage people’s expression by using discourses and institutionalization in the name of formal process and use platform companies to abolish the direct role of the state (Hong, 2016).

---

<sup>3</sup> New media became the centre of criticism about the government and policies since President Lee Myeong-bak’s term. In contrast, conservative newspapers and government-affiliated research institutes produced discourses that defined new media as the spheres of ‘danger’ and ‘rumours’ to regulate them. In this situation, the state’s helm institutionalized a system based on the definition, knowledge, and discourses about new media. For instance, a new media information regulation team was created in Kocsc(Korea Communications Standard Commission) to regulate podcasting, SNS, or mobile apps. Further, the personal information of people who criticized policies was revealed and they were legally punished. Public posts about epidemics such as Mers or Swine Flu increased and were punished by the state.

There have been similar cases outside of South Korea. The recent uproar over the FBI's request for a backdoor to Apple Inc. is just one example. Many countries around the world have demanded personal data from the private sector in the wake of social crises. Moreover, the whistleblower Snowden revealed that the NSA collects personal data from platforms such as Google, Amazon, and Facebook. In fact, there was a case called the 'KakaoTalk surveillance case' in South Korea in 2014 where the Korean government requested some personal information about a vice representative of the Labour Party who organized an anti-government sit-down to clarify the truth about the Sewol Ferry disaster. Because this revealed the government's surveillance, lots of users moved from KakaoTalk to Telegram, which had secret encryption and whose international service prevented the Korean government from affecting average people. This revealed that the state could influence 'individualization' and being an 'entity' more easily. Further, they allowed informal expressions such as personal speech to advance the country's direct object. Based on this discussion, this paper offers a critical perspective on the governing of individuals by the state through platform companies, and aims to theorize 'new censorship' and 'governmentality' based on Foucauldian concepts.

This study especially wants to critically analyse the 'temporary measure' based on the 'Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.' (Act of Information and Communications Network) to govern individuals by using platform companies. This system is a kind of new censorship under 'self-regulation' and 'economic governmentality'. Furthermore, this is a kind of 'automatic censorship' because platform companies block content without any hesitation based on specific requests. This system is a method to reconsider the effectiveness of the State's governmentality by controlling people's speech to protect society.

This paper will analyse the 'temporary measure' to show how the state governs individuals through platforms. It claims that this system amounts to a new form of censorship under 'self-regulation' and, to use Foucault's term, 'economic governmentality'. In other words, it is a way for the state to improve its control over its citizens without revealing itself.

In view of these cases, this study has three goals. First, it theorizes the 'temporary measure' through new censorship and governmentality. Second, it explores the historical process of internet content regulation before introducing the 'temporary measure'. In South Korea, censorship through platforms is not unique to contemporary times, nor is it a recent phenomenon. Third, we discuss about meanings of 'temporary measure' in the way of 'deletion of our public history' and 'automatic censorship'.

## **2. Theoretical Conceptualization**

### **2.1. New Censorship, the State, and the Platform**

#### **2.1.1. The Epistemological Turn about Censorship: New Censorship**

In the traditional perspective, censorship is based on the dichotomous opposition between the censor and censored. In other words, censorship is a negative process by the state or church and mainly refers to prior restraint before popularity. It comprises content blocking and restraining people who use specific speech. Censorship usually places the ideal of complete freedom of expression in the antipodes.

In most democratic countries, censorship is illegal. However, although this formal definition of censorship is clear and distinct, it simultaneously restricts the meaning. According to this definition, the term only holds if the legal definition of censorship is fulfilled and individual expression is withheld. There has been a surge of censorship through technology and platforms, which do not adhere to the legal definition of censorship. In addition, indirect regulation through technology or platform companies causes little resistance because the operation methods are less obvious for the average citizen. In this situation, we need to critically redefine and reorganize a more concrete theoretical and conceptual frame.

'New' censorship is based on the concept of Foucault's power, so we need a 'epistemological turn' that comprises a new kind of censorship, where 'new' means 'different' from the previous censorship. 'New' censorship cannot be explained in the Internet age by the traditional concept of censorship. Thus, cognition about censorship needs to be expanded.

Some scholars insist that censorship is a kind of 'conduct of conduct' and define what can or cannot be said. Their discussion reflects the constructive relations of 'power-individual' in various ways. In view of this, censorship is the entity of various institutions and cognitions that operate without censors, a 'process' not an object, suggesting an invisible and secret power. Censorship is 'formed and interlaced' with knowledge, technology, and discourses in view of the 'microphysics' of power (Foucault, 1975/2004).

In fact, the new censorship debate grew by the end of the Cold War when some communist country censorship archives were opened (Müller, 2003, p.3). This also increased various censorship methods by subject in the U.S.A., which is known as a liberal country. Richard Burt (1994) insists that new censorship began with the 'Cultural Wars' between the Regan/Bush authorities while society became more conservative in the 1980s and 1990s. In this debate, censorship not only opposed free expression but also various methods of presenting (or not) a specific subject to the public.

