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‘Social Media and Limitations on the New Electronic Civil Society in Northeast Asia’

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Abstract
Electronic media in general and social media in particular have developed recently, both growing as part of civil society and expanding the range of traditional civil society electronically. This has been a particularly powerful development in Northeast Asia, where a rapid increase in technological infrastructure following rapid development has joined with the trend towards e-governance to promote new forms of citizen participation. Social media have played a strong role in undermining traditional authoritarian controls and empowering citizens in countries that had authoritarian governments for much of the 20th century. However, governments have responded to these new forms of participation with new restrictions and limitations on this new form of civil society. This study investigated the legal framework and practices for controlling social media in Japan, the People’s Republic of China, and South Korea, looking into the relationship between law and policy implementation. Social media had a positive effect in promoting citizen participation and involvement in politics and administration in all three nations. In terms of restrictions placed on social media, it was found that Japan had the least restrictions both in law and in implementation, South Korea was the next most open, and the PRC was the least open with the greatest level of censorship and restrictions. The discrepancy between generally positive predictions for the future of electronic participation and systems of government restriction on social media is discussed with implications for future trends and suggestions for policy.

Introduction
From a network known by a small handful of researchers in the 1980s to a phenomenon universally available to anyone with access to basic information-communications technology (ICT), the internet has already transformed society in major and fundamental ways and the debate has moved to whether the internet will have a historical impact on the level of the printing press (Foster and McChesney, 2011). The internet has further facilitated the spread of social networking services (SNS) already in place in the 1980s in the form of Usenet and ARPANET and early bulletin board services. By the mid-90s there were SNSs like Geocities that more closely resembled the public networks that have become a major sensation in the new century.

This has had the effect of enhancing civil society by making access and participation easier by lower barriers. It has also had the effect of expanding the range of traditional civil society by opening up new cyber realms for participation electronically. This has made
organizing considerably easier, allowing isolated groups to form virtual communities across distances, facilitating coordinated action once organized. Whether augmenting offline activities like easing interactions with government, or spurring new connections and communities online, SNSs have had a major impact.

This has been a particularly powerful development in Northeast Asia, where a rapid increase in technological infrastructure following rapid development has joined with the trend towards e-governance to promote new forms of citizen participation. E-governance represents electronic and networked and internet systems of governance that combine to form a system for providing seamless access to government structures, promoting flexibility and cooperation among and between all of the actors in governance systems, including citizens and public and private institutions and organizations. South Korea was an early adopter, with the social network site Cyworld founded in 1999 and having 19 million members by its peak in 2005\(^1\). Online cyber civil society had advanced by 2002 to the point that a citizen journalism service featuring open source reporting by members (OhmyNews) allowed supporters of liberal outsider Roh Moohyun to report to each other news that bypassed the nation’s conservative newspapers while the Roh Campaign’s online organizing and helped catapult Roh to the presidency with an effort benchmarked by politicians and parties worldwide, including Howard Dean, who went on to reorganize the US Democratic Party as chairman in an effort that contributed to the election of Barack Obama. Similarly, more than eight million Japanese signed online petitions against nuclear power in the wake of the Fukushima nuclear disaster that compelled the ruling Liberal Democratic Party to reconsider its plans for restarting the damaged plants. Meanwhile, the People’s Republic of China officially went online in 1997 and rapidly opened its own domestic equivalents to international sites and has even allowed Google and other international players to operate on Chinese systems. While the government has employed more controls, citizens of the PRC have been able to engage in a vibrant and unprecedented nationwide discussion that is independent of traditional social controls and even allows for more direct contacts overseas.

The traditional modern means of communication and public expression, mass communications, are usually one-way and top down so public opinion is easily manipulated by the corporations and governments that exercise control. However, new ICT and SNS invite plural conversations that may be bottom-top in orientation, dramatically developing the potential for freedom of expression where the press was tightly controlled by government and

\(^1\) Out of a Korean population of 50 million
other elites. Autocratic governments traditionally manage the media somewhere along the continuum from just suppressing articles to managing the media with the implicit threat posed by visible public examples of journalists fined, fired, jailed, or otherwise punished for speaking against the government. The legal basis for such actions exists to this day in many countries, even where it is not exercised, but may be the basis for managing the internet and ICT. Governments also manage morals and sometimes decide what contents are dangerous for young people and erect barriers to getting there. For example, the word “homosexual” may be limited in online searches with information, if available, limited to netizens, who confirm their age, or even their identity. Websites may be closed or monitored by government. SNSs have also been impacted by these sorts of restriction. This is especially true in Korea related to elections where court cases and government regulatory decisions have outlawed certain kinds of SNS electioneering. The National Election Commission even judged some get-out-the-vote postings illegal after voters took pictures by themselves and uploaded them to twitter. Efforts to control new media have continued, undermining the promise of social media to advance freedom of expression.

