THE PROTECTION OF PRIVATE INFORMATION ON THE INTERNET UNDER TORT LAW IN KOREA

Seong Wook Heo[*]

[*] Professor of Law, Seoul National University School of Law. This article is a modified version of the original draft published in Korea. See Seong Wook Heo, The Protection of Private Information in the Internet under Tort Law in Korea: From the Perspectives of Three Major Legal Conceptions of Law, 9 Journal of Korean Law 109 (2009). Analysis of the aftermath of this case was added to the end of the original article.

INTRODUCTION

The protection of private information is increasingly becoming important with the rapid development of computer technology and the internet in Korea. However, the traditional legal system of Korea is yet to provide legal theories that specifically deal with the aspect of protection of information in cyberspace. Therefore, the problem of leakage and misappropriation of private information in the cyberspace has been governed by traditional tort law. And there are several problems that we should consider in addressing the protection of private information in the cyberspace when applying traditional 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 victim 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, and relating to the second problem, the plaintiff tends to demand consolation money rather than compensation for monetary damages. In such case, the plaintiff often requests the judge to consider monetary injuries, which are often hard to prove

and unquantifiable, in calculating the amount of consolation money. According to Korean tort law, a judge can decide the amount of consolation money at his or her own discretion, taking into consideration the totality of circumstances presented during the trial. However, in such case it is not easy for the judge 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 the governance of cyberspace.

The matter of how heavily ISPs (Internet Service Providers) should be held liable for the leakage of private information can have great influence on the prosperity of IT industry. In this sense, the court's decision on consolation money in private information case has the aspect of *policymaking*.

In this regard, this paper is written to review several issues on the protection of private information under tort law. Recently in Korea, several cases on those issues have been decided by the court. Among those cases, the "Seoul Central District Court 2005Gadan240057" case, dated April 28, 2006 is the leading case.[1] This paper is written to open discussions on such problems in relation to "Seoul Central District Court 2005Gadan240057" which dealt with the problem of private information leakage in the Internet.

In this paper, I attempt to apply three different kinds of tort law interpretation from the different perspectives of the three major conceptions of law: 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.

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[1] *See* Seoul Central District Court [Seoul C.D. Ct.], 2005Gadan240057, Apr. 28, 2006 (S. Kor.). 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 the judge in charge of the case.

I. SEOUL CENTRAL DISTRICT COURT 2005*GADAN*240057 DECISION (SO CALLED 'LINEAGE II CASE').

A. Facts

(1) The defendant "ncsoft corporation" was an online gaming operation company in Korea, and the plaintiffs were the users of the MMORPG (Massively Multiplayer Online Role Playing Game) named 'lineage II' and provided by the defendant.

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

(3) Once an ID & Password is written on the log file, anybody using the PC can access the information by simply searching for the log file. In this sense, the plaintiffs' private information had been leaked. I will refer to this leakage of private information as "the accident in this case".

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

(5) Between May 11th and May 16th, more than a half million users logged onto this game, and their IDs & Passwords were recorded on the log file.

(6) No monetary damage to the plaintiffs was verified until the trial procedure. And the plaintiffs claimed against the defendant their mental damages from the leakage of their private information.

B. Issues

(1) The first issue in this case was whether it could be said that the "leakage of private information" occurred when each ID & Password was recorded on the log file.

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

C. The Court Ruling

(1) On the issue of whether the "leakage of private information" occurred, 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 by simply checking the log file in the hard-disc.

