2016
Open Net
Annual Report

2016 Highlights

September 24 :   Access Now, an international NGO working for open Internet, selected Open Net as one of the "heroes" that are **most working for human rights in communications surveillance** in 2016. Open Net was specifically recognized for its efforts to reveal the risks of Smart Sheriff, a parental monitoring app supported by the government, and to finally shut it down.

September 23 :   Open Net hosted in the **Korea Internet Governance Forum (KrIGF) annual conference** three sessions on regulation: webcasting regulation, zero-rating, and the mandatory ISMS certification. Open Net also presented various local and global Internet governance issues in KrIGF Steering Committee, and conducted a training on United Nations' human rights mechanism related to those issues.

August 30 :   Open Net represented minors and their parents in **a constitutional challenge** against the law that forces to adopt measures blocking "harmful contents" in smartphone owned by minors.

June 15 :   Open Net released a new report on **the social responsibilities of the Internet intermediaries**, "Stand Up for Digital Rights: Recommendations for Responsible Tech," after jointly working with Center for Law and Democracy (Canada), Arabic Network for Human Rights Information (Egypt), Center for Internet and Society (India), Center for Studies on Freedom of Expression and Access to Information (Argentina), Canadian Internet Policy and Public Interest Clinic (Canada), and research team of University of Toronto (Canada).

June 01 :   On behalf of 22 users participated in Open Net's "Ask Your Telcos" campaign, Open Net filed a civil damages suit against the National Intelligence Service and investigative authorities for **unlawful warrantless seizure of subscriber data**.

May 27 :   Open Net celebrated the third anniversary by hosting a **special conference, "Free, Open, and Sharing Internet,"** in which various Internet freedom and digital rights issues were discussed in three independent sessions. Combined annual reports titled "Activity Report 2013 - 2015" was released.

April 01 :   Open Net won **a civil suit against a copyright troll**'s excessive damage claims to BitTorrent users who had downloaded stories from published books. The court decided that to harass the accused by filing rampant lawsuits solely for monetary settlement is illegal because it is not in accordance with the nature of civil actions.

March 30 - April 01 : At **RightsCon 2016 conference** in San Francisco Open Net hosted a session on warrantless access to subscriber data in which UN Special Rapporteur on FoE David Kaye spoke, and spoke in various sessions on right to be forgotten, intermediary liability, Internet transparency, and net neutrality. Other achievements included working with Article 19

on the principles of balancing free speech vs. privacy, and building international network of public interests attorneys with Media Legal Defence Initiative.

March - Present :   Open Net has spearheaded organizing the Korean civil society coalition for **Open Government Partnership**,. Major contribution includes participating in constructing government's National Action Plan, and monitoring its moves toward the Plan and the principles of Open Government Partnership.

2016 Numbers

- Unfair Online Content Takedown Reporting campaign -- Re-posted **8** blocked contents

- Ask Your Telcos campaign -- **152** participants and **22** volunteered for the civil damages lawsuit against the investigative authorities

- Petition for No ActiveX -- **11,587** signatures

- Petition for reforming PACJSA (Child Pornography Law) -- **9,233** signatures

- Petition for reforming Copyright Law not to be used as a tool of excessive pursuit of monetary rewards -- **986** signatures

- Open Net Forum -- **6** seminars with more than **200** participants

- Open Net Talk (social academy program launched in November) -- **1** meeting with **8** participants

- Essay and Video Contest 2016 -- awarded to **8** papers and **2** movies (total prize was KRW 1,250,000)

- Total donation -- **KRW 313,866,888** (**6** corporate and organization donors + **66** individuals)

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1. Legislative Campaigns

(1) Freedom of Expression

- **Intermediary liability law reform**

  - **Temporary Takedown System** reform: Open Net is working to propose a bill with MP Park Honggeun to improve the process of restoring blocked contents by reforming the Information and Communications Network Act. It submitted a request to Korea Internet Self-governance Organization (KISO) to change ISPs' process of **restoring blocked contents** so that users' freedom of expression could be protected effectively.
    - Related activities: **[Reporting Unfair Online Content Takedown Campaign](#)** and offering [a **shelter**](#) for re-posting the blocked contents

  - Internet User Monitoring Law Repeal: Open Net moved to repeal Article 9.2 of the Electronic Commerce Act that **imposes obligation on e-commerce service providers to monitor their users**. Open Net issued comments demanding repeal of the clause. Also submitted opinion to the Fair Trade Commission.