Citizen participation is increasing with the development of SNS. However, government often reactsto restrict SNS. What is the nature and practice of these SNS regulations in the three countries? This study investigates the legal framework and practices for controlling social media in Japan, the People’s Republic of China, and South Korea, looking into the relationship between law and policy implementation.

Literature Review

There has been ample cheerleading for cyberspace from the time William Gibson coined the term in his 1984 novel Neuromancer (Murray 2007:5) and the internet and the potential for SNS to enhance citizen participation (Spinello 2003:1, Lee and Anderson 2013). At the same time, there have also been critics of aspects of the new ICT in the real world. Foster and McChesney (2011) explained from a radical perspective how, in contrast to the democratic potential of the internet, it is being turned into a new means of alienation with private riches growing at the expense of public wealth and the major problem of the internet from the perspective of capitalism being lack of commodification. The easy availability of information on the internet led James Reiman (cited in Spinello 2003) to find the loss of privacy online leading to extrinsic (control by others) and intrinsic (self-controls) losses of freedom. Meanwhile, the malleability of identity online that allows for greater equality, self-
definition, and more unprejudiced interaction leads to its own abuses so that “Anonymity is seen as the ideological opposite of accountability, a dichotomy of views that leads to another instance of technology creep as the two sides battle it out for supremacy” (Davenport 2009:55). Finally, there is the specter of cybercrime. The spectrum of cybercriminality ranges from traditional crime that involves online communication/coordination (crimes that do not require internet but may be made easier by it), new forms of hybrid crimes enabled by internet (they may exist in a greatly diminished form even without the internet), and true cybercrimes (ones that could not occur without the internet). The final category is particularly disruptive and online communities are plagued by the disorder caused by such cybercrimes (Wall and Williams 2007). The European Commission sums up the situation online: “New online technologies, new users and new usage patterns create new dangers and exacerbate existing dangers at the same time as opening a wealth of new opportunities” (cited in Kim 2004:342).

How is it that the internet and, by extension, online SNSs are regulated? Regulation is defined by Murray (2007:22,35) as rules or enforcement by the state, state intervention in the economic activity of social actors, or any form of social control. Different theories of general regulation include the public interest, where the government has more information and acts to optimize public outcomes; regulatory capture, where regulator and regulated come to an accommodation; mainstream economic theory, where regulations are rents sought by private interests groups that hurt all consumers; public choice, a view of political and regulatory actors as motivated by self-interest; and historical institutionalism, where regulatory interests emerge from context.

Spinello (2003:146) sets out the range of regulation from *laissez faire* to outright bans, with a broad middle ground involving flexible approaches. Early cyberlibertarians asserted the “unregulability of bits” so that state sovereignty could not hope to regulate online systems, the free market-only model though later cyberlibertarians conceded that cyberspace could be regulated structurally at the network level (Murray 2007:7). On a slightly different track, Easterbrook argued that cyberspace was not a separate space requiring its own dedicated legal study but merely represented one on many possible locations where law may govern (cited in Murray 2007:9-10).

Davenport (2009) indicates the origin of the internet and social media as the product of an interplay between social and technical factors though the internet itself is based on a technical architecture that determines much of its nature (Spinello 2003, Murray 2007:18,
Wall and Williams 2007, Davenport 2009). Therefore, there is a wider range of potential for regulation than the market or technology. Lessig asserted four regulatory modalities of the market, architecture, law, and norms (1999) and any true regulatory system would consider all four. Murray and Scott (2002) found a similar set of four controls: competition-based, design-based, hierarchical, and community-based. However, Wall and Williams compress the systems into two methods, proximal and distal (2007). Proximal methods are online and include technology and online social controls such as reintegrative or disintegrative shaming while distal forms of governance include offline-law and policing.

