Journal of Korean Law | Vol. 9, 109-124, December 2009

The Protection of Private Information in the Internet under Tort Law in Korea: From the Perspectives of Three Major Legal Conceptions of Law*

*Seong Wook Heo***

Abstract

This paper is a follow-up paper of my previous paper on the issue of protection of private information in the Internet under tort law.

In the previous paper, I reviewed the facts, legal issues, background information, and policy issues in the lineage II case, coming to the conclusion that the process of finding law by the judges in a new case which does not have any convention or precedent inevitably entails the policy makings of the judiciary.

Based on the factual and legal foundations of the previous paper, in this paper, I made a new effort of analyzing the three major legal conceptions of modern jurisprudence from the perspective of finding the 'law' in hard cases and applying the legal conceptions to solving the lineage II case.

The three legal conceptions I referred are conventionalism, legal pragmatism, and integrity in law.

By reviewing and comparing each of the three legal conceptions, I came to the conclusion that legal pragmatism is the most candid and suitable legal methodology in dealing with the recent private information leakage lawsuits in Korea.

---

* The original draft of this paper was presented at the 2008 SNU-Freiburg Symposium held in Freiburg Germany from July 16-19 of 2008. The relevant issue of this paper was formerly dealt with in my Korean paper included in the book "Science Technology and Law (Parkyoungsa)" published in July 2007. Compared with the former Korean paper, I made a new effort in this paper to analyze the legal issues in the previous paper in the perspective of three different kinds of conception of law; conventionalism, legal pragmatism, and integrity in the law. I developed the three different kinds of conception of law on the issue of private information protection case in the follow up paper of the previous Korean paper with the title of "Several legal issues on private information leakage lawsuits -mainly about the methodology of finding law in hard cases-" which was published at *The Justice* of the Korean Legal Center in April 2009.

I am especially thankful to my friend Prof. Wei, Gu-Yeon in Harvard Engineering School, who kindly provided me with his office in Harvard while I was staying at Cambridge 2008 summer.

** Assistant Professor, Seoul National University School of Law. This Article was funded by the Seoul National University Law Foundation in 2009.

I. Introduction

The protection of private information is increasingly becoming important with the rapid development of computer technology and the Internet in Korea. However, traditional legal system of Korea is yet to provide for legal theories those specifically deal with the aspect of protection of information in the cyberspace. Therefore, the problem of leakage and misappropriation of private information in the cyberspace has been governed by the traditional Korean tort law. However, there are several problems that we should consider in addressing the protection of private information in the cyberspace when applying the traditional Korean tort law.

First of all, due to the special characteristics of cyberspace where the users are often anonymous, it is not easy to identify the wrongdoers.

Second, even if the wrongdoer is identified, it is not easy for the plaintiff to establish the causation between the wrongful act committed by the wrongdoer and the actual injury suffered by the plaintiff. In general, it is extremely difficult for the plaintiff to specify the concrete monetary damages inflicted on him or her by the defendant's leakage of private information.

Third, relating to the second problem, the plaintiff tends to demand consolation money rather than compensation for monetary damages. In such cases, the plaintiff often requests judges to consider monetary injuries, which are often hard to prove and unquantifiable, in calculating the amount of consolation money. According to the Korean tort law, judges can decide the amount of consolation money at his or her own discretion taking into consideration of the totality of circumstances presented during the trial. However, in such cases, it is not easy for judges to determine the appropriate amount of consolation money because the decision would not only bind the parties of the case but would also influence various legal policies relating to cyberspace governance.

The matter of how heavily should the ISP(Internet Service Provider) be liable for the leakage of private information can have great influence on the prosperity of IT industry. In this sense, the court's decisions on consolation money in private information cases have the aspect of policy making.

