

# South Korea

	2016	2017		
<b>Internet Freedom Status</b>	<b>Partly Free</b>	<b>Partly Free</b>	<b>Population:</b>	<b>51.2 million</b>
Obstacles to Access (0-25)	3	3	<b>Internet Penetration 2016 (ITU):</b>	<b>92.7 percent</b>
Limits on Content (0-35)	15	13	<b>Social Media/ICT Apps Blocked:</b>	<b>No</b>
Violations of User Rights (0-40)	18	19	<b>Political/Social Content Blocked:</b>	<b>Yes</b>
<b>TOTAL* (0-100)</b>	<b>36</b>	<b>35</b>	<b>Bloggers/ICT Users Arrested:</b>	<b>Yes</b>
			<b>Press Freedom 2017 Status:</b>	<b>Partly Free</b>

\* 0=most free, 100=least free

## Key Developments: June 2016 – May 2017

- Hundreds of thousands of people attended mass candlelight rallies organized online and off, successfully pressuring the National Assembly to impeach President Park Geun-hye over corruption allegations (see **Digital Activism**).
- The Constitutional Court struck down onerous registration requirements for online news agencies introduced in 2015 (see **Media, Diversity, and Content Manipulation**).
- Military officials used apps and social media to identify gay soldiers, and prosecute several under a law which bans army personnel from having same-sex relationships (see **Surveillance, Privacy, and Anonymity**).
- A 67-year-old labor activist was detained for several months before being released without charge; he ran an online library that included communist classics (see **Prosecutions and Detentions for Online Activities**).
- Women reported violent threats after they advocated for feminist causes on social media (see **Intimidation and Violence**).

## Introduction

Internet freedom improved during the period of political mobilization that led up to the impeachment of President Park

Geun-hye, though the subsequent corruption investigation revealed new details about her administration's attempts to distort online information.

In late 2016, then-President Park found herself at the center of a scandal involving allegations of corruption on a massive scale, as well as other violations of the constitution. Weekly rallies demanding her removal and the restoration of democratic principles were held across the country for months starting on October 29. The National Assembly voted to impeach the president on December 9, and the Constitutional Court unanimously upheld the vote on March 10, 2017. Park was subsequently arrested. The presidential election originally scheduled for December was moved forward to May 9. Moon Jae-in, leader of the liberal Democratic Party and former human rights lawyer, was elected to the presidency and sworn into office the following day

These extraordinary developments highlighted, on the one hand, Korean citizens' innovative and effective use of physical and digital resources to exercise their political rights<sup>1</sup> On the other hand, investigations resulting from the scandal underlined the extent to which freedom of expression had been eroded since the conservative party came into power in 2008.

Park's presidency got off to a controversial start in 2013 amid allegations that the country's National Intelligence Service (NIS)—an agency prohibited from interfering with domestic politics—had manipulated online content to support her candidacy in the December 2012 election. In 2017, an internal NIS inquiry admitted that the agency had worked covertly to ensure another conservative would succeed outgoing President Lee Myung-bak. The agency hired commenters who were "charged with spreading progovernment opinions and suppressing antigovernment views," among other things.<sup>2</sup> Park's close aid continued working to influence online opinion while she was in office according to reports published in the past year.

The Park administration was also criticized for crackdowns on dissent.<sup>3</sup> In the midst of the 2016 presidential scandal, it was discovered that the government had compiled a blacklist of almost 10,000 artists, writers, and other cultural practitioners who were considered critical of President Park or supportive of her political rivals.<sup>4</sup>

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1 Ishaan Tharoor, "South Korea just showed the world how to do democracy," *The Washington Post*, May 10, 2017, <http://wapo.st/2qGpMy8>.

2 BBC, "South Korea's spy agency admits trying to influence 2012 poll," August 4, 2017, <http://www.bbc.com/news/world-asia-40824793>.

3 Matt Stiles, "South Korea's president is removed from office as court upholds her impeachment," *The Los Angeles Times*, March 12, 2017, <http://lat.ms/2mGiOr5>.

4 Al Jazeera, "South Korea: Minister arrested over 'artist blacklist'," January 21, 2017, <http://bit.ly/2j8CH7W>; Tae-seong Cho, "Confirmed existence of a cultural industry blacklist, including those who condemned the Sewol disaster" (in Korean), *Hankook Ilbo*, October 12, 2016, <http://bit.ly/2ojdQkA>; Yeong-oh Jeong, "Cultural censorship particularly sensitive to Sewol investigations and satires about the president, says Professor Lee Dong-yeon of K-Arts" (in Korean), *Hankook Ilbo*, October 23, 2016, <http://bit.ly/2ovz7bf>.

## Obstacles to Access

South Korea boasts one of the world's highest broadband and smartphone penetration rates. The internet service sector is relatively diverse and open to competition, while the mobile market is subject to more state influence. Broadcasting and telecommunications activities are regulated by the Korea Communications Commission (KCC) and the content and ethical standards of such activities are monitored by the Korea Communications Standards Commission (KCSC). Both commissions are chaired by presidential appointees.

### Availability and Ease of Access

Key Access Indicators		
Internet penetration (ITU) <sup>a</sup>	2016	92.7%
	2015	89.9%
	2011	83.8%
Mobile penetration (ITU) <sup>b</sup>	2016	123%
	2015	118%
	2011	108%
Average connection speeds (Akamai) <sup>c</sup>	2017(Q1)	28.6 Mbps
	2016(Q1)	29.1 Mbps

<sup>a</sup> International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>b</sup> International Telecommunication Union, "Mobile-Cellular Telephone Subscriptions, 2000-2016," <http://bit.ly/1cblxxY>.

<sup>c</sup> Akamai, "State of the Internet - Connectivity Report, Q1 2017," <https://goo.gl/TOH7L7>.

South Korea is one of the most wired countries in the world, for both usage and connection speed (see Availability and Ease of Access: Key Indicators).<sup>5</sup> Smartphone penetration was at 88 percent in 2015, surpassing other advanced economies in global surveys.<sup>6</sup> Taking connected mobile phones, televisions, and game consoles into consideration, an estimated 97 percent of households had internet access by 2012.<sup>7</sup>

Several factors have contributed to the country's high degree of connectivity. High-speed internet is relatively affordable, and roughly 70 percent of South Koreans live in cities dominated by multi-story apartment buildings that can easily be connected to fiber-optic cables.<sup>8</sup> The government has also implemented a series of programs to expand internet access since the 1990s, including subsidies for low-income groups.<sup>9</sup>

5 Matthew Speiser, "The 10 countries with the world's fastest internet speeds," *Business Insider*, May 17, 2015, <http://bit.ly/1Qppsqs>.

6 Jacob Poushter, "Smartphone ownership and internet usage continues to climb in emerging economies," *Pew Research Center*, February 22, 2016, <http://pewrsr.ch/1RX3lqq>.

7 South Korea has been on the top of the Organisation for Economic Co-operation and Development's (OECD) list of internet access rates in 34 member countries since 2000: OECD, "Households with access to the internet in selected OECD countries," *Key ICT Indicators*, July 2012, <http://bit.ly/19Xqbzx>.