  - Blocking **new webcasting regulations**: Open Net issued comments and submitted its opinion to the Korea Communications Commission to oppose the proposed amendment of the Telecommunication Business Act. The amendment imposes new obligation to monitor obscene contents on webcasting service providers.

- **Countering administrative censorship**

  - Open Net and MP You Seunghee proposed an amendment of the **Public Official Election Act** to abolish the National Election Commission's power to issue order to delete Internet contents.

  - Open Net and MP You Seunghee are also working on an amendment of the Information and Communications Network Act to remove the notoriously vague phrase "**sound communication ethics**" from the Korea Communications Standard Commission (KCSC)'s telecommunications review standard.

- **Child Sexual Abuse Prevention Act reform**

  - While Act on the Protection of Children and Juveniles Against Sexual Abuse was introduced to protect children and minors, an amendment in 2011 **expanded the concept of "child or juvenile pornography" to animations, cartoons, and adult pornographies** that present characters to be perceived as children and minors, which has imposed excessive punishment on artists. With MP Keum Taesup, Open Net is working on an amendment to reform the law.

(2) Intellectual Property

- **Copyright Act reform**

  - **Copyright troll prevention law**: Open Net, after defending against copyright owners' abuse, proposed a bill to block those abuses by limiting the applicability of criminal liability only to the cases with more damages than an equivalent of USD 1,000 and maintain balance between the interests of copyright owners and users. The bill was abandoned with the end of the previous 19th National Assembly. Open Net plans to propose the bill again in current National Assembly, with MP Noh Woongrae.

  - Intermediary liability for copyright: Article 103 of the Copyright Act **forces intermediaries to remove contents merely upon receiving a report of infringement** even when it is not infringing. Open Net plans to propose a bill to reform the system to work as a safe harbor, not a censorship.

(3) Privacy

- **Cyber surveillance prevention legislation**

  - Open Net is pursuing amendments of the Protection of Communications Secrets Act and the Electronic Communications Business Act with MP Jeon Haecheol to prevent the state's pervasive **unconstitutional cyber surveillance**. The current communication data provision system enables law enforcement agencies to obtain personal information without warrant, and proper notice is not given to the data subjects after communications metadata was seized.

  - In a joint effort with Jinbo Network and P2P Foundation Korea, in August 2015 Open Net developed and released "Open Vaccin," an Android app to check the **infection of National Intelligence Service's surveillance spyware**. The app was downloaded and installed half milion times by November 2016.

- **Protection of personal information**

  - Open Net participated in consultation on the proposed amendments of the **Information and Communication Network Act** and the **Location Information Act**, which aim at making the use of personal data more efficient.

  - Warning against government's **Big Data De-identification Guideline**: Government's Guideline considers any information de-identified by selected government measures to be exempt from data protection rules.. The attempt to establish an extralegal organization, not based on any law, to determine the appropriateness of de-identification measures is questionable. Open Net released

its concern that the plans in Guideline should be implemented by relevant statutory amendments, not by extra-legal guideline.

- **Surveillance for smartphones owned by minors**

  - ○ Open Net issued its opinion to oppose KCC's amendment of the Telecommunications Business Act. While the amendment finally allowed parents to refuse to install **monitoring apps in their minors' smartphones**, it still required telcos to check if the smartphones have those apps and report the results to parents. Open Net believed that the amendment still had problems of privacy invasion because telcos need to access and monitor minors' devices.

(4) Innovations and Regulations

- **Reforming Digital Signature Act**

  - ○ In a successful legislative campaign Open Net had challenged the mandatory use of **government-sponsored electronic certificates** and led government to drop that rule by reforming the Electronic Financial Transactions Act. However the certificates are still used/recommended in many other areas and are mixed with other identification measures. In order to ensure the tech-neutrality principle and help users enjoy easier access to the Internet services, Open Net works with MP You Seunghee to reform the Digital Signature Act and finish the problem for good.

- **Blocking attempts to expand ISMS certification**

  - ○ Government planned to expand the **mandatory application of Information Security Management System (ISMS)** to hospitals and universities. Open Net opposed to this move by issuing its objection and now is working with the association of universities' information management bodies to amend related laws.

