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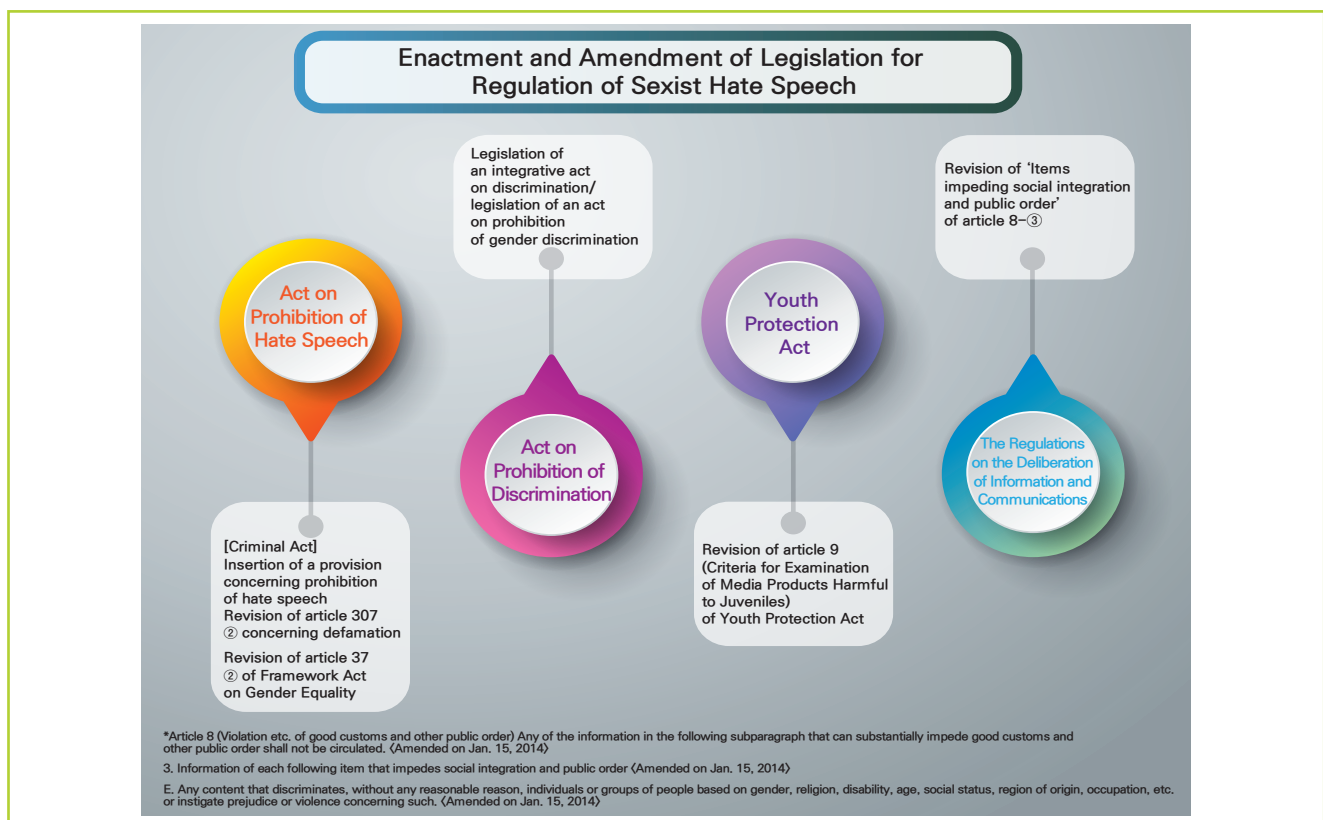
Research Title Measures for Institutional Responses against Sexist Hate Speech

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## Enactment and Amendment of Legislation for Regulation of Sexist Hate Speech

### Abstract

- Based on the recognition that the symbolic authority of law is required to persuade the fact that using hate speech against women is unethical, this study suggests the measures for legal control of hate speech against women.
- Many nations keenly feel the necessity of institutional regulation of sexist hate speech. Unfortunately, however, no nation has efficiently controlled it yet. Although regulation of hate speech against women is made possible through such general criminal laws as Anti-Hatred (Speech) Act of Australia, and Anti-sexism Law of Belgium, and Communications Act and Abusive Behavior and Sexual Harm Act of Scotland, there still exist many obstacles to be overcome.
- Based on such overseas experiences, this study intends to suggest measures for legal control that fit our society. Roughly, they are divided into four possible measures, which are legislation of an act on prohibition of hate speech, legislation of an act on prohibition of discrimination, revision of Youth Protection Act, and revision of the Regulations on the Deliberation of Information and Communications.



