



*Permanent Mission of the Republic of Korea
Geneva*

*Avenue de l'Ariana 1 P.O.Box 42, 1211 Geneva 20
Tel: +41(0)22 748 0000 / Fax: +41(0)22 748 0001
geneva.korea@mofa.go.kr*

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The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights), and has the honor to refer to the Communication from Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, dated 4 July 2019(ref: AL KOR 2/2019).

The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva has further the honor to submit, as attached, the response of the Government of the Republic of Korea.

The Permanent Mission of the Republic of Korea to the United Nations and Other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurance of its highest consideration.

Encl.: as stated

Geneva, 29 August 2019



Office of the High Commissioner for Human Rights (OHCHR)
Palais des Nations
1211 Geneva 10

Response to the Communication from the Special Rapporteur of the United Nations Human Rights Office of the High Commissioner

< August 2019, Korea Communications Commission >

□ Background to the introduction of SNI filtering

- o Because there were no means to exercise authority over unlawful information such as child or youth pornography, illegally filmed material(filmed without consent), and illegal gambling rampantly being distributed on illegal overseas websites through servers located overseas, there was a limit to drawing up measures to prevent access and provide relief for victims.
- Even before the introduction of SNI filtering, there were consistently calls from the National Assembly, the media, and civic groups to improve the efficacy of blocking access to illegal overseas websites.

< Correction Requests for Harmful, Unlawful Information Overseas by Year (KCSC) >

Status	2015	2016	2017	2018	Total
Total Correction Requests	148,751	201,791	84,872	238,246	673,660
Access blocking (Percentage)	111,008(75%)	157,451(78%)	66,659(79%)	187,980(79%)	523,098(78%)

※ Common violations: gambling, prostitution/pornography, illegal food/drugs, violation of rights, etc.

※ During the last year, the KCSC made approximately 230,000 requests for correction for unlawful information. Of these,

approximately 79% (190,000 cases) were for overseas illegal websites, which shows that the majority of the content was distributed on illegal sites with servers overseas. (Domestic cases were approximately 50,000 or 21%).

o However, it was impossible to block access to unlawful information on illegal sites overseas using secure connections(https) with existing blocking technology such as DNS¹ and URL².

- In response, the Korea Communications Commission(KCC), the Korea Communications Standard Commission(KCSC), and telecom operators jointly introduced SNI³ filtering to enable blocking access to illegal websites using https.

※From 11 February to 30 June 2019, there were 22,825 cases of blocked access to overseas unlawful information(16,332 cases of illegal gambling, 4,460 cases of illegal pornography, 1,108 cases of pirated content).

□ Legal grounds for the introduction of SNI filtering

o Pursuant to Article 21(Duties of the Korea Communications Standards Commission) of the Act on Establishment and Operation of Korea Communications Commission(hereinafter “Act on Establishment of KCC”) and Article 44-7(Prohibition on Circulation of Unlawful Information) of the

1 Method by which a domain is registered on the server to be blocked. If the particular domain is entered, access is blocked (rerouting to overseas DNS possible)

2 Method by which the URL is blocked by installing equipment at the telecom's overseas facilities

3 Information displaying the sender's destination hostname (domain)

Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.(hereinafter, “Network Act”), the KCSC deliberates on and issues correction requests(such as blocking access) for unlawful information and information harmful to adolescents.

- Following deliberation, the KCSC’s correction requests take the form of content deletion, termination of use for domestic websites/blogs, blocking access to overseas websites, etc.⁴

o Pursuant to Article 44-7(Prohibition on Circulation of Unlawful Information) of the Network Act, “the Korea Communications Commission may order a provider of information and communications services or a manager or an operator of a message board to reject, suspend, or restrict management of information... subject to deliberation by the KCSC.”⁵ If the operator or provider fails to comply, the KCC can issue a penalty(two year imprisonment/20,000,000 won fine)

< Relevant Laws >

4 Executive Decree of Act on Establishment of KCC, Article 8(2)

5 Network Act, Article 44-7(2) and (3)

ACT ON PROMOTION OF INFORMATION AND COMMUNICATIONS NETWORK UTILIZATION AND INFORMATION PROTECTION, ETC.