8 J. C. Herz, "The bandwidth capital of the world," *Wired*, August 2002, <http://wrd.cm/1f2ENfx>.

9 John D. Sutter, "Why internet connections are fastest in South Korea," *CNN*, March 31, 2010, <http://cnn.it/1mOyYUT>.

Omnipresent and affordable *PC bang* (“computer rooms”) offer broadband access for approximately US\$1 per hour, and also serve as venues for social interaction and online gaming. Free Wi-Fi is offered in over 2,000 public spaces across the country, including train stations, airports, libraries, health centers, and community centers.<sup>10</sup> The Ministry of Science, ICT and Future Planning aims to extend this to 12,000 public hotspots, though no updated figures available in mid-2017<sup>11</sup>

There is no significant digital divide with respect to gender or income levels, although difference persist along generational and professional lines.<sup>12</sup>

## Restrictions on Connectivity

The country’s internet backbone market is oligarchic, with Korea Telecom (KT) as the biggest provider. KT was founded in 1981 and remained state-owned until privatization in 2002. The network infrastructure is connected to the international internet predominantly from the southern cities of Busan and Keoje, through international submarine cables connecting to Japan and China. For national security reasons, the police and the National Intelligence Service have oversight over the access points, but the government is not known to implement politically motivated restrictions on internet or mobile access.<sup>13</sup>

## ICT Market

The telecommunications sector in South Korea is relatively diverse and open to competition, with 95 internet service providers (ISPs) operating as of mid-2016.<sup>14</sup> Nevertheless, it is dominated by three companies: Korea Telecom (41 percent), SK Telecom (25.5 percent), and LG Telecom (17.6 percent). The same firms also control the country’s mobile service market, with 25 percent, 44 percent, and 19 percent market share, respectively.<sup>15</sup> All three companies are publicly traded, but they are part of the country’s *chaebol*—large, family-controlled conglomerates connected to the political elite, often by marriage ties.<sup>16</sup> This has given rise to speculation that favoritism was at play in the privatization process and in the selection of bidders for mobile phone licenses.<sup>17</sup> Korea Mobile Internet (KMI), a consortium of mobile virtual network operators who rent capacity from the main players, made a sixth attempt to enter the market in 2014. The Ministry of Science, ICT and Future Planning rejected their bid for a license for failing to meet financial requirements, which a KMI spokesman described

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10 Searchable at [http://www.wififree.kr/en/service/map\\_search.js](http://www.wififree.kr/en/service/map_search.js).

11 Ministry of Science, ICT and Future Planning, *Public Wi-Fi Free Service*, <http://bit.ly/1EfmhKz>; Inyoung Choi, “Significant expansion of free public Wi-Fi by 2017” (in Korean), *Yonhap News*, July 12, 2013, <http://bit.ly/1GjEY5O>.

12 Ministry of Science, ICT and Future Planning, “The digital divide index, 2010–2015” (in Korean), *IT Statistics of Korea*, <http://bit.ly/1e2FFNb>; Ha-neul Lee, “Widening digital divide a matter of ‘survival’ in the 4th industrial revolution” (in Korean), *Money Today*, April 13, 2017, <http://bit.ly/2pAGGKS>

13 Interviews with ICT professionals, August 2015.

14 Korea Internet & Security Agency, “ISP statistics” (in Korean), *Infrastructure Statistics*, <http://bit.ly/1TPRXSz>

15 Ministry of Science, ICT and Future Planning, “Wire and wireless communication service subscribers, as of February 2017” (in Korean), *IT Statistics of Korea: Statistical Resources*, <http://bit.ly/2nMDcIK>

16 Hyeok-cheol Kwon, “Is *Chojoongdong* one big family?” (in Korean), *Hankyoreh*, July 29, 2005, <http://bit.ly/1lhqYQM>

17 Hyeon-ah Kim, “KMI criticizes the selection criteria for the 4th mobile operator and issues an open inquiry” (in Korean), *e-Daily*, February 18, 2013, <http://bit.ly/1fXe7y8>

as “excessively strict.”<sup>18</sup> Media reports say KMI and Sejong Telecom, another unsuccessful bidder, intend to reapply.

Under the stated aim of easing the information asymmetry caused by the effective oligopoly of the mobile phone market, a law came into effect in October 2014 limiting service carriers’ subsidies for consumers. However, it ended up hiking up the prices of mobile handsets and subscriptions, leading to a public furor, and is currently under reconsideration.<sup>19</sup>

## Regulatory Bodies

The Korea Communications Commission (KCC), which is responsible to the president, regulates the telecommunications and broadcast sectors.<sup>20</sup> Its credibility has been marred by politicized appointments. The president appoints two commissioners, including the chair, while the National Assembly chooses the remainder. Following the presidential impeachment, four commissioner posts, including that of the chair, were vacant in June 2017.

The conservative Lee Myung-bak government, which was in power from February 2008 to February 2013, created the five-member KCC in 2008.<sup>21</sup> The first KCC chairman, Choi See-joong, was a close associate of President Lee.<sup>22</sup> Choi resigned in 2012 amid bribery scandals, and was later sentenced to two and a half years in prison and a fine of KRW 600 million (US\$540,000) for influence peddling.<sup>23</sup> Lee pardoned him at the end of his presidential term.<sup>24</sup> In 2013, President Park Geun-hye also named a close aide, four-term lawmaker Lee Kyeong-jae, to head the KCC.<sup>25</sup> He was succeeded by a former judge, Choi Sung-joon, who completed his term on April 7, 2017.

Other institutions also shape the information and communication technology (ICT) sector. The Ministry of Science, ICT and Future Planning created by President Park has policy and strategy-related responsibilities.

## Limits on Content

*Although South Korean cyberspace is vibrant and creative, there are a number of restrictions on the free circulation of information and opinions. Technical filtering and administrative deletion of content is particularly evident. Content that “praises or benefits” communist North Korea or that undermines the traditional social values of the country is blocked or deleted based on the recommendations of the*

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18 Yun-seung Kang, “Gov’t nixes consortium’s application for new mobile carrier license,” *Yonhap News*, July 24, 2014, <http://bit.ly/1uTA4aR>; Min-ki Kim, “Bidders for the position of the 4th mobile operator complain of high opening bid of \$260 million” (in Korean), *Yonhap News*, January 20, 2014, <http://bit.ly/1iy4P6f>

19 Kwan-yul Cheon, “The birth of ‘that law’ that everybody hates” (in Korean), *SisaIN*, October 31, 2014, <http://bit.ly/1Elq1vz>

20 Jong Sung Hwang & Sang-Hyun Park, “Republic of Korea,” in *Digital Review of Asia Pacific 2009–2010*, eds. Shahid Akhtar and Patricia Arinto, (London: SAGE, 2009), 234–240.

21 The Commission was the result of a merger between the Ministry of Information and Communication and the Korean Broadcasting Commission, to improve policy coherence between the two sectors.

22 Ji-nam Kang, “Who’s who behind Lee Myung-bak: Choi See-joong the appointed chairman of the KCC” (in Korean), *Shindonga* 583, 2008, <http://bit.ly/1aYiNCd>.

23 Rahn Kim, “President’s mentor gets prison term,” *The Korea Times*, September 14, 2012, <http://bit.ly/1esLXak>

24 “South Korean president issues controversial pardons,” *BBC News*, January 29, 2013, <http://bbc.in/L3ce7o>

25 “Park appoints former veteran lawmaker as communications commission chief,” *Yonhap News*, March 24, 2013, <http://bit.ly/1gkquoV>.

*Korea Communications Standards Commission. Systematic manipulation of online discussions has also documented in the past, with several new revelations in the reporting period..*

## Blocking and Filtering

Service providers systematically block content deemed to violate the law or social norms, including threats to national security and public morality, primarily on the orders of the Korea Communications Standards Commission (KCSC).<sup>26</sup> The KCSC monitors broadcast and internet content and issues censorship orders to content hosts or service providers. Noncompliant service providers face up to two years' imprisonment or a fine of up to KRW 20 million (US\$18,000), according to Article 73 of the Information and Communications Network Act.

