

Manila Principles: One Year in Korea

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MANILA PRINCIPLES

ON INTERMEDIARY LIABILITY



INTRO

All communication over the Internet is facilitated by intermediaries such as Internet service providers, social networks, and search engines. The policies governing the legal liability of intermediaries for the content of these communications have an impact on users' rights, including freedom of expression, freedom of association and the right to privacy.

With the aim of protecting freedom of expression and creating an enabling environment for innovation, which balances the needs of governments and other stakeholders, civil society groups from around the world have come together to propose this framework of baseline safeguards and best practices. These are based on international human rights instruments and other international legal frameworks.

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1

Intermediaries should be shielded from liability for third-party content



2

Content must not be required to be restricted without an order by a judicial authority



3

Requests for restrictions of content must be clear, be unambiguous, and follow due process



4

Laws and content restriction orders and practices must comply with the tests of necessity and proportionality



5

Laws and content restriction policies and practices must respect due process



6

Transparency and accountability must be built into laws and content restriction policies and practices



ENDORSE THE PRINCIPLES

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Manila Principles vs. Korean NTD

Manila Principles		Copyright Act Art. 103	ICNA, Art. 44-2
1	Intermediaries Should be Shielded	Complete Immunity	Partial Immunity “may”
2	Content Restriction Requires Judicial Order	(When requested) “immediately suspend ” No obligation	(When requested) delete without delay even if content is lawful
3	Restriction Requests: Clear, Unambiguous, Due Process	Enforcement Decree	“present materials supporting violation”
4	Law, Orders, Practices: Tests of Necessity and Proportionality	Suspension of Reproduction or Transmission	Deletion/Temporary Measure
5	Law, Orders, Practices: Due Process	Request for Resumption	X
6	Transparency and Accountability	X	X

Manila Principles vs. NTD under ICNA

Information and Communications Network Act Article 44–2 (Request for Deletion of Information)

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



Time	Title	Speakers
09:00~10:00		Registration
10:00~10:20	Opening Remarks	MPs and Hosts
10:20~10:30	Introduction	Prof. K.S. Park (KU, Director of Open Net)
10:30~12:00	<div>Session 1</div> Safe Harbor (other parts of the world) vs. Limited Liability (Korea)	<div>Moderator</div> Prof. K.S. Park (KU, Director of Open Net) <div>Main Speaker</div> Prof. Urs Gasser (Harvard Berkman Center for Internet and Society) : <i>Online Intermediaries Project: Findings and Recommendations</i> <div>Panelists</div> Prof. Youngjoon Kwon (SNU Center for Law and Technology) Dr. Yoo Hyang Kim (Head, NARS Science, Media and Telecommunications Team) Mr. Kyung Oh Jung (Attorney at Law, Hanjung Partners) <div>Case Study</div> Ms. Naoko Mizukoshi (Partner, Endeavour Law Office) : <i>Intermediary Liability Rules in Japan</i>
12:00~13:30		Lunch
13:30~15:00	<div>Session 2</div> Intermediary Liability and Digital Ecosystem	<div>Moderator</div> Prof. Jewan Kim (KU Law School Research Institute) <div>Main Speaker</div> ▪ Prof. Anupam Chander (UC Davis School of Law) : <i>The "Electronic Silk Road" and Intermediary Liability</i> ▪ Mr. Oliver Süme (President, EuroISPA) : <i>E-Commerce Directive and Experience of European ISPs</i> <div>Panelists</div> Prof. Minjeong Kim (Hankuk University of Foreign Studies) Mr. Jongsoo Yoon (Partner, Shin&Kim) Prof. Inho Lee (Chung-Ang University)
15:00~15:20		Coffee Break
15:20~16:50	<div>Session 3</div> Intermediary Liability and Copyright: focus on Graduated Response and General Monitoring Obligation	<div>Moderator</div> Prof. Dukyoung Park (Yonsei University) <div>Main Speaker</div> ▪ Prof. Eric Goldman (Santa Clara University School of Law) : <i>ISP Liability under DMCA</i> ▪ Dr. Rebecca Giblin (Monash University Faculty of Law) : <i>Evaluating Graduated Response</i> <div>Panelists</div> Dr. Kyuhong Lee (Presiding judge, Seoul Central District Court) Prof. Pilwoon Jung (Korea National University of Education) Mr. Kyong-soo Choe (Chief Senior Researcher, Korea Copyright Commission)
16:50~18:00		Wrap-up Session

**Letter to the Members of the Parliament of the Republic of Korea and Korean
Communication Commission:
No More “Mandatory” Notice-and-Takedown!
No More Obligations to “Keep Out” Unlawful Content!
Respect the Manila Principles!**

We, concerned citizens and civil society organizations of the world, call on you to amend Korean law on intermediary liability to conform to international norms.