Article 44-7 (Prohibition on Circulation of Unlawful Information)

(1) No one may circulate any of the following information through an information and communications network:

1. Information with obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, image, or motion picture;
2. Information with content that defames other persons by divulging a fact or false fact, openly and purposely to disparage the person's reputation;
3. Information with content that arouses fear or apprehension by reaching other persons repeatedly in the form of code, words, sound, image, or motion picture;
4. Information with content that mutilates, destroys, alters, or forges an information and communications system, data, a program, or similar or that interferes with the operation of such system, data, program, or similar without a justifiable ground;
5. Information with content that falls within an unwholesome medium for youths under the Youth Protection Act and that is provided for profit without fulfilling the duties and obligations under the relevant statutes and regulations, including the duty to verify the opposite party's age and the duty of labeling;
6. Information with content that falls within speculative activities prohibited by statutes and regulations;
- 6-2. Information regarding content of transactions of personal information in violation of this Act or other statutes and regulations concerning the protection of personal information;
7. Information with content that divulges a secret classified by statutes and regulations or any other State secret;
8. Information with content that commits an activity prohibited by the National Security Act;
9. Other information with content that attempts, aids, or abets to commit a crime.

(2) The Korea Communications Commission may order a provider of information and communications services or a manager or an operator of a message board to reject, suspend, or restrict management of information under paragraph (1) 1 through 6 and 6-2, subject to deliberation by the Communications Standards Commission: Provided, That if the information falls under paragraph (1) 2 or 3, the Commission shall not issue an order to reject, suspend, or restrict such management against the intention specifically manifested by the victim of the relevant information.

(3) The Korea Communications Commission shall order a provider of information and communications services or a manager or an operator of a message board to reject, suspend, or restrict management of information under paragraph (1) 7 through 9, if the information falls under all of the following:

1. There was a request from the head of a related central administrative agency;
2. A demand for correction was made pursuant to subparagraph 4 of Article 21 of the Act on the Establishment and Operation of Korea Communications Commission after deliberation by the

Communications Standards Commission within seven days from the date on which the request under subparagraph 1 had been received;

3. The provider of information and communications services or the manager or operator of the message board has not complied with the demand for correction.

Article 73 (Penalty Provisions) 5. A person who fails to comply with an order issued by the Korea Communications Commission under Article 44-7 (2) or (3) ;

Act on the Establishment and Operation of Korea Communications Commission:

Article 21 (Duties of the Korea Communications Standards Commission) Duties of the Korea Communications Standards Commission shall be as follows:

3. Deliberation on matters falling under Article 44-7 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.;

4. Deliberation on information prescribed by Presidential Decree as necessary for nurturing sound communications ethics, from among information disclosed to the public and distributed via telecommunication circuits, or requests for correction;

ENFORCEMENT DECREE OF THE ACT ON THE ESTABLISHMENT AND OPERATION OF KOREA COMMUNICATIONS COMMISSION

Article 8 (Information Subject to Deliberation by Standards Commission) (2) Kinds of requests for corrective action under subparagraph 4 of Article 21 of the Act shall be as follows:

1. Deletion of the relevant information or blocking access thereto;
2. Suspension or termination of the use of the relevant information to users;
3. Fulfillment of the duty to label information harmful to juveniles or alterations of labeling methods, and other matters deemed necessary.

□ Response to the Special Rapporteur

① Request 1) Additional information and comments on allegations

Allegation 1: “The browsers of users accessing the blocked HTTPS websites will be blacked out without any notification as if they have connection problem.”