The KCSC's nine members are appointed by the president and the National Assembly.<sup>27</sup> The all-male commission was led until the end of the reporting period by Park Hyo-chong, a key figure in the country's neoconservative movement. The KCSC evaluates online content directly through a team of in-house monitoring officers, but also considers censorship requests from other agencies and individuals. Observers criticize the KCSC's vaguely defined standards and wide discretionary power to determine what information should be censored, which allow the small number of commissioners to make politically, socially, and culturally biased judgments, often lacking legal grounds.<sup>28</sup> Commissioners meet every two weeks to deliberate, according to one 2013 account.<sup>29</sup> In many cases, the commission blocks entire sites even though only a small portion of posts are considered to be problematic. In 2016, 157,451 websites or pages were blocked and 35,709 deleted.<sup>30</sup>

The KCSC does not publish a list of blocked sites, but every quarter it releases the number of websites or pages blocked under different categories of banned content, including gambling, illegitimate food and medicine, obscenity, violation of others' rights, and violation of other laws and regulations. The last category includes websites containing North Korean propaganda or promoting reunification, based on Article 7 of the 1948 National Security Act. Article 7 bans content that "praises, promotes, and glorifies North Korea."<sup>31</sup> Under the Park Geun-hye administration, censorship requests on national security grounds by the National Security Service (NIS) and the police increased from 700 in 2013 (2 from NIS and 698 from police) to 1,996 between January and August 2016 (209 from NIS and 1,787 from police). The KCSC was criticized for "rubber-stamping" the requests to have the content in question blocked or deleted.<sup>32</sup>

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26 The KCSC is statutorily independent, although its operation is prescribed in a subsection of the Act on the Establishment and Operation of the Korea Communications Commission.

27 Six members are nominated by the president and the parliamentary majority party, while three are nominated by the opposition. See also Jeong-hwan Lee, "A private organization under the president? The KCSC's structural irony" (in Korean), *Media Today*, September 14, 2011, <http://bit.ly/1aYr0GA>

28 Jillian York & Rainey Reitman, "In South Korea, the only thing worse than online censorship is secret online censorship," *Electronic Frontier Foundation*, September 6, 2011, <http://bit.ly/1gkiKfw>

29 Author's interview with Park Kyung Sin, who served as a commissioner until his resignation in 2014, at the KCSC office April 4, 2013.

30 Among those blocked, 73,342 were for "prostitution and obscenity," 50,072 for "encouraging gambling," 19,799 for "illegitimate food and medicine," 7,641 for "violating others' rights," and 6,597 for "violating other laws and regulations." Among those deleted, 14,873 were for "illegitimate food and medicine," 14,694 for "violating other laws and regulations," 5,021 for "prostitution and obscenity," 980 for "encouraging gambling," and 141 for "violating others' rights." Statistics published quarterly by the Korea Communications Standards Commission at <http://bit.ly/1iDTDgX> (in Korean).

31 OpenNet Initiative, "South Korea," August 6, 2012, <http://bit.ly/19XA93S>

32 Yun Na Yeung Kim, "Requests for censoring content deemed to violate the National Security Act increased 300% during the four years under Park Geun-hye" (in Korean), *Pressian*, September 30, 2016, <http://bit.ly/2p2EMqf>

A legal amendment to Article 25(2) to the Act of the Establishment and Operation of the Korea Communications Commission was passed on December 29, 2014, to mandate notifying owners of censored content.<sup>33</sup> Affected users are allowed to challenge the commission's ruling in principle, but with no independent avenue for appeal available, only 0.07 percent of cases involving censorship have resulted in appeal.<sup>34</sup>

The KCSC has occasionally responded to pressure to reverse censorship orders, however. In March 2015, for example, the commission blocked the entire platform of an adult cartoon service, saying that part of its content was obscene. The platform argued that the content was provided through an age-authentication system in compliance with the law. Faced with a public backlash, the commission withdrew the order after only days.<sup>35</sup> British journalist Martyn Williams legally disputed the KCSC's blocking of his website *North Korea Tech*, a media outlet that reports on technology in North Korea, in April 2016. A year later, on April 21, 2017, the Seoul Administrative Court ruled that the blocking order was unlawful.<sup>36</sup>

## Content Removal

New information about content removal during elections was published in the past year. Official reported having taken down thousands of posts deemed to violate the election law in 2016, when parliamentary elections were held in April. And a review of some major web platforms' internal policies about user searches revealed a lack of transparency surrounding the way lists of trending search terms are compiled, dating back to the previous elections in 2012.

Some political and social content is subject to removal by service providers based on instructions from the KCSC and complaints from individuals, other government agencies, and the police. On receiving a takedown request, the company must hide the content in question for 30 days,<sup>37</sup> and delete it if the owner does not revise it or appeal within that time. "Hundreds of thousands of online posts get deleted every year by such temporary removal requests, which in effect remove the posts permanently," according to the Associated Press.<sup>38</sup>

Restrictions on political speech surrounding elections are more stringent in South Korea than in many democracies due to limits prescribed in the 1994 Public Official Election Act. Although ban on posting election-related commentary online in the days before the polls was lifted after it was declared unconstitutional in 2011, content about candidates is still monitored by the National Election Commission (NEC), which has a remit to correct information published about candidates in online and offline news stories. Facebook restricted 56 items in the first half of 2016 citing a request from the NEC, compared to 15 items based on requests from the KCSC and others in the second half of the year, after the election.<sup>39</sup> South Korean officials also sent 73 content removal requests t

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33 Open Net Korea, "The KCSC now mandated to notify affected content owners before and after censorship orders" (in Korean), January 7, 2015, <http://opennet.or.kr/7974>

34 Open Net Korea, "The KCSC now mandated to notify affected content owners before and after censorship orders" (in Korean), January 7, 2015, <http://opennet.or.kr/7974>.

35 Sung-won Yoon, "Watchdog hit for excessive digital censorship," *The Korea Times*, March 30, 2015, <http://bit.ly/1IWCXcu>

36 Martyn Williams, "Court rules in favor of North Korea Tech in blocking dispute," *North Korea Tech*, April 24, 2017, <http://bit.ly/2q746bF>

37 Kyung Sin Park, *Guilty of Spreading Truth* (in Korean), (Seoul: Dasan Books, 2012), 125–130.

38 Associated Press, "Online curbs limit South Korea pre-election speech freedoms," *Associate Press*, April 11, 2016, <http://apne.ws/2cV37sl>

39 Facebook Government Requests Report, <https://govtrequests.facebook.com/>

Twitter in the same year, although it is not clear which agency they came from; the company said it did not comply.<sup>40</sup>

Official figures confirm that the NEC and its regional branches ordered the removal of 17,101 online posts violating the election law in 2016, including “unauthorized displays of opinion poll results,” “distribution of false information,” and “slanders against candidates.”<sup>41</sup> The NEC does not expand on the kind of information included in these categories, but an Associated Press report highlighted the potential scope for abuse. Before the April 2016 National Assembly election, the NEC ordered service providers to delete at least 600 online posts that referenced a *Newstapa* story alleging that the daughter of conservative candidate Na Kyung-won had received preferential treatment during a college admissions program for disabled students in 2012, according to the report. Na’s campaign had complained to the election commission about a factual error in the story which was unrelated to the allegations.<sup>42</sup> NEC content removal figures were not yet available for the May 2017 presidential election period, though a campaign to combat fake news was reported (see Media, Diversity and Content Manipulation).

Separately, an audit of the country’s two largest web portals, Naver and Daum, revealed the existence of internal regulations authorizing staff to alter its public list of real-time search terms based on requests from government or official agencies. The portals operate search engines and blog platforms, among other internet services. In the past, both companies maintained that the most popular search terms were selected automatically by an algorithm.