- **Problems in identity verification agency system**

  - ○ The system was meant to substitute the practice of collecting government-issued Resident Registration Numbers (RRNs), but many have concerns that it simply functions as **another state paternalism regulations**. These agencies are allowed to collect RRNs, and many laws lead the needs of identity verification to the agencies, which grants them the monopoly status. Open Net prepares a new bill to deal with these problems.

- **Legislation to control smartphone pre-installed apps**

  - ○ The device manufacturers or telcos' **practice of pre-installing numerous apps on new smartphones** can cause concern because it takes up device's resource and may limit free competition in the market. Ministry of Science, ICT and Future

Planning set a guideline which limits the number of pre-installed apps and allows users to delete those apps. However, hoping stricter regulations be applied, MP Shin Kyungmin proposed an amendment, which can work as an overly broad advance regulation. Open Net is examining the amendment and the guideline to decide what is the best approach.

(5) Open Government

- **Reforming Official Information Disclosure Act**

  - Current **open information law** has many holes that are utilized by government and officials to avoid disclosure of unwanted information. Open Net cooperates with [Center for Freedom of Information](#) to reform the law; it specifically tries to introduce the **penalty clauses** that allow courts to punish officials who do not conform with the law.

- **Election information system in National Election Commission homepage**

  - **Election information** including candidates biography and results data is crucial for vital democracy. However, the election information system managed by National Election Commission is not useful enough for voters. Also the Commission does not offer various **API sources**, hindering new services from private sector to come up. Open Net worked with MP Park Jumin to change the Commission's approach.

- **Reforming laws for court rulings to be opened to public**

  - Currently courts allow public to **access only a part of their written decisions in civil and criminal cases**. Also it is hard for users to search cases on the Internet; they have to pay an absurd amount of money to finally get the case they want to see. Open Net offers systematic alternatives and moves to change related laws in a joint effort with MP Keum Taesup.

(6) Net Neutrality

- **Reforming Telecommunications Business Act for reinforcing net neutrality**

  - Open Net and MP You Seunghee jointly sponsored the amendment of the Telecommunications Business Act. The amendment focused on **the irrelevance of m-VOIP limitation and needs to clarify some clauses**. The amendment had been submitted in the 19th National Assembly but not passed then.

2. Litigations

(1) Freedom of Expression

- **Open Net won 4shared.com lawsuit**

  - Korea Communications Standards Commission (KCSC) had blocked the access of 4shared.com, a file-sharing site, for copyright infringement. Open Net had filed an administrative lawsuit and won the first trial in January 2016. The case now went to the Supreme Court.

- **Foreign news website on North Korea blocked**

  - KCSC blocked Northkoreatech.org, an England-based news websites specialized in North Korea ICT and Technology, arguing it violates the National Security Act. Open Net fight the decision by filing an administrative lawsuit in May 2016.

- **Constitutional Appeal against web contents censorship**

  - A dairy company reported numerous web contents that were criticizing it for unfair business practice. Those reported contents were blacked out according to the notorious take-out system of the Information and Communications Network Act. In July 2016 Open Net filed an unsuccessful constitutional appeal against the rules.

- **Defamation lawsuit against a Sewol Ferry commentator**

  - Open Net won again a defamation lawsuit by Maritime Police against a Sewol Ferry incident commentator. In September 2016 the appellate court ruled that government agencies should not use defamation lawsuits to block criticism against them.

- **Fighting against insult lawsuit abuse**

  - Open Net criticized a Korean lawyer for insult lawsuit abuse and the practice of pursuing excessive settlement money with netizens who had worte critical comments on the Internet. In December 2015 one of the commentators was acquitted after Open Net defended his case. Open Net keep fighting the practice by supporting defendants, delivering remarks on the issue, and offering Responding Manuals to numerous victims in the similar cases.

- **Child Pornography Law for cartoon characters**

  - Open Net has been defending artists and netizens in at least four criminal lawsuits on child pornography charge. Open Net argued that Act on the Protection of Children and Juveniles Against Sexual Abuse should protect real children, not the fictional characters in arts such as animations and cartoons.