“While the previous censorship method alerted the users of the government censorship by diverting the traffic to a warning page, SNI filtering does not inform the users of the state intervention. Hence, without proper notice, the public may be deprived of an opportunity to be aware of the information that they are denied access to and content providers are also preempted from learning about the blocked users and petitioning the government to restore the content.”

o Response: When the KCSC makes a request for correction, the relevant person is given an opportunity to state his/her opinion in advance.⁶ Additionally, the user has the right to file an objection, thereby allowing for a swift response to protect user rights.⁷ The person’s right to institute administrative appeal and administrative litigation through the judicial court is also guaranteed.⁸ Therefore it is incorrect to claim that the

6 Act on Establishment of the KCC, Article 25(2)

7 Enforcement Decree of the Act on Establishment of the KCC, Article 8(5)

8 Act on Establishment of the KCC, Article 25(6)

deliberation process on communications is opaque or that there are restrictions on opportunity for petition.

- Furthermore, although the SNI field blocking technique does not divert to a notification page, such notification does not influence the users' realization that a website has been blocked. Thus this cannot be seen as a reason for loss of the users' right to petition.

< Relevant Laws >

Act on the Establishment of the KCC

Article 25 (Sanctions, etc.) (1) When it is deemed that contents of broadcasting or information and communications violate deliberation provisions under Article 24, the Korea Communications Standards Commission may determine any of the following sanctions:

1. Sanctions, recommendations, or the submission of opinions under Article 100 (1) of the Broadcasting Act;
2. Refusing, suspending or restricting the handling of illegal information under Article 44-7 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.

(2) Where the Korea Communications Standards Commission intends to determine sanctions under paragraph (1) and a request for correction under subparagraph 4 of Article 21, it shall provide an opportunity for the relevant person or his/her agent to state his/her opinion in advance: Provided, That where it intends to determine a request for correction under subparagraph 4 of Article 21, it may choose not to provide an opportunity for the relevant person or his/her agent to state his/her opinion in any of the following cases: <Amended by Act No. 13073, Jan. 20, 2015>

1. Where it is necessary to make an urgent request for correction for public safety and security or welfare;
2. Where it is clearly impracticable or unnecessary to hear the opinion of the relevant person and his/her contact details are unknown;
3. Where it is clearly impracticable or unnecessary to hear the opinion of the relevant person, and a statement of opinion based on a request for correction is deemed unnecessary because the fact that is a prerequisite for the request for correction is objectively proved in accordance with the final and conclusive judgement, etc. made by a court;
4. Where the relevant person clearly expresses his/her intention of relinquishing an opportunity to state his/her opinion.

(6) Where the Korea Communications Standards Commission makes a request for correction, it shall inform the relevant person of whether he/she may institute administrative appeal and administrative litigation against such disposition, whether he/she may object to such disposition, the procedure and period for making a request therefor, and other necessary matters.

ENFORCEMENT DECREE OF THE ACT ON THE ESTABLISHMENT AND OPERATION OF KOREA COMMUNICATIONS COMMISSION

Article 8 (Information Subject to Deliberation by Standards Commission) (5) An information and communications service provider, a person who manages and operates a bulletin board or a user of information may file an objection to a request for corrective action under paragraph (2) by submitting a document stating the following to the Standards Commission within 15 days from the date he/she receives

such request for corrective action:

1. Name, address, telephone number, and email address of the person who files such objection;
2. Reference number of the written request for corrective action;
3. Grounds for filing such objection;
4. Signature and seal or signature of the person who files such objection;
5. Other matters necessary to file such objection.

Allegation 2: “In addition to the new policy adopted by the KCC, Article 21 of the Act Establishing KCC, which administers technical regulation of the communications industry, confers broad discretion to communication regulatory agencies. The provision provides that the agency has duties to deliberate on ‘information prescribed by Presidential Decree as necessary for nurturing sound communications ethics, from among information disclosed to the public and distributed via telecommunication lines, or requests for correction thereof’ and ‘matters concerning the soundness of information distributed via telecommunications circuits.’”