This statement does not intend to bisect censor and censored or conservative and liberal. The Communication Decency Act was proved to strictly regulate online content during the Clinton authority. Hendershot (1999) also insists that an informal regulation system existed in American television before the V-chip was suggested to parent and teacher organisations, meaning that media regulation was commonplace in liberal countries like the U.S.A.

Holquist (1994) criticizes the 'either/or' question 'still between prohibition and freedom'. In other words, the composition of contrasts such as censorship/free expression, repression/freedom supposes an ideal and transcendental situation where 'nobody has freedom'. New censorship means the process and practice of

unconscious premises, not only vertical and centralized legal/institutional practices but also naturalized in order of specific spheres and hermeneutical communities. It shows that censorship does not have an absolute meaning but reconsiders historical specificity (Burt, 1994, xiii).

The meaning of new censorship debates is related to various exclusion mechanisms in the public sphere with political conservatization. It is associated with neo-liberalism in which economic agency comes to power. It can explain that power such as the state or corporation make invisible censorship strategies to control media or technology. This concept of censorship explains the methods and agencies of censorship with varying mechanisms that make it invisible. Furthermore, this allows people to think censorship is a 'process' related to different legal, institutional, and socio-cultural systems.

### 2.1.2. Censorship through and by the platform

How is this related to the censorship debate with censorship through and by the platforms? First, censorship assumes that there is no single agency such as the state, which is related to the expansion of corporate power with neo-liberalism. In the digital era, governments can target many different aspects of the digital infrastructure that people use to communicate for control or surveillance (Balkin, 2014, pp.1-4). We can call this digital infrastructure such as 'platforms', 'ISPs' or 'intermediaries'<sup>4</sup>. Balkin (2014) explains old and new school techniques for controlling people's expression. The old school techniques regulated individual speakers or publishers. However, the new school techniques regulate owners of auxiliary services such as digital networks, search engines or digital service providers. Gillespie(2010, p.348) insisted that "the term 'platform' let it elide the tensions inherent in their service such as between user-generated and commercially-produced content, between cultivating community and serving up advertising, between intervening in the delivery of content and remaining neutral." However, it is important that the roles of the state for controlling people's expression do not disappear even though new school techniques have arisen from digital technology. Rather, censorship by private sector especially means the alliance of state and economic power and explains the influences of economic power.

MacKinnon (2012) explored the alliance of state and corporate power critically. There are many cases of regulation such as blocking internet networks or using intermediary services or technologies globally. Some countries use Deep Packet Inspection (DPI) technology based on that invented by Western democratic countries to surveil their citizens in Tunisia, Iran, or South Korea (MacKinnon, 2012). This technology is sold to information and security agencies in each country and is used to practice ordinary surveillance and censorship. In other words, some authoritarianism countries buy some technologies from IT corporations in Western liberal

---

<sup>4</sup> Balkin(2014) gives us some examples of digital infrastructure such as telecommunications and broadband companies, web-hosting services, domain name registrars, search engines, social media platforms, payment systems, and advertisers. We can call this infrastructure Internet Service Providers (ISPs), platforms, or intermediaries. Even though there are some differences delicately, we can become aware all of them have similar meaning in the way they are 'mediate' between two or more agencies.

countries to control their citizens. Slowing the Internet connection speed or filtering is subtle and invisible way to be used in Iran and Syria. (The Enemies of the Internet, 2012; recited in Drucker & Gumpert, 2013, p.13).

In addition, the government has to obtain assistance from IT corporations to collect their citizens' personal data. IT corporations must comply if they wish to conduct their business in the nation-state surrounded by territories. Thus, it becomes a symbiotic, not hostile, relationship. As corporations and technologies need internet censorship, the state conducts their censorship through the corporations. This also means that the corporation has a tug-of-war for power with the state. The state is not ready to regulate properly and rapidly as technology advances and corporations have a lot of information about every citizen. Consequently, the state and IT corporations have an interactive tie-up and conflict with each other. McChesny (2014) observed that a few IT companies in the Internet age have formed a monopoly. We can see a few companies such as Amazon, Google, Facebook, or Twitter based in the U.S. take the internet market globally. In view of this, we can ask whether the state can control each person in the country more easily<sup>5</sup>. Collection of privacy information in the name of big data can be used by the state in various ways. The state requests specific personal data from IT corporations.

As seen earlier, legal censorship has reduced the meaning of censorship. 'Self-regulation' by platform companies raises questions of whether it reduces real censorship or makes it invisible. Lessig (2006) emphasizes the fact that 'code' is operated by combinations of various elements such as law, norms, or markets, which means that we must understand that the state uses technologies, discourses, institutions, law, and private platforms to achieve their goals even though we are limited from speaking freely by code or algorithm. As Nash (2013) observed, other agencies except the state, such as industry or NGO, are neglected. She also claims that self-regulation is to the best method of online regulation. Next, we explain censorship through platforms in view of Foucault's governmentality.

