Master's Thesis of Public Administration

A Comparative Study on Internet Regulations focused on Preventing the Circulation of Illegal and Harmful Information on the Internet in South Korea and Ecuador

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Abstract

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Nowadays, the development of the Information and Communication Technologies has caused an increasing concern of States to regulate undesired content on the Internet. However, this is not easy because of many reasons. First of all, the Internet is a technology created and developed to use it openly without any control. Additionally, it allows anonymity and faster distribution of the information. For instance, if an undesired content is found it can be blocked but it is possible that this content emerges again in another place, plus if the person who publish the content encrypts it, it will be difficult to know who sent it.

Moreover, there is a lack of an international law governing the Internet. Other types of technologies that distribute information and facilitates communication are successfully regulated by international law such as telephone networks, but regarding the Internet there are no international laws covering specific problems of it because the States have different approaches to do it. States that are more interested in protecting social values would have a different approach than States that support freedom of speech. As a consequence, an international effort is also needed to improve regulation related to prevent the circulation of illegal and harmful information on the Internet.

Nevertheless, there are efforts made by some States to prevent the circulation of illegal and harmful information on the Internet. For instance, South Korea has developed laws and institutions according to the current reality focused on promoting a healthy use of the internet by involving three important actors on the regulation, the government, the Internet Service Providers and the users.

In this sense, due to the importance of the Information and Communication Technologies, it is necessary for countries like Ecuador that are still developing laws to regulate the Internet, to know what other countries are doing to prevent the circulation of illegal information on the Internet in order to learn from the experiences from abroad what could be an effective way to regulate the content on the Internet.

For this purpose, a methodology of comparative legal research has been applied in order to understand and compare two different legal systems and see if there is a possibility to improve one of them. Additionally, it was helpful to interpret and analyze the data collected through the review of primary and secondary

sources. Furthermore, the comparative methodology included 4 methods: the functional method, the law- in- context method, the historical method and the common- core method. A research question has been formulated for each method to focus the analysis in one specific point that contributed to answer the following research question: How the South Korean and Ecuadorian government are trying to prevent the circulation of illegal and harmful information on the Internet?

Keywords: Information and Communication Technologies, Internet Regulations, Harmful and Illegal Information, Discrimination and Hate Acts

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Abbreviations and Acronyms

ARCOTEL: Agencia de Regulación y Control de las Telecomunicaciones/ Agency for the Regulation of Telecommunications

ARPA: Advanced Research Project Agency

COIP: Código Orgánico Intergral Penal/ Comprehensive Organic Criminal Code

CORDICOM: Consejo de Regulación y Desarrollo de la Información y Comunicación/ Council of Regulation and Development of Information and Communication

ICT: Information and Communication Technologies

ICNA: Act on Promotion of Information and Communications Network Utilization and Information Protection

ISPs: Internet Service Providers

KCC: Korea Communications Commission

KFTC: Korea Fair Trade Commission

MIC: Ministry of Information and Communication

MRFTA: Monopoly of Regulation and Fair-Trade Act

OCL: Organic Communication Law

OCM: Online Community Member

OTL: Organic Telecommunications Law

PP: Program Provider

SUPERCOM: Superintendencia de la Información y Comunicación/ Superintendence of Information and Communication

WTO: World Trade Organization

Chapter 1. Introduction

1.1. Purpose of the Study

The emergence of the Information and Communication Technologies (ICT) have created new forms and channels of communication, and have shaped the current society, as well as the way in which we relate and interact with each other. The core of this technological transformation that people are experiencing, refers to the creation of tools and devices that generates knowledge and processes the information. The clearest example of this is the Internet, which helped to the improvement and expansion of the communication and interaction between people. In other words, it has developed a global communication through the use of the network, in which a set of numerous of actors can participate and interact, find information as well as share it faster than ever through the use of social networks.

At the same time, on the Internet it is also possible to find fake, illegal or harmful news that instead of giving accurate information, they can confuse citizens and contribute to the misleading of information. “The Internet is a magnificent repository of knowledge, and yet it is also the source and enabler of spreading epidemic of misinformation” (Nichols, 2017). In this sense, many governments around the world have been motivated to developed tools such as laws and institutions to prevent the circulation of illegal and harmful information on the Internet.

In the case of Ecuador, Internet regulation is a new topic for the country. Recently, on May 23, 2017 a new law project about Internet and social networks

regulation was submitted to the National Assembly of Ecuador. This law project is aimed to regulate the Hate Acts and Discriminatory Content on Social Media and the Internet because during the last presidential election campaign in February 19, 2017, the social media accounts of the presidential candidates and journalist were hacked and used to spread rumors. (Freedom on the Net, 2017). Fake news and photos had circulated through the Internet and social media affecting the public opinion about certain candidates. Therefore, to avoid the manipulation of information through the Internet and Social Media, the law project was submitted to National Assembly.

The research will focus on the period from 2007 to 2017, where many advances related to the telecommunications sector and communicational activity in the country were done. A new constitution was approved in 2008, an Organic Communication Law (OCL) was issued in 2013 as well as an Organic Telecommunications Law (OTL) in 2015, which created new institutions. For instance, the Council of Regulation and Development of Information and Communication (CORDICOM), an institution created in 2015 through the approval of the OCL, is currently in charge of designing and implementing policies developed to protect and regulate the communication and information rights established in the Constitution and the Organic Communication Law (CORDICOM, 2013).

Additionally, the OTL created "the Agency for the Regulation of Telecommunications (ARCOTEL) attached to the Ministry of Telecommunications, which is responsible for the technical aspects of administration, regulation, and control of the telecommunications sector and the radio-electric spectrum". (Freedom House, 2015).