- o Response:** The KCSC clarifies that the principle of least control is the basic principle for deliberation and prescribes the specifics of the information and communications deliberation standards pursuant to the Rules for Deliberation on Information and Communications as provided for by Article 24 Item 2 of the Act on the Establishment of the KCC.
- In order to preserve freedom of expression, the KCSC complies with standards and procedures according to the laws and regulations under the principle of least control, and deliberates and makes requests for correction on clearly unlawful information.
 - The Constitutional Court of Korea also decided that: requests for correction are not excessive restriction on freedom of expression; that the means of regulation are not excessive and there is no issue of arbitrary execution on the part of the KCSC; and that the limitation on freedom of expression of the provider of unlawful information due to the correction request is small compared to the overall public need.⁹
 - Therefore, it cannot be said the regulatory agencies have been given excessively broad discretion.

⁹ The Request for Correction by Korea Communications Commission, 2011Hun-Ka13, 23 February 2012

< Relevant Laws >

ACT ON THE ESTABLISHMENT AND OPERATION OF KOREA COMMUNICATIONS COMMISSION

Article 24 (Enactment and Proclamation of Deliberation Provisions) The Korea Communications Standards Commission shall enact and proclaim the following deliberation provisions necessary for performing duties under Article 21:

1. Provisions concerning deliberation on broadcasting under Article 33 of the Broadcasting Act;
2. Provisions concerning deliberation on information and communications, with the aim of deliberating under the subparagraphs 3 and 4 of Article 21.

RULES FOR DELIBERATION ON INFORMATION AND COMMUNICATIONS

Article 4 (Basic Principles of Deliberation) (1) The following shall be the basic principles for deliberation by the Commission:

1. Principle of least control;
2. Principle of impartiality and objectivity;
3. Principle of promptness;
4. Principle of protection of personal information and privacy.

Allegation 3: "... the policy raises some concerns with respect to its compatibility your Excellency's Government's obligations under international human rights law, in particular due to the policy's use of vague categories as well as with the broad discretion that the policy confers to the communication regulatory agencies... In this connection, I wish to remind your Excellency's Government of its obligation under Article 19 of the International Covenant on Civil Rights and Political Rights (ICCPR)... Any restriction the right to freedom of expression must meet the standard established by Article 19(3), that is, restrictions must be provided by law, and be necessary and proportionate to the legitimate aim... I urge your Excellency's Government to ensure that any restrictions on freedom of expression is consistent with Article 19 of the ICCPR and related human rights standards."

- o **Response:** While Article 19 of the ICCPR guarantees freedom of expression, it also stipulates it be may subject to certain restrictions in certain cases regarding protection of national security, of public order, or of public health or moral as provided by law and necessary.

ICCPR Article 19. 1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

- Article 21 of the Constitution of the Republic of Korea provides for the freedom of speech and the press, and freedom of assembly and association. Pursuant to Article 37(2) of the Constitution, “the freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.”
- Based on the Constitution of the Republic of Korea, the KCC and KCSC block unlawful information within the scope of the authority provided to them according to the relevant laws, including the Act on the Establishment of the KCC and the Network Act, in order to maintain law and order in Korea and protect the public.
- SNI filtering does not restrict expression by examining the information in the packet that is transmitted, but rather is a means to block Internet websites which have already been deemed to be unlawful according to due process in order to maintain public order and protect the people as prescribed in the Constitution and relevant laws of the Republic of Korea, as well as Article 19 of the ICCPR. Therefore, it cannot be said that SNI

filtering is incompatible with Article 19 of the ICCPR.

- Recognizing the risks related to public deliberation, the KCSC does not only rely upon mandatory deliberations, but also is striving to allow for voluntary self regulation with the cooperation of the Internet operators.

< Relevant Laws >

CONSTITUTION OF THE REPUBLIC OF KOREA

Article 21(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.

Article 37(2) The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.