## 2.2.Economic Governmentality

Foucault (1977-78) used governmentality to explain the relationship between the state and economic power and proper governing in the history of (neo)liberalism. Foucault observed that 'freedom' is established through the circulation of trade and grain by physiocrats. As mercantilists failed to intervene by strong plan, limitation, and compulsion, the transition was made in the economic field. Foucault explains that 'economic' governmentality was proposed by Kenneth, a physiocrat. The term 'economic' means both effective and private. In other words, economic governance introduces laws of economy (market area) for the state to govern and assigns a function to the market as an infrastructure of governance. Thus, it means governance by knowledge of the 'population' and

---

<sup>5</sup> McChesny (2014) observed that the 'network effect' was the reason a few corporations had a monopoly online. If the biggest company increased their market share, users would be attracted to the company. Metcalfe's Law makes the market a winner-take-all one. Further, he insisted on the importance of technical standards. Once the standard is established, the monopoly will continue naturally.

also means effective governance. This is not reduction of governing but continual ordering of economical and careful governance. In other words, it is to modulate 'proper' intervention to improve.

This term means introducing the law of economy to governance and attempt to allocate a function to contemporary economic systems such as markets and corporations as governance infrastructure. In other words, it means 'be effective' with less effort if they want to govern effectively. Further, it means that we need to 'privatize' if we do so. This is related to the delegation of the 'private sector' for media regulation. This delegation is 'economic' for the following reasons. First, it provides a definite effectiveness report by shifting the public sphere's power to the private sector. Second, it is 'economic' because the private sector is also subordinate to the state. Censorship by the private sector is a way of dealing with their 'population' efficiently because the state cannot cover every population with the ability to express their own opinion through individual media. As this system is institutionalized to the law, it can be considered an 'obligation', and the state can manage the economic power.

Foucault quoted Rousseau's statement that economy came from *économie* or *œconomie* meaning 'home' from *oikos* and 'law' from *nomos*. He understood that governing a family for the common good was to govern wisely and properly (Jean-Jacque Rousseau, 1755; recited in Foucault, 1977-78, 145). This included considering every member's political influence, behaviours, and wealth management and simply increasing the family's wealth. Thus, governing the family encompassed some kinds of patriarchal elements in the practice of politics.

The state and economic power do not oppose each other, but intersect. Firstly, 'the body as a machine' integrates the body into the economic management system through discipline. Secondly, 'the body as a species' is interesting in terms of population 'bio-politics'. Thus, the state and economy want to focus on the same object, 'population' and their 'productive power', and are willing to cooperate if necessary (Toshihito, 2005).

Regulating the state is related to modulating the private sector. For instance, the state makes it mandatory to monitor illegal and harmful information online through platforms. Further, specific content circulated online can be blocked under the 'temporary measure'. Despite national borders, especially based on specific territory, in the internet age, each nation still regulates content. IT platforms are applied to national standards to regulate content in their guidelines or terms of use. The state does not control all users directly, so it empowers the private sector to improve effectiveness. Moreover, the private sector in specific countries follows national borders.

Average citizens are reluctant about the state controlling the media directly. Even though the state has regulated some media directly worldwide, direct regulation by the state must be governed. In addition, power does not have only one side. Although the state is very violent or repressive, 'culture' becomes the object of detailed and secret control. Thus, 'culture' is used to internalize proper norms and ethics.

Furthermore, self-regulation is not direct censorship by the state but indirect and invisible censorship under 'independent', 'private', 'self', or 'governance' to allow private sectors to participate in the regulation process. However, independent or private committees are not free from state control and are subordinate to

administrative institutions because of funding or intervention from such institutions (Shim, 2012, 165).

Censorship also improves effectiveness through technical elements. For example, filtering can explain a kind of technical censorship without any ‘censors’. Filtering blocks illegal and harmful content through various software or applications for protecting the youth. The youth are protected by common services like the ‘V-chip’ in televisions and the Communication Decency Act online. As the media becomes individualized, regulation for the youth is expanded to the public. To decrease various elements like fear of terrorism, the state’s surveillance of the public is based on these technical elements.

In short, economic governmentality can be applied to media censorship because it is related to the effectiveness of governing individuals by methods such as delegating to the private sector. It assumes that direct censorship by the state can increase people’s resistance. However, we believe regulation through the private sector is not purely private because it still places ‘the state’ in the centre.

### **3. Method & Research Questions**

In this study, first, we will present the historical background of the ‘temporary measure’ in South Korea. Second, by looking at the concrete process and operation method of the system we will explore some meanings of this system. Third, we organize the meaning of this system in view of ‘deletion of history as public archive’ and ‘automatic censorship’ by platforms.