Nevertheless, the Communications Law nor the Telecommunications Law have not included or considerate yet the regulation of the contents on the Internet. As a result, in Ecuador, individuals can enjoy a relatively high level of freedom on line, which becomes prejudicial when the information disseminated is not accurate such as fake, illegal or discriminatory news that can affect the users. In this sense, it is important to Ecuador to know from the experiences from outside, for instance, how countries like South Korea are dealing with this issue and if it is possible try to incorporate some of the good practices in the country.

The Korean government emphasize on the "importance of using ICT to promote and strengthen economic growth, increase efficiency and productivity and increasing democracy" (Talar & Kos-Łabędowicz, 2014). Strategies and policies existing in South Korea devoted to the ICT development are the important factors responsible for the quality and efficiency of the technological infrastructure in the country.

Regarding the content regulation on the Internet, the institution in charge of dealing with this matter is the Korea Communications Commission (KCC). One of its major function includes "preventing circulation of illegal and harmful information on the internet" (KCC, 2017). Additionally, the Act on Promotion of Information and Communications Network Utilization and Information Protection, amended in 2016, also focus on promoting an environment in which information can be disseminated in a healthier and safer way. "The purpose of this Act is to contribute to improving citizens' lives and enhancing public welfare by facilitating utilization of information and communications networks, protecting personal information of people using information and communications services, and developing an environment in which people can utilize information and communications networks in a healthier and safer way".

(Act on Promotion of Information and Communications Network Utilization and Information Protection, 2016)

In this context, the following research will be focused on identifying the actions taken by the South Korean and Ecuadorian government in the effort to regulate the content on the Internet. This is important because there is an international concern and debate about the regulation of the content circulating on the Internet, especially in democratic societies in which freedom of speech and civil liberty must be guaranteed.

1.1. Research Questions

1. How the South Korean and the Ecuadorian government are trying to prevent the circulation of illegal and harmful information on the Internet?

2. Under which condition/ environment a successful legal transplant from South Korea to Ecuador could be possible?

1.2. Objectives of the Study

General Objective:

- To identify the actions taken in South Korea and Ecuador to prevent the circulation of illegal and harmful information on the Internet

Specific Objectives:

- To identify in Act on Promotion of Information and Communications Network Utilization and Information Protection the main features regarding the content regulation on the Internet
- To identify the main features regarding the content regulation on the Internet in the Ecuadorian law project aimed to regulate the Hate Acts and Discriminatory Content on Social Media and the Internet
- To identify the role of the Institutions involved in the content regulation on the Internet in each country
- To determine under which condition a legal transplant could be possible

Chapter 2. Theoretical Backgrounds

2.1. The History of the Internet and the Development of the Information and Communication Technologies (ICT)

The communication process essentially has been composed for three important elements: the sender, the receiver and the message. This basic structure has not change in essence. However, the new channels, new media and tools used to communicate any message between the individuals have change significantly. Historically, there have been many events in the development of the communication process that have marked the development of the civilization as well. The first one was the emergence of common codes that established the first communicational links between the individuals, then the emergence of writing and later the development of the television, the telephone and the fax, which allowed individuals to exchange messages through new communicational channels of that time. (Hütt Herrera, 2012)

Nevertheless, in 1969 in the United States-California, a new technological paradigm was developed. In a specific segment of their society, a new way of communicating was materialized and it was called the Internet. The history of the Internet is long, although many people consider it is a recent phenomenon, the "Internet was created in 1969, it has 33 years old. It was built on the basis of what is designed, decided and produced by four cultures, which work one among the others" (Castells, 2002). The four cultures to which Manuel Castells refers are different but they support each other. “The university culture of research, the hacker culture of passion to create, the countercultural culture of inventing new social forms, and the entrepreneurial culture of making money

through innovation. And all of them, with a common denominator: the culture of freedom. The Internet is and must be a technology open to all, controlled by all, not privately appropriated - although some specific uses may be appropriated - and not controlled by governments" (Castells, 2002)

In this sense, it is important to emphasize in who and what have contributed to the development of the Internet. "The libertarian values of those who created and developed the Internet, namely, the academic computer researchers, the hackers, the countercultural community networks and the entrepreneurs of the new economy determined an open architecture difficult to control" (Castells, 2001). The Internet was thought as an instrument of global communication, free and not controllable, mainly by governments. Although at the beginning of its creation, the Internet was financed by the Department of Defense of the United States, through the Advanced Research Projects Agency (ARPA) who developed several strategies to design a communication system invulnerable to a nuclear attack. "The Internet was financed by the Department of Defense of the United States. However, it was financed it without knowing what it had financed. The Internet was a military program, but a military program without a military application. It never had it. Only once one of its creators decided to research a military application in order to create a network that the Soviets could not control, but then it was rejected because they said it was unfeasible". (Castells, 2002)

However, since 1995, the use of the Internet was expanded and easy to use. The Internet was widespread by the hackers and the students of the most advanced universities currently reaching more than 400 million of users. This was a great advance due to the fact that in 1995 only 16 million of people used the Internet. (Castells, 2001)

When the Internet reached its full technological development, it had a broad user base. Therefore, the private enterprises saw on the Internet, a new way of doing business and introduced it into the economy, as well as into the society. “If the academic researchers invented the Internet, the enterprises spread it in the society three decades later. Although, between the two processes, the appropriation, transformation and development of the Internet took place by two cultures of freedom that were decisive in their technology and applications: the hacker culture and the countercultural communities, who reflected their autonomy in technology, structure and uses of the network". (Castells, 2001)

Thus, with the widespread of the Internet and the benefits that have emerged from it, such as "mobile communication, digital media and a variety of social software tools which have boosted the development of horizontal interactive communication networks that connect locally and globally in a certain time "(Castells, 2008). Currently, the basis of the communication in the network society is "the global web of horizontal communication networks that includes the multimodal exchange of interactive messages from many people to many others" (Castells, 2008). The development of the communication due to technological advances has allowed "a greater intervention of citizens, which helps social movements and alternative policies. But at the same time, also companies, governments, politicians intervene in the internet space "(Castells, 2008).