Allegation 4: “The policy, through the vague and overbroad categories of “unlawful sites including illegal videos, gambling, pornography ,and pirated contents,’ may fail the ‘ provided by law’ requirement as it leaves open the specific parametes of what constitutes ‘unlawful’ and what standards may be applied by the agencies in conducting SNI flitering. In addition, the broad and vague scope of these Communication Standards Commission and the Korea Communications Commission, provides your Excellency's Government with broad leeway to disproportionately restrict the public's right to access to information that is protected under international human rights law.”

- o **Response:** Blocking access to illegal information is done pursuant to Article 44-7 of the Network Act, Article 21 Item 4 of the Act on the Establishment of the KCC,

and Article 8(2) of the Enforcement Decree of the Act on the Establishment of the KCC.

- The KCSC determines whether the content on a website is illegal through deliberations. The KCSC is an independent body consisting of nine commissioners recommended by the National Assembly, the representative body of the Korean people.
- The KCSC takes into account the deliberation principles(principle of least control) and standards according to the Rules for Deliberation on Information and Communications, as well as the crime, violation of Acts and subordinate statues, disruption of good morals, disruption of social order, etc., when determining which sites that distribute unlawful information to block.

< Factors Considered when Deliberating Unlawful, Harmful Information >

Quantitative and qualitative degree and the importance it occupies within the whole; socioethical, literary, artistic, educational, medical, and scientific aspects and characteristics by types of provision; whether sound ethical beliefs, legal awareness, and social norms are harmed; pattern of expression of information, character and influence, contents and theme and overall context (Rules for Deliberation on Information and Communications, Article 4(2))

- According to several precedents set by the Constitutional Court of Korea,

considering the scale of the duplicability, transferability, and speed of Internet media compared to existing communications methods, it was determined that the provisions to prohibit distribution of unlawful information in each subparagraph of Article 44-7(1) of the Network Act following the KCSC's deliberation does not infringe upon freedom of expression.¹⁰

- Additionally, because unlawful information that is subject to access blocking has been defined by law as such, the concept of unlawful information is clearly definable by previous legal precedents.
- Unlawful information is defined in the Criminal Act, Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, the Network Act, Juvenile Protection Act, and more.

※For example, according to Article 14 of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, illegally filmed material is defined as “photos of another person's body, which may cause any sexual stimulus or shame against the latter's will, by using a camera or similar mechanism” and also includes the copies (and copies of the copies)

¹⁰ 2015. 10. 21. 2014Hun-Ba344, 2015. 10. 21. 2012Hun-Ba415 etc.

of the photos.

< Constitutional Court Precedents >

※ In the case of obscene information (Subparagraph 1), the Constitutional Court determined that the concept of “obscene” is content that causes sexual stimulus or shame, opposing concept of sexual morality. When observed and evaluated, if the content overtly displays sexual parts or acts in a manner that is beyond vulgar and promiscuous to infringe upon or distort the dignity and value of a person who should be respected and protected, and it is wholly or dominantly not simply an expression of sexual interest nor does it have cultural, artistic, idealistic, scientific, medical, or educational value, the court determined this concept of obscene does not violate the principle of clarity. (Constitutional Court decision 2013. 8. 29. 2011 Hun-ba 176)

※ According to Article 2(1)1 of the Act on Special Cases Concerning Regulation and Punishment of Speculative Acts, Etc., “the term ‘speculative act’ means any act to cause gain or loss of property by collecting goods or benefits from such property (hereinafter referred to as “goods, etc.”) from many people and by determining the gain or loss by coincidental means.” The Supreme Court has also defined the concept of “gambling” as two or more persons risking one’s own property and determining the gain or loss by coincidental means. (Constitutional Court decision 2011. 1. 13. 2010 Do 9330)

※ Regarding Article 44-7(1)9 of the Network Act, the Constitutional Court determined the following :

- “In this case, the Constitutional Court held that Article 44-7 Section 1 Item 9 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, which prohibits circulation of information whose content is intended to commit, solicits or aids a crime did not violate the principle of clarity or the principle against excessive restriction and thus is constitutional.”
- “Considering the meaning in general usage of their terms, “crime, “solicit“ and “aid,“ the phrase information that is intended to commit a crime” should mean information circulated for the purpose of committing a crime, whose content self-evidently shows the criminal purpose.”

