

## SOUTH KOREA

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## Violent video games and freedom of expression



By Kyoung-Joo Park

It has been reported that the US Supreme Court will consider whether *California Law AB 1170*, which was passed by the California state legislature in 2005 to ban the sale and rental of certain violent video games to minors, violates the “freedom of expression” provided under the *First Amendment to the US Constitution*. The State of California has argued that it bears a responsibility to protect minors. In response, the Entertainment Merchants Association (EMA) has argued that, because the California State did not prove any causal relationship between the access to violent video games by minors and the actual violence committed by minors, there is a clear risk that freedom of expression may be unconstitutionally restricted by this law. However, it is unlikely that the State of California will prevail in the case, as the US courts are traditionally very reluctant to restrict freedom of expression.

**The Korean position**

The Korean Constitution provides for the freedom of speech and press, but it also provides that neither speech nor press shall violate the dignity or rights of individuals, nor shall they undermine public morals or social ethics.

Based on this provision, the *Korean Juvenile Protection Act* provides that the Korean Juvenile Protection Committee and other government agencies have the authority to determine whether media materials might lead to violence or brutality by juveniles or stimulate or glorify the exercise of violence, including sexual violence; that media materials deemed harmful to juveniles shall carry indications thereof; that no person shall sell such harmful materials to juveniles; that no media materials harmful to juveniles shall be exhibited or displayed for sale or rental unless such materials are segregated from the materials which may be distributed to juveniles; and that the Juvenile Protection Committee and other bodies shall compile and make available to the public a list of media materials that are deemed harmful to juveniles.

In one court case, the Korean Constitutional Court ruled that it is not unconstitutional to delegate to the Korean Juvenile

Protection Committee the authority to determine whether certain media materials are harmful to juveniles. Specifically in that case, the Korean Council for Performing Arts Promotion concluded that the game “Starcraft” is harmful to juveniles due to its violent nature, and the Korean Juvenile Protection Committee made this determination public. Thereafter, questions as to whether the provision of the Act delegating the authority violates the Korean Constitution were raised and the Korean Constitutional Court examined such questions.

The main constitutional questions were whether the relevant provision of the Act, which does not specify the scope of media materials which is harmful to juveniles, and which authorises the relevant administrative agencies to determine such scope, violates the principle of clarity of law, and whether such administrative agencies’ determination interferes with the right of adjudication by the courts.

The Korean Constitutional Court ruled that the aforesaid provision does not violate the principle of clarity. The Court’s rationale was that, despite the fact it is essential to substantively examine the contents of media materials in order to determine whether they are harmful to juveniles, it is not indeed possible or practicable to specifically describe all specific media materials in the Act or its regulations.

**Time for change?**

Due to the differences of jurisprudential traditions, social, cultural and historical backgrounds between the United States and Korea, their respective courts currently take different positions on the issues of freedom of expression. However, considering Korea’s current status in the world, I believe that Korea needs to engage in discussions and reviews of this issue, as has been done in the United States.

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