(2) On the issue of whether the defendant was liable for the mental injuries of the plaintiffs, the court ruled that the plaintiffs must have suffered mental injury from the leakage of their private information, considering the high probability of the misuse of their information on the internet and accompanied by the fast development of computer technology and internet. So, the defendant was 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 was the appropriate amount of consolation money in consideration of the totality of this case. The court ruled that it was necessary to protect the plaintiffs' private information, but also held that it is too far going to let the defendant go bankrupt just because of one mistake. In consideration of all these factors, the court decided that KRW 500,000 was an appropriate amount of consolation money in this case.[2]

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[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* Seoul Central District Court [Seoul C.D. Ct.], 2006Na12182, Jan. 26, 2007 (S. Kor.). And the legal reasoning was also maintained at the Supreme Court. *See* Supreme Court [S. Ct.], 2007Da17888, Aug. 21, 2008 (S. Kor.). Afterwards, several other cases on private information leakage followed the reasoning of this case. *See* Seoul Central District Court [Seoul C.D. Ct.], 2006Gahap33602, Feb. 8, 2007 (S. Kor.); Seoul Central District Court [Seoul C.D. Ct.], 2006Gahap87762, Jan. 3, 2008 (S. Kor.).

II. THE PROTECTION OF PRIVATE INFORMATION IN THE INTERNET UNDER TORT LAW IN KOREA AND THE THREE CONCEPTIONS OF LAW

A. Basic Legal Doctrine of Tort Law in Korea

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

The Civil Act Article 750 provides: "Any person who causes losses or inflicts injuries on another person by an unlawful act, intentionally or negligently, shall be bound to make compensation for damages arising therefrom."[3] For a person to be liable under tort law in Korea: (1) his action or inaction must be illegal (illegality); (2) injury must be inflicted on the victim (injury); (3) the injurer must have acted by intentionally or negligently (responsibility); and (4) there must be causation between the injurer's action or inaction and the victim's injury (causation).

The Civil Act Article 751(1) provides: "The person who has injured the person, liberty or fame of another or has inflicted any mental anguish to another person shall be liable to make compensation for damages arising therefrom."[4]

The Civil Act Article 393(1) provides that "[t]he compensation for damages arising from the non-performance of an obligation shall be limited to ordinary damages."[5] Section 2 provides, though, that "[t]he obligor is responsible for reparation for damages that have arisen through special circumstances, only if he had foreseen or could have foreseen such circumstances."[6] And this is applied correspondingly to the scope of liability in tort by the Civil Act Article 763.[7]

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[3] Minbeob [Civil Act], Act. No. 471, Feb. 22, 1958, *last amended by* Act. No. 14965, Oct. 31, 2017, art. 750 (S. Kor.).

[4] *Id.* art. 751(1).

[5] *Id.* art. 393(1).

[6] *Id.* art. 393(2).

[7] *Id.* art. 763.

B. The Interpretation of the Civil Act Articles 750, 751, 753, and 393 In this Case and the Issues to be Solved by Legal Reasoning

It was not difficult to establish in this case that the defendant was negligent, and that its negligence was illegal. The issue was whether the defendant's negligence resulted in injury to the plaintiffs. As we have seen above, no monetary damage was verified. The problem was whether plaintiffs ordinarily suffer mental damages simply because of the leakage of their private information. And if they do, what is the amount of the mental damages compensation to which the plaintiffs are entitled? The issues and problems in this case can be solved differently according to the different conceptions of law.

C. Three Major Conceptions of Law[8]

1. Introduction

In this section, I will try to determine 'the law' in this case through the perspective of three different kinds of conceptions[9] of law widely discussed in the field of legal philosophy.

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.[10] Dworkin explains:

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[8] The explanation about the conception of law in this section is mainly dependent on the work of Ronald Dworkin. RONALD DWORKIN, LAW'S EMPIRE 94-96 (1986).

[9] Dworkin uses the word 'concept' and 'conception' differently according to the different levels of abstraction at which the interpretation of the practice can be studied. *Id.* at 70-71. 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. *Id.* at 70. 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 71. The concept of law and the conception of law can be understood in the same way.

[10] DWORKIN, *supra* note 8, at 94. Actually, this categorization is not the unique to Dworkin, as 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, *see* RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 4-23 (1990).