The Korea Internet Self-governance Organization (KISO), an industry group of major internet firms of which Naver and Daum are members, conducted the audit at Naver’s request to investigate allegations that companies were complicit in the content manipulation scandal surrounding the 2012 presidential election (see Media, Diversity, and Content Manipulation). The rule on altering search terms was implemented in the lead-up to that election, according to the audit, which was published in December 2016. After the audit was released, the companies acknowledged that such a rule was in place.

Yet the report found that Naver routinely removes search terms from its public lists without oversight, some based on requests from users, companies, and educational institutions, and some without a clear reason. The KISO reported that Naver removed 1,408 popular search terms from the real-time rankings between January and May 2016, amounting to an average of nine per day.<sup>43</sup> Naver said this enabled the company to comply with requests from law enforcement, such as keeping the names of criminal suspects off the list. But observers said the lack of transparency over the process, coupled with the fact that the companies had agreed to allow political influence over content that affects the public’s perception of popularity—and did so during an election year—were cause for concern.

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40 Twitter Transparency Report: Removal Requests, <https://transparency.twitter.com/en/removal-requests.html>

41 People’s Solidarity for Participatory Democracy (PSPD), “Online campaigning permitted? The NEC’s crackdown continues” (in Korean), *OhmyNews*, October 6, 2016, <http://bit.ly/2d1PA6Z>

42 Associated Press, “Online curbs limit South Korea pre-election speech freedoms,” *Associated Press*, April 11, 2016, <http://apne.ws/2cv37sl>

43 Yonhap News, “Naver and Daum found to have a rule to remove trending search terms upon the government’s request” (in Korean), *Yonhap News*, December 25, 2016, <http://bit.ly/2i6s59P>

Companies are known to proactively delete content that they judge to potentially violate the law, even without a complaint, to avoid legal liability. Under Article 44(3) of the Information and Communications Network Act, intermediaries are encouraged to monitor and carry out proactive 30-day takedowns of problematic content.<sup>44</sup> Companies who can demonstrate proactive efforts to regulate content would be favorably considered by the courts, while those who do not are potentially liable for illegal content posted on their platforms by users.<sup>45</sup>

During the coverage period of this report, politicians sought to make this arrangement more explicit for companies that host video online. In October 2016, conservative lawmakers proposed an amendment to the Information and Communications Network Act to regulate internet video streaming services more like broadcast media under the definition “audiovisual media services” used in the European Union.<sup>46</sup> The amended Act could hold domestic platform operators accountable for obscene and other illegal content posted by users.

Article 17 of the Children and Youth Protection Act places responsibility for removing child pornography on online service providers, with possible penalties of up to three years’ imprisonment or fines of up to KRW 20 million. In 2015, the CEO of KakaoTalk, the country’s most popular mobile messaging application, was charged under this Article because underage users had shared explicit images of themselves on the service. Critics alleged that this charge was punishment for “refusing to curb users’ opinions critical of the government.”<sup>47</sup> Public prosecutors had met with several companies in 2014, including KakaoTalk, to discuss how to curb rumors in the wake of the Sewol ferry disaster, which the government was accused of mishandling (see Surveillance, Privacy, and Anonymity).<sup>48</sup> The CEO left the company and the case was on hold in 2017, pending a constitutional review of Article 17.

The legal grounds for takedown requests have expanded in recent years. An antiterrorism law passed in March 2016 granted the National Intelligence Service (NIS) the power to order the removal of any online content during terrorism investigations (see Surveillance, Privacy, and Anonymity). The KCSC separately amended its regulations in December 2015 to accept takedown requests from third parties based on perceived defamation of other people, despite opposition from civil society groups.<sup>49</sup>

## Media, Diversity, and Content Manipulation

Onerous registration requirements for online news agencies were struck down during the reporting period, though freedom for the digital news media could be undermined by emergent attempts to

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44 Yoo Eun Lee, “Is South Korea encouraging portal sites to self-censor?” *Global Voices*, Nov 23, 2013, <http://bit.ly/1ff3Eh>

45 Hyeon-seok Kang, “Portal sites that neglected malicious comments liable for defamation” (in Korean), *Nocut News*, April 16, 2009, <http://bit.ly/1kTPiql>

46 Jun-kyeong Keum, “Whack the internet video streaming services as is done in Europe?” (in Korean), *Media Today*, February 17, 2017, <http://bit.ly/2owxzgZ>. The EU regulation referenced in this context is the Audiovisual Media Services Directive, <http://bit.ly/1WmvGOS>.

47 “South Korea targets dissent,” *The New York Times*, November 19, 2015, <http://nyti.ms/1jah3N0>; Simon Mundy, “Freedom fears as South Korea targets chat app chief,” *Financial Times*, November 17, 2015, <http://on.ft.com/1OVI2p4>

48 Jae-seob Kim, “KakaoTalk managers present at prosecutors’ meeting on countering ‘defamation of the president’” (in Korean), *Hankyoreh*, October 2, 2014, <http://bit.ly/1vzr6Oy>

49 Yeong-ju Choi, “KCSC passes an amendment to its regulations on defamation” (in Korean), *PD Journal*, December 10, 2015, <http://bit.ly/1Rlsmwd>

curb fake news. Revelations continued to unfold in the manipulation scandal surrounding former President Park's election in 2012.

South Korea's overall media environment is partly restricted,<sup>50</sup> and activist media outlets have developed online in part to challenge those restrictions.<sup>51</sup> *Newstapa*, a user-funded investigative journalism platform, has accumulated more than 40,000 regular donors and 74 million views on its YouTube channel since it launched in 2012.<sup>52</sup> It was a leading source of information on the election manipulation scandal in 2013,<sup>53</sup> and one of the first to allege systemic corruption and negligence behind the sinking of Ferry Sewol in 2014, a disaster that resulted in 304 deaths.

The National Police Agency announced a crackdown on "fake news," especially in the context of the May 2017 presidential election. In February, Chief Lee Cheol-seong said a special unit would investigate malicious cases of fraudulent news, and less serious cases would be censored in cooperation with the KCSC and the NEC.<sup>54</sup> While there were no reports that legitimate content was suppressed, the crackdown established government agencies as the arbiters of whether online information is true or false.

In March, police said they had investigated 40 cases of news reports they said were fake, and that 19 of them, including one implying U.S. President Donald Trump had snubbed South Korea's liberal opposition, had been blocked or deleted.<sup>55</sup> Others remained under investigation, including one that said 80 percent of the population was against President Park's impeachment. Police were also investigating Park supporters for distributing printed copies of misleading online media reports before she was forced out.

Officials have used the premise that their critics are spreading false content to try to limit online speech in the past. In 2013, for example, the KCC warned *Newstapa* and a handful of other independent news websites, calling their work "pseudo journalism."<sup>56</sup> Separately, a month after the Sewol ferry disaster, conservative legislator Han Sun-kyo proposed a legal amendment to punish rumormongering on social media "in times of disaster" with up to five years in prison or up to KRW 50 million (US\$45,000) in fines, although the proposal expired in May 2016.

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50 Freedom House, "South Korea," *Freedom of the Press*, 2016, <http://bit.ly/2pitqeh>; Haeryun Kang, "Journalism without journalists: Political interference cripples public broadcasting," *Korea Exposé*, January 26, 2017, <http://bit.ly/2oDaiKx>

51 Many developed after 2012, when journalists launched a series of strikes against government interference for the first time since the country's transition to democratic rule in 1987. See, "No news is bad news: Reporters complain of being muzzled," *The Economist*, March 3, 2012, <http://econ.st/1mPL1kl>

52 *Newstapa's* YouTube page, accessed March 2016, <http://www.youtube.com/user/newstapa>.

