**Submission for the SR on the Right to Privacy**

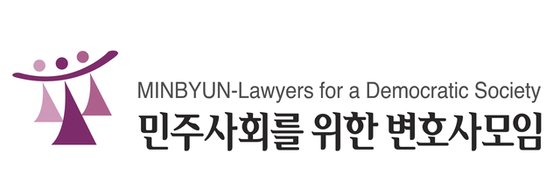
**Republic of Korea**

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In Republic of Korea, children's privacy is restricted in the name of "protection". Although the awareness of child rights has been raised, rights regarding personal information and privacy which acknowledge children's initiative in life are recognized restrictively. Furthermore, as outdoor activities are significantly restricted due to the COVID-19 pandemic, children's privacy is easily being exposed in family environments and school life. The protection of privacy is much vulnerable for children in poverty or institutions. It is necessary for the State to actively make effort to ensure children’s right to privacy with the purpose to enhance their autonomy and independence according to age and developmental characteristics.

**1. The protection of children in relation to the processing of personal data**

Rapid technological developments, globalization, and the beginning of the digital age have expanded the collection and sharing of personal information. Consequently, private companies and public institutions have begun to use personal information data (hereinafter "personal data") on a large scale. This increased use of personal data has brought a tremendous challenge to the right to privacy. Republic of Korea is one of the countries which has drastically eased legal regulations on personal data on the grounds of boosting the so-called "big data industry." On 9 January 2020, the Korean National Assembly passed amendments (collectively, the ‘Amendments’) to three data privacy laws[[1]](#footnote-1) on promoting personal Information utilization. The Amendments’ key changes are allowing the combination of data and the use of personal information that have undergone pseudonymization (hereinafter “pseudonymized data”) without the consent of the data subject. The Amendments not only allows pseudonymized data to be used for profit purposes, such as marketing purposes by private companies[[2]](#footnote-2), but also completely excludes the right of data subject to pseudonymized data.[[3]](#footnote-3)if the information is pseudonymized, private companies could use sensitive information, such as health data, without the consent of the data subject.[[4]](#footnote-4)

The most vulnerable victim of the data policy, which focuses on using the data rather than protecting personal information, will inevitably be children because the negative impact of data’s reckless use will be fatal to children. In the case of the Republic of Korea’s data policies, there are no specific protections, provisions of the data subject’s right, or safeguards concerning children’s data. In particular, the personal information of a child under the age of 14 can be provided to private companies by the child’s legal representative. Private companies can use the child’s personal information for profit-related purposes, such as marketing, without the child's consent or notification, by pseudonymizing data. In addition, the child and guardians have no control over the child’s pseudonymized data because the Amendments exclude the data subject’s rights on pseudonymized data, such as the right to suspend profiling, the right to receive a notification, the right to suspend the data processing, and so on.

The International human rights law needs to state clearly that the children’s right to personal data, such as the right to suspend profiling, the right to receive a notification, cannot be excluded under any circumstances. It should be made clear that children’s personal data, including pseudonymized data, which is not anonymous data, cannot be used in principle without the children's consent and where such use may run counter to the best interests of child. Exceptions that the children’s pseudonymized data can be used without the children’s consent would be strictly limited to the cases in which it is used for public interest purposes.

**2. Children’s consent and access to personal information**

The protection of children's personal information and the right to privacy continue to be infringed. Information registered with the notification system for missing children remains in the system until the child becomes 18 or until a guardian requests its deletion.[[5]](#footnote-5) Although medical information is sensitive and personal information, the minor’s examination results of AIDS should be notified to the legal representative without their consent.[[6]](#footnote-6) The guidelines of the Ministry of Health and Welfare provide that if the patient is a minor, their legal representatives are able to apply for the inspection or a copy of the details of the patient's record to medical institutions without the consent of the patient. Sometimes, the images on CCTVs, which are installed to prevent school violence and child abuse in schools and childcare facilities, may be used for purposes other than what was originally intended. Furthermore, smartphone applications developed to protect children and youth infringe their freedom of privacy, such as those that track user’s location and the amount of smartphone usage.

In all actions concerning children in all settings, the best interests of the child shall be a primary consideration. In assessing the best interests of a child, States should make every effort to balance, and wherever possible, reconcile children’s right to protection with other rights, in particular the right to privacy and access to information as well as participation rights. Also, the capacities of a child develop gradually from birth to the age of 18 and individual children reach different levels of maturity at different ages. States and other relevant stakeholders should recognize the evolving capacities of children, including those of children with disabilities or in vulnerable situations, and ensure that policies and practices are adopted to respond to their respective needs. This also means, for example, that policies adopted to fulfil the rights of adolescents may differ significantly from those adopted for younger children. For this purpose, the State should develop guidelines for educational institutions, social welfare facilities, medical institutions, and government offices, etc. to ensure the protection and management of children’s personal information. Also, the State required to establish specific regulations to confirm children's consent and assess according to his or her age and maturity.