Both these and other regulatory systems would hold that regulators design controls, though regulation is often achieved through regulatory competition such as to rationalize a system (radio) or to forestall government controls (cinema) or as an equilibrium settlement within a system seen as acceptable to the actors but too complicated to be predicted or planned by regulators (Murray 2007:28,37). Lessig finds three architectural layers that can be targeted for regulation: the foundational physical layer, the code layer, and the most visible content layer (2002:148). Regulations built into the physical infrastructure limit the workings of the entire system, code limits the range of content, while direct regulation of content is the most difficult (what the libertarians call impossible or that Wall and Williams (2007) call distal forms and find riddled with practical problems due to jurisdiction issues). The P3P standard is an example of an attempt to protect privacy through code (Spinello 2003:167).

In terms of real-world systems that have dealt with internet regulation in detail, the US is closer to the market ideal with less of an ideology of a paternal state, relying on more passive systems, self-regulation, and calls for good behavior. Much of American legal systems and practice have been guided by the law surrounding the First Amendment to the Constitution, guaranteeing free speech and freedom of assembly, as well as American traditions of ad hoc governance(Spinello 2003:159-162). On the other hand, the European Union, based on states with a greater tradition of government involvement in the economy, makes more reference to law, takes a more proactive approach, takes a view of data protection as a privacy issue, and employs multilayered systems of governance more explicitly designed to deal with the internet era as a multinational organization that needs to cooperate across state borders even to regulate within the Union (Spinello 2003:162-165).

SNS Regulation in Northeast Asia

This study as noted above looks at the case of SNS regulation in Japan, the Republic
of Korea, and the People’s Republic of China. The cases produce a broad range of variety for comparison, share some common history but are distinct from each other and the rest of the world, showing how SNS may be used and yet be regulated in ways that differ from other regions like North America and Europe that are heavily-invested in ICT and similarly use SNS on a broad basis that is transforming society.

Japan

Much as was the case elsewhere, the internet developed in Japan largely from the 1980s and started to be commercialized in the 1990s. A network called JUNET was built to link a number of Tokyo universities with USENET. Widely Integrated Distributed Environment (WIDE) was a group which started in 1988 to connect internal Japanese networks to the US internet. Their work gradually attracted the interest of corporations interested in monetizing the internet.

Japanese SNSs are more broadly distributed in membership than ones in many other countries, such as the US or Australia, where a majority of users belong to the most popular service, facebook. The most popular SNSs in Japan, Ameblo and Livedoor, approach only about a third of users. Most of the top Japanese services are domestic: @niftyhomepage, OCN, and Seesaa fill out the top five.

Law

Article 21 of the Japanese Constitution guarantees freedom of speech and freedom of expression and also bans censorship. The allies in the Second World War determined that censorship and restrictions on freedom of expression supported militarism and imperialism and worked to oppose such means from being employed again in Japan, although Allied occupation authorities used strong censorship after the war. The Japanese courts have upheld restrictions on expression but have usually done so after balancing competing interests, repeatedly upholding the absolute ban on censorship, though the definition of what constitutes censorship has fluctuated between a ban on all prior restraint and a more narrow ban on traditional administrative means of censorship prior to publication.

Crimes via SNS and online more generally are covered by the traditional penal code for traditional crimes by means of new technologies as well as for cybercrimes covered under acts such as the Unauthorized Computer Access Law, the Law for Punishing Acts Related to Child Prostitution and Child Pornography and for Protecting Children, and the Copyright
Law. Penalties are enforced under the standard criminal code.

Bans on expressions in various government laws that have been upheld include advocacy of the violent overthrow of the government, advocacy of illegal strikes, advocacy of illegal disclosure of public secrets, and advocacy of tax evasion. The Public Offices Election Act also places limitations on public expressions that have been upheld regarding the time frame and form of electioneering, including bans on most pamphlets, effectively limiting most campaigning to campaign trucks with megaphones (Matsui 1990:22-24).

Section 175 of the Japanese Criminal Code bans obscenity and it has been ruled that sexual conduct that depicts the act is obscene, though the entirety of the piece should be considered. However, artistic or literary merit does not prohibit a piece from being named obscene. Digital pornography has not been well-covered and could probably be banned but the vagueness of the definition of obscenity under the Criminal Code means that the presence of any images on a device may make the entire device obscene, leading to difficulties in enforcement, particularly regarding requirements for tangible data for seizure (Natsui 2003).

Libel and defamation are covered under Section 230 of the Criminal Code as amended by 230-2. Section 230 originally made any defamatory statements, true or not, illegal, with absence of truth adding the crime of vilification. This broad section was modified to add a public interest exception that makes any speech that can be proven true not punishable if motivated by advancing the public interest. The difficulty in proving truth leads to substantial self-censorship, however.