2.2. Internet Regulation and Freedom of Speech: John Stuart Mill´s Theory

Nowadays, there is an increasing concern of States to regulate undesired content on the Internet. The following research is concerned about the Internet regulation to stop the circulation of illegal and harmful information because "the Internet is a magnificent repository of knowledge, and yet it is also the source and enabler of spreading epidemic of misinformation" (Nichols, 2017)

On the Internet, people are able to find millions of websites containing excellent publications, home pages of think tanks, universities, research organizations, etc. However, there is also "bad news, of course, is that finding all of this information posted by everyone from well-intentioned grandmothers to the killers of the Islamic State (…) Some of the information on the Internet is wrong because of sloppiness, some of it is wrong because well-meaning people just don´t know any better, and some of it is wrong because it was put there out of greed or even sheer malice". (Nichols, 2017)

Therefore, one of the main and most obvious problem of the Internet is the freedom to post anything. Especially nowadays, when the free movement of ideas is important in the modern democratic societies where the right to express and hold an opinion is given and clearly established in the Article 19 of the Universal Declaration. "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Moreover, this right has become greatly supported by the use of the Internet. "The Internet for the first time entirely implemented the Article 19 of the Universal Declaration (…). Simultaneously it can be used for receiving an e-mail, or sending it, posting blog or even broadcast. It can be used for personal purposes, or it could be used for scientific or artistic work. It serves as a tool for governments, promotion of their policies and services or for any other politically involved group or individual" (Nevena, 2007)

Thus, countless of information and messages from known and unknown senders and receivers can be exchange and transmitted through the Internet supporting the freedom of expression each individual possesses. However, an "ambiguous interpretation of freedom of expression and of the roles of key actors could only lead to further that it is necessary limitation of this invaluable virtue of democracy" (Nevena, 2007).

John Stuart Mill´s in his work called On Liberty, argued that historically there is always been a struggle between liberty and authority. In early times, liberty meant the protection against tyranny of the political rulers, who were conceived in an antagonistic position to the people whom they ruled. Nevertheless, with the evolution of society, a time came, "when men ceased to think it a necessity of nature that their governors should be an independent power, opposed in interest to themselves. (…) What was now wanted was, that the rulers should be identified with the people; that their interest and will should be the interest and will of the nation" (Mill, 2001).

In time, this was achieved in a democratic republic, in which "the will of people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves

accepted as the majority; the people, consequently may desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power" (Mill, 2001). This power of the majority, Mills called it "the tyranny of the majority", indicating that even in democratic societies there is no true power of people over themselves.

However, in democratic societies civil liberty of its citizens must be guarantee and "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others". This statement only meant that government "was never justified in trying to control, limit, or restrain (1) private thoughts and feelings, along with public expression; (2) individual tastes and pursuits as reflected through efforts to live happily; and (3) the association of like- minded individuals with one another" (Peet & Hartwick, 2015).

Humans should be free to "choose his or her own path in life even if it differs significantly from what other people would recommend" (Peet & Hartwick, 2015). Citizens must be responsible for themselves, thoughts, opinions and feelings. "The State was justified in limiting or controlling the conduct of individuals only when doing so was the only way to prevent from doing harm to others by violating their rights" (Peet & Hartwick, 2015). Thus, governmental action was justified when citizens needed to be protected from a direct harm caused by another human. "In every other case, the liberty of the individual should remain inviolate". (Peet & Hartwick, 2015).

2.3. Difficulties related to Content Regulation on the Internet

The Internet has many unique features that difficult the regulation. It was created and developed following the libertarian values and the culture of freedom that established that the Internet must be a technology open to all and controlled by all, and not privately appropriated. Although, some specific uses of the Internet can be appropriated and control by the governments, in essence the Internet is nothing but a decentralized network that "relies on IPs to act as intermediaries to funnel information transmissions through a common node before a message reaches its destination" (Hanley, 1998). Therefore, a huge number of ISPs are needed in order to maintain the Internet. A single ISP will not be capable of support the Internet connection and the amount of information that travels through the network.

Additionally, the Internet provides the sender the opportunity to maintain anonymity. "A user may "encrypt" his or her transmission so the receiver of the message has no capability of knowing who sent it. Therefore, the structure of the Internet allows persons to transmit any type of information with few repercussions. Thus, governments of all Internet using countries are faced with a dilemma: how to allow the free exchange of information while at the same time prevent socially unacceptable information from entering their country via the Internet" (Hanley, 1998).

Governments are aware that there is a wide range of objectionable content circulating on the Internet, and nowadays, there is an international concern and

debate about the regulation of content circulating on the Internet. Nevertheless, "Governments have wildly divergent preferences regarding the extent to which Internet content should be regulated" (Drezner, 2004). What is considered to be "socially intolerable information" (Hanley, 1998) in one country, can be appreciated differently in another one. For instance, in the United States, socially intolerable information is divided into two categories, "the material that is typically referred to as "adult", termed "obscene" and information unacceptable, devoid of any useful expression, termed "indecent" (Hanley, 1998). Nowadays, the United States and the European Union share similar opinions and views about what they consider to be intolerable material on the Internet. Both consider that "adolescents should not be exposed to either indecent or obscene information. Materials likely to affect the mental health of adolescents are the most distained by these governments" (Hanley, 1998).