(2) Intellectual Property

- **Successful defense of online file sharing**

  - Open Net successfully defended three defendants in copyright infringement civil cases. Those defendants were sued for downloading stories through Torrent, a P2P file sharing programs.

  - In July 2016 Open Net won a criminal case against a netizen who had downloaded files through Torrent and been charged with copyright infringement.

  - Open Net defended a netizen who had uploaded a movie file on a web drive in which other netizens may download it. Later the plaintiff dropped the case.

- Lawsuit against photo used in public campaign

  - Fashion Labor Union was sued for using copyrighted photographies in parody images used in its campaign to promote fair labor practice. The Union lost the trial case and in July 2016 Open Net started to defend it in the appellate court.

(3) Privacy

- **Lawsuit over illegal acquisition of communication data**

  - After collecting 22 citizen participants in a right-to-know campaign, in June 2016 Open Net filed a state compensation lawsuit against law enforcement agencies over illegal acquisition of communication data without warrant. The defendants included National Intelligence Service, Seoul Metropolitan Police Agency, and Seoul Central District Prosecutor's Office.

- **Constitutional lawsuit for smartphones owned by minors**

  - Open Net represented minors and their parents to file a constitutional lawsuit against the Telecommunications Business Act that forces to adopt measures blocking "harmful contents" in smartphone owned by minors. Open Net argued that the law was a violation of minors' privacy and free communication, and also an offence against their parents' right to decide for their children.

(4) Net Neutrality

- **Lawsuit against telcos to block mVoIP service**

- ○ Open Net and mobile phone consumers have been plaintiffs in a civil lawsuit against telecommunication service companies in which they sought a compensation for mVoIP (mobile-Voice over Internet Protocol) blocking. **Those telcos blocked mVoIP for consumers who subscribed inexpensive plans**, violating net neutrality principles. In April 2016 Supreme Court turned down the case.

(5) Legal Consultation

- ● **Joint efforts in Internet Law Clinic**

  - ○ Open Net and Korea University Law School signed an MOU to run [Internet Law Clinic](#) and began to offer legal counselling on Internet-related cases including copyright, patent, defamation, user information protection, and free expression.

3. Seminars

(1) Seminars in National Assembly

- "Reforming Copyright Act for preventing lawsuit abuse"
  - Open Net, MP Park Joosun, Center for Law and Technology, Korea Copyright Law Association
  - February 15, 2016

(2) Open Forum

- "Online identity verification: Is state paternalism the only answer?"
  - November 2, 2016

- "Zero-rating: User benefit vs. fair competition"
  - June 27, 2016

- "The Miracle at Marrakesh: International copyright change for the Blind and Visually Impaired"
  - May 19, 2016

- "Personal information at a crossroad in big data and IoT era"
  - March 3, 2016

(3) Special Conference

- Open Net's Third Anniversary Conference: "Free, Open, and Shareable Internet"
  - Session 1: For the normalization of the abnormalities
  - Session 2: Free expression on the Internet and state paternalism
  - Session 3: Korean economic crisis and digital exit strategy
  - May 27, 2016

4. Education and Research

(1) Promoting Social Discussion

- Open Net launched a new social academy discussion program "Open Net Talk."
  - The First Talk: "Hate speech and the Internet public sphere"
  - November 11, 2016

(2) Promoting Research and Creativeness

- Essay and short movie Contest 2016
  - Topics: Internet policy issues including free expression, privacy, surveillance, personal information protection, open government, copyright, and net neutrality.
  - Paper/video submission: June - September 2016
  - Total prize: KRW 1,250,000
  - Five essays and two videos were selected and awarded in November 2016.

5. Coalition Efforts

(1) International Coalition

- Co-hosting "AI in Asia" conference
  - Hosts: Open Net, Digital Asia Hub, SPRI, AIRI, Korea University Law School, Judicial Policy Research Institute
  - December 2016

- Signed an MOU with Open Observatory of Network Interference (OONI)
  - October 2016

- Asia Pacific School on Internet Governance (APSIG) 2016
  - Open Net worked with Dr. Kilnam Chon and Asian Institute of Technology (AIT) in Bangkok
  - September 2016

- Monitoring hate expression in World Cup football matches
  - Open Net is working with Fare Network in hate speech monitoring program.
  - Monitoring staff observes participants in 2018 World Cup football matches and reports any incident.
  - Started in September 2016