In this regard, this paper is written to review several issues on the protection of private information under the Korean tort law. Recently in

Korea, several cases on those issues have been decided by the court. Among those cases, "Seoul Central District Court *2005Gadan240057*" case dated April 28, 2006 is regarded as the leading case.[1)]

This paper is written to open discussions on such problems in relation to "Seoul Central District Court *2005Gadan240057*" case which dealt with the problem of private information leakage in the Internet.

In this paper, I made an attempt to apply three different methods of tort law interpretation from the different perspectives of the three major conceptions of law — which is conventionalism, legal pragmatism, and law as integrity.

I sincerely hope that the reflections I had in that case and in this paper would help other judges and scholars dealing with similar problems in other cases.

II. Seoul Central District Court *2005Gadan240057* Decision (Hereinafter, the 'Lineage II Case')

1. Facts

(1) The defendant "ncsoft corporation" is an on-line game operating company in Korea, and the plaintiffs are the users of the MMORPG (Massive Multiplayer Online Role Playing Game) game named 'lineage II' provided by the defendant.

(2) In May 11, 2005, while processing the game server updating, the technician of the defendant mistakenly left the plaintiffs' IDs & Passwords to be written at the log file which is saved at the user PC's hard-disc.

(3) Once ID & Password is written at the log file, anybody using the PC can have access to the information simply by searching for the log file. In this sense, the private information of plaintiffs has been leaked. I will

1) Actually, I was the presiding judge of the case while I was serving as a judge in Korea. And this paper is on the reflections I had while I was considering the case as a judge in charge of the case.

call this leakage of private information as "the accident in this case."

(4) Not until May 16, 2006 12:00 pm, did the defendant know that the accident in this case had happened, and at that time the defendant took measures to prevent the leakage of private information.

(5) From May 11 to May 16, more than a half million users logged on this game, and their IDs & Passwords have been written at the log file.

(6) No monetary damages to the plaintiffs have been verified until the trial procedure began. And the plaintiffs are claiming against the defendant their mental damages from the leakage of their private information.

2. Issues

(1) The first issue in this case is whether it could be said that the leakage of private information has happened simply because the ID & Password was written at the log file.

(2) The second issue is whether the defendant is liable for the consolation money to the plaintiffs in the case that the leakage of private information is admitted. And the appropriate amount of money to console the mental injuries of the plaintiffs.

3. The Court Ruling

(1) On the issue of whether the leakage of private information has happened in this case, the court ruled as follows. "The defendant, as an on-line game service provider, was under the legal and contractual obligation of taking necessary measures not to leak the customers' private information. In the world of on-line game and the Internet, the ID & Password is the private information by which the identity of the user can be recognized. And, if ID & Password is written at the log file, anybody who uses the computer can have access to the ID & Password simply by checking the log file in the hard-disc."

(2) On the issue of whether the defendant is liable for the mental injuries of the plaintiffs, the court ruled that the plaintiffs must have suffered the mental injury from the leakage of their private information considering the high probability of the misuse of their information in the Internet accompanied by the fast development of computer technology and

Internet. So the defendant is liable for the consolation money to the plaintiffs.

(3) About the amount of consolation money, the court ruled that KRW 500,000 (about $500) for each plaintiff is the appropriate amount of consolation money in consideration of the totality of this case. The court ruled that it is necessary to protect the private information of the plaintiffs but it is also true that it is too far going to let the defendant go bankruptcy just because of one mistake. In consideration of all these factors, the court decided that KRW 500,000 is an appropriate amount of consolation money in this case.[2)]

III. The Protection of Private Information in the Internet under Tort Law in Korea and the Three Conceptions of Law

1. Basic legal doctrine of the Korean tort law

The basic law governing the tort liability in Korea comes from the interpretation of the Civil Act §750, §751, §763, and §393.

The Civil Act §750 provides: "Anybody who has illegally inflicted injury on others by intention or negligence is liable for the injury." For a person to be liable under tort law in Korea, 1) his action or inaction should be illegal (illegality), 2) injury has been inflicted on the victim (injury), 3) the injurer should have acted by intention or by negligence (responsibility), 4) there should be the causation between the injurer's action or inaction and the victim's injury (causation).