In this sense, governments are making efforts to regulate the Internet. To begin, they need to define what they consider to be undesirable, which can vary from one country to another. This can also cause problems in the global context because each country is developing its own legislation regarding the content regulation on the Internet. Therefore, jurisdictional problems on the application would arise. "A problem of trilateral jurisdiction arises, rather than a simple application of a nation's jurisdiction over a wrongdoer. Trilateral jurisdiction questions arise when a person at a computer in a first country (first jurisdiction) manipulates a program or accesses a computer in another country (second jurisdiction) and violates law in a third country by displaying or making accessible intolerable information to the third country (third jurisdiction)" (Hanley, 1998).

The lack of an international law governing the Internet causes conflicts at the moment of executing any other domestic law related to this topic. Other types of technology that distribute information and facilitates communication are successfully regulated by international law, like satellites and telephone networks. However, regarding the Internet there are no international laws covering specific problems of it. Some steps have been taken towards the creation of an "international convention", as well as meetings to prepare resolutions addressing Internet- related issues, but still no international law has been yet created (Hanley, 1998). This is because the different political and social interests, values, beliefs, priorities, and realities of each country. For instance, "Freedom of speech is not a universally held belief. Problems inevitably arise when a country such as Germany wishes to prosecute a United States citizen for placing pro-Nazi propaganda on the Internet. The United States is hesitant to support extradition in view of the United States citizens First Amendment rights, whereas the German government desires to prosecute the United States citizen under German law" (Hanley, 1998).

In this context, an effort to create an international regulation on the Internet is a very complex solution for many countries because countries are not homogenous. "Global regulation has not been exclusively embraced because governments disagree on Internet regulation. Countries interested in protecting societal values have to approach Internet regulation more aggressively than countries which support free expression. A harsh but effective solution for societal value protective countries is to either sever themselves from the Internet or limit their Internet connections to only a few terminals. This drastic measure depicts the lack of communication between nations over the issue of Internet regulation" (Hanley, 1998).

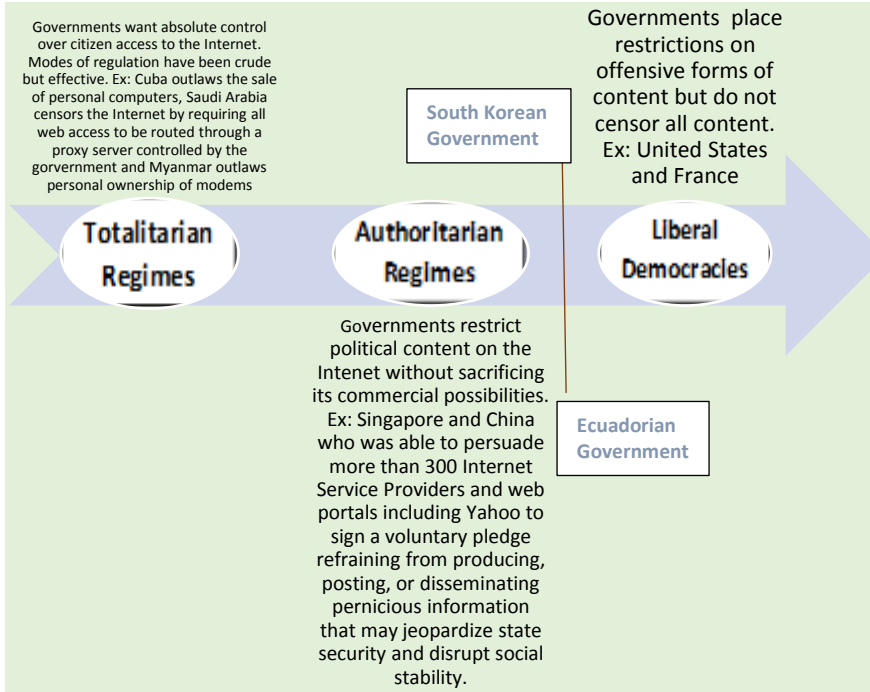
However, is not either about imposing one regulation to all countries because it will not be effective. On the contrary, it is about recognizing the differences between each country, keeping in mind that each country has differing tolerances to specific content in the Internet. Thus, a successful international regulation on the Internet must be flexible. It has to consider these aspects and develop a range of possibilities and options for the countries to regulate the content on the Internet.

2.4. Content Regulation on the Internet: Efforts made by Different Types of Government

Countries around the world use different types of methods to regulate the content on the Internet. Even though no method is totally effective, there are some options available so countries can decide how the want to regulate the Internet according to their interests. Liberal democracies, totalitarian and authoritarian regimes have different ways to approach to this issue. The kind of government clearly influences the content regulation because of the importance they give to social values and freedom of speech.

The following graph illustrates more clearly the situation.

Graph 1. - Different Preferences of Internet Content Regulation by Types of Governments



Source: Drezner, D. W. (2004). The Global Governance of the Internet: Bringing the State Back In. *Political Science Quarterly*, 479-498.

In the case of South Korea and Ecuador, each government is placed between the authoritarian government and the liberal democracy because both countries regulate the content which they considered to be harmful or illegal, but not all the content on the Internet. Therefore, they cannot be considered authoritarian regimes, nor liberal democracies because there are still some practices that block the democratization process in each country.

In the case of South Korea, there are some factors that affect the democratic quality in the country. According to Inhye (2017), the quality of democracy in Korea has been discussed in the past literature with a focus on ways to increase

the level of the traditional democratic values and indicators, such as freedom, equality, participation and cooperation.

South Korea is still considered "one of the young democratized countries in Asia" (Inhye, 2017) because the country "enters the twenty-first century with a twelve-year-old democracy that has weathered the crucial tests of a major economic crisis and alternation of national power from the ruling party to a lifelong opponent of authoritarian rule who was nearly put to death by the military. It enjoys a level of democratic vitality and stability that is without precedent in its history and in the broader history of Confucian societies. Yet even if South Korea's democracy can be considered in some minimal way "consolidated" (a point on which the contributors to this volume disagree), its political institutions remain shallow and immature, unable to structure a meaningful choice of policy courses and to provide the responsiveness, accountability, and transparency expected by the South Korean public" (Larry & Kim, 2000). In this sense, South Korean government have not yet achieved a total democracy. However, the country continues to make some efforts in order to achieve it.