The cases of ‘temporary measures’ for filing Constitutional complaints by August 2016, which have been repeatedly raised were collected, especially from the study of Lee & Lee (2012), and the Opennet Korea (<http://censored.kr/>) website.

## **4. The Historical Background and the Process of ‘Temporary Measure’**

### **4.1. The Historical Background of ‘Temporary Measure’**

In South Korea, ICT has had discursive, institutional, and industrial support since the 1990s. Above all, ICT was needed for growth of national wealth because old industries no longer made money. However, this situation did not apply only to South Korea; it was a global phenomenon. Thrift(2005, p.113) referred to ICT as the key element to the ‘New Economy’ that included some romantic concepts such as passion for business, creativity of individuals, and innovation for new subjectivity. Thus, the ‘New Economy’ was based on new discursive works by press, statement of presidents or government officials, and business organizations. In South Korea, the Kim Dae-jung administration insisted on the necessity of ‘turning to the New Economy’ because of the IMF crisis. Since the mid-1990s, we have been equipped with a high level of IT infrastructure by state-led policies.



This infrastructure allows Korean society to develop dynamically in the political, social, and cultural dimensions; however, it may cause some dysfunctional cases, for instance, the dog faeces and celebrity X-file cases.

The dog faeces case in 2006 is representative of damage caused to a specific individual by the reveal of privacy information by netizens. In the early stages of the case, many people blamed the woman who did not clean her dog's faeces in the subway on online communities. However, it became 'threat to the privacy of individual' and 'fear of revealing privacy' because some people made her privacy information public over time. Thus, several people felt the same way about the necessity of an 'Internet real-name system'. In addition, the X-file case about celebrities raised some opinions about the 'real-name system' because they felt 'anonymity' was a reason to speak aggressively. In other words, if we introduce an Internet real-name system, online effects would reduce.

The Internet real-name system was declared unconstitutional by the Constitutional Court on August 23, 2012. The court insisted that the system violated the principle of excess prohibition and suspects could be traced through IP addresses or online names even without the real-name system. The real-name system violated 'freedom of expression'.

After the system was shut down, a 'temporary measure' was created as an alternative system. Platforms needed a 'temporary measure' because of restrictions and delays in the official and legal process.

According to the National Assembly Research Service, the Korean Communications Committee (KCC) referred a self-regulation system by ISPs. This reinforces the ISPs' role but reduced direct state intervention. The 'temporary measure' was based on the Act of Information and Communications Network passed on January 26, 2007 (Act no.8289). The Internet real-name system regulates a person's behaviours based on anonymity through verification of personal details, while the 'temporary measure' blocks specific content from circulation 'temporarily' within 30 days

Next, we will look into the concrete contents and process of the temporary measure.

#### 4.2. Contents of the Temporary Measure

The Act is trying to create good circumstances while using networks to promote the safe and healthy use of networks to protect personal data. Thus, this act reduces dysfunction and promotes good functions. Act 44 proves the fact that protects user's rights. Above all, users must not circulate information to infringe others' right through violation of privacy or defamation. Further, ISPs are trying not to circulate these contents in their networks.

We can refer to some points in this act. For instance, if ISPs already know about harmful content, they must delete it 'without delay'. However, in case of the content violating personal rights, people who argue infringement by specific content can make deletion or block requests to the ISPs, who can delete or block within 30 days (temporary measure) and notify the applicant and post author. ISPs must notify the users of their terms of use in advance.

The issue is that these provisions raised about the private sector are stipulated by law and may violate a person's freedom of expression. It is also uncertain whether ISPs can determine such an infringement of rights. Next, we want to examine how the system operates concretely, and what problems are derived from its operational processes.

#### 4.3. The Process and the way of Temporary Measure

We can illustrate the 'temporary measure' based on 'the Network Act' Article 44-2, 3.

##### Article 44-2 (Request for Deletion of Information)

(1) Where information provided through an information and communications network purposely to be made public intrudes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who handled the information to delete the information or publish a rebuttable statement (hereinafter referred to as "deletion or rebuttal"), presenting explanatory materials supporting the alleged violation.

(2) A provider of information and communications services shall, upon receiving a request for deletion or rebuttal of the information under paragraph (1), delete the information, take a temporary measure, or any other necessary measure, and shall notify the applicant and the publisher of the information immediately. In such cases, the provider of information and communications services shall make it known to users that he/she has taken necessary measures by posting a public notice on the relevant message board or in any other way.

(3) A provider of information and communications services shall, if there is any unwholesome medium for juvenile published in violation of the labeling method under Article 42 in the information and communications network operated and managed by him/her or if a content advertising any unwholesome medium for juvenile is displayed in such network without any measures to restrict access by juvenile under Article 42-2, delete such content without delay.