Korean law (Copyright Act Article 103*, Information and Communications Network Act Article 44-2**) requires intermediaries to take down all content for which anyone sends a takedown notice, regardless whether the content violates any right or law. This is imposed not as a condition of obtaining exemption from liability but as a positive obligation. This ‘mandatory’ notice-and-takedown system is unprecedented and contravenes the core principle of freedom of speech that it can be abridged only to protect another’s rights, national security, public safety, etc. As a result, the intermediaries are forced to take down thousands of contents daily which they believe to be perfectly lawful.

Also, Korean law requires some intermediaries to implement ‘technical measures’ to filter out copyright infringing material (Copyright Act Article 104***) and obscenity (Telecommunications Business Act Article 22-3 (1)****), and requires all intermediaries to implement technical measures to filter out child pornography (Children and Juvenile Sex Protection Act Article 17*****). These requirements of ‘technical measures’ are practically equivalent to a general monitoring obligation, banned in the EU e-Commerce Directive, for the very reason that the only available technical measure is to manually review and assess each material on their services. These monitoring obligations are enforced by a penalty of criminal punishment for 1 to 3 years or criminal or administrative fine.

We believe that both sets of laws are in violation of international norms on intermediary liability, as most recently and succinctly set out in the Manila Principles (www.manilaprinciples.org) that many NGOs and individuals have subscribed to. Manila Principles Article 1.d. states that intermediaries should not be required to monitor content proactively; Article 2.a. states that “Intermediaries must not be required to restrict content unless an order has been issued by an independent and impartial judicial authority that has determined that the material at issue is unlawful.”; and Article 1.c. states that “Intermediaries must not be held liable for failing to restrict lawful content.” Almost identical recommendations were made in a study titled Good Practice for Online Intermediaries commissioned by the Network of Centers, a network of 50 research centers around the world

Manila Principles vs. Filtering Obligation

Copyright Act Article 104

(Responsibility, etc. of Online Service Providers of Special Type)

(1) The online service provider who aims principally at forwarding works, etc. by using computers between other persons (hereinafter referred to as “online service provider of special type”) shall take **necessary measures, such as technical measures, etc. that cut off illegal forwarding of the relevant work, etc.** where there is a request from the holder of rights. In such cases, matters regarding the request of holder of rights and necessary measures shall be prescribed by Presidential Decree.

→ Fine of no more than **30 million won** (Art.142(1))

Manila Principles vs. Filtering Obligation

Telecommunications Business Act Article 22–3 (Technical Measures for Special Value-added Telecommunications Business Operators)

(1) Any person who registered for a special type of value-added telecommunications business (“special value-added telecommunications business operator”) under Article 2 subparagraph 13 item a [note: same as the special type of OSPs under the Copyright Act Art. 104] must implement **technical measures prescribed by Presidential Decree to prevent circulation of illegal information** under Article 44–7 (1) 1 of the Information and Communications Network Act [note: obscenity].

→ fine of no more than **30 million won** (Art.104(3))