## 1. Background and Issues



### Severity of hate speech against women

- ▶ With the development of online life, the phenomenon of hate speech against women is becoming more serious. The severity of expressions keeps intensifying, and extreme and preposterous words are being used ordinarily in everyday life. Use of such sexist hate speech is not limited to online life but also often appears in magazines, offline media, and even in face-to-face situations. This is particularly serious among the youth, who use them both consciously and unconsciously without awareness of the problem.



### Absence of regulatory laws

- ▶ Notwithstanding the seriousness of situation, the reality is that hate speech, including that against women, is not being regulated on the ground that it is the violation of the 'freedom of expression.' Of course, the criminal and civil punishment of hate speech under provisions concerning defamation or insult is possible. However, such punishments are limited to cases against individuals, and there exists no way of punishing hate speech against women as a group. Absence of legal restrictions on hate speech against women constitutes a problem in terms of symbolic order as well as a deficiency in the legal system. That is, absence of any legal intervention leads people to consider the use of such hate expressions against women as no serious matter. Particularly, youths fail to realize its harmful effects of the violation of human rights and abuse while using such hate speech for fun, or not to be excluded from peer group, or for the increase of influence. Given this youth culture, an effective education on this point without the symbolic prohibition thorough relevant laws and regulations cannot be realistic.

## 2. Overseas examples



### Background

- ▶ Current status of legislation related to general hate speech and particularly to hate speech against women was looked into. That is, whether there exist general laws that regulate general hate speech, whether such laws provide for the control of hate speech against women, and whether there are other possibilities to punish hate speech against women either through laws concerning gender discrimination or general criminal laws were examined.



### Existence of an act on prohibition of hate speech and a provision concerning sexist hate speech

- ▶ Regulations against general hate speech exist in Germany, Australia, Canada, France, the UK and Japan, etc. This is mainly due to their history of racial discrimination, and not many of them include provisions concerning misogyny. Of these countries, Australia, France and Canada explicitly prohibit the expression of misogyny by law. France is the only case where gender is clarified in the general law on prohibition of hate speech (the Press Freedom Act). Australia prohibits gender-based collective hate under state government laws (Tasmania), not under federal laws, while Canada prohibits it in relation to federal broadcasting regulations.

- ▶ As shown above, even in the cases of having regulatory provisions on hate speech against women, either they are included as one of many reasons (groups), or they are not applied nationwide but to certain states or limited fields (media). This demonstrates the low level of legal interest in sexist hate speech that is common worldwide.
- ▶ As shown in the table below, these countries belong to one of the three cases of having a law on hate speech with a provision concerning gender, or having a gender discrimination law with a provision concerning hate speech against women, or having provisions in other laws that can be applied to punishment of sexist hate speech. Notwithstanding, all these three countries (like most of countries of the world) are not successful in controlling it. The reasons are as follows.

<Table 1> Acts applicable to regulation of sexist hate speech in Australia/Belgium/Scotland

Law		Australia	Belgium	Scotland
Act on Hate Speech	Existence	○	×	×
	Relevance to Gender	○(Tasmania State Government laws)	Not applicable	Not applicable
Act on Gender Discrimination	Existence	○	○(Gender Act)	○(Integrated Equality Act)
	Provisions concerning misogyny	×	○	×
Other Act	Provisions concerning misogynous speech	○(Civil Act of New South Wales State/Queensland State, Section 750 of Criminal Act of Australian Capital Territory)	○(Anti-sexism Law, Labor Act)	○(Communications Act, Abusive Behavior and Sexual Harm Act)



## Australia

- ▶ The provisions prohibiting hate speech are stated in the Racial Discrimination Act or Racial Hatred Act. Due to such high social sensitivity against racial discrimination, Australia seems to control hate speech against races.
- ▶ In a society that has an act on prohibition of hate speech, the best way of regulating hate speech against women is taking advantage of the act prohibiting hate speech. In reality, however, there are not many cases where such a society that has an act prohibiting hate speech, including Australia, adopts sexist hate speech as a subject of prohibition. Although Australia adopts gender or gender identity as subjects of prohibition perfunctorily, that is limited to some states, and effects of such regulation even in such states are found not to be great as well. This shows that as difficult as it is to legislate an act on prohibition of hate speech in a society where there is no act concerning it, adopting gender-based hate speech as a subject of prohibition after legislation of such an act is so much more difficult. From the Australian case, it is revealed that the abovementioned method is not a practical measure for regulating hate speech against women.