On the other hand, even though Ecuador is still placed in the same placed of South Korea, the case of Ecuador is different. Before Rafael Correa´s administration, the lack of political stability and confidence in the government was obvious. During 10 years, Ecuadorians experienced the rule of seven different presidents, which affected significantly the development of the country. "The country experienced a crisis of democratic representation before he came to power" (De la Torre & Ortiz Lemos, 2016). However, since 2007 in the Rafael Correa's administration, the construction of a democratic State was consolidated. "Under Correa, Ecuador went through a process of

democratic erosion" (De la Torre & Ortiz Lemos, 2016). The State recovered its faculties of planning, regulation and control. Stopped acting at the service of the economic and political groups and most important had generated spaces for citizen participation and coordination between the public sector and institutions". (National Secretary of Planning, 2018)

According to Scott Mainwairing and Aníbal Pérez Liñán, "the country shifted form weak democracy to a semidemocracy. Even though there are spaces for democratic contestation (particularly at the local level), we argue that the process of democratic erosion is leading to an ongoing political transformation that might well result in the establishment of a competitive authoritarian regime". (De la Torre & Ortiz Lemos, 2016)

However, the administration of Rafael Correa was also viewed as an example of a populist government which represented the main obstacle to achieve the status of a "liberal democracy" in its traditional sense. He was considered in that way because he insisted on pursuing strongly redistributive economic policies to improve the quality if live of the poor's and he promised "to roll back neoliberalism in the country" (De la Torre & Ortiz Lemos, 2016) that caused several damages to the country. "Correa kept alive the populist myth of the people confronting powerful elites" (De la Torre & Ortiz Lemos, 2016).

Additionally, during his administration he confronted some domestic actors that were against his national project: parties, social movements, and the media. Therefore, the interactions between a "strong populist government" in Ecuador and a weak, divided and domestic opposition in a context where democracy was starting to be consolidated, lead to what the author Guillermo O' Donnell called

the democratic process of Ecuador “the slow death of democracy”. (De la Torre & Ortiz Lemos, 2016)

2.5. From Government to Governance: Involving Other Actors on the Internet Regulation

The efforts to regulate contents on the Internet can be separated into two approaches. The first one involves regulatory measures controlled by the government or government censorship, mainly used by totalitarian regimes, and the second approach includes regulation by the user or self-regulation through Internet Service Providers (ISPs). “In an ideal Internet environment, government regulation strives for no tolerance of socially disturbing information at any juncture of the global network. In contrast, self-regulation acknowledges the presence of indecent material on the Internet. However, due to the structure of the Internet and the protection of freedom of expression, self-regulating countries confront this material at its terminal destination. Whether a nation's government chooses government censorship or self-regulation may reflect the government's relationship with its people”. (Hanley, 1998)

ISP have facilitated people the access to the Internet because they own the costly networking equipment needed to allow individuals to access to the Internet by using a modem-equipped computer, a phone line and Internet software. “The ISP acts as gateway, therefore, by passing all of the user's communications and information through the ISP's network before it reaches the user's computer” (Rodriguez, 2000).

For that reason, most democratic governments have chosen the second approach to regulate the contents on the Internet involving the ISPs on the regulation. “Governments have discovered that by pressuring Internet service providers, they can exercise significant control over access to content” (Drezner, 2004) because ISPs “undeniably provide a focal point of web site controllability since web sites could not be accessed if all ISPs decided to disconnect service” (Hanley, 1998).

In this sense, ISPs have been actively involved in circulation of information through the Internet for the users. Therefore, it is important for ISP to “work with each country’s government to provide a level of service commensurate with the ideals of the society” (Hanley, 1998). As entities pertaining to the private sector, their work will not be directly related “to censor” the contents on the Internet, rather they will merely block websites that contains “intolerable information” for the citizens. In this sense, it is important first to define, what a government considers to be intolerable information for its citizens in order to focus the regulation on that type of material and with the cooperation of ISPs prove that there could be an effective way of regulating information on the Internet considering open structure of it and without affecting freedom of expression.

Chapter 3. Methodology

3.1. Comparative Legal Research

The purpose of the current research it is to identify which actions are taken in South Korea and Ecuador to prevent the circulation of illegal and harmful information on the Internet, in order to analyze if any good practice can be incorporated in Ecuador. Therefore, a methodology of comparative legal research is needed in order to understand and compare two different legal systems and try to improve one of them. “When one tries to improve one’s own legal system, be as a legislator or as a scholar, it has become obvious to look at the other side of the borders. However, importing rules and solutions from abroad may not work because of a difference in context, hence, a more through contextual approach may be required”. (Van Hoecke, 2017)

Van Hocke (2017), distinguished six different methods for comparative research, which are: the functional method, the structural method, the analytical method, the law-in-context method, the historical method and the common-core method. These methods are not mutually exclusive, in fact it is possible to combine some or all methods at the same time in the same research. In this sense, for the current research the comparative methodology will include the functional method, the law- in- context method, the historical method and the common- core method. In order to know how these methods will be applied in the research, it is necessary to explain them. The following table shows the focus of each method and its utility in the research.