> First, is the supposed link between law and coercion justified at all? Is there any point to 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?[11]

2. Conventionalism

Conventionalism explains that whether a person has a legal right is determined by the content of social conventions.[12] If one 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 one has a legal right, but not otherwise.[13] Conventionalism is a kind of "nonskeptical" theory about legal rights people have.[14] People have as legal rights whatever rights legal conventions extract from past political decisions.[15]

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

On the issue of finding law under the situation of no convention, conventionalism adds:

> Judges must decide such novel cases as best they can, but by hypothesis no party has any right to win flowing from past collective decisions—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 hard cases is discretionary in this sense: it is left open by the correct understanding of past decisions. A judge must find some other kind of justification beyond law's warrant, beyond any requirement of consistency with decisions made in the past.[16]

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[11] DWORKIN, *supra* note 8, at 94
[12] *Id.* at 114
[13] *Id.* at 115.
[14] *Id.* at 152.
[15] *Id.*
[16] *Id.* at 115.

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

H.L.A. Hart's version of positivism can be categorized as conventionalism in the sense that "his rule of recognition is a rule that happens to have been accepted by almost everyone, or at least by almost all judges and other lawyers, no matter what the content of that rule may be."[17] There has been a good deal of debate about the meaning of "'acceptance' of a 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.[18]

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. Even still, cases depending on the meaning of the statute must be decided. Judges cannot send parties to their home empty-handed simply because the meaning of a statute cannot be discerned. Hart argues that in such a case the judges have to *legislate*.[19]

In this aspect legal positivism shares much with legal pragmatism. As Richard A. Posner has pointed out correctly, "[j]udicial legislating is obviously at the pragmatic end of the pragmatism-formalism spectrum."[20] But positivism is not fully consistent with pragmatism, and as Posner explains, Hart's argument "goes only half the distance to pragmatism."[21] Hart "limits the judge's pragmatic, legislative discretion to filling gaps in 'the law.'"[22] Borrowing John Dewey's terminology, Posner explains that "[t]he Hartian judge employs . . . a logic relative to antecedents until he encounters a gap, whereupon he switches to a logic relative to consequences."[23]

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[17] *Id.* at 431 n.2 (citing H.L.A. HART, THE CONCEPT OF LAW 97-107 (1961)).
[18] *Id.* at 34-35.
[19] H.L.A. HART, THE CONCEPT OF LAW 252, 272-73 (2d. ed. 1994).
[20] RICHARD A. POSNER, LAW, PRAGMATISM, AND DEMOCRACY 81 (2003).
[21] *Id.*
[22] *Id.*
[23] *Id.*

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."[24]

Pragmatism "denies that past political decisions in themselves provide any justification for either using or

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[24] *Id.* at 1. Posner makes the following generalizations of legal pragmatism:

> 1. Legal pragmatism is not just a fancy term for ad hoc adjudication; it involves consideration of systemic and not just case-specific consequences.
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> 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.
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> 3. The ultimate criterion of pragmatic adjudication is reasonableness.
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> 4. And also, despite the emphasis on consequences, legal pragmatism is not a form of consequentialism, the set of philosophical doctrines (most prominently utilitarianism) that evaluates actions by the value of their consequences: the best action is the one with the best consequences. There are bound to be formalist pockets in a pragmatic system of adjudication, notably decision by rules rather than by standards. Moreover, for both practical and jurisdictional reasons the judge is not required or even permitted to take account of *all* the possible consequences of his decisions.
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> 5. Legal pragmatism is forward-looking, regarding adherence to past decisions as a (qualified) necessity rather than as an ethical duty.
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> 6. The legal pragmatist believes that no general analytic procedure distinguishes legal reasoning from other practical reasoning.
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> 7. Legal pragmatism is empiricist.
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> 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 decisionmaking.
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> 9. The pragmatic judge tends to favor narrow over broad grounds of decision in the early stages of the evolution of a legal doctrine.
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> 10. Legal pragmatism is not a supplement to formalism, and is thus distinct from the positivism of H.L.A. Hart.
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> 11. Legal pragmatism is sympathetic to the sophistic and Aristotelian conception of rhetoric as a mode of reasoning.
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> 12. It is different from both legal realism and critical legal studies.

Id. at 59-60.

withholding the state's coercive power."[25] Rather, pragmatism finds the justification for legal coercion "in the justice or efficiency or some other contemporary virtue of the coercive decision itself, as and when it is made by judges."[26] In this sense, pragmatism is a kind of skeptical theory of legal right. It 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 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.[27] 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."[28]

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 theory or doctrine, but that turns out to be empty.[29] He argues that "[i]n law and morals, particularly, the admonition to avoid thorny question by seeing 'what works' is not just unhelpful."[30] In fact, "it is unintelligible."[31]

On this objection, Posner admits "that legal pragmatism is not always and everywhere the best approach to law."[32] But he emphasizes that in twenty-first-century America,[33] "there is no alternative to legal pragmatism."[34] He argues that modern America "contains such a diversity of moral and political thinking that the judiciary . . . *has* to be heterogeneous [to retain its effectiveness and legitimacy]; and the members of a heterogeneous

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[25] DWORKIN, *supra* note 8, at 151.
[26] *Id.*
[27] POSNER, *supra* note 20, at 93.
[28] *Id.* at 93-94.
[29] RONALD DWORKIN, JUSTICE IN ROBES 64-65 (2006).
[30] *Id.*
[31] *Id.* at 65.
[32] POSNER, *supra* note 20, at 94.
[33] This explanation can be also applied to other modern countries including Korea.
[34] POSNER, *supra* note 20, at 94.

judicial community are not going to subscribe to a common set of moral and political dogmas that would make their decisionmaking determinate."[35] Moreover, Posner adds, "pragmatism does not leave judges at large."[36] "The pragmatic judge is less constrained by doctrine, by theory, than the formalist judge thinks himself to be."[37] But the pragmatic judge is still under the "material, psychological, and institutional constraints," which "limit the discretion" of the judge.[38]

4. Law as Integrity

As Dworkin explains: "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."[39] Dworkin also explains that "[l]aw as integrity is also a nonskeptical theory of legal rights [in the sense] that people have as legal rights whatever rights are sponsored by the principles that provide the best justification of legal practice as a whole."[40]

The detailed explanation of law as integrity will be presented in Section II.D.3 of this article.

D. The Probable Conclusion 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 mental damages to victims has not been established, which means that victims of private information leakage do not have legal rights to consolation money flowing from

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[35] *Id.*
[36] *Id.* at 95 (emphasis omitted0.
[37] *Id.*
[38] *Id.*
[39] DWORKIN, *supra* note 8, at 225.
[40] *Id.* at 152.

the past practices. In one aspect, the plaintiffs' claims for consolation money might have actually been rejected by the court. There were no statutes specifically ordering the payment of consolation money for the leakage of private information, and there could not be found any precedents granting the consolation money to the victims like the plaintiffs in the case.

On the contrary, it might be said that there were social conventions disallowing the payment of consolation money in this kind of case 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 cured by the payment of economic injuries.[41]

Anyway, in deciding cases without convention, judges inevitably have to exert their discretion. But 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 justice or 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 incentivizes ISPs to take necessary measures to protect the customers' private information.

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[41] *See* Supreme Court [S. Ct.], 96Na31574, Nov. 26, 1996 (S. Kor.).

But, 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. As a result, 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) in consolation damages for each victim was 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).[42] It would not be easy to find any company which can endure that amount of damages, whether in Korea or the international market. According to this calculation, the judge's decision ordering the payment of consolation money in this case may effectively be a decision 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.[43]

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[42] = $ 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.

[43] *See generally* ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS (2d ed. 1986).

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

Dworkin explains that "[l]aw as integrity asks judges to assume, so far as this is possible, that the law is structured by a coherent set of principles about justice and fairness and procedural due process."[44] Additionally, law as integrity "asks them to enforce these in the fresh cases that come before them, so that each person's situation is fair and just according to the same standards."[45] Under law as integrity, "[j]udges must make their common-law decisions on grounds of principle, not policy."[46] In this sense, law as integrity rejects pragmatism.[47]

To better understand the way integrity operates in the process of interpretation, I will modify and use Dworkin's analysis of *McLoughlin* case to fit our case.[48] As Dworkin does in *Law's Empire*, let's suppose that Hercules, "an imaginary judge of superhuman intellectual power and patience who accepts law as integrity,"[49] is making an interpretation of Korean tort law in this case.