(4) A provider of information and communications services may, if it is difficult to judge whether information violates any right or it is anticipated that there will probably be a dispute between interested parties, take a measure to block access to the information temporarily (hereinafter referred to as "temporary measures"), irrespective of a request for deletion of the information under paragraph (1). In such cases, the period of time for the temporary measure shall not exceed 30 days.

(5) Every provider of information and communications services shall clearly state the details, procedure, and other matters concerning necessary measures in its standardized agreement in advance.

(6) A provider of information and communications services may, if he/she takes necessary measures under paragraph (2) for the informations circulated through the information and communications network operated and managed by it, have its liability for damages caused by such informations mitigated or discharged.

#### Article 44-3 (Discretionary Temporary Measures)

(1) A provider of information and communications services may, if it finds that information circulated through the information and communications network operated and managed by him/her intrudes on someone's privacy, defames someone, or violates someone's rights, take temporary measures at its discretion.

(2) The latter part of Article 44-2 (2), the latter part of Article 44-2 (4), and Article 44-2 (5) shall apply mutatis mutandis to the temporary measures under paragraph (1).

[This Article Wholly Amended by Act No. 9119, Jun. 13, 2008]

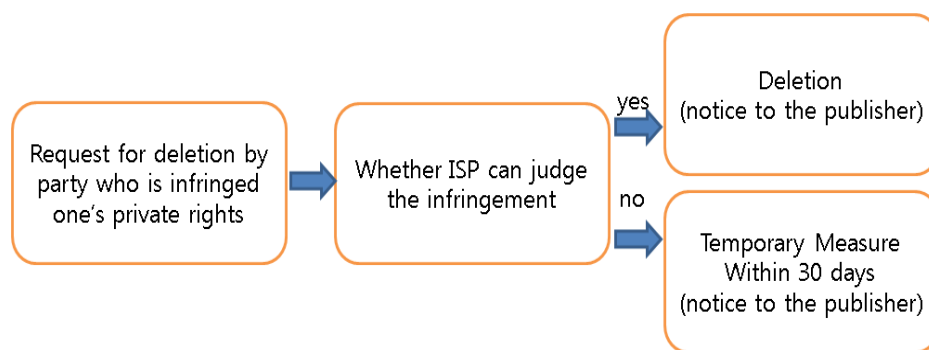
#### Article 44-4 (Self Regulation)

An organization of providers of information and communications services may establish and implement a code of conduct applicable to providers of information and communications services with an objective to protect users and render information and communications services in a safer and more reliable way.

[This Article Wholly Amended by Act No. 9119, Jun. 13, 2008]

This Act in English from STATITUES OF REPUBLIC OF KOREA

[http://elaw.klri.re.kr/kor\\_service/lawTotalSearch.do](http://elaw.klri.re.kr/kor_service/lawTotalSearch.do)



**Figure 1 Brief Process of the Temporary Measure**

There are conditional and arbitrary temporary measures. The former, 'conditional', means a personal request to delete or block specific content. According to the Act, if the person who complains has been the target of a specific post, (s)he can request the temporary measure to delete or block the post temporarily within 30 days. NARS (2012) observed that this system infringes the basic rights of the writer and ISPs. From the writer's

viewpoint, a person who only argues that the posting violates their basic right might delete the post. Further, ISPs accept most requests to avoid potential litigation that will be probably be raised later. If ISPs are confident about the infringement, they could delete some content. However, in most cases, they do not know and do not delete content directly. Instead of direct deletion, private ISPs use the temporary measure unconditionally.

However, if the writer objects to blocking their content, the portal site can take action to restore the post after 30 days. ISPs manage this process almost automatically to escape danger by legal judgement if only for people with formal requirements about requests for temporary measure and restoring the posts.

Meanwhile, the arbitrary temporary measure does not require any voluntarily judged requests by ISPs. If ISPs judge that specific content infringes a basic right, ISPs can delete or block it. There is safe harbour for intermediaries in the conditional temporary measure, but the arbitrary temporary measure does not have any disclaimer. Thus, the arbitrary measure is rarely used because ISPs have a heavy responsibility<sup>6</sup>.

Park (2009) referred that this Act from Notice-and-Takedown of the Digital Millenium Copyright Act or even that of Korea's own Copyright Act Article 103.<sup>7</sup> However, copyright Act is not same to limit citizen's ordinary free expression.

Major portal platforms in South Korea have terms of use about temporary measure if someone insists that (s)he is infringed by any contents. Next, we will explore some problems from concrete cases.

## 5. Discussion

### 5.1. The Deletion of History as a 'Public Archive': Request by Public Power

This system is introduced to protect an individual's right to block the rapid spread of content. Recent studies have showed that people who request to delete or block content are 'public persons' or 'public institutions'. Lee & Lee (2012) categorized 'public' with corporation/local government or the state/administrative institution/media companies/politicians/celebrities/church. In addition, OpenNet Korea is collecting cases raise in the Constitutional Courts concerning censorship claims (See Table 1; collected from Lee & Lee (2012) and censored.kr).