Table 1. - Methods for Developing a Comparative Research

Method	Focus	Utility in the Current Research
Functional	Looks at the actual societal problem and the way this is solved in different jurisdictions. The focus is on the societal problem and the actual result of the legal approach to that problem.	This method will help us to compare solutions to practical problems in different legal system. It will allow us to identify the problem that South Korea and Ecuador are facing regarding the Internet content regulation and which actions or solutions are taken by each government to solve it.
	If the legal solution is the same in the compared countries, the researcher may conclude that the law is the same in those countries.	To understand the law better by focusing on the same problem which can have similar ways to be solved.
Law-in-context	Focus at the way law works in practice, so the comparative research is not limited to black-letter comparison of legal rules.	Understand how the law works in practice by looking for examples in which the law has been applied.
	To know how the law as it functions today in some society is only possible when one knows where it comes	Explains the origins and reasons for the law as it is today in that society. Therefore, this method will

Historical	from and why it is as it is today.	allow us to understand the context and the society of South Korea and Ecuador. To know and understand under which conditions the law in each country was created.
	Will inevitable use sociological, economic, historical and/or other context data.	It will be helpful to know the differences and commonalities among the South Korean and Ecuadorian legal systems.
Common-core	Looks for commonalities and differences between legal systems in view of the question to what extent harmonization on certain points would be possible among the compared legal systems.	This method will help us to identify the similarities in the South Korean and Ecuadorean law and see if harmonization is possible.

Source: Van Hoecke, M. (2017). Methodology of Comparative Legal Research . En M. Adams, J. Husa, & M. Oderkerk, *Comparative Law Methodology Volume I* (págs. 1-35). Massachusetts: Edward Elgar Publishing, Inc.

All the aforementioned methods are important for the research and each one of them complement each other in order to have a complete knowledge and understanding of the law. For instance, "the functional method refers already by definition to context: which societal problem is solved with what kind of legal construction. (…) Hence, the functional method is at least to some extent including a law- in- context method" (Van Hoecke, 2017). Additionally, the

historical method is “just one part of the law- in- context method, the context being here the historical origins of the present- day laws, which are compared” (Van Hoecke, 2017), and it cannot be avoided in a comparative research. Moreover, “the common-core method is largely based on the functional method, to some extent combined with the law-in- context method” (Van Hoecke, 2017).

In this sense, all methods are important in developing a comparative legal research. This means that a method is not more or less important than other. In fact, for a successful legal research, Van Hoecke (2017) pointed that to apply a methodology for comparative legal research, the researcher needs a toolbox, not a fixed methodological road map which can show him or her various approaches that could be usefully applied in a comparative legal research.

However, the researcher can determine which method will be more useful for the research depending on the aim of the research and the research question. Therefore, I will prioritize the four methods mentioned above, out of the six methods proposed by Van Hoecke: The functional method which will allow us to identify the problem and the solutions given in the South Korean and Ecuadorian government to prevent the circulation of illegal and harmful information on the Internet; the law-in- context method will help us to know how the law works in practice in South Korea; the historical method will allow us to understand better the South Korean and the Ecuadorian society and therefore know under which conditions the Internet regulation of each country was created; and the common core method will help us to identify the commonalities in each legal system in order to think about a possible legal transplant because “just copying a foreign law could hardly be considered to be a ‘method’. It is rather the typical example of lack of method in comparative law” (Van Hoecke, 2017). Therefore, a successful “legal transplant”, like a

human organ “will grow in its new body, and become part of that body just as the rule or institution would have continued to develop in its parent system” (Watson, 1974).

According to the Oxford English Dictionary, transplant is to remove and reposition, to convey or remove elsewhere, to transport to another country or place of residence. Thus, transplant involves displacement. For legal research, “the transfer is one that occurs across jurisdictions: there is something given in a jurisdiction that is not native to it and that has been brought there from another” (Legrand, 1997). Additionally, Alan Watson (1974) defines legal transplants to the moving of a rule or a system of law from one country to another, of from one people to another. He illustrated that by mentioning a set of rules related to the matrimonial property, which have travelled from Visigoths to become the law of the Iberian Peninsula, migrating then from Spain to California, and from there to other states in the western of the United States.

In this sense, it would be important to emphasize in the notion that legal transplants are not a new practice. “The phenomenon of transplantation is not restricted to the modern world” (Watson, 1974). In fact, in ancient times, there was a law related to a goring ox and his owner that appeared in different dates and legal systems. The following table will show the accurate relation between different legal systems.

Table 2. - Legal Transplants in Ancient Times

Name of the Legal System	**Content**	**Period**
Laws of Eshnunna	"If an ox (was) a gorer and the ward (authorities) have had it made known to its owner, but he did not guard his ox and it gored a man and caused him to die, the owner of the ox shall weight out 2/3 of a mina of silver. If it gored a slave and caused him to die, he shall weigh out I4 shekels of silver"	Dates from at least the 18th century B.C.
Babylonian Code of Hammurabi	"If a man´s ox (was) a gorer and the ward (authorities) have had made known to him that (it was) a gorer, but he did not screen its horns, (or) did not tie up his ox and that ox gored a son of a man and caused him to die, he shall give ½ a mina of silver"	Not later than the early 12th century B.C.
Exodus	"If an ox gore a man or a women, and he died, the ox shall surely be stoned and his flesh shall not be eaten; but the owner of the ox shall be quit. But if the ox was a gorer from beforetimes, and it has been testified to his owner and he did not keep him in and he killed a man or a woman, the ox shall be stoned and his owner also shall be put to death. If there be laid upon him a sum of money, then he shall give for the ranson of his	Uncertain date, but centuries after the Code of Hammurabi

	life whatsoever is laid upon him. Whether he gored a son or gored a daughter, according to his rule shall it be done to him. If the ox gore a slave or a slave-woman: he shall give to his master thirty shekels of silver and the ox shall be stoned".	

Source: Watson, A. (1974). Introduction to Legal Transplants. En M. Adams, J. Husa, & M. Oderkerk, *Comparative Law Methodology Volume II* (págs. 21-30). Massachussetts: Edward Elgar Publishing, Inc.