Japanese intellectual property rights are enforced through a Copyright Law, Trademark Law, and Patent Law. Enforcement of copyrights is in line with international conventions and is enforceable for the creator’s life plus fifty years after death. Violations of rights under the Copyright Law are generally punishable with a prison term up to three years or a fine up to three million yen beyond compensation for damages (Natsui 2003).

**Regulatory Organizations**

The regular civil and criminal legal machinery is involved in most of the enforcement of the laws that cover regulation of the internet. Election rules are managed by the rules of the Central Election Administration Committee under the Ministry of Internal Affairs and Communications and the rules are supervised at the local level by election committees. ISPs have a key regulatory self-policing role under this system, particularly with regard to the protection of minors under the Law for Protecting Children, noted above. ISPs
have the power to delete material or websites without notice and to restrict access in the interests of child welfare. Failure to fulfill this role subjects the ISP and its personnel to legal liability punishable by fines and prison terms, though the system is considered self-regulation by the government.

**The System in Practice**

The government does not take very aggressive action in the area of politics, other than enforcement of election regulations and action taken advocating serious crimes. Defamation is broadly defined and the main effect of the law is probably self-censorship and self-restraint in public unless critical speech can be proven true and is clearly in the public interest. In practice, pornography and online indecency is a major target for ISP self-policing and regulation. Online pornography is widely available and generally acceptable so long as it is pixilated and not available to minors, though breaches are not heavily enforced.

**The Republic of Korea**

The internet developed in South Korea from the 1980s but was not commercialized until 1995. Government started a “high-speed communication network project” to install a network of fiberoptic cable through the country, doing so while installing or maintaining water pipes, gas pipes, and general infrastructure. As a result, Korea was able to ensure that the whole country was linked via a high-speed communication network. Moreover, government helped supply personal computers to the public from the late 1990s. Therefore, 78% people were using the internet in 2011, three times more than in 1999(22.4%).

Social media in Korea started from PC communications focusing on chatting and text-based information. Several online communities showed with the development of the internet but did not gather people like they do now. Cyworld was first and the most popular social media site in Korea. After Cyworld, other social media like me2day, naver blog, facebook, and twitter developed in Korea. At the same time, role of the internet and social media as a cyber town square grew with online newspapers, communities, and political movements.

**Law**

Under these circumstances, freedom of expression is an important issue for using SNSs. The Korean Constitution officially protects the freedom of expression but, on the other
hand, the law still leaves open the possibility of limits on freedom of expression. According to Article 21 sections (3) and (4) of the Constitution, the government decides the necessary standards for broadcasting, communication facilities, and newspapers. Moreover, everyone involved in publishing, broadcasting, and like communications must respect the honor and social morality of others under threat of punishment.

The Constitutional Court has found several laws unconstitutional because of the potential for violating the freedoms of expression and information. Censorship and prioritized regulation is defined by the Constitutional Court as where public administration, regardless as to name or structure, is the main agent making a prioritized review before any idea is announced. However, there are still many quasi-government organizations that can affect freedom of expression.

The Korean government is very sensitive about national security because Korea is still divided so Korea has a broad National Security Law banning anti-state activity. Political expression related to North Korea must be made carefully in accordance with the law to avoid being branded as anti-state activity. Moreover, the nation was ruled by autocratic governments for a long time with democracy dating only from 1987. Democracy and free elections have a very short history so the National Election Commission plays an important role in regulating expressions during elections. The commission determines the standards, including what pictures and postings are permitted on SNSs.

The Juvenile Protection Act is how the Korean government considers what contents are appropriate for children and juveniles. To avoid violating adult freedom of expression enforcement focuses on the providing process so the Ministry of Culture and Tourism, the Broadcasting and Communication Commission, and the Korea Communication Standards Commission operate a contents-rating system and an ISP monitoring system. The government tries to block access to obscene materials, though they are often available by bypassing the server of domestic providers by going through foreign countries.

Following the requirement for using real names in banking, real names have been required for the ISP monitoring system. This system is made for protecting people from cyberlibel and violations of copyright law. ISPs must monitor their websites and make sure whether the contents are legal or not, deleting illegal posts. The ISP is held liable when they do not.

**Regulatory Organizations**
The National Election Commission is responsible for determining and enforcing overall procedure during elections. They monitor the campaigns and candidate qualification. They may enforce fines and disqualification of candidates, even after the election.

The National Intelligence Service, the Korean equivalent of the CIA, is responsible for the National Security Law, collecting domestic information, analyzing the international and domestic situation, and monitoring North Korea. Like other national security organizations, they operate with limited transparency.