## Belgium

- ▶ The Anti-sexism Law of Belgium is differentiated from the acts on hate speech or acts on gender discrimination of other countries in that it is criminal regulation against sexism that prescribes the punishment of gender-discriminatory acts in public places. This act, being

legislated for the purpose of supplementing the existing criminal act or labor act, provides for the punishment of gender-based contempt, disparagement, and sexual objectification, which can serve as the foundation for the punishment of misogynous speech. The ultimate goal of this act is of course pursuing cultural change rather than punishment.

- ▶ Nonetheless, the limit of this law in restricting sexist hate speech is clear. Acts on regulating hate speech in general can punish expression of hatred against groups as well as individuals, which is different from general defamation laws that usually punish contempt and insult against individuals. In other words, hate speech targeting a total group with no aim at certain persons is ordinarily subject to an act on hate speech. The Belgian Anti-sexist Law, however, includes the stipulation specifying its application to such acts that are “aimed at certain persons”, and accordingly cannot punish ‘general’ types of sexual behavior or gender-discriminatory speech (online or offline) targeting all women as a group.



## Scotland

- ▶ In Scotland, neither an act on hate speech nor an act on gender discrimination exists. So, the criminal act or civil act serve as routes to regulate sexist hate speech. Actually, the above-suggested ‘Abusive Behavior and Sexual Harm Act’, ‘Communications Act’, ‘Criminal Justice Act’, and ‘Hate Crime Act’ either have provisions applicable to the control of sexist hate speech or have the great possibility to include provisions concerning sexist hate speech through some amendments.
- ▶ That is, first, sexist hate speech can be included in the definitions of ‘violent act’ and ‘sexual violence’ in the Abusive Behavior and Sexual Harm Act. Second, the provision in the Communications Act referring to ‘sending of excessively offensive electronic mail’ can already include online hate speech. Third, through amendments that include hatred among the acts of ‘harassment’ in the Criminal Justice Act and gender as a subject of hatred in the ‘Hate Crime Act’, sexist hate speech can be regulated. Last, in the case of Communications Act, although the provision referring to ‘offensive communications’ can regulate online sexist speech depending on the decision of judge panel even without amendment to this Act, there is no such precedent in the Scottish judiciary.



## Implications

- ▶ Overseas examples suggest the following implications:
  - Failure in integrating gender provisions in hate speech laws: While Australia clearly states prohibition of racial hatred by law due to the high sensitivity to racial discrimination in society, the low sensitivity to gender discrimination in society seems to have hindered the inclusion of gender discrimination as a realm where hate speech is prohibited.
  - Partial success of acts on gender discrimination: Although there exist the grounds for prohibiting hate speech in gender discrimination acts, its application is limited to only offline or face-to-face situations.
  - Failure in legislation and revision of laws and lack of legal practices of applying existing laws: The demand for the law that prohibits sexist hate speech from women’s circles is inadequate to change the long, gender-blind practices of legal circles.

### 3. Policy suggestion



#### Korean status

- ▶ Under the current legislation, the possibility of controlling hate speech is limited to such cases where a speech aimed at an individual amounts to a crime of insult or defamation under criminal law. This is possible for such cases where hate speech is “an argument that a target group should be exiled, persecuted or corrected”, or “a public allegation is judged to be a defamation”<sup>1)</sup>, or hate speech falls under unlawful information (article 44-7)<sup>2)</sup> under the “Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.” (Hong Sung Soo, etc. 2016, 242).<sup>3)</sup>
- ▶ However, since the subjects of the abovementioned restrictions are “infringements on legal interest of individuals,” there is little probability for them to be applied to most of hate speeches aimed at all who belong to a target group (ibid., 247). Other scholars also insist that due to the specification of individuals in the establishment of a case of contempt and defamation, damages done by hate speech against groups or those done by disparage or scorn of target groups are hard to be redeemed (Lee Seuyng-yeon, 2016; Lee Zoon Il, 2014). In reality, there has been no case of applying defamation, insult, or circulation of unlawful information to online expressions that disparage women as a group.