In fact, conflicts between private persons cannot usually be collected. From the cases above, we know that the 'temporary measure' is used to protect 'public power' such as politicians, administrative officials or organizations, or major companies. Blocking content in conflicts between private persons can be understood to

---

<sup>6</sup> Some scholars insist the act is not mandatory because both conditional and arbitrary temporary measures do not have any 'penalty provisions' unless they do. But, platforms may follow the act because it is defined legally.

<sup>7</sup> Park (2009) also pointed out the courts decided about the ISP liability not mandatory, but any ISPs do not interpret Article 44-2 as an exemption but obligation.

protect that specific person's basic right, while the relationship between private and public persons (or organizations) does not work in the same way. Toshihito (2005) insists that freedom of expression should be guaranteed because of 'the imbalance of power' between citizen and public power.

<b>Division</b>	<b>Date</b>	<b>The subject requested</b>	<b>Contents</b>
Corporation	2007.8.14	E-Land World	Scrap articles about union's protest in E-Land World and record own opinion in five lines
	2007.8.31	Hasol Education Company	The posting about Hansol Education Company's teacher union's strike
	2008.3.6	Ticket Movie	The posting about inconvenience in Ticket Movie's online site
	2010.9.2	Dan World	The posting about a scandal related to Dan World yoga after SBS's reporting
	2011.4.15	Korean Air	The contents that Korean Air demanded money from nationals but helped the Japanese in Libya
	2016.2.15	Samsung Fire	The criticisms about the rising premium of Samsung Fire's Direct Car insurance
	2016.3.21	Namyang Diary Product	The posting about criticizing Namyang Diary Product's unjust act
Local government or the state	2007.11.7	The City of Daegu	The contents about criticizing the city of Daegu calling it 'Gotham Daegu'
	2007.11.15	The City of Seoul	The postings about criticizing Oh Sehoon, Mayor of Seoul
	2008.12.29	Government Anonymous	Minerva, a famous online writer wrote that the government sent a public message to major corporations prohibiting the purchase of dollars. The government searched for Minerva who was arrested and indicted by the prosecution
Administrative institution	2009.5.1	The National Police Agency	The posting that police kept down Candlelight Vigil protesters with their own batons
	2009.9.24	Seoul Metropolitan Police Agency	The posting (with scrap articles) about criticizing suppression by the police because of former President Noh Mu-hyun's death and memorial

	2010.6.25	The National Police Agency	The posting about the sinking of the warchip Cheonan
	2011.6.17	Seoul National University	The parody videos about corporation opposition of Seoul National University
Politician	2008.10.20	A member of congress Joo Seong-Yeong	The posting about Member of Congress Joo
	2010.3.4	Minister Yoo	The parody about minister Yoo
	2010.7.13	A Member of Congress Ahn	Military service information of Member of Congress Ahn
	2010.8.17	A Member of Congress Cho	A posting criticizing Cho during the election period
	2010.10.19	Audit Committee member Eun	A posting about Audit Committee member Eun when he worked for the former President such as his work on four major rivers
	2011.11.22	A Member of Congress Hong	The posting about Hong's military service information
Celebrity	2009.5.4	Galaxia Communications (Entertainment Agency)	About military service of Korean singer Cho Seong-mo
	2010.7.8	Celebrity Chang Mi-hee/Manager Moon Yong-ho	The critical posting about the diploma fabrication of celebrity Chang Mi-hee
	2010.10.20	King Kong Entertainment	The picture of celebrity Park Min-yeong before plastic surgery
Media company	2009.4.5	Chosun Ilbo, Sports Chosun, MoneyToday	About celebrity Jang Ja-yeon's list
	2012.3.28	MBC	The posting about the use of the MBC president's corporate credit card and problems with Human Resources
	2016.3.26	Bae In-jun Editorial Writer in DongA Ilbo	The posting criticizing the columns in DongA Ilbo
church	2012.2.3	Network of Korean Internet Mission	The postings that criticize some violence in major locations such as Somang and Sunbokeum Church
	2012.2.7	Network of Korean Internet Mission	The postings about the 2012 election with political satire
	2012.3.7	Network of Korean Internet Mission	The postings about the 2012 election with political satire
	2012.3.7	ShinCheonJi Jesus Church	The postings about how we recognize ShinCheonJi (Results as heresy by Christianity)

2016.6.28	Pastor Cho Yong-gi	An analysis of blood and marriage relations between major newspaper companies, major companies, and religion
2014.6.28	Network of Korean Internet Mission(Saemmul Church)	The criticism of the mission in Islamic countries in relation to the death of a Christian in Afghanistan
2012.2.	Network of Korean Internet Mission(Pastor Kim Hong-do)	Criticizing the pastor Kim Hong-do

**Table 1. The caes of the temporary measures**

However, this temporary measure can delete information anybody can request if they are equipped only with simple and formal requirements. We can discuss that this system can delete our public history online as a kind of ‘public archive’. This system is associated with drafting similar to deleting information online since 2008. We observe that this system is related to public people or power.