The Broadcasting and Communication Commission and the Korea Communication Standards Commission regulate broadcast media. They decide what contents may be broadcast. They order corrections and issue cautions even after a program is broadcast, if there was something deemed wrong. The Ministry of Culture and Tourism has the authority to punish offenders. The Korea Communication Standards Commission is a private independent organization thought work with the Korea Communication Commission. The KCC is a government organization that handles broad areas related to policies and standards, rules, and research.

**The System in Practice**

Internet, and by extension, SNS regulation in Korea is mostly focused on juvenile protection. Some keywords are blocked and access to pornography is limited through search engines. Users must prove that they are more than 19 years old if they want to search related keywords. Homosexuality was treated the same until recently. Before users upload contents, they must mark them as sexual, radical, or violent. The ISP warns users who fail to do so and their content is blocked or deleted.

This affects political issues, as ISPs block or delete content without notice when conflicts with the North increases. In most cases, government explains that the content violates national security. Users may even be imprisoned over posting pro-North information, asking others to read it.

Moreover, the NEC suggests the limits on postings on SNSs including prohibitions on taking pictures outside the voting booth, and prohibiting posting photos that ask people to vote for specific candidates. Penalties may be enforced when the guidelines are violated, though content is often simply removed with a warning.

**People’s Republic of China**
The internet has only been available to the general public in China since 1995 and yet it has grown explosively to more than 564 million internet users as of 2012. Unlike the social media landscapes in Japan and Korea, which include a large international presence, Chinese social media is dominated by domestic Chinese services designed in China for the Chinese market. Absent facebook and twitter, Chinese are more familiar with big names like Qzone, RenRen, Pengyou, Sina Weibo, and Kaixin001, the top five SNSs in the PRC (Lukoff 2011).

China’s online controls stand in stark contrast to Western cyberspace regulations that effectively range from *laissez faire* to multilateral systems combining legal cooperation across borders with norms and market controls. Kim argued that “the Chinese government has a serious concern about uncontrolled information through the Internet which may undermine its sovereignty and social order, as well as cultural values. In this sense, Internet regulation in China is based on the idea that the government should monitor and control information on the Internet.” (2004:90). The Chinese government uses strong law, active exercise of the law, norms, and control of the design and maintenance of the system to regulate cyberspace.

**Law**


The 1994 Ordinance relates to the responsibility for controlling the internet, which is given to the Ministry of Public Security. The 1996 Interim Regulations state in Article 6 that “Computer information networks conducting direct international networking shall use the international access channels provided by the national public telecommunications networks of the Ministry of Posts and Telecommunications. No units or individuals shall set up by themselves or use other access channels for international networking.” Furthermore, Article 13 states that “Units and individuals engaging in international networking … are not allowed to use international networking to harm national security, leak state secrets, and engage in
law-breaking criminal activities; and they are not allowed to produce, read, duplicate, or circulate information hampering public security and obscenepornographic information.” (Kim 2004:91-2).

The 1997 Regulations offer more detail about specific prohibitions: “No unit or individual may use the Internet to create, replicate, retrieve, or transmit the following kinds of information: (1) Inciting to resist or breaking the Constitution or laws or the implementation of administrative regulations; (2) Inciting to overthrow the government or the socialist system; (3) Inciting division of the country, harming national unification; (4) Inciting hatred or discrimination among nationalities or harming the unity of the nationalities; (5) Making falsehoods or distorting the truth, spreading rumors, destroying the order of society; (6) Promoting feudal superstitions, sexually suggestive material, gambling, violence, murder, (7) Terrorism or inciting others to criminal activity; openly insulting other people or state organs; (9) Other activities against the Constitution, laws or administrative regulations.” (Kim 2004:92-3).

The 2000 Measures provide that Chinese websites could not link to overseas sites or distribute material from abroad without approval in each instance. The publication of news was limited to licensed publishers or to the reprinting of materials from licensed publishers. Article 11 holds content providers responsible for making sure that their content is legal. Article 14 says that “an ISP must record information of its subscribers’ online activities and must keep a copy of their records for 60 days. ISPs are obliged to furnish them to the relevant state authorities upon demand in accordance with the law.” (Kim 2004:93).