#### Regulatory measures on sexist hate speech through legislation of an act on prohibition of hate speech

- ▶ Prohibition of hate speech through revision of the Criminal Act
  - Insertion of a provision concerning hate speech

Discussions of the legislation on the prohibition of hate speech have been tried through the amendment bill on the inclusion of a provision concerning hatred in the Criminal Act proposed by an Assemblyman, Ahn Hyo-dae, and the proposal by Assemblyman Jin Young in 2015 of partial amendment to the Public Official Election Act, but they failed to pass the National Assembly. This demonstrates that the consciousness of the evils of hate speech in our society is not high enough, while the resistance against the prohibition of expression is big. However, given the ever-growing severity of hate speech today, there is no little probability of the reemergence of the necessity of an act on prohibition of hate speech. Particularly, for the punishment of the kinds of hate speech containing the incitement of violence against ‘groups’ that cannot be regulated with existing legislation, a new legal provision as an act on prohibition of hate speech is required.
  - Amendment to the provision of defamation

Currently, the provision concerning defamation in article 307 of the Criminal Act is

1) Article 307 (Defamation) of Chapter 33 (Crimes Against Reputation) (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won. <Amended on Dec. 29, 1995> (2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won <Amended on Dec. 29, 1995>. Article 309 (Defamation through Printed Materials) (1) A person who commits the crime of Article 307 (1), by means of newspaper, magazine, radio, or other publication with intent to defame another, shall be punished by imprisonment or imprisonment without prison labor for not more than 3 years or by a fine not exceeding seven million won <Amended on Dec. 29, 1995>. Article 311 (Insult) A person who publicly insults another shall be punished by imprisonment or imprisonment without prison labor for not more than one year or by a fine not exceeding two million won <Amended on Dec. 29, 1995>.

2) Of the unlawful information prohibited from circulation under paragraph (1), information with content that defames other persons (subparagraph 2), and information with content that repeatedly arouses fear or apprehension (subparagraph 3)(ibid.)

3) Where a provider of information and communications services, or a manager or an operator of a message board fails to implement this, the person shall be punished by imprisonment with labor for up to 2 years or by a fine not exceeding 20 million won (article 73 of the same Act). Any person who perpetrated any act that falls under subparagraph 3 of paragraph (1) of the same article, including the person who started to use the relevant speech, shall be punished by imprisonment with labor for up to 1 year or by a fine not exceeding 10 million won (article 74 of the same Act).

understood to be applicable to cases where the targets are individuals. Although, of course, it is not completely impossible to extensively interpret this provision that it includes defamation against a group, it is hard to find such examples in reality. Under the circumstances, if “a person who defames another by publicly alleging facts” in article 307<sup>4)</sup> is revised to “a person who defames an individual or a group by publicly alleging facts (underlined part is to be added)”, this will constitute a sure ground for prohibition of collective hate speech. In the same context, if “A person by means of newspaper, magazine, radio, or other publication with intent to defame another” in paragraph (1) of article 309<sup>5)</sup> can be revised to “A person by means of newspaper, magazine, radio, or other publication with intent to defame an individual or a particular group (underlined part should be added).”<sup>6)</sup>

Revision of a provision concerning defamation opens the possibility for other legal provisions to be applied to the punishment of hatred based on the revised provision. For example, subparagraph 2 and 3 of paragraph (1) of article 44-7 (Prohibition on Circulation of Unlawful Information)<sup>7)</sup> of the ‘Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. stipulate that information with defamatory content and information arousing fear or apprehension are unlawful information<sup>8)</sup>, and they can become the grounds for the punishment of hatred against groups with the amendment to the defamation provision in the Criminal Act.

## ► Revision of the Framework Act on Gender Equality

- As described above, legislation of an act on prohibition of hate speech which enables criminal punishment can be a measure. However, Japanese-style proclamatory laws publicizing the evils of hate speech without penalty provisions can also motivate the education and monitoring for prevention of hate speech. In this respect, prohibition of hate speech can be clarified in the Framework Act on Gender Equality. Currently, the provision in section 4 of the Framework Act on Gender Equality, which deals with the expansion of gender equality culture, prescribes that improvement of gender discrimination and depreciation is the duty of the State and local governments. It is suggested that hatred be included in this provision.
- In other words, paragraph (2) of article 37 can be revised to “The State and local governments shall provide assistance in improving discrimination, prejudice, depreciation, hatred<sup>9)</sup>, or abuse grounded on gender inequality in the content of newspapers, broadcast media, magazines,