(Constitutional Court decision 2012. 2. 23. 2008 Hun-ma 500)

※ The Constitutional Court has used child pornography, leakage of state secrets, libel, pirated content, etc as examples of content that is in itself clearly illegal and societally harmful. (Constitutional Court decision 2002. 6. 27. 99 Hun-ma 480).

- Because there are such standards for interpretation from relevant laws and decades of precedents, there is no possibility for the KCC or KCSC's authority to interfere in such interpretations.
- Accordingly, it is difficult to allege that "illegal videos, gambling, pornography, and pirated content" are vague and overbroad, and fail the "provided by law" requirement. It is also incorrect to say that the broad and vague scope of the KCSC and KCC provides the Korean government "with broad leeway to disproportionately restrict the public's right to access to information that is protected under international human rights law."

Allegation 5: “The monitoring of SNI fields circumvents the privacy protections provided by encryption, and thereby unduly interferes with freedom of expression...”

“The opacity of the censorship process, coupled with the broad categories of “unlawful sites,” burdens the right of people in the Republic of Korea to access information and exerts a chilling effect on freedom of expression in the country.”

o Response: The SNI blocking method blocks access using the SNI field, which is not encrypted and is public, so the SNI field is not subject to privacy protection.

- When the URL information is encrypted with https, SNI information*, which is not encrypted at the beginning of the authentication process when first connecting to a site, is mechanically(automatically) compared with the block list. If it is an illegal site, it is blocked. Thus, this process does not infringe upon privacy.

*In https communications, information is used to confirm the connected server domain before the data is encrypted

- Therefore, it cannot be said that the SNI field blocking method weakens online privacy protection provided through encryption and anonymization technology. It was introduced to be a more effective method than the existing blocking methods to block illegal overseas websites.

- Furthermore, the nine-member committee of the KCSC, appointed by the

National Assembly, a representative body of the public, carry out deliberations and make decisions on the matter.

- For illegal information distribution websites subject to blocking, the KCSC takes into account the deliberation principles and standards according to the Rules for Deliberation on Information and Communications, as well as the crime, violation of Acts and subordinate statutes, disruption of good morals, disruption of social order, etc. Therefore it cannot be said that the “opacity of censorship”(and because the process is not censorship, the use of the word is not appropriate in this context) weakens access to information and freedom of expression in a chilling manner.

Allegation 6: “With respect to Article 21 of the Act Establishing KCC, I am concerned that this provision fails to meet the level of clarity and precision required by Article 19(3) of the ICCPR for restrictions on freedom of expression. To satisfy the requirements of legality, restrictions must additionally be sufficiently clear, accessible and predictable. The wording of the statute does not meet the level of clarity and predictability as required by international human rights law and such ambiguity may confer excessive discretion on regulatory agencies. Not only blanket delegation of authority to the lower-level Presidential Decree is unacceptable but also the Presidential Decree itself is any more specific than the statutory language: the scope of its Article 8 includes “any information deemed necessary to be deliberated upon.” Under this imprecise mandate, many lawful contents have been deleted or blocked as sometimes courts have shown.”

The expansive discretion given to these agencies, combined with the opacity of the procedure, standards and even the contents subject to censorship, appears particularly problematic given extremely limited opportunities for review or appeal of removals. The lack of independent and external review or oversight of removal orders reinforces the unchecked discretion of government authorities and raises concerns of due process. Consistent with my past reporting, I urge Your Excellency's Government to categorically reject a model of regulation “where government agencies, rather than judicial authorities, become the arbiters of lawful expression.”