53 *Newstapa*, "South Korea spy agency's illegal campaigning on SNS" (in Korean), YouTube video, 15:34, January 6, 2014, <http://bit.ly/1gVTJap>; Yoo Eun Lee, "South Korean authorities discredit dissenting voices as 'not-real' news," *Global Voices*, January 2, 2014, <http://bit.ly/1cpE2sy>

54 *Yonhap News*, "Fake news, to be investigated if willful and repeated; otherwise to be blocked or deleted" (in Korean), *Yonhap News*, February 13, <http://bit.ly/2p2Efe8>

55 *Yonhap News*, "Police crack down on fake news", *Yonhap News*, March 13, 2017, <http://bit.ly/2pqxed0>.

56 Yoo Eun Lee, "South Korean authorities discredit dissenting voices as 'not-real' news," *Global Voices*, January 2, 2014, <http://bit.ly/1cpE2sy>

In a positive development, other legal measures restricting the digital media market were struck down during the coverage period of this report. In 2015, an amendment to the Newspaper Act stipulated that an online news agency must have more than five regular employees to be eligible to register, as part of a crackdown on “substandard” internet media.<sup>57</sup> All news organizations are required to register, and failure to do so is subject to up to one year of imprisonment or fines up to KRW 20 million (US\$ 18,000), according to the Act. The Korea Press Foundation estimated that this could cause at least one third of existing agencies to close down, including most citizen journalism sites.<sup>58</sup> However, the Constitutional Court ruled the amendment unconstitutional in October 2016.<sup>59</sup>

Former President Park Geun-hye’s administration was overshadowed by an investigation into the politicized manipulation of online comments by intelligence agents to aid her victory in the December 2012 election. Park Geun-hye denies ordering or benefiting from election manipulation<sup>60</sup> Though she was ultimately impeached for other reasons, there were further revelations about the scandal in 2017.

Opposition lawmakers first accused a National Intelligence Service (NIS) agent of manipulating different online accounts to discredit opponents of then-candidate Park in December 2012. Police initially cleared the agent,<sup>61</sup> but in 2013, prosecutors indicted former NIS director Won Sei-hoon on charge of authorizing agents to post thousands of online comments and 1.2 million tweets characterizing members of the political opposition as sympathizers of North Korea.<sup>62</sup> Won and his successor, Nam Jae-joon, admitted having refuted North Korean propaganda in online forums, but denied political motives.<sup>63</sup> In 2013, the Defense Ministry’s cyber command unit, launched in 2010 to “combat psychological warfare in cyberspace,” stated that some officials had posted inappropriate political content online during the same period, but without the knowledge of the unit heads. Like Won Sei-hoon, they denied the more serious charge of election meddling.<sup>64</sup> A case against the officials is being heard in the Seoul High Court<sup>65</sup>

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57 Yonhap News, “Editorial from Korea Herald on Nov 21,” *Yonhap News*, November 21, 2015, <http://bit.ly/2dNjH8j>

58 Sang-geun Jeong, “Exclusive: Internet news agencies with less than 5 employees to be ousted” (in Korean), *Media Today*, November 3, 2015, <http://bit.ly/1L6rAXg>.

59 Su-jeong Kim, “Constitutional Court rules that news agencies with less than 5 reporters/editors are equally part of the press” (in Korean), *Nocut News*, October 27, 2016, <http://bit.ly/2oXrriM>.

60 Sang-Hun Choe, “Prosecutors detail attempt to sway South Korean election,” *The New York Times*, November 21, 2013, <http://nyti.ms/1hvtiyf>; Yoo Eun Lee, “South Korea’s spy agency, military sent 24.2 million tweets to manipulate election,” *Global Voices*, November 25, 2013, <http://bit.ly/1jB00Sp>; Harry Fawcett, “South Korea’s political cyber war,” *Al Jazeera*, December 19, 2013, <http://bit.ly/1cmfW86>

61 In-ha Ryu, “Breaking news: Seoul Police already plots a scenario before releasing the interim report of investigation into the online comments scandal” (in Korean), *Kyunghyang Shinmun*, September 6, 2013, <http://bit.ly/1aWCZkN>; Chosun Ilbo, “Seoul Police warns Kwon Eun-hee, who claims the police investigation into NIS was ‘downscaled and covered up’” (in Korean), *Chosun Ilbo*, September 26, 2013, <http://bit.ly/1v85Yjn>

62 Chico Harlan, “In South Korea’s latest controversies, spy agency takes a leading role,” *The Washington Post*, July 6, 2013, <http://wapo.st/1mO8QJQ>; Dong-hyeon Lee, “Won Sei-hoon ordered operations against opposition candidates in every election, says prosecution” (in Korean), *JoongAng Ilbo*, June 6, 2013, <http://bit.ly/1aYLChk>; Sang-Hun Choe, “South Korean official accused of political meddling,” *The New York Times*, December 19, 2013, <http://nyti.ms/1ohP89w>

63 Ho-jin Song et al., “Nam Jae-joon says online posting is the NIS’s legit work, insisting the allegation of election interference be a political set-up” (in Korean), *Hankyoreh*, August 5, 2013, <http://bit.ly/1aDobNp>

64 Xinhua, “South Korean officials accused of political meddling; “Former chiefs of S. Korean cyber command charged with political intervention,” *Shanghai Daily*, August 19, 2014, <http://bit.ly/1v5n6pZ>.

65 Yonhap News, “Political comments’ case of former head of the cyber command unit resumed after 6 months” (in Korean), *Yonhap News*, December 13, 2016, <http://bit.ly/2nN1bHP>.

In 2014, the Seoul Central District Court gave Won a suspended sentence under a law that bars intelligence officials from political activity, but acquitted him of trying to sway the election.<sup>66</sup> Both sides appealed. The Seoul High Court sentenced Won to three years in jail,<sup>67</sup> but the Supreme Court granted him a retrial in July 2015.<sup>68</sup> Two years later, in August 2017, the High Court sentenced him to 4 years in prison for election interference.

In the past year, investigations into the corruption allegations revealed that efforts to interfere with online discussions continued even after the 2012 presidential election under the oversight of Park's long-time top aid Kim Ki-choon, who has been popularly described as her "puppet master".<sup>69</sup> Jinbonet, a civil society organization specializing in human rights and the internet, published handwritten notes from staffers that revealed Kim's efforts to steer online discussions on various issues throughout Park's presidency, including the forced dissolution of a left-wing party in 2013, the Sewol ferry accident in 2014, and the delegitimation of a teachers' union in 2014.<sup>70</sup>

The 2016 presidential scandal also led to the publication of a government blacklist comprising almost 10,000 artists, writers, and other cultural practitioners, active online and offline.<sup>71</sup> Those on the list were defunded and professionally disadvantaged for satirizing or being critical of President Park. The president office was also alleged to have ordered major conglomerates to provide 2.5 million dollars' worth of funds for 38 right-wing groups between 2013 and 2015, including some web-based ones.<sup>72</sup>

Separately in April 2017, a civilian whistleblower who had been part of the NIS's online manipulation operation disclosed that the operation went back to the Lee Myung-bak administration. He said that he was paid US\$450–540 per month for posting progovernment comments on various web forums between 2008 and 2009.<sup>73</sup>

## Digital Activism

South Koreans have long embraced online technology for civic engagement and political mobilization. The coverage period witnessed one of the most historic examples of this. In response to corruption allegations that broke out against then-President Park Geun-hye in October 2016, hundreds of thousands of citizens mobilized themselves to pressure the legislative and judicial branches of the

66 Sang-Hun Choe, "Former South Korean spy chief convicted in online campaign against liberals," *The New York Times*, September 11, 2014, <http://nyti.ms/1qCE6xV>

67 BBC News, "South Korea spy chief sentenced to three years in prison," *BBC News*, February 9, 2015, <http://bbc.in/1dibHgP>

68 Ju-min Park, "South Korea court orders retrial of ex-spy chief in vote-meddling case," *Reuters*, July 16, 2015, <http://reuters/1PiPkVw>

69 Hyeon-seok Gang, "Yoon Jang-hyun, 'Former Vice Minister Kim Jong pressured me to take down a satirical painting of Park Geun-hye,'" *Kyunghyang Shinmun*, November 15, 2016, <http://bit.ly/2qT9tON>

70 Jinbonet, "How Kim Ki-choon has manipulated online public opinion" (interactive news archive, in Korean), *Jinbonet*, <http://act.jinbo.net/wp/bhnote/>; Jihye Lee, "Kim Ki-choon attempts to discourage prosecutors from appealing the 'NIS's fake comments' case to a higher court" (in Korean), *Nocut News*, January 1, 2017, <http://bit.ly/2pC5GS3>

71 Al Jazeera, "South Korea: Minister arrested over 'artist blacklist'," January 21, 2017, <http://bit.ly/2j8CH7W>; Tae-seong Cho, "Confirmed existence of a cultural industry blacklist, including those who condemned the Sewol disaster" (in Korean), *Hankook Ilbo*, October 12, 2016, <http://bit.ly/2ojdQkA>; Yeong-oh Jeong, "Cultural censorship particularly sensitive to Sewol investigations and satires about the president, says Professor Lee Dong-yeon of K-Arts" (in Korean), *Hankook Ilbo*, October 23, 2016, <http://bit.ly/2ovz7bf>

72 Jung-soo Kwack & Jeong-hun Lee, "As part of whitelist, FKI doled out millions to right-wing groups," *Hankyoreh*, February 6, 2017, <http://bit.ly/2oqSO3l>

73 Wan Kim et al., "First and exclusive disclosure by a former member of the Alpha Team, the NIS's army of paid commenters" (in Korean), *Hankyoreh*, April 16, 2017, <http://bit.ly/2pp1C8f>

government to bring the president and those involved to justice. On this occasion, the will of citizens, expressed through social media alongside a sustained series of mass candlelight rallies offline successfully led the more conservative mainstream media and legislators to endorse the removal of the president.<sup>74</sup>

## Violations of User Rights

*Labor activists and others are subject to prosecution for online speech. Officials were accused of using digital tools to spy on human rights defenders and gay soldiers. However, the Supreme Court ruled that investigative agencies may not make repeat requests for communications data under a single warrant.*

### Legal Environment

The South Korean constitution guarantees freedom of speech, the press, assembly, and association to all citizens, but it also enables restrictions, stating “neither speech nor the press may violate the honor or rights of other persons nor undermine public morals or social ethics.” South Korea has an independent judiciary and a national human rights commission that have made decisions upholding freedom of expression. Nevertheless, the prosecution of individuals for online activities has a chilling effect, generating international criticism (see Prosecutions and Detentions for Online Activities).

Several laws restrict freedom of expression in traditional media as well as online. The 1948 National Security Act allows prison sentences of up to seven years for praising or expressing sympathy with the North Korean regime. In 2010, the Ministry of Unification issued a notice reminding citizens that the 1990 Act on Exchanges and Collaboration between South and North Korea applies to online communications as well as offline<sup>75</sup> and that any active engagement with websites or pages maintained by people of North Korea must be reported to the government in advance.<sup>76</sup> Anyone failing to do so may face a fine of up to KRW one million (US\$900).

Defamation, including written libel and spoken slander, is a criminal offense in South Korea, punishable by up to five years' imprisonment or a fine of up to KRW 10 million (US\$9,000) regardless of the truth of the contested statement. Insult charges, which unlike defamation offenses must be instigated directly by a complainant, are punishable by a maximum KRW two million (US\$1,800) fine or a prison sentence of up to one year. Defamation committed via ICs draws even heavier penalties—seven years in prison or fines of up to KRW 50 million (US\$45,000)—under the 2005 Information and Communications Network Act, which cites the faster speed and wider audience of online communication as a basis for the harsher sentencing.<sup>77</sup>

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74 Youngsu Won, “South Korea’s historic candle light protests bring down President Park,” *Links: International Journal of Socialist Renewal*, December 9, 2016, <http://bit.ly/2oDkti1>; Se-woong Koo, “South Korea breathes a sigh of relief,” *The New York Times*, March 10, 2017, <http://nyti.ms/2oDe6vc>; Ishaan Tharoor, “South Korea just showed the world how to do democracy,” *The Washington Post*, May 10, 2017, <http://wapo.st/2qGpMy8>

75 Ministry of Unification, “Notice on the use of North Korean internet sites” (in Korean), April 8, 2010, <http://bit.ly/1VVn7ad>

76 Reports of such contact, online and offline, are to be made through an online system at <http://www.tongtong.go.kr/>.

77 Act on Promotion of Information and Communications Network Utilization and Data Protection, Art. 61 amended December 30, 2005, <http://bit.ly/LoN97A>

Despite a nine-day filibuster by 38 opposition legislators, a draconian antiterrorism law (Act on Anti-Terrorism for the Protection of Citizens and Public Security) was passed in the 19th National Assembly in March 2016, 14 years after it was first proposed (see Surveillance, Privacy, and Anonymity).

The 20th National Assembly began on May 30, 2016, with the conservative party lacking a parliamentary majority for the first time since 2004. On the same day, all 122 conservative legislators united to propose a National Cybersecurity Act. Civil society groups condemned the proposal, saying it is an extension of the antiterrorism law and will further the powers of the National Intelligence Service by allowing for digital surveillance over civilians.<sup>78</sup> Following the impeachment of Park Geun-hye, Acting President Hwang Kyo-ahn proposed an almost identical bill on December 27, 2016. Both remained under consideration in mid-2017.

## Prosecutions and Detentions for Online Activities

Prosecutions for online activity increased under President Park Geun-hye. National security arrests increased 19 percent and detentions 37.5 percent during her first year in power.<sup>79</sup> Between 2012 and 2014, 104 people were convicted for violation of the National Security Act in cyberspace.<sup>80</sup>

Some of these cases involve legitimate speech. In one recent example, police arrested 67-year-old labor activist Lee Jin-young in January 2017 for the online distribution of Marxist-themed literature, which was deemed to “benefit the enemy.” His posts calling on fellow members of the Korean Railway Workers Union to go on strike in 2013 were considered to be part of the offense.<sup>81</sup> He was reportedly held in solitary confinement, and faced up to seven years in prison. Amnesty International and other human rights advocates called for his release.<sup>82</sup> He was cleared of the charge in July 2017.

The number of online defamation cases increased from 3,610 prosecutions and complaints in 2007 to 9,372 in 2015 and 6,137 in the first half of 2016.<sup>83</sup> These include offenses committed in private KakaoTalk messenger chats, based on complaints from others in the same chat.<sup>84</sup>

## Surveillance, Privacy, and Anonymity

During the coverage period of this report, the Supreme Court ruled that investigative agencies may not make repeat requests for communications data under a single warrant. In a less positive development, police and military officials were accused of joining communications apps to spy on human rights activists and gay soldiers, respectively.

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78 Byeong-il Oh, “Petition against the proposed National Cybersecurity Act” (in Korean), *Jinbonet*, October 10, 2016, <http://act.jinbo.net/wp/17784/>

79 Hong-du Park, “In Park’s first year, the number of violators of the National Security Act has leaped” (in Korean), *Kyunghyang Shinmun*, February 19, 2014, <http://bit.ly/1fzlxmM>; see also Amnesty International Report 2015/16.

80 “According to Cho Hae-jin, “Online violation of the NSA increasing dramatically but mostly going unpunished” (in Korean), *Yonhap News*, April 10, 2015, <http://bit.ly/1PzwA89>.

81 *Yonhap News*, “Lee Jin-young of Labor Books arrested for violation of the National Security Act” (in Korean), *Yonhap News*, January 4, 2017, <http://bit.ly/2oBWBuQ>.

82 Amnesty International, “Urgent Action: Activist held in solitary confinement,” February 27, 2017, <http://bit.ly/2oy6aJA>

83 *Financial News*, “Prosecutions and complaints in relation to ‘insults’ increased 9 times over the past 9 years” (in Korean), *Financial News*, September 28, 2016, <http://bit.ly/2oC0SOV>

84 Jinju Lee & Tae-yeong Kyeong, “‘Cyber defamation’ in KakaoTalk chatrooms results in prosecutions offline” (in Korean), *Kyunghyang Shinmun*, March 8, 2017, <http://bit.ly/2p5uCVF>.

In April 2017, it was reported that the country's army chief, General Jang Jun-kyu, ordered a nationwide "hunt" to out and prosecute gay personnel.<sup>85</sup> Reportedly initiated by a video that a soldier posted on social media showing him having sex with another soldier, the investigation expanded to about 50 soldiers, 20 of whom face charges under Article 92 of the Military Criminal Act. Article 92 characterizes homosexual activity as a "sexual harassment crime," even off duty and away from military premises; the Constitutional Court upheld it in 2002 and 2011. South Korea maintains compulsory conscription, and conscientious objectors are sentenced to 18 months in prison.<sup>86</sup> As part of the investigation, army officials seized soldiers' mobile phones without a warrant to retrieve messenger histories, and signed up for gay dating applications to identify more potential suspects. On May 24, 2017, an officer was sentenced to six months in prison for having had consensual sex with another soldier while off duty.

Labor activists were also subject to apparent surveillance. When farmer and activist Baek Nam-gi died on September 25, 2016, after sustaining injuries caused by police water cannons on November 14, 2015,<sup>87</sup> many students and human rights activists staged a sit-in protest. A member of Youth Left, a university student organization, identified a number known to belong to a police officer being used by someone posing as a group member in the organization's closed Telegram chatroom.<sup>88</sup>

Many users originally switched to Telegram, a Germany-based messaging service that advertises encrypted connections, after the domestic messenger app KakaoTalk became associated with state monitoring. But in a positive step on October 13, 2016, the Supreme Court ruled that the practice of investigative agencies making repeat requests for communications data under one warrant is illegal.<sup>89</sup> Lower courts had previously sanctioned ongoing monitoring of suspects in a practice that media reports dubbed "KakaoTalk monitoring."

Activists have accused government officials of surveilling them on KakaoTalk, and the company appeared to be facing unusual government pressure to comply with data requests prior to the Supreme Court judgment. In 2014, Jung Jinwoo, a vice representative of the Labor Party charged with "causing public unrest" during a protest over the Sewol ferry incident, said prosecutors had accessed two months' worth of his private KakaoTalk conversations, along with the personal details of his 3,000 contacts, as part of the investigation.<sup>90</sup> Yong Hye-in, who initiated a silence protest in support of Sewol victims, was another target.<sup>91</sup>

The company initially dismissed public concern about this cooperation, and hundreds of thousands of users switched to foreign providers perceived to be beyond the influence of the South Korean

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85 Bryan Harris, "S Korea army chief accused of ordering probe to out gay personnel," *The Financial Times*, April 13, 2017, <http://on.ft.com/2px5T97>; Bo-eun Kim, "Army chief accused of ordering 'homosexual hunt'," *The Korea Times*, April 14, 2017, <http://bit.ly/2ohH3sN>

86 Justin McCurry, "Amnesty International calls on South Korea to free conscientious objectors," *The Guardian*, May 13, 2015, <http://bit.ly/2oy4jVk>

87 San Yi, "South Korea: Independent union leader sentenced to five years in prison," *Labor Notes*, July 6, 2016, <http://bit.ly/2pjT5GR>.

88 Newsis, "Police illegally surveillance the youth organization that tries to block autopsy of Baek Nam-gi" (in Korean), *JoongAng Ilbo*, October 12, 2016, <http://bit.ly/2oiyJTr>; Hyun-ju Ock, "Police response to farmer's death sparks controversy," *The Korea Herald*, September 26, 2016, <http://bit.ly/2d3hx8P>

89 Yong-ha Park, "Court puts a break on the investigative agencies' 'expedient SNS search'" (in Korean), *Kyunghyang Shinmun*, October 13, 2016, <http://bit.ly/2oCtIUR>

90 "Jung Jinwoo: Police surveillance over 3,000 of my family and acquaintances" (in Korean), *JTBC News*, October 2, 2014, <http://bit.ly/1PAH0nY>.

91 Myeong-soo Seon, "How was KakaoTalk surveillance 'legally' possible?" (in Korean), *Pressian*, October 1, 2014, <http://bit.ly/1LkpBJJ>.

government.<sup>92</sup> Then-KakaoTalk CEO Lee Sir-goo vowed to reject future data requests, even those with warrants,<sup>93</sup> but the company said it would resume complying in October 2015. In November, Lee stepped down to face criminal charges for failing to prevent teenagers from sharing explicit photos of themselves on the service. Since holding a CEO personally liable for user activity is unprecedented in South Korea, critics suspected that the real goal was “to punish him for resisting government surveillance efforts” (see Content removal).<sup>94</sup>

Some government agencies may possess more technology that enables them to spy on internet users. In July 2015, leaked documents from the Italian company Hacking Team indicated that the National Intelligence Service (NIS), the country’s chief spy agency, purchased surveillance software to monitor digital activity, especially on domestic mobile devices and KakaoTalk.<sup>95</sup> The agency acknowledged purchase of the software ahead of the 2012 presidential election, but said it was only used to analyze material related to North Korea. An investigation into possible misuse of the equipment was dropped after a senior intelligence agent was found dead in an apparent suicide, leaving a note denying that his team had ever used spyware on citizens.<sup>96</sup>

An antiterrorism law passed in March 2016 strengthened NIS powers to undermine individual privacy.<sup>97</sup> The law enables the agency to access individuals’ travel records, financial records, private communications, location data, and any other personal information to advance terrorism investigations, on suspicion alone and without judicial oversight (Article 9). It also allows it to have any items of expression removed, both online and offline, without judicial oversight (Article 12)<sup>98</sup>

Court-issued warrants are otherwise required for investigative agencies to access the content of private communications. However, service providers may “choose” to surrender individuals’ metadata to the NIS and other investigative agencies without a warrant under Article 83(3) of the Telecommunications Business Act.<sup>99</sup> An amendment to Article 16 of the Presidential Enforcement Decree of the Network Act, effective from August 2015, shortened the legally permitted period for retaining users’ personal data from three years to one year.

There is limited transparency surrounding official requests for communications data. Service providers have a legal duty to inform the targets, but have been criticized for failing to fulfill it.<sup>100</sup> Government critics have been particularly vulnerable to undisclosed privacy violations. In

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92 Sam Judah & Thom Poole, “Why South Koreans are fleeing the country’s biggest social network,” *BBC News*, October 10, 2014, <http://bbc.in/1MimzB>.

93 Peter Micek, “South Korean IM app takes bold stand against police abuses,” *Access*, October 16, 2014, <http://bit.ly/1Q1as1f>; “Seven warrants for KakaoTalk monitoring still disobeyed and prosecutors looking to enhance law” (in Korean), *Yonhap News*, November 12, 2014, <http://bit.ly/1R9P8JC>.

94 “South Korea targets dissent,” *The New York Times*, November 19, 2015, <http://nyti.ms/1jah3N0>; Simon Mundy, “Freedom fears as South Korea targets chat app chief,” *Financial Times*, November 17, 2015, <http://on.ft.com/1OVI2p4>.

95 Bill Marczak & Sarah McKune, “What we know about the South Korea NIS’s use of Hacking Team’s RCS,” *Citizen Lab*, August 9, 2015, <http://bit.ly/1N5ctvi>; Yu-kyeong Jeong, “Everything you wanted to know about the NIS hacking scandal” (in Korean), *Hankyoreh*, July 23, 2016, <http://bit.ly/23liA2W>.

96 Jack Kim, “South Korea spy found dead with note denying agency targeted citizens,” *Reuters*, July 19, 2015, <http://reut.rs/1QyBC03>; David Gilbert, “Hacking Team leak linked to South Korean spy suicide,” *International Business Times*, July 20, 2015, <http://bit.ly/1QwkU52>.

97 Jun-beom Hwang, “Will passage of anti-terror bill turn the NIS into a monster?” *Hankyoreh*, March 3, 2016, <http://bit.ly/1TUSjY4>.

98 Steven Borowiec, “South Korean lawmakers try first filibuster since 1969 to block anti-terrorism bill,” *Los Angeles Times*, February 24, 2016, <http://lat.ms/1QpKNmV>.

99 Metadata includes the user’s name, RRN, postal address, telephone number, user ID, dates of joining or leaving the service.

100 See also a public campaign by Open Net: “Reclaim the right to be informed when telecom companies disclose personal information” (in Korean), <http://bit.ly/1GRAX6e>.

2016, environment activist Lee Heon-seok, civil rights lawyer Yoon Jiyong, and labor union representatives Park Byeong-woo and Kwak Yi-kyung were among dozens to discover after the fact that they had been the subjects of government requests to mobile carriers, though they were not under arrest or formal investigation at the time. The NIS and police retrieved Park's metadata ten times within four months and Kwak's 17 times over a year.<sup>101</sup>

The government publishes the number of times data was provided to investigative agencies based on these requests, but user rights advocates say the figures may be misleading, since one request can affect many individuals over a long period of time.<sup>102</sup> According to an official press release service providers fulfilled 574,768 requests for metadata in the first half of 2016, an increase of 14,741 over the same period in 2015. Requests to access the logs of private communications decreased from 150,880 to 145,467, while requests for private communications content declined from 203 to 165.<sup>103</sup> Metadata in this context reveal information about the subscriber, while logs document what they did or who they spoke to.

There are some limits on anonymous communication, although a problematic "internet real-name system" was largely dismantled in 2012. First adopted in a 2004 amendment to the Public Official Election Act,<sup>104</sup> the system required users to submit Resident Registration Numbers (RRNs) to join and contribute to major websites. An RRN is a 13-digit number uniquely assigned at birth. In 2007, the system was applied to any website with more than 100,000 visitors per day under Article 44(5) of the Information and Communications Network Act. The Constitutional Court ruled Article 44(5) unconstitutional in 2012, citing privacy vulnerabilities from cyberattacks among other factors.<sup>105</sup> Under 2013 amendments to the Personal Information Protection Act, website administrators are prohibited from collecting RRNs, and failure to protect an individual's RRN is punishable by fines of up to KRW 500 million (US\$450,000).<sup>106</sup>

Mobile service providers still require users to provide their RRNs, and some other registration requirements remain in place. In 2015, the Constitutional Court upheld clauses of the Public Official Election Act requiring people to verify their real names before commenting online during election periods (22 days before a presidential election and 13 days before a general election).<sup>107</sup> Other laws, such as the Children and Youth Protection Act, the Game Industry Promotion Act, and the Telecommunications Business Act, separately require internet users to verify their identities.<sup>108</sup> The KCC is exploring other online identity verification methods besides RRNs to comply with these laws.

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101 Hyung-kyu Kim, "NIS digs around the communication records of environmental activists, union representatives, and lawyers" (in Korean), *Kyunghyang Shinmun*, March 4, 2016, <http://bit.ly/1Sp9n8O>.

102 Gwang Choi, "The public prosecutors access 67 accounts with one piece of document" (in Korean), *Money Today*, December 3, 2014, <http://bit.ly/1ekA7Gy>.

103 Ministry of Science, ICT and Future Planning, "Statistics of communication data requests by investigative agencies in the first half of 2016" (in Korean), November 1, 2016, <http://bit.ly/1spxM4m>.

104 The amendment became Article 82, Provision 6.

105 Kyung Sin Park, "Korean internet identity verification rule struck down unconstitutional; 12 highlights of the judgment," *K.S. Park's Writings* (blog), August 25, 2012, <http://bit.ly/1nevLB7>.

106 Yun-ji Kang, "Hide your RRN away! Ban on online collection of user RRNs" (in Korean), *Policy News* (blog by the Ministry of Culture, Sports and Tourism), February 21, 2013, <http://bit.ly/1eefGaD>.

107 Kyung-min Lee, "Online real name system during election periods constitutional: court," *The Korea Times*, July 30, 2015, <http://bit.ly/28QNHnH>. Article 33 of the Act prescribes an election period and Article 82(6) requires online services to verify users' real names during this period.

108 Bora Jeong, "Internet real-name system and its lingering remains" (in Korean), *Bloter.net*, September 13, 2013, <http://bit.ly/1jKR4Hx>.

## Intimidation and Violence

There have been no reports of physical violence against online users in South Korea. In the past year, however, women reported being harassed in retaliation for expressing support for feminist causes online.

The intimidation followed the murder of a woman near Gangnam Station in Seoul in May 2016, which sparked intense online debate about gender-based discrimination and violence in South Korea.<sup>109</sup> Women reported receiving intimidating comments in reprisal for sharing empowering messages on social media.<sup>110</sup> A Facebook page set up to commemorate the murder victim was switched to private after Facebook Korea warned the administrators that it had been brought to their attention that the page violated community standards. The administrators, including student Lee Jiwon, reported receiving abuse from other Facebook users.<sup>111</sup>

In August 2016, the online game company Nexon fired voice actress Kim Jayeon after she published a photo of herself on Twitter wearing a T-shirt with the slogan “Girls do not need a prince.” The image prompted a backlash from male gamers, and many responded with comments that observers characterized as misogynic. Nexon told the BBC it had replaced the actress in order to “[recognize] the voices” of those who complained, and said the company did not agree with the T-shirt, which was being sold to fundraise for a “radical” feminist group.<sup>112</sup> Digital artists who pledged support for Kim were also subject to a boycott organized by men’s rights advocates.<sup>113</sup>

## Technical Attacks

Government critics are not known to be subject to targeted cyberattacks in South Korea, though the special prosecution team investigating the presidential corruption scandal was attacked by hackers in January 2017. The attacks originated from abroad and were suspected to represent an attempt to interfere in the investigation. No significant damage was reported<sup>114</sup>

Reported violations of electronic data tripled between 2010 and 2013, from 54,832 incidents to 177,736, but decreased to 98,210 in 2016, according to official statistic<sup>115</sup> Local officials alleged that the North Korean government was behind cyberattacks on major banks and broadcasting stations in March 2013,<sup>116</sup> on nuclear power plants in December 2014,<sup>117</sup> and an attack which seized control

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of a large university hospital network for 8 months in 2015,<sup>118</sup> among many other incidents, which highlight vulnerabilities in the country's ICT infrastructure.<sup>119</sup>

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