4) Article 307 (Defamation) (1) A person who defames another by publicly alleging facts shall be punished by imprisonment or imprisonment without prison labor for not more than two years or by a fine not exceeding five million won. <Amended on Dec. 29, 1995> (2) A person who defames another by publicly alleging false facts shall be punished by imprisonment for not more than five years, suspension of qualifications for not more than ten years, or a fine not exceeding ten million won. <Amended on Dec. 29, 1995>

5) Article 309 (Defamation through Printed Materials) ① A person who commits the crime of Article 307 (1), by means of newspaper, magazine, radio, or other publication with intent to defame another, shall be punished by imprisonment or imprisonment without prison labor for not more than three years or by a fine not exceeding seven million won. <Amended on Dec. 29, 1995>

6) If amended like this, a problem of the conflict with current emphasis on the protection of legal interest of individuals might occur.

7) 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: <Amended on Sep. 15, 2011>

1. Information with obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, images, or motion picture; 2. Information with content that defames other persons by divulging a fact or false information, openly and with intent to disparage the person's reputation; and 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.

8) Such unlawful information shall be deleted upon the request of the Korea Communications Standards Commission. Internet contents providers who fail to comply with such request shall be punished by imprisonment with labor for up to 2 years or by a fine not exceeding 20 million won (Article 73 of the same Act). A person who sends the information arousing fear or apprehension under subparagraph 3 can be punished by imprisonment with labor for up to 1 year or by a fine not exceeding 10 million won. (Article 74 of the same Act)

9) There are some scholars who have reservations about including the word ‘hatred’ in an act on the grounds that this word is an expression of an emotional state, and it has recently been contaminated with numerous incidents (Lee Seung-hyun, Jan. 25, 2018. Performance Reviews of Korea Women's Development Institute). Nevertheless, while hatred has been emerging as one of major issues in the media, it started to have implications pointing to social phenomena. Moreover, considering that overseas countries use the term ‘hate speech’, its inclusion in laws do not necessarily seem impossible, and even replacing the word with the one that can be socially agreed on through discussions in legislation process is also possible.

Internet, and other mass media, and shall strive to ensure that the awareness of gender equality can be diffused through mass media.” Paragraph (3), also, can be revised to “(3) The Minister of Gender Equality and Family may regularly examine gender-based discrimination, prejudice, depreciation, hatred, or abuse in the content of mass media and, where deemed necessary to improve any statute, system, policy, etc., may request the Korea Communications Commission and other relevant institutions to make the necessary improvement.”



## **Legislation of an act on prohibition of discrimination**

- ▶ Considering that the root of hatred is discrimination against a particular group, legislating an act on prohibition of discrimination and thereby including the provision concerning the prohibition of hate speech can be an effective measure. While UN keeps recommending the legislation of an integrative act on prohibition of discrimination, currently Korea does not have an act on prohibition of discrimination.
  - Integrative act on prohibition of discrimination: Legislation of an integrative act on prohibition of discrimination, clarifying gender as a group or a reason for discrimination along with race, religion, etc. and hate speech as an act of discrimination, can be considered. But the laws and motions on discrimination thus far have adopted the method of creating a provision on ‘harassment’ and indirectly included hate expression as part of it, rather than clarifying hate expression itself.<sup>10)</sup> This method cannot assure efficiency in producing results, since it requires another phase of proof that hate speech is a kind of harassment to those people who think hate speech is not a physical attack but just verbal expression that causes no actual harm. In this respect, a provision in an act on prohibition of discrimination that directly regulates hate speech is necessary.
  - Act on prohibition of gender discrimination: In Korea, the Gender Discrimination Prevention and Relief Act was enacted in 1999, but was abolished as the jurisdiction of prevention and relief of gender discrimination was transferred to the Ministry of Gender Equality and Family in 2005. Currently, in the absence of an independent act providing for prevention of gender discrimination, the necessity of an act on prevention of gender discrimination is emerging. In 2015, the Framework Act on Gender Equality was legislated, and assemblyman Yoo Seung-hee proposed the ‘legislative bill on prohibition of gender discrimination and sexual harassment and protection of rights’, which contained a provision on prohibition of discrimination for the reason of gender, and marital status, etc., prohibition of disadvantage due to nonacceptance of sexual harassment, and prohibition on the part of employers of gender discrimination, dismissal or punishment for reporting sexual harassment, etc. If a provision concerning the prohibition of hate speech against women is included in an act on prohibition of gender discrimination, it would fit well with the whole context of the act. If it is actually realized, referring to the Belgian Gender Act, provisions enabling the punishment of hate speech against women as a group as well as the punishment of hate speech against individual women should be included, and use of hate speech online and in printed materials, as well as offline oral expressions, should also be included as subjects of punishment.