- o **Response:** Article 19(3) of the ICCPR states that the exercise of freedom of expression “carries with it special duties and responsibilities. It may be therefore subject to certain restrictions, but these shall only be such as provided by law and are necessary: for respect of the rights or reputations of others; for the protection of national security or of public order, or of public health or morals.”

- In the Republic of Korea, unlawful information is blocked within the necessary scope to protect the people in order to maintain the public order in Korea. This is done according to the lawful procedures and powers granted to the authorities pursuant to the Act on the Establishment of the KCC, the Network Act, and other relevant laws.
- In order to guarantee freedom of expression to the maximum extent possible, the KCSC complies with the standards and processes of the regulations and rules according to the principle of least control. It carries out deliberations and makes requests for corrections for clearly unlawful information. The Rules for Deliberation on Information and Communications clarifies that the principle of least control is the basic principle for deliberation and prescribes the specifics of the information
- The Constitutional Court of Korea also determined that the KCSC's request for correction did not constitute excessive restriction on freedom of expression, and that the regulation method was not excessive. There is no issue of arbitrary execution on the part of the KCSC, and any restriction on the freedom of expression of the provider of the unlawful

information is small compared to the public need.¹¹

- Furthermore, the KCSC's deliberation process is done in a public meeting, so the transparency of the process is guaranteed by law. The decision on unlawful information is made after discussions by the KCSC, an independent, consultative body of nine commissioners with professional knowledge who are appointed by both opposition and ruling parties of the National Assembly. Therefore, it is impossible for a few commissioners to sway the decision. Finally, the relevant laws define unlawful information, and the KCSC's precedent decisions and other judicial precedents exist, so it is difficult for individual commissioners to unduly influence the deliberation.
- There were concerns raised on the subject of deliberation as the KCSC deliberates on information prescribed by Presidential Decree according to Article 21 Item 4 of the Act on the Establishment of the KCC, but the clarity and constitutionality of this matter was upheld by the Constitutional Court of Korea.
- Regarding Article 21 Item 4 of the Act on the Establishment of the KCC,

11 Constitutional Court decision 2012. 2. 23. 2011 Hun-ga 13

the Constitutional Court concluded: “A comprehensive understanding of relevant laws, including the provisions on the purpose and illegal information of the Information and Communications Act (Articles 1, 41 through 44-3, and 44-7), suggests anyone can predict that unhealthy information prescribed by Presidential Decree subject to review and request for correction would be information that is prohibited or regulated by the above provisions of the Information and Communications Act, or one that is similar to such information.”¹²

- When the KCSC makes a request for correction, the party in question is given the opportunity to submit a statement of opinion¹³, as well as the opportunity to object, making it possible to swiftly provide relief.¹⁴ There is also the opportunity for judicial appeal through the courts.¹⁵ Thus, it cannot be said that the telecommunications deliberation process is opaque or that there is no opportunity for appeal.

- Additionally, as the KCSC is a private, independent body formed and

¹² Constitutional Court decision 2012.2.23. 2011Hun-ka13

¹³ Act on Establishment of the KCC, Article 25(2)

¹⁴ Enforcement Decree of the Act on Establishment of the KCC, Article 8(5)

¹⁵ Act on Establishment of the KCC, Article 25(6)

operated pursuant to the laws founded on a societal consensus to realize the public values of creating a sound communications culture and proper user environment, the independence and neutrality of the KCSC is guaranteed.¹⁶ Furthermore, because there is opportunity for appeal through the courts(judicial court, Constitutional Court), establishing a separate authority is not in line with the purpose of the current communications deliberation system.

< Relevant Laws >

Act on Establishment of the KCC

Article 18 (Establishment, etc. of the Korea Communications Standards Commission)

(1) The Korea Communications Standards Commission (hereinafter referred to as the "Korea Communications Standards Commission") shall be established to perform its duties independently, with the purposes of guaranteeing the public nature and fairness of broadcasting contents, creating a sound culture in the areas of information and communications, and creating an environment where information and communications are used in an appropriate manner.