### 5.2. Unconditional Deletion: Automatic Censorship

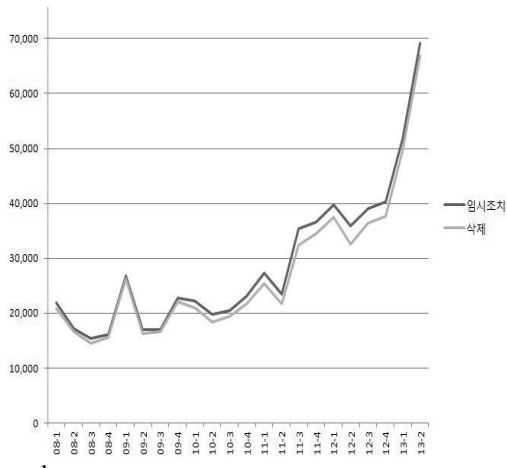
This system functions to delete some content unconditionally. With disappearing online documents as a ‘public archive’, portal business owners carry out a ‘temporary measure’ with requests only. Figure 3 shows us the total number of temporary measure from 2010 to 2014. According to the figure, we see that the number of temporary measures has increased over the years; the number in 2014, especially has increased about four times since 2010.

	NAVER	DAUM	SK COMMS.	Total
2010	85,573	58,186	1,353	<b>145,112</b>
2011	123,079	97,104	3,504	223,687
2012	155,161	67,342	7,664	230,167
2013	277,146	88,634	9,196	374,976
2014	337,923	116,261	642	<b>454,826</b>
<b>Total</b>	978,882	427,527	22,358	1,428,768

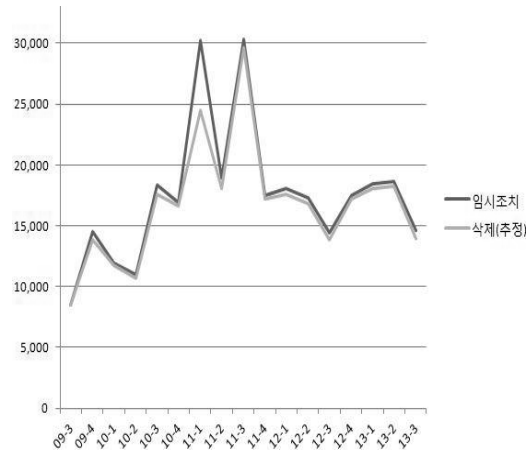
**Table 2 the number of the temporary measures by year**

\* Source: KCC & A member of Congress Seung-hee Yoo

According to Figure 2 and 3, we can check the point the relation between temporary measure and deletion. If the person did not request objection or reposting one’s posting, many of them are deleted from internet.



**Figure 2 The relation between temporary measure and deletion(From A portal site)**



**Figure 3 The relation between temporary measure and deletion(From B portal site)**

\* Source: Shim (2014). A Review on the Constitutionality Decision of Temporary Blinds from the Perspective of Legislative Studies 225-226

## 6. Conclusion

This ‘temporary measure’ is a system to protect a person’s right from online infringement. The system is based on the U.S. Copyright Act that allows platform owners to delete or temporarily block content. It is a ‘self-regulation’ system, which is always desirable as alternative online regulation. However, it is uncertain whether ‘voluntary’ regulation is necessary. Of course, even before the system was legislated, a similar system to delete problematic content ‘voluntarily’ was already in place. However, legislation of such institutions, even if there is no compulsion to delete or block, is hard to say ‘voluntarily’. To avoid unnecessary conflict between private individuals, this system is automatic. Thus, it is similar to ‘automatic censorship’ by ‘private subjects’.

Even by analysing the temporary measure, we can see that people who request deletion or blocking of content related to them are associated with ‘public power’, which can be criticized by the people. In the context of average persons, one can express their political or social opinion only online, and this system can be operated to suppress citizen freedom. In addition, public power can be the object of criticism in a normal democratic society. In addition, if we see the Internet as a ‘public archive’ or ‘public document’, the temporary measure deletes our public material. We can consider preserving our public history in the digital era.

Besides, it is problematic that the state has achieved a kind of censorship very easily and effectively. This system reflects the historical background from the regulation of ‘rebellious communication’ since the early 1990s. At that time, Internet regulation was a kind of cultural custom by platforms from other media regulation. Rebellious content regulation was a kind of indirect regulation because if online writers were not regulated, they



would not be able to protest or repost again. In short, rebellious content regulation is a kind of indirect censorship by platforms, platforms use it to block what the state wants to delete.