These direct internet-oriented regulations cover most of internet regulations for political, moral, and libel purposes. Further law unrelated to this body of internet law covers copyrights. China has enforced intellectual property rights since 1979 and has a Copyright Law, Trademark Law, and Patent Law. The current Copyright Law was adopted in 1990 with implementing regulations in force since 1991 that were modified in 2002. Recognition of international copyright conventions falls under the 1992 Regulations on Implementation of International Copyright Treaties with international copyright holders protected on the basis of regulations put into effect that year. Computer programs were not included prior to a law written in 1991, but have been covered since then as well as by international conventions. The general rule is life of the creator plus fifty years, with companies holding rights for fifty years. International regulations do not require copyright registration, which in China requires a fee and detailed information (such as source code) that may be confidential, but China
technically requires it and it makes enforcement of rights much easier. Without registration, intellectual property rights are more difficult to enforce in China. In practice, China has often weakly enforced copyright law, with a famous 1992 judgment in favor of Microsoft (claiming USD$30 million in losses over a theft of 650,000 Microsoft hologram icons by the Shenzhen Reflective Materials Institute) awarding the company only $252. The highest award (RMB157.7 on appeal) has been to a Chinese firm damaged by a French company in 2007.

**Regulatory Organizations**

All internet in China must be accessed through government-licensed service providers that are also legally liable for the content posted by users. The next level of control is the encouragement of self-censorship through the widespread posting of rules and the self-governing Internet Society, which developed and enforces the “Public Pledge on Self-Discipline in the Chinese Internet Industry.” Not only are users encouraged to believe that they are being watched, but the industry itself explicitly sees itself as supporting the regulatory framework. The Chinese SNSs that dominate social media in China fit completely within this system.

Further, the 1994 Ordinance for Security Protection of Computer Information Systems gives responsibility for internet regulation to the Ministry of Public Security, which produced the “Golden Shield Project” for managing the internet. Additionally, the State Council Information Office, under the executive State Council, is responsible for internet registration and licensing. In particular, the subordinate State Internet Information Office handles internet regulation, while the Internet Affairs Bureau handles censorship.

**The System in Practice**

China uses methods of formal control and direct regulation along with technical means of surveillance and filtering both employ censorship. In addition to fines and short arrests, there have been cases whereby users have been sent to prison or reeducation for 10 years or more for publicizing government efforts to downplay the anniversary of Tiananmen Square, and for anonymous upload by well-known government critics. In addition, technical methods like banning IP addresses, deleting websites, blocking access to websites, redirection to other sites, filtering domain names, among other methods.

**Discussion**
Japan’s system for regulation of the internet is the most similar to the range presented in Spinello (2003) from the US to Europe, with the Japanese system working to balance competing interests, including freedom of expression to ensure that Japan would not reconstitute its repressive and autocratic wartime structures. The Republic of Korea is an intermediate case, with a system of laws and practices that remained in force following the end of authoritarian rule. This leaves a system that looks much like those in Europe in North America but which has much broader enforcement in social media, with the active involvement of the National Information Service in a realm of national security so broad that it would cover lots of legal political activity in Japan and the West. The People’s Republic of China has a system that does not even look like the Spinello spectrum. The entire system is designed to be managed by the state, prompting Kim (2004:94) to note: “China is the country which has adopted the most extensive and sophisticated technical censorship measures on the Internet.” However, it has opened up major spaces for Chinese to interact with each other in common ways and across great distances, so even a heavily regulated system represents much greater opportunity for citizens to inform and express themselves.

All three systems have vibrant online SNSs that have opened up new spaces for citizen participation and self-expression. All three systems engage state actors in enforcing restrictions that amount to some sort of censorship, no matter how broad or limited. The three nations have legal systems that mix traditional law and specific rules and regulations to monitor social media for political, moral, libelous, and copyright violations. ISPs play a key role in all three systems, with ISPs responsible for the websites they host and the content that appears in their systems. ISPs have incentives in all three systems to delete and block content without notice.

Censorship may violate individual and collective freedom of expression underdemocratic governments as well as under autocratic ones. Censorship and media control have traditionally been used for manipulating public opinion. It was relatively easy for government to control public media when a few major organizations controlled the whole market. However, there are now many of private channels for publishing and expressing one’s views with each SNS effectively an open platform for self-expression. The internet is the most popular way to express personal opinions because anyone can use social media. Users can share their opinions with people at almost no cost.

Democratic countries do not usually restrict access to SNSs. Instead, government control is legally over the contents of the media. Most countries are officially in favor of
freedom of expression at some level so they do not enact laws and procedures for directly controlling social media. However, users may use social media to commit cybercrimes, such as spreading virus, identity theft, and collecting and misusing personal information. Users access and illegally distribute books, movies, and music through the internet without permission. Further, SNS is used to facilitate offline crimes. In order to regulate that, government has found ways to protect the public from harmful contents and restrict other illegal uses.