Article 20 (Guarantee of Status, etc. of Deliberators) (1) No deliberator shall be influenced by unfair instructions or interference from outside in performing his/her duties.

16 Act on the Establishment of the KCC, Article 18 and 20

Allegation 7: “Also the proportionality of website blocking as a measure abating the harms arising of expressions must be seriously reassessed. Website blocking by a government blinds its own citizens from certain information available to the citizens of all other countries, undermining the media literacy and social stock of information of its own citizens while leaving intact the more culpable sources of the harms.”

o **Response:** The content subject to access blocking is not lawful video content, but rather websites that distribute child pornography, illegally filmed videos, illegal gambling, and other unlawful information.

- The harm resulting from illegally filmed videos is rising rapidly and access to illegal overseas gambling sites which encourage speculation is all too easy. There is a need now more than ever for an effective means of preventing the distribution of illegal information.

- From 11 February 2019 to 30 June 2019, the number of cases that were blocked were 16,332 for illegal gambling and 4,460 for illegal pornography websites. These figures show the seriousness of unlawful information distribution.

※Access to lawful adult video through procedures designated by relevant laws, such as being rated for adult audiences by the Korea Media Rating Board, are not blocked.

- The duplicability, transferability, and speed of Internet media is on an entirely different scale than the existing communications methods. Thus

when the circulation of unlawful information like child/youth pornography, illegally filmed videos, illegal pornography, etc., is not blocked according to the terms of each subparagraph in Article 44(7)1 of the Network Act, the following become impossible to properly execute:

- Pursuant to Article 11 of the Act on the Protection of Children and Youth Against Sex Offences, imprisonment for not more than 10 years for the distribution of child or youth pornography;
 - Pursuant to Article 14 of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes, punishment of imprisonment for not more than five years or a fine not exceeding thirty million won for the distribution of illegally filmed material; and
 - Pursuant to Article 243 of the Criminal Act, punishment by imprisonment for not more than one year or a fine not exceeding five million won for the distribution of obscene pictures.
- Furthermore, there is the serious concern that youth and adolescents may be widely exposed to an illegal Internet environment if unlawful information is rapidly spread on information and communications networks. Thus the objective of the blocking measures to prohibit distribution of unlawful material is just.

- Therefore, it is determined that there is proportionality of website blocking as a measure abating the harms arising of expressions. It is incorrect to say that “website blocking by a government blinds its own citizens from certain information available to the citizens of all other countries, undermining the media literacy and social stock of information of its own citizens while leaving intact the more culpable sources of the harms.”

② Request 2: Provide information about the human rights assessments made prior or subsequent to the introduction of SNI filtering

o The KCSC clarifies that the principle of least control is the basic principle for deliberation and prescribes the specifics of the information and communications deliberation standards pursuant to the Rules for Deliberation on Information and Communications as provided for by Article 24 Item 2 of the Act on the Establishment of the KCC.

- In order to guarantee freedom of expression, the KCSC complies with the standards and processes according to the principle of least control. The KCSC deliberates and makes requests for correction on clearly unlawful information being distributed on overseas sites such as child pornography, illegally filmed material, and illegal gambling. Thus, there has been no need for a human rights assessment either prior or subsequent to the introduction of SNI filtering.

□ **Additional Comments**

- o In the Republic of Korea, the KCSC carries out blocking measures following deliberation only on unlawful information which clearly violates the laws of the Republic of Korea, including child pornography, illegally filmed material, and gambling, not on lawful information. Therefore the process aligns with Korea's obligations under Article 19(3) of the ICCPR.
- The government of the Republic of Korea fully understands and respects the comments made by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Moving forward, the government of Korea pledges to spare no effort in ensuring that freedom of expression is not limited in the process of enforcing the law.
- Having noted the above, the government of Korea hopes that it is now understood that SNI filtering technology is simply a technological development of existing methods, and does not infringe upon the public's freedom of expression or privacy.