Manila Principles vs. Filtering Obligation

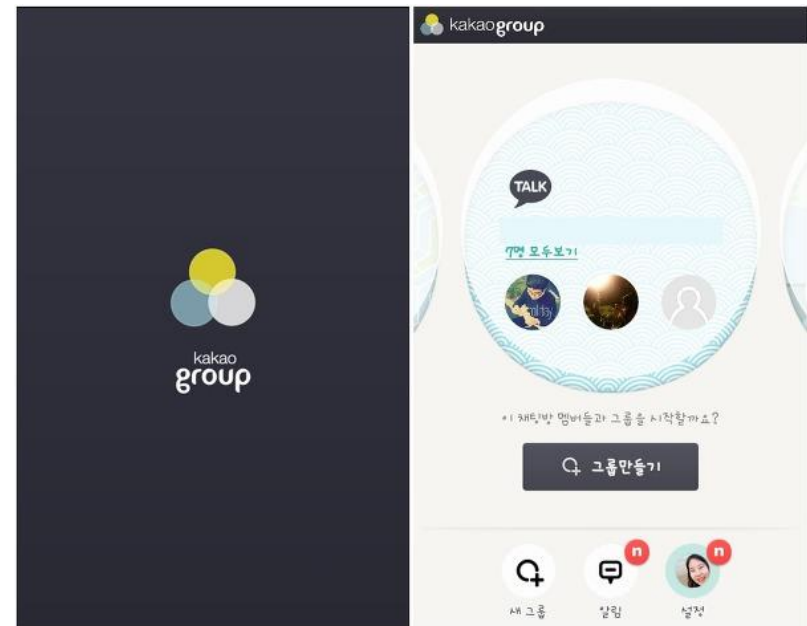
Children and Juvenile Sex Protection Act Article 17 (Obligations of Online Service Providers)

(1) Any online service provider who fails to take measures prescribed by Presidential Decree to detect child or juvenile pornography in the information and communications network managed by himself/herself or who fails to immediately delete the detected pornography and take technical measures to prevent or block transmission thereof, shall be punished by imprisonment with prison labor for not more than **three years** or by a fine not exceeding **20 million won**: [omitted]

DaumKakao case



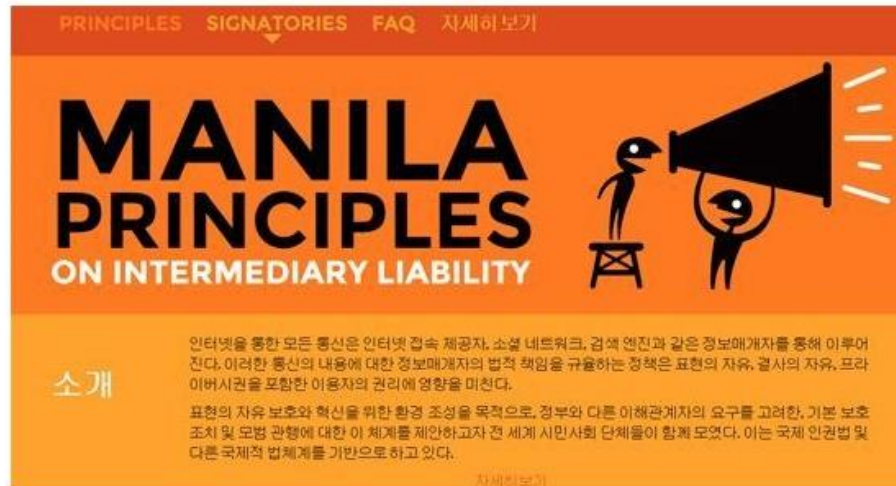
Former CEO of
Daumkakao Mr. Lee
indicted this month
under Art. 17 of Child
Sex Protection Act



DaumKakao case

ZD Net Korea, 5 Nov. 2015.

http://www.zdnet.co.kr/news/news_view.asp?article_id=20151105094521&type=det&re=



당시 방한한 제레미 말콤 EFF 선임 국제정책 담당관은 “위험을 피하려는 회사 특성상 조금이라도 콘텐츠를 검열할 동기가 부여되면 우려되는 게시물을 삭제, 차단할 것”이라며 “이용자들의 표현의 자유를 위해서라도 기업에 면책을 주는 것이 매우 중요하다”고 강조했다.

고려대 법학전문대학원 박경신 교수는 “마닐라 원칙에 근거해 한국법이 개정돼야 세계적인 기준에 부합하게 된다”면서 “불법 판단을 받지 않은 콘텐츠를 삭제 또는 차단하도록 하는 의무를 부과하거나, 사업자들이 적극적으로 불법 콘텐츠를 찾도록 요구하는 것들은 개정돼야 한다”고 밝혔다.

또한 박 교수는 “진정한 시장경제와 민주주의를 이룰 수 있는 유일한 매체가 인터넷”이라며 “마닐라 원칙의 목적은 정보매개자들이 불법 콘텐츠 모니터링을 당장 그만둬야 한다는 것이 아니라 이를 법적으로 의무화 하거나 강제해선 안 된다는 것”이라고 역설했다.

Thank you!

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