And the Civil Act §751 provides: "The injurer who has inflicted the mental

---

2) At the appellate court, the amount of consolation money was reduced to KRW 100,000. But the basic legal reasoning was all the same with this case. *See* Decision of January 26, 2007, *2006Na12182* (Seoul C.D. Ct). And the legal reasoning was also maintained at the Supreme Court Decision. *See* Decision of August 21, 2008, *2007Da17888* (Sup. Ct. of Korea). Afterwards, several other cases on private information leakage followed the reasoning of this case. *See* Decision of February 8, 2007, *2006Gahap33602* (Seoul C.D. Ct.), Decision of January 3, 2008, *2006Gahap87762* (Seoul C.D. Ct.).

anguish on the victim is also liable for the victim's mental damages."

And the Civil Act §393 provides: "The amount of damages is limited to the ordinary damages, and the extraordinary damages are granted only when the debtor knew or could know the special situation of the creditor." And this is applied correspondingly to the scope of liability in tort by the Civil Act §763.

2. The Interpretation of the Civil Act §750, §751, §763, and §393 in this case and the issues to be solved by legal reasoning.

It is not difficult to establish in this case that the defendant was negligent, and that its negligence was illegal.

The issue is whether the injury caused by the defendant's negligent act was occurred to the plaintiffs or not. As we have seen above, no monetary damage has been verified. The problem is whether the plaintiffs ordinarily suffer mental damage simply because of the leakage of their private information. And if they do, what is the amount of the mental damages compensation which has to be paid by the defendant to the plaintiffs?

The issues and problems in this case can be solved differently according to the different conceptions of law.

3. Three Major Conceptions of Law[3)]

1) Introduction

In this section, I will try to find 'the law' in this case in the perspective of three different kinds of conceptions[4)] of law mainly discussed in the field of legal philosophy.

---

3) The explanation about the conception of law in this part is mainly dependent on that of DONALD DWORKIN, LAW'S EMPIRE 94-96 (1986).

4) Dwokin uses the word 'concept' and 'conception' differently according to the different level of abstraction at which the interpretation of the practice can be studied. For example, about the concept and conception of courtesy, the initial trunk of the tree — the presently uncontroversial tie between courtesy and respect — is concept, and the branches from the trunk — the controversial meaning of how to show respect as courtesy — is conception. That is to say, for this community, respect provides the concept of courtesy and that competing positions about what respect really requires are conceptions of that concept. *Id.* at 70-71. The concept of law and the conception of law can be understood in the same way.

According to Ronald Dworkin's explanation, there can be three different kinds of conceptions of law in relation to how they answer the next three questions of law.[5),6)]

First, is the supposed link between law and coercion justified at all? Is there any point in requiring public force to be used only in ways conforming to rights and responsibilities that "flow from" past political decisions?

Second, if there is such a point, what is it?

Third, what reading of "flow from"-what notion of consistency with past decisions-best serve it?

2) Conventionalism

Conventionalism explains that whether a person has a legal right is determined by the content of social conventions. If he has a right according to social conventions about who has the power to legislate and how that power is to be exercised and how doubts created by the language are to be settled then he has a legal right, but not otherwise.[7)]

Conventionalism is a kind of non-skeptical theory about legal rights people have. People have as legal rights whatever rights legal conventions extract from past political decisions.[8)]

Conventionalism does not admit the popular layman's view on law that there is always law to enforce. In conventionalism, law is never complete, because new issues on law ceaselessly arise about which no convention has been established yet.

On the issue of finding law under the situation of no convention, conventionalist adds like this; "Judges must decide such novel cases as best as they can, but by hypothesis no party has any right to win flowing from past collective decisions, that is to say, no party has a legal right to win, because the only rights of that character are those established by convention. So the decision a judge must make in a hard case is discretionary in this sense. A

---

5) *Id.* at 94.