Much of the literature and early debate on cyberspace regulation centered on the debate in the US, the creator of the internet, and the unique characteristics of the US with a continuing influence of libertarian ideology and a lack of a history of a paternal view of the state. The rise of neoliberal free market ideology and conservative political ascendancy coincided with the rise of ICT in the US. These factors led early adopters in the US to be skeptical of regulation of ICT, but the language and cultural context may have played a role as well. English as an international language and the “McDonaldization” of American cultural influence around the world (Ritzer 2008) meant that Americans considering the prospect for internet regulation would be acutely aware of the internet to cross borders with English and American cultural references spreading across borders. In a similar manner, the interconnected governance in Europe, with the increasingly interconnected economies and societies may limit the potential for the idea of a single state controlling ICT on its own.

The East Asian countries here all lack these traits and, at least on the surface, would appear to have a greater potential for state control. The three nations have substantial overlap between the state and ethnicity. In the case of Japan and Korea, the states are both monolingual and mono-cultural, with a unified language and culture in the same state. Japan is the only nation where Japanese language and culture predominate. South Korea is one of two Korean ethnic states, but it does not really recognize the legitimacy of the North as a separate state. China is different, with multiple ethnicities and languages and with a large ethnic Chinese population around the world, not to mention in Taiwan. However, ethnic Han, the dominate group in China, make up more than 90% of the population and clearly predominate. Furthermore, the number of Chinese in the PRC heavily outweighs the number of Chinese elsewhere. China wants to maintain its socialist state from unauthorized foreign and domestic influences and tries to maintain separate systems, including trying to maintain tight control over the internet as noted above. As a result, the three nations considered in this study are at least theoretically more capable of controlling SNSs than the Western countries
that have been the source for much of the early cyberspace theory and architecture.

Furthermore, all three nations had authoritarian systems until the end of the Second World War and Korea and China have a more recent history of authoritarian state control. Japan effectively ended authoritarian rule, forced by the American occupation to adopt a democratic system with a very liberal constitution dictated by the Supreme Commander Allied Forces after the war. South Korea, living in a state of war with the North governed only by a truce, had a corrupt and authoritarian presidential regime until 1960 followed by a military coup in 1961 and military-organized governments until the 1987 presidential election held under the pressure of the pro-democracy movement and generally considered free and fair. Meanwhile, China maintains a system that retains the state-dominance of Communist countries with party control over most areas of politics, though local autonomy has been increased and open contests have been held for local-level offices. While Japan is limited by its own constitution from censoring, the legal basis for censorship still exists in both Korea and China making control of SNSs a more realistic option.

SNS regulation can affect people’s freedom of expression. Most restrictions and penalties range from deleting contents without notice and fines. Responsibility for checking contents is usually delegated to ISPs because government does not have the easy access to find the user who uploaded problematic contents to deal with them directly. Not only ISPs but SNS users could also be affected by regulation and they learn to be careful when they upload contents.

It is often asserted anonymity could cause the problems such as cyber-bullying, lies, and the spreading of false information. In order to control this problem, real-name systems and registration with the ISP and even IP address tracking are used to make it easy to connect specific users to prohibited content, prompting users to be careful of what they say on SNSs. Though such measures can be helpful for making a better SNS environment, it can affect the criticism of government and public officials for fear they could be categorized as defamatory or vaguely harmful according to the respective legal system. Moreover, the standards for regulation are very ambiguous with broad room for potential enforcement, leaving the individual users to decide for themselves what could possibly be restricted, leading to substantial self-censorship that goes far beyond any actual government restrictions. This undermines freedom of expression, and limits the range of participation, confining the range of cyber civil society to the worst fears of what individual users think could happen if they step across an often-vague line.
The Lessig (1999) argument for regulation taking place at the physical design, code, and content levels argues for the importance of system architecture and coding based on that system. While the previous legal regimes in all three nations focused on content, the comparison of the three nations reveals the importance of control of the physical architecture of SNSs under their legal framework. In China, this amounts to an extensive system that aggressively leverages all three levels of the Lessig framework. Many search terms are automatically deflected or filtered. Even in Japan and Korea, however, the ISPs are leveraged like in China as a major means for controlling content. The ISPs are held responsible for content and incentivized to police their own systems. However, this non-state governance leaves users with a lack of standard recourse for complaint and redress of grievances as they are only guaranteed the limited rights granted under the, often commercial, user agreement (that most users agree to without reading) that usually falls short of a user’s rights as a citizen.