**3. Digital environment and children’s right to privacy**

Several years ago, the act of ‘sharenting’, parents sharing their children’s private information, images, and videos online, was raised as a problematic issue in the international community. However, many parents are insensitive of posting their children in Republic of Korea. They are unaware of the consequences of their actions online, including the risks that come with posting their children online. The State must take the lead in informing people on the dangers of one’s unintentional actions through legislation, policy and program.

Poverty pornography – uploading images/videos of children in poverty or in pain with the purpose of fundraising – is widely used in Korea as an effective measure to induce sympathy. Recently, two young children were in a fire due to parental maltreatment. One organization captured a photograph of one child on his/her hospital bed all bandaged up, this photograph was used on their webpage as the main image of their fund raising to support them. However, it is strictly violating children’s right to privacy and it may result in re-traumatization. This questions whether the direct use of children’s image is necessary.

Meanwhile, the Support Center for Victims of Digital Sexual Crime announced that adolescents can request for their data to be deleted without their parents’ consent in this year. However, recently in Republic of Korea, a private company which provides services to delete all of the requestee’s ‘uncomfortable records’ online received spotlight. This company mentioned that out of all age groups, adolescents in their teens requested the most and most requests from adolescents were related to images or videos of sexual crime. Although the government has services regarding the removal of records related to sexual crime, adolescents chose to depend on private companies. Such sensitive issues must be held responsible by the State. As schools offer online classes in Covid-19 pandemic, there is concern that the rate of digital sexual crimes will increase as the proportion of digital device use increases. the State must make them much accessible for children and must widely promote the existence of such services.

**4. Purpose of education and children’s right to privacy**

One of the reasons why Republic of Korea still remains to ‘not’ adopt anti-discrimination legislation is because of the society’s deep-rooted discrimination against LGBTIs. Although schools superficially claim the importance of nondiscrimination in education, there have been cases reported that schools held questionnaires to search for students with different sexual orientations and gender identities. The act of trying to search for children who have different sexual orientations just shows that some schools in Korea still do not respect children’s privacy on their sexual orientation and gender identity. No matter what sexual orientation a child has, it should not be a factor to affect the child’s education and school life. As such problematic issues are hidden within school walls, the State must actively monitor schools that are violating children’s right to privacy and nondiscrimination and must provide specific guidelines on the protection of children’s right to privacy.

Additionally, as mentioned in detail in the ‘Additional NGO report on the right to privacy in the Republic of Korea (2019)’ submitted to the SR on the right to privacy, many schools still remain to have regulations regarding dating among students. Although not explicit, school life regulations still punish children for dating. However, the act of dating between students is strictly a private issue. In line with the issue of sexual orientation, the State must make efforts to monitor schools violating children’s right to privacy.

1. The Personal Information Protection Act (‘PIPA’); The Act on the Promotion of Information and Communications Network Utilization and Information Protection (‘Network Act’); and the Act on the Use and Protection of Credit Information (‘Credit Information Act’). [↑](#footnote-ref-1)
2. See Personal Information Protection Commission, “The Guideline of pseudonymized data”, September 2020. [↑](#footnote-ref-2)
3. Article 28-7 of PERSONAL INFORMATION PROTECTION ACT exclude the data subject’s right on pesudonymized data; Article 28-7(Scope of Application) Articles 20, 21, 27, 34 (1), 35 through 37, 39-3, 39-4, 39-6 through 39-8 shall not apply to the pseudonymized information. [↑](#footnote-ref-3)
4. See Personal Information Protection Commission & Ministry of health and welfare, “The Guideline of health and medical care data utilization”, September 2020. [↑](#footnote-ref-4)
5. Article 7-2 (Issuance of Pre-Notification for Early Detection of Missing Children, etc.) of the Act on the Protection and Support of Missing Children, Etc.

   (1) Upon request from a custodian of a child, etc. for the prompt recovery and return of the missing child, etc., the Commissioner General of the Korean National Police Agency may register information on fingerprint and face of the child, etc. (hereinafter referred to as "information, such as fingerprints") in the information system under Article 8-2 and issue the certificate of advance reporting to such custodian. [↑](#footnote-ref-5)
6. Article 8-2 (Notification of Results of Medical Examinations) of the Prevention of Acquired Immunodeficiency Syndrome Act

   (1) No person who has conducted a medical examination of AIDS shall notify any person, other than the person himself/herself subject to the medical examination, of the results of such medical examination: Provided, That where a person subject to the medical examination is a person who lives communally in a military camp, correctional institution, etc., the person who has conducted the medical examination shall notify the head of the relevant institution of the results of such medical examination, and where the person subject to the medical examination is a minor, feeble-minded person or mentally disabled person, the person who has conducted the medical examination shall notify his/her legal representative of the results of such medical examination. [↑](#footnote-ref-6)