- Petition to UNCHR against Korean regulations
  - Open Net submitted petitions to UNCHR
  - Issues: Government agencies' collecting communication data, delay or omission of notification on monitoring activities, surveillance of minors' smartphone, and Anti-terrorism Act
  - September 2016

- Defending Juveniles' right to privacy
  - In 2015 Open Net successfully block "Smart Sheriff," an app for monitoring minors' smartphone, in a joint effort with Citizen Lab of Toronto University and Cure53.
  - Open Net is working with the partners on similar apps: Cyber Safety Zone, Smart Comfort Dream, and other apps provided by telcos.

(2) Domestic Coalition

- South Korea Internet Governance Forum (KrIGF) 2016
  - Open Net co-hosted KrIGF and offered discussion sessions: Webcast regulations, zero rating, and mandatory ISMS certification.
  - Open Net reported findings and issues on international and regional Internet governance.
  - September 23, 2016

- Coalition efforts against online censorship
  - For fighting against KCSC's blackout of Internet contents criticizing the THAAD installation, Open Net and other eight NGOs formed a collective protest.
  - Released comments and held a press conference.
  - Also urged Internet Service Providers not to delete contents based on KCSC's arguments.
  - August 2016

- Activities in Open Government Partnership (OGP)
  - Since March 2016 Open Net is working as the chairperson of the civil society component of Korea's OGP.
  - Participated in drawing the National Action Plan and delivered opinions from civil society.
  - Open Net is monitoring the commitment of government to the Plan.

6. Overseas Activities

(1) INCLO (International Network of Civil Liberties Organizations) conference
  ○ Johannesburg, South Africa
  ○ October 30 - November 1, 2016
  ○ What debates on MLAT, encryption, SIM registration have in common: users' choice – Comments at INCLO 2016

(2) FOC (Freedom Online Coalition) 2016 conference
  ○ San José, Costa Rica
  ○ October 17 - 18, 2016
  ○ Why Freedom Online Coalition Should Act on Right to be Forgotten – Comments at FOC 2016

(3) CSN (Cyber Stewards Network) meeting
  ○ Toronto, Canada
  ○ October 12 - 14, 2016

(4) International Institute of Communications conference
  ○ Bangkok, Thailand
  ○ October 12 - 13, 2016
  ○ Discussion 1: Changing Customer Expectations : We Need Strong Data Protection Law but not RTBF
  ○ Discussion 2: Criminal Enforcement of Copyright Hurts Copyright Holders

(5) CyFy (The India Conference on Cyber Security and Internet Governance) 2016
  ○ New Delhi, India
  ○ September 28 - 30, 2016
  ○ Discussion: Understanding Warrant Doctrine Solves Dilemmas like MLAT and Apple v. FBI

(6) APrIGF 2016
  ○ Taipei, Taiwan
  ○ July 27 - 29, 2016
  ○ Hosted two sessions:
    ■ Merger 8. Right to be forgotten (RTBF), Privacy, anonymity and public access to Information
    ■ Merger 3. Recommendations for Responsible Tech: Digital Rights and Private Sector Internet Intermediaries
  ○ Participated in four sessions as presenters and/or discussants:
    ■ WS.67 Intrusive Surveillance Technology Could be Justified?
    ■ WS.52 Regional Transparency Report and Online Rights Protection Measures
    ■ Merger 2. The Future of Internet Rulemaking through Trade Agreements

- ■ Merger 7. Threats to Free Expression and Challenges for Reform in South East Asia

(7) OGP (Open Government Partnership) Asia regional meeting
- ○ Manila , Philippines
- ○ July 21 - 22, 2016

(8) Citizen Lab CLSI 2016
- ○ Toronto, Canada
- ○ July 6 - 8, 2016

(9) RightsCon Silicon Valley 2016
- ○ San Francisco, USA
- ○ March 30 - April 1, 2016
- ○ RightsCon Silicon Valley 2016 participation report (Korean)

7. Donations

Period: January 1 - October 30, 2016

Donation from companies (2)	KRW	284,485,753
Donation from organizations (4)	KRW	13,885,135
Donation from individuals (66)	KRW	15,496,000
Total amount	KRW	**313,866,888**