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

(1) No one has a moral right to compensation except for physical injury.

(2) People have a moral right to compensation for emotional injury suffered at the scene of an accident against anyone whose carelessness caused the accident but have no right to compensation for emotional injury suffered later.

(3) People should recover compensation for emotional injury when a practice of requiring compensation in their circumstances would diminish the overall costs of accidents or otherwise make the community richer in the long run.

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[44] DWORKIN, *supra* note 8, at 243.
[45] *Id.*
[46] *Id.* at 244.
[47] *Id.*
[48] *See id.* at 23-29 (discussing McLoughlin v. O'Brian [1983] 1 AC 410 (H.L.) (Eng.)); *id.* at 238-39 (introducing the application of "Hercules," the "imaginary judge of superhuman intellectual power and patience who accepts law as integrity," to the facts of *McLoughlin* and other contexts).
[49] *Id.* at 239.

(4) People have a moral right to compensation for any injury, emotional or physical, that is the direct consequence of careless conduct, no matter how unlikely or unforeseeable it is that that conduct would result in that injury.

(5) People have a moral right to compensation for emotional or physical injury that is the consequence of careless conduct, but only if that injury was reasonably foreseeable by the person who acted carelessly.

(6) 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.[50]

These statements regarding various interpretations of a victim's rights, though, contradict one another and no more than one can be chosen as interpretation of tort law in this case.[51]

If Hercules chooses interpretation (1), he will decide for the defendant; if interpretation (4), for the plaintiffs. The other statements require further thought, and line of reasoning will be different for each.

Dworkin explains that Hercules' decision will depend on the "two constituent virtues of political morality": "justice and fairness."[52] His decision will depend "not only on his belief about which of these principles is superior as a matter of abstract justice but also about which should be followed, as a matter of political fairness."[53] After a long discussion,[54] Dworkin concludes that Hercules might choose interpretation (5) or (6) in accordance with his political morality and the community's moral convictions.[55]

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.[56] If Hercules cannot escape

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[50] *Id.* at 240-41.
[51] *Id.* at 241.
[52] *Id.* at 249.
[53] *Id.*
[54] *Id.* at 245-59.
[55] *Id.* at 258-59.
[56] *See id.* at 258-60. 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

playing politics in finding integrity in law at the final stage of interpretation, he actually becomes no different from the judge practicing pragmatism or conventionalism. It might be better to admit candidly that, in some cases, judges should or must inevitably make a policy decision and, of course, in 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.

CONCLUSION

In this article, I have tried to propose a possible interpretation of Korean tort law on the protection of private information on the internet from the three different perspectives of conception of law: conventionalism, pragmatism, and integrity in the law.

The decision of lineage II case was mainly made in the perspective of legal pragmatism. The court considered several factors and interests related to the case and concluded that it would be better to impose heavy liability on the ISP-defendant 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 policymaking 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 often have to make a policy decision in a hard case lacking an outright answer. And 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.

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this objection is an album of confusions. *Id.* at 259. However, I am not sure that his explanation was enough to repudiate the objection. *See id.* at 259-60.

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

AFTERMATH

The appellate court and the Supreme Court of Korea maintained and confirmed most of the legal issues delivered in this case, except that it lowered the damages amount to KRW 100,000 and dismissed the claims from plaintiffs who accessed the game from public PC stations.

This case took the position of leading case in private information leakage cases. The reasoning and decisions in this case were followed by many other similar cases which frequented the courts in the aftermath. Judges in the proceeding cases took pragmatic approaches and calibrated the amount of damages considering the context of each case.

As of 2019, quite a large volume of damages-based cases has accumulated and it can be said that the conventions on this issues are established. But it needs to be critically reviewed whether principles and integrity in law could be found in those streaming cases.