The individual nations may aspire to complete control of their systems but there are practical limits of policy. The experience of Chinese citizens working outside of China having to maintain separate Facebook and Qzone pages highlights the way individuals physically located under a single governance system may be subjected to multiple cyber systems in a single visit online. Even though governance may theoretically be complete over servers inside the nation, those outside are limited to a lowest-common denominator. Koreans and Japanese who desire to circumvent the limits of their systems may do so with conversations in their languages on sites hosted abroad and even freer discussions on servers abroad in foreign languages. Even in China, there have been many efforts to design technical fixes for overcoming the “Digital Great Wall.” There is a limit to the independence of any system due to the interconnectedness of each. The widespread availability in Japan of materials that are immoral in China and Korea means that Japan really sets the standard for motivated users for these interconnected systems. Koreans can easily engage in activity outside of their National Security Law through casual online conversations with Chinese and Japanese Communists that would be monitored were they held with Korean Communists. The arms of the system cannot stretch everywhere users can go, though the range of Chinese users may be as far as those in the other two nations.

This dual nature of having to negotiate multiple cyber governance systems in a single trip online shows the limits of the multiple incompatible systems for cooperation across borders in the sort of the nondiscriminatory limitless ways imagined by cyber-utopians. Although, this may not be a concern for general users, it is a strong concern for academic
users increasingly crossing the border for collaboration with Chinese users. Chinese users are not allowed to use many international SNSs, meaning that they are squeezed out of the networks that increasingly flow through those systems. Meanwhile, non-Chinese users are faced with the choice of maintaining a separate online presence in China on a Chinese system and following Chinese rules.

**Conclusion**

SNSs have expanded the range of civil society in all three nations online as part of an online cyber civil society that has provided an expanded range for freedom and citizen participation as isolated individuals connect with each other, gain unprecedented access to information, and have historically unique opportunities to share and broadcast their opinions. The apparent range of freedom is limited in all three societies by a variety of regulations, restrictions, and controls but the most profound control may come in the form of self-censorship. From Japan’s vague and broad defamation and indecency law to Korea’s National Security Law to Chinese exhortations that users are being watched, citizens in all three societies have reason to be careful in their expressions in case they are being watched. Certain enforcement is not currently possible, let alone even desirable in terms of cost-effectiveness in these societies, but it would be easier to spot and evade than even more powerful self-censorship where the self-doubt and intermittency of enforcement looms over the individual, causing them to avoid expressing thoughts that might get them in trouble.

Despite the similarities of the systems across the three nations, there remain problems of integrating incompatible cross-national systems for international cooperation. These are not acute between Korea and Japan, where the systems are largely compatible, in spite of stricter Korean policing of morals and political action, where these standards are applied inside of Korea. Chinese citizens are not restricted even when openly organizing Communist Party activities among themselves in South Korea, though they would be stopped for engaging in such anti-state activities were they Koreans. However, the standards of the Chinese internet hold for all actors in exchanges between citizens of the three nations. Chinese students in Japan and Korea are limited in dealing with Japanese and Koreans online because the Chinese social media are effectively separate from outside systems.

Across the three nations there is an effective lowest common denominator standard for cross-system social media interactions. Koreans and Japanese must follow the greater restrictions of the Chinese system. Japanese and Chinese have to be careful about how they
talk about the division of Korea on Korean networks. Likewise, Koreans and Chinese moral restrictions are overwhelmed by sexually-explicit material from Japan. The ability of the state to control networks inside its borders subjects people who have not crossed a real physical border but a virtual cyber border to the real restrictions of the system of governance of the state controlling the network. With widely different systems in such geographical proximity in nations with substantial historical ties, the wide range of differing social media governing systems cannot help but disrupt efforts to build international understanding and friendship. Increasing international travel, economic ties, friendships, marriages, and academic cooperation are all complicated by the different systems. The large number of outstanding territorial disputes alone may be mitigated with greater people-to-people contacts among the three nations trying to argue competing claims.

The apparent ability of the state to control social media is limited as even the simple act of employing a nonnative language such as English may help facilitate bypassing restrictions of the system. Even in the case of China with its advanced filters and other technical controls, motivated users inside and outside of the country have developed and continue to develop means for going around restrictions, making its controls less comprehensive than the system designers would hope.

References