10) Both the bill on prohibition of discrimination proposed by Assemblyman Kim Jae-yeon in 2012 and the bill on prohibition of discrimination proposed by Assemblymen Kim Han-gil and Choi Won-sik in 2013 contained a provision on prohibition of ‘harassment.’



## Revision of Youth Protection Act

- ▶ Article 9 of Youth Protection Act<sup>11)</sup> defines media products that are harmful to juveniles. Based on that definitions, article 44-7 (Prohibition on Circulation of Unlawful Information)<sup>12)</sup> (1) 5 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. prohibits the circulation of media products that are harmful to juveniles for profit, and article 20 of the Provisions concerning Deliberation on Information and Communications describes the Criteria for Examination of Media Products Harmful to Juveniles. Since matters related to hatred are not included in the definitions of media products that are harmful to juveniles in the current Youth Production Act, “2. If a media product is likely to arouse juveniles to an urge to commit an atrocity or crime” can be revised to “2. If a media product is likely to arouse juveniles to hatred or an urge to commit an atrocity or crime (underlined part is to be added)”, so that the ground for controlling the circulation of hate speech can be prepared.



## Provisions concerning deliberation on information and communications

- ▶ The reformed Korea Communication Standards Commission has established and is operating the ‘Provisions concerning Deliberation on Information and Communications’ pursuant to article 24 (2) of the Act on the Establishment and Operation of Korea Communications (hereinafter, “Act”). Among the provisions, article 8 (3)<sup>13)</sup> ‘items impeding social integration and public order,’ is relevant to prohibition of hate speech. Currently, it is stated that “any content that discriminates, without any reasonable reason, individuals based on gender, religion, disability, age, social status, region of origin, occupation, etc. or instigate prejudice or violence concerning such” without clarification about hate speech. This can be revised to “any content that discriminates, without any reasonable reason, individuals or groups of people based on gender, religion, disability, age, social status, region of origin, occupation, etc. or instigate prejudice or violence concerning such (underlined part is to be added)”, and thereby serve as more concrete grounds for punishment of hate speech.

11) Article 9 (Criteria for Examination of Media Products Harmful to Juveniles) (1) If the Commission on Youth Protection or an examining authority finds, as a result of its examination under Article 7, that a media product falls under any of the following, it shall determine the media product as harmful to juveniles: 1. If a media product is lewd or obscene to arouse juveniles' sexual desire; 2. If a media product is likely to urge juveniles to commit an atrocity or crime; 3. If a media product provokes or glamorizes violent acts in various forms, including sexual violence, and the abuse of drugs; 4. If a media product induces juveniles to gambling and speculation or is likely to significantly harm the healthy lives of juveniles; 5. If a media product is anti-social or unethical to hinder juveniles' formation of good character and citizen consciousness; 6. If a media product is obviously likely to harm the mental or physical health of juveniles in any other aspect. (2) The criteria under paragraph (1) shall apply on the basis of the notion generally accepted in society, and the literary, artistic, educational, medical, and scientific aspects that each media product has and the characteristics of each media product shall be taken into consideration. (3) Necessary matters regarding the detailed criteria for examining whether a media product is harmful to juveniles and the application of such criteria shall be prescribed by Presidential Decree.

12) 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 <Amended on Sept. 15, 2011>: 1. Information with obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, images, or motion picture; 2. Information with content that defames other persons by divulging a fact or false information, openly and with intent to disparage the person's reputation; and 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.

13) Article 8 (Violation etc. of good customs and other public order) Any of the information in the following subparagraph that can substantially impede good customs and other public order shall not be circulated. <Amended on Jan. 15, 2014> 3. Information of each following item that impedes social integration and public order <Amended on Jan. 15, 2014> E. Any content that discriminates, without any reasonable reason, individuals based on gender, religion, disability, age, social status, region of origin, occupation, etc. or instigate prejudice or violence concerning such. <Amended on Jan. 15, 2014>

Government office in charge : Women's Policy Division and Division of Youth Protection Environment  
of the Ministry of Gender Equality and Family