The similarities between these three legal systems are obvious. This clearly shows that some connection must have existed between them. "The nature of the similarities of style and substance is such that they exclude the possibility of parallel legal development. Probably they share an ultimate common source. Thus, legal transplants are already to be found in remote antiquity and were probably not uncommon" (Watson, 1974).

Nowadays, with globalization and the development of the ICTs, the number of countries seeking to harmonize their laws with others legal systems, have increased. However, there is also issues to be considered when it comes to transferability. David Nelken (2003), posed three issues to be considered. 1) How far is it possible to understand other peoples' law? 2) What can be done to ensure that only law is transferred which fits into its new setting? 3) In what ways are current wider political, economic and social developments affecting the process of legal transfer?

For the first question, Neklen (2003), suggests a closer collaboration between sociologist of law and comparatist, even though they often prefer to ignore or

criticize each other work rather than work together, both academic disciplines could make valuable contributions if they work together because both of them are interested in understanding the way legal transfer are affected by interest, mentalities and institutions. “Even if there are important differences between these approaches, it could be argued that it is just the starting- point for collaboration” (Nelken, 2003). Therefore, both disciplines should be encouraged to work together, not only for the common goal they shared but also because both disciplines are able to understand the best route to capture the way law does or does not fit in a society and culture.

Regarding the second question, Neklen (2003) began by indicating that some authors like Alan Watson and William Ewald did not think about ensure that law will fit into its new setting. For instance, Watson claimed that legal transplants just happened and they will keep happening all the time whether any condition or fit with the society that want to adopt a law. Additionally, he also said that a large proportion of law in any society is a direct result of legal transplants and its form and content is rooted in another time and place. Ewald followed the ideas of Watson and argued that the frequency of legal transplants demonstrates the fallacy of attempting to produce a sociology of law in order to see if a law can fit well in a new setting. Therefore, a sociology of law is needed to answer the question. It can also be complemented by empirical investigation of the relations between law and society, which is the concern of sociology of law, to see how law connects to or “fits” society because is clearly established that transplanting laws are not an easy task, is like medical transplants, which are highly planned and not something one undergoes lightly. (Nelken, 2003)

Lastly, for the third issue, Nelken (2003) argues that social changes like globalization are affecting legal transfers in a way that some comparatist might want to generalize problems in all societies. Additionally, the ways in which legal transplants are taking place are also important to consider. Friedman distinguishes three process: borrowing, diffusing or imposition. Each one will affect the process of legal transfer in a society. Therefore, economic, political and social conditions are important in legal transfer. Especially nowadays when "communication via computer is much quicker than creating and enforcing legal agreements, (…). Flexibility is now all important and business people have less need of standard and consistent norms. (…), the rule of law used to be valued because it protected business transactions from the arbitrary interference by the State. But now, argues Scheuerman, at least as far as multinational business is concerned, companies often have the same rights as states themselves. (…). There follows a competition to reduce legal safeguards and there is, by now, considerable evidence that economic globalization flourishes where lower standards in protecting labour, health and the environment are exploited by powerful companies" (Nelken, 2003). Therefore, denying or ignoring these current conditions would be a mistake, especially if the goal is transferability.

Chapter 4. Analyzing the Internet Regulations focused on Preventing the Illegal and Harmful Information in South Korea and Ecuador

In this chapter the comparative methodology will be applied. The historical, law-in context, functional and common core methods will be used in order to interpret and analyzed the data collected through the review of primary and secondary sources. From the primary sources the evidence will include legal documents such as laws of South Korea and Ecuador related to the research. Regarding the secondary sources, these will be used to interpret the primary sources. For instance, books, academic papers and journals, and videos. Additionally, a question will be formulated for each method used to focus the analysis in one specific point that will contribute to answer the main research question.

4.1. The role of the South Korean Government in the Regulation of the Content on the Internet

Each government has a specific approach to Internet regulation which depends on its historical background, needs and priorities. In the case of South Korea, in 1980, Korea's economic policy shifted from "central direction toward reliance on markets" (OECD, 2000), which increased reliance on markets rather than the government to drive the economic growth in the country. In this sense, a competition authority was needed to prevent abuses in the developing markets. As a result, the Korea Fair Trade Commission (KFTC), a competition agency was established in order to promote a balance and fair development, as well as free competition an efficiency.

Additionally, the Monopoly Regulation and Fair-Trade Act (MRFTA), the basic competition law was created to deal with the principal competition problems related to monopoly, unfair practices, mergers, etc. All industries with no exceptions should apply the MRFTA principles. Just few industries related to agriculture, fisheries, forestry and mining are exceptions.

Regarding the telecommunications industry, it has played an important role in Korea's economic growth. For that reason, the government encourage the development of ICTs in the country. "Information and knowledge have been regarded as two major resources of national wealth in the previous regimes by Kim Dae-jung and Roh Moo-hyun. This had been clear since the late 1990s. President Kim had suggested building a creative knowledge-based nation in 1998, when he initiated rescue plans to save his country from the Asia-wide financial crisis that had swept across many developing countries in the region. He thought that the fields of information and knowledge are areas where Koreans might enjoy a competitive advantage within the globalized world economy. Thus, he established the Ministry of Information and Communication (MIC) and designated one of the elite business leaders as the first Minister of the MIC". (Min, 2013)

Therefore, many efforts were made by the government to transform South Korea into a leader in the ICT dimension. "South Korea has become a model of government-led industrialization in the field of IT and media industries such as telecommunications companies, cable television operators, IT manufacturers and software developers" (Min, 2013). The South Korean government succeed in building a strong ICT infrastructure. However, to improve the development of this sector, competition was introduced to obtain additional benefits. "The opening of the local loop market to full competition in 1997 means that, today,

all parts of the telecommunication infrastructure and service market are, in principle, open to competition. Korea's commitments under the WTO Agreement on Basic Telecommunication Service and bilateral trade talks with the United States and the European Union have also substantially contributed to liberalization of the Korean telecommunications services sector" (OECD, 2000).