6) Actually, this categorization is not the unique one of Dworkin's, his categorization is on the line of historical debate between the natural law claims and the positive law claims. About the succinct explanation on the origin of law and jurisprudence, refer to RICHARD A. POSNER, THE PROBLEM OF JURISPRUDENCE 4-23 (1990).

7) *Id.* at 115.

8) *Id.* at 152.

judge must find some other kinds of justification to support his decision beyond any requirement of consistency with decisions made in the past."[9)]

Of course those new decisions can make a new convention for the future and create a new legal right for the future.

Hart's version of positivism can be categorized as conventionalism in the sense that his rule of recognition is a rule that was accepted by almost everyone, or at least by almost all judges and other lawyers, no matter what the content of that rule may be.[10)]

There has been a good deal of debate about the meaning of "acceptance of the rule of recognition", but Hart's root idea that the truth of propositions of law is in some important way dependent upon conventional patterns of recognizing law has attracted wide support from scholars.[11)]

To the legal positivist like Hart, 'law' is what is promulgated as law by the agency which has the authority to do so, generally a legislature. But the problem begins when the meaning of a statute cannot be discerned. Cases depending on the meaning of a statute must be decided at any rate. Judges cannot send parties to their home empty handed simply because the meaning of a statute cannot be discerned.

Hart argues that in such cases the judges have to "legislate."[12)]

In this aspect legal positivism shares much with legal pragmatism.

As Richard A. Posner has pointed out correctly, judicial legislating is obviously at the pragmatic end of the pragmatism-formalism spectrum.[13)] But positivism has big part not sharing with pragmatism and it goes only half the distance to pragmatism. Hart limits the judges' pragmatic, legislative discretion to filling gaps in the "law." Borrowing John Dewey's terminology, Posner explains that a Hartian judge employs a logic relative to antecedents until he encounters a gap, whereupon he switches to a logic relative to consequences.[14)]

---

9) *Id.* at 115.

10) H.L.A. HART, THE CONCEPT OF LAW 97-107 (1961). (recited from DWORKIN, *supra* note 3, at 431).

11) DWORKIN, *supra* note 3, at 34-35.

12) HART, *supra* note 10, at 252, 272-273 (1994).

13) RICHARD A. POSNER, LAW, PRAGMATISM, AND DEMOCRACY 81 (2003).

14) *Id.* at 81.

3) Legal Pragmatism

Posner has repeatedly argued that pragmatism is the best description of the American judicial ethos and also the best guide to the improvement of judicial performance, and thus the best normative as well as positive theory of the judicial role.[15),16)]

Pragmatism denies that past political decisions in themselves provide any justification for either using or withholding the state's coercive power.

Pragmatism finds the justification for legal coercion in justice, efficiency, some other contemporary virtue of the coercive decision itself, as and when it is made by judges.[17)]

In this sense, pragmatism is a type of skeptical theory of legal right. It

---

15) *Id.* at 1.

16) Posner makes the following generalizations of legal pragmatism. [*Id.* at 59-60.]

1. Legal pragmatism is not just a fancy term for ad hoc adjudication; it involves consideration of systematic and not just case-specific consequences.
2. Only in exceptional circumstances, however, will the pragmatic judge give controlling weight to systemic consequences, as legal formalism does; that is, only rarely will legal formalism be a pragmatic strategy. And sometimes case-specific circumstances will completely dominate the decisional process.
3. The ultimate criterion of pragmatic adjudication is reasonableness.
4. And so, despite the emphasis on consequences, legal pragmatism is not a form of consequentialism, the set of philosophical doctrines (most prominently utilitarianism) that evaluate actions by the value of their consequences: the best action is the one with the best consequences.
5. Legal pragmatism is forward-looking, regarding adherence to past decisions as a qualified necessity rather than as an ethical duty.
6. The legal pragmatist believes that no general analytic procedure distinguishes legal reasoning from other practical reasoning.
7. Legal pragmatism is empiricist.
8. Therefore it is not hostile to all theory. Indeed, it is more hospitable to some forms of theory than legal formalism is, namely theories that guide empirical inquiry. Legal pragmatism is hostile to the idea of using abstract moral and political theory to guide judicial decision making.
9. The pragmatic judge tends to favor narrow over broad grounds of decision in the early stages of the evolution of a legal doctrine.
10. Legal pragmatism is not a supplement to formalism, and is thus distinct from the positivism of H. L. Hart.
11. Legal pragmatism is sympathetic to the sophistic and Aristotelian conception of rhetoric as a mode of reasoning.
12. It is different from both legal realism and critical legal studies.

17) DWORKIN, *supra* note 3, at 151.

denies that people ever have legal rights. People do not have any legal right until judges decide that they do.

According to Posner, the basic objection to legal pragmatism is that while pragmatism undoubtedly explains much of the form and the content of legislation and of governmental action generally, pragmatic adjudication is formless; the principles of pragmatism leave a very large, as it were blank, space in which the judge has discretion; pragmatism leads us to lawlessness, accepting and embracing the inevitability that like cases will not be treated alike, since different judges will weigh consequences differently, depending on each judge's background, temperament, training, experience, and ideology.[18)]

Dworkin objects the pragmatism in the sense that it is just advising lawyers and judges to seek the decision that "works" in the specific legal case without relying on a theory or a doctrine, but that turns out to be empty. He says that in law and moral, the admonition to avoid thorny question by seeing "what works" is not just unhelpful but it is unintelligible.[19)]

On this objection, Posner admits that legal pragmatism is not always and everywhere the best approach to law. But he empathizes that in twenty-first-century America,[20)] there is no alternative to legal pragmatism. He argues that modern countries contain such a diversity of moral and political thoughts that the judiciary has to be heterogeneous to retain its effectiveness and legitimacy; and the members of a heterogeneous judicial community cannot subscribe to a common set of moral and political dogmas that would make their decisionmakings determinate.[21)] Moreover, Posner adds, pragmatism does not leave judges at large. The pragmatic judge is less constrained by doctrine or theory than the formalist judge thinks himself to be. But the pragmatic judge is still under the material, psychological, and institutional constraints, which limit the discretion of judge.[22)]

---

18) POSNER, *supra* note 13, at 93-94.

19) DONALD DWORKIN, JUSTICE IN ROBES 64-65 (2006).

20) This explanation can be also applied to other modern countries including Korea.

21) POSNER, *supra* note 13, at 94.

22) *Id.* at 95.

4) Law as Integrity

According to law as integrity, propositions of law are true if they fit to or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice.[23)]

Law as integrity is also a nonskeptical theory of legal rights in the sense that people have whatever rights are sponsored by the principles that provide the best justification of legal practice as a whole, as legal rights.[24)]

The detailed explanation of law as integrity will be presented at the later part of this paper.

4. The probable conclusions of this case according to each conception of law

(1) Under the conventionalism conception of law, the issue of the mental consolation damages claim in this case cannot be easily answered.

The problem of private information leakage is relatively novel issue in Korea and so the convention about whether to allow the compensation for the metal damages to the victims has not been established, which means that the victims of private information leakage do not have legal rights on consolation money flowing from the past practices.

In one aspect, the plaintiffs' claim on consolation money might have been rejected by the court. There was no statutes specifically ordering the payment of consolation money for the leakage of private information, and no precedents granting consolation money to the victims like the plaintiffs in this case could be found.

On the contrary, it might be said that there were social conventions not allowing the payment of consolation money in this kind of cases in Korea. The court has been generally reluctant in ordering the payment for the abstract and non-monetary injuries. The court has repeatedly ruled that the victim's mental injury is generally recouped by the payment of economic injuries unless victims are under special situation in which the mental injury cannot be

23) DWORKIN, *supra* note 3, at 225.

24) *Id.* at 152.

cured by the payment of economic injuries.[25)]

Anyway, in deciding cases without conventions, judges inevitably have to exert their discretion. It is not certain in what way the conventionalism demands judges to use their discretion.

In my view, the discretionary decision of judges in the area of no convention becomes much similar to that of legal pragmatism.

Actually, as we have seen above, Hart demands the judicial legislating in filling the gap in the "law." And the judicial legislating is obviously at the pragmatic end of the pragmatism-formalism spectrum.

(2) Under the pragmatism conception of law, the conclusion of this case can be different according to the perspectives judges have about the justice, efficiency or some other contemporary virtues on this issue. In this case, the court ruled that it would be better to impose heavy liability on the defendant considering the increasing risk of misuse of leaked private information accompanied by the speedy development of computer technology and Internet.

The court decided that imposing heavy liability on ISPs can help the ISPs to have incentives to take necessary measures to protect the customers' private information.

Of Course judges can disagree about which rule would be best for the future of our community.

Some judges may think that it is impetuous for the court to order the payment of consolation money in this kind of case. They may think that no social consensus has been made about how strictly the ISPs should be liable for the private information leakage. The IT industry in Korea is under severe competition both in domestic and international market and yet to grow much. Imposing too heavy liability on ISPs may hinder the IT industry development.

Actually, in this case, the potential plaintiffs who had suffered the same private information leakage like the plaintiffs were as many as a half million. If $ 1,000(about KRW 1,000,000) of consolation money for each victim is granted by the court, then the total sum of potential damages the defendant have to pay to the potential plaintiffs amounts to nearly $ 500,000,000(about KRW 500,000,000,000).[26)] It would not be easy to find any company which can

25) *See* Decision of November 26, 1996, *96Da31574* (Sup. Ct. of Korea).

endure that amount of damages not only in Korea but also in international market. According to this calculation, the judge's decision ordering the payment of consolation money in this case may be the decision of ordering the defendant to go to ruin.

Some judges may think that unless the legislature has specifically made the legislation ordering the payment of consolation money in this kind of cases, it would not be appropriate for the judiciary to move forward in the policy making issue. They may think that the role of policy making should be left to the political branches of the government which act under the political responsibility for the people, and the judiciary is better to be kept at its position as the least dangerous branch of the government.[27)]

(3) It is difficult to know exactly what kind of conclusion the court can provide under the law as integrity conception of law.

Dworkin explains that law as integrity asks judges to assume, so far as possible, that the law is structured by a coherent set of principles about justice, fairness and procedural due process, and it asks them to enforce those principles in the new cases that come before them, so that each person's situation is fair and just according to the same standards.[28)]

Under law as integrity, Judges must make their common-law decisions on grounds of principle, not policy. In this sense, law as integrity rejects pragmatism.[29)]

To better understand the way integrity operates in the process of interpretation, I will modify and use Dworkin's analysis of McLoughlin case[30)] to fit our case.

Let's suppose that Hercules, an imaginary judge of superhuman intellectual power and patience who accepts law as integrity, is making an interpretation of Korean tort law in this case.

---

26) = $ 1,000×500,000. Of course not every victim will sue against the defendant. If, however, quite a big portion of victims comes to sue against the defendant, then the total amount of damages will be big enough to lead the defendant to bankruptcy.

27) ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH — THE SUPREME COURT AT THE BAR OF POLITICS — (1986).

28) DWORKIN, *supra* note 3, at 243.

29) *Id.* at 244.

30) *McLoughlin v. O'Brian* [1983] 1 A.C. 410, reversing [1981] Q.B. 599.

In parallel with Dworkin's example,[31] we can think of the next six lists of interpretations among which Hercules chooses the best fit for integrity.

i. No one has a moral right to compensation except for economic injury.
ii. People have a moral right to compensation for mental injury from the leakage of private information only in the case when they were using PC open to public use, but have no right to compensation if they were using their own personal computers. Because in the latter case there is no possibility of other people accessing the log file.
iii. People should recover compensation for mental injury when a practice of requiring compensation in their circumstances would diminish the overall costs of private information leakage or otherwise make our community richer in the long run.
iv. People have a moral right to compensation for any injury, mental or economic, which is the direct consequence of negligent leakage of private information, no matter how unlikely or unforeseeable it is that the leakage would result in that injury.
v. People have a moral right to compensation for mental or economic injury that is the consequence of negligent leakage of private information, but only if that injury was reasonably foreseeable by the person who acted carelessly.
vi. People have a moral right to compensation for reasonably foreseeable injury but not in circumstances when recognizing such a right would impose massive and destructive financial burdens on people who have been careless out of proportion to their moral fault.

These statements on victim's right contradict one another and no more than one can be chosen as interpretation of tort law in this case.

If Hercules chooses i., he will decide for the defendant, if iv., for the plaintiffs. The other statements require further thoughts, but the line of reasoning will be different.

Dworkin explains that Hercules' decision will depend on the two

31) DWORKIN, *supra* note 3, at 240-241.

constituent virtues of political morality: justice and fairness.[32] His decision will depend not only on his belief about which of these principles is superior as a matter of abstract justice but also on the moral convictions a community members have as a matter of political fairness.[33]

After a long discussion, Dworkin concludes that Hercules might choose interpretation v. or vi. in accordance with his political morality and the community's moral convictions.[34]

I am not sure that I have understood Dworkin's legal reasoning 100 percent perfectly in Hercules' interpretation of hard case law.

However, I cannot but give some doubtful eye on Hercules' way of finding integrity in law in the sense that he himself is also playing politics in finding or defining integrity.[35] If Hercules cannot escape playing politics in finding integrity in law at the final stage of interpretation, he actually becomes no different from the judge in pragmatism of conventionalism. It might be better to admit candidly that in some stage judges should inevitably make a policy decision and it that sense they are playing politics. We can understand the principle of separation of powers as including the policy making aspect of the judiciary in hard cases.

IV. Conclusion

In this paper, I have tried to make a possible interpretation of Korean tort law on the protection of private information in the Internet from the three different perspectives of conception of law; conventionalism, pragmatism, and integrity in the law.

The decision of the lineage II case was mainly made in the perspective of legal pragmatism. The court considered several related factors and interests

---

32) *Id.* at 249.

33) *Id.* at 249.

34) *Id.* at 245-259.

35) Actually, Dworkin himself is pointing out that the first and most common objection to integrity in law is that Hercules is playing politics and is repudiating that this objection is an album of confusions. *Id.* at 258-260. However, I am not sure that his explanation was enough to repudiate the objection.

and concluded that it would be better to impose heavy liability on ISP by ordering the compensation of mental damages to the plaintiffs for the sake of building a more private information protective IT industry in Korea.

The legal reasoning in reaching the 'law' in this case can be different according to which legal conception we take in interpretation. However, my opinion is that on whichever legal conception we are standing, we cannot help but allow the policy making of the judge at the final stage of finding law in hard cases. And in that sense, the way of finding law becomes much similar in each legal conception.

As far as my legal reasoning supports, my understanding is that legal pragmatism is a rather candid posture of interpreting law in hard cases. After all, judges would have to make a policy decision in hard cases which do not have the outright answer. Trying to explain the process of finding law in such hard cases only from the perspective of convention or integrity in law can be misleading.

I sincerely hope that the issues and considerations discussed in this paper might be helpful to other judges and commentators interested in similar legal subjects.

KEY WORDS: Protection of private information in the Internet, conventionalism, legal pragmatism, integrity in law, jurisprudence, legal conceptions

Manuscript received: Oct. 10, 2009; review completed: Dec. 1, 2009; accepted: Dec. 10, 2009.