However, the temporary measure was carried out between private sectors without any official public power or the state. It is important to call this system ‘self-regulation’. However, as this article showed, because somebody related to ‘public power’ requested a temporary measure, we can conclude that public power intervenes when ordinary people express their own opinion online freely.

This system already raised constitutional claims but was decided to be constitutional. However, OpenNet raised constitutional claims again. While reviewing the method and process of the temporary measure, it is a kind of private censorship by platforms to delete or block criticizing public power automatically. Further, we want to point out that this system deletes history as a public archive with other similar institutions.

### References

- [1] Balkin, J. M. 2014. Old-School/New-School Speech Regulation. *Harvard Law Review*, 127(1), 1~45.
- [2] Burt, R. 1994. “Introduction: The "New" Censorship.” In *The Administration of Aesthetics: Censorship, Political Criticism, and the Public Sphere*. eds. Burt, R. Minneapolis: University Of Minnesota Press, xi-xxix.
- [3] Choe, Sang-hun. 2012. “Korea Policing the Net. Twist? It’s South Korea.” *New York Times* (August 12) [http://www.nytimes.com/2012/08/13/world/asia/critics-see-south-korea-internet-curbs-as-censorship.html?\\_r=0](http://www.nytimes.com/2012/08/13/world/asia/critics-see-south-korea-internet-curbs-as-censorship.html?_r=0)
- [4] Drucker S. J. and Gumpert, G. 2013. “Introduction: Thoughts on Social Media, Law, and Ethics” In *Regulating Social Media: Legal and Ethical Considerations*. eds, Drucker, S.J and Gumpert, G. NY: Peter Lang Publishing, 1-20.
- [5] Foucault, M. 1977-78. *Sécurité, territoire, population: Cours au Collège de France, 1977-1978*,
- [6] Gillespie, T. 2010. The politics of ‘platforms’. *New Media & Society*, 12(3), 347-64.
- [7] Hendershot, H. ed. 1998. *Saturday Morning Censors: Television Regulation before the V-Chip*. Duke University
- [8] Holquist, M. 1994. “Corrupt Originals: The Paradox of Censorship”
- [9] Lee, Jae-hyun and Lee, Jung-gi. 2012. “A Study on the ‘Notice and Takedown’ of Internet Portal Service”. *Korean Journal of Journalism & Communication Studies* 56(3): 51- 84.
- [10] Lessig, L. ed. 2006. *Code: And Other Laws of Cyberspace, Version 2.0* Basic Books

- [11] Mackinnon, R. 2012. *Consent of the Networked: The Worldwide struggle for Internet freedom*. Basic Books.
- [12] McChesny, R.W. 2013. *Digital Disconnect: How Capitalism Is Turning the Internet Against Democracy*. NY: The New Press.
- [13] Müller, B. 2004. "Censorship and Cultural Regulation in the Modern Age: Mapping the Territory." In *Censorship and Cultural Regulation in the Modern Age: Mapping the Territory*. ed. Müller, B. Amsterdam: Rodopi, 1-32.
- [14] NARS (National Assembly Research Service) 2013.12.18. An analysis of 'temporary measure' of 'Network Act'. NARS Contemporary Report, Vol.205.
- [15] Nash, V. 2013. "Analyzing Freedom of Expression Online: Theoretical, Empirical, and Normative Contributions". In *The Oxford Handbook of Internet Studies*. eds. Dutton, W. H. Oxford University Press, 441-63.
- [16] Opennet Korea website <http://opennet.kr>
- [17] Park, Kyung-Shin. 2009. Unconstitutionality of Korea's Temporary Blinds on Internet: Thou Shall Not Speak for 30days What Others Do Not. *Chung-Ang Law Review*, 11(3), 7-51.
- [18] S.C.S. 2014. "Why South Korea is really an Internet Dinosaur." *The Economist* (February 10) <http://www.economist.com/blogs/economist-explains/2014/02/economist-explains-3>
- [19] Shim, Woo-min. 2014. "A Review on the Constitutionality Decision of Temporary Blinds from the Perspective of Legislative Studies". *Journal of Cybercommunication Academic Society* 31(1): 199-239.
- [20] STATUTES OF REPUBLIC OF KOREA [http://elaw.klri.re.kr/kor\\_service/lawTotalSearch.do](http://elaw.klri.re.kr/kor_service/lawTotalSearch.do)
- [21] Thrift, N. 2005. *Knowing Capitalism*. UK: SAGE Publications.
- [22] Toshihito, K.2005. *Kokka Towa Nanika*. Japan: Ibunsha.
- [23] Opennet Korea <http://censored.kr/>
- [24] Nam-hee Hong. 2016. *The Discursive and Institutional Construction of SNS Censorship: A Critical Discourse Analysis of major SNS censorship cases in South Korea*. Thesis, Ph.D. in Visual Communication, The Graduate School of Communication & Arts, Yonsei University.