As a consequence, the telecommunication sector was privatized and deregulated, and in order to regulate the actors involved in the market, improve competition and protect consumers, in 2008, during the presidency of the former president Lee Myung-bak, the MIC created the Korea Communications Commission (KCC), which is "a body established under the Ministry with responsibility to consult on matters concerning fair competition among the telecommunication service providers, to protect the interests of telecommunication users and to arbitrate in disputes among telecommunication service providers, and between service providers and consumers" (OECD, 2000).

The KCC is composed of five commissioners which includes the Chairman, and the Vice Chairman. "Of the five standing commissioners, two, including the Chairman, are directly appointed by the President of the Republic of Korea. The remaining three are nominated by the National Assembly and appointed by the President. The Commission deliberates and resolves key issues according to the characteristics of Collegiate System". (Korea Communications Commission, 2016).

Additionally, the key functions of the institution includes "the formulation and implementation of policies pertaining to terrestrial broadcasting, general

service and news-specialized Program Provider (Programming providing business operator, hereinafter referred to as 'PP'), as well as the investigation and imposition of sanctions against violations conducted by broadcasting or communications business operators, the development and implementation of wide-ranging measures aimed at protecting users and their personal information, preventing the circulation of illegal or harmful information, the arrangement of broadcasting commercials, the formulation and enforcement of policies on programming and evaluation, and the development of policies for media diversification" (Korea Communications Commission, 2016); and it is responsible for the enforcement of 13 acts (See Annex 1).

The KCC was created with the purpose of promote fair competition and protect the user. This still continue to be part of its key functions. However, with the accelerated development of the media sector and emergence of new technologies such as the Internet, the institution needed to incorporate new policies adjusted to the current reality. The Internet has provide a virtual space for sharing information, communicating and interacting with two or more users, but it has also cause "lots of serious problems, such as attacks on database, privacy invasion, the prevalence of illegal information, and the distribution of obscene materials and unfiltered information that may harm adolescents, are also taking place online" (Seung-Won & Hyun, 2008);

As a result, one of the current policy issues of the KCC includes "more stringent measures to deal with harmful information on the Internet" (KCC, 2018). For this purpose, the KCC is developing campaigns for sound use of the internet and internet ethics education to be provided in elementary and high schools, involving the telecommunications service providers to run illegal and harmful

information report center, monitoring on information telecommunications service providers in handling illegal information. (KCC, 2018)

Also, it is important to mention that there is another institution that supports the task of monitoring the content on the Internet, and is the Korean Communications Standards Commission (KCSC) created in 2008 through the enactment of the Act on the Establishment and Operation of Korea Communications Commission. “The Korea Communications Standards Commission (hereinafter referred to as the "Korea Communications Standards Commission") shall be established to perform its duties independently, with the purposes of guaranteeing the public nature and fairness of broadcasting contents, creating a sound culture in the areas of information and communications and creating an environment where information and communications are used in an appropriate manner” (Act on the Establishment and Operation of Korea Communications Commission, 2015)

This administrative body “has inclusively deliberated on broadcast and Internet content since 2008. 5 members of the communication sub- committee of the Commission are engaged in deliberating up to 4,000 cases of Internet content twice a week. This communication subcommittee is demanding correction from Information service providers (ISP) regarding content considered inappropriate”. (Choi & Ji, 2014).

Additionally, the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., whose purpose is “to contribute to improving citizens’ lives and enhancing public welfare by facilitating utilization of information and communications networks, protecting personal information of people using information and communications services,

and developing an environment in which people can utilize information and communications networks in a healthier and safer way". (Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., 2016), and especially what is established in the article 44, is important for preventing the circulation of illegal and harmful information on the Internet. "Article 44 of Information and Communication Network Law contains various regulations intended to protect the user's rights by preventing them being damaged by obscene materials, privacy invasion, and illegal information". (Seung-Won & Hyun, 2008) (See Annex 2)

Therefore, on the Internet regulation in South Korea, three important actors can be distinguished. The government, the information and communication service providers and the user. Although the South Korean government has developed an important role to regulate the content on the Internet, the service providers and the users need to get involved too in order to utilize the Internet in a healthier and safer way. "To overcome such problems and achieve a goal of establishing e-welfare society, the Broadcasting and Communications Commission(G), the information and communication service provider(B), and the user(C) all need to make ceaseless efforts to harmonize their interests". (Seung-Won & Hyun, 2008)

4.2. The role of the Ecuadorian Government in the Regulation of the Content on the Internet

In the case of Ecuador, unlike South Korea, the telecommunications sector was not a source of economic growth for the country. On the contrary, many factors made this sector very unstable. In Ecuador, the process of privatizing the telecommunications sector began in 1993, when the State, following the guidelines and recommendations proposed by the Washington Consensus, issued the "Modernization Law" which established the transference of certain public services, including the telecommunications services, to the private sector. The objective of this was to promote competition in the market that was composed of public enterprises controlled by the State (Sanchez, 2009). Nevertheless, these objectives proposed to privatize the telecommunications sector were not accomplished. The recommendations proposed by the Washington Consensus failed in the country because they ignore the national reality[1], and instead of achieving stability and development, it weakened the role of the State and create more inequalities in the country.

However, in 2007 during Rafael Correa's administration, the State recovered its faculties of planning, regulation and control. In addition, a national referendum to establish a new constitution was executed, and in 2008, the new constitution was issued. Many elements were involved in the new constitution related to the telecommunications sector and communicational activity in the

[1] In the beginning of 1980 until 1998, the oil price decreased, natural disasters such as floods cause by the "Child's phenomenon" (El Fenomeno del Nino) occurred which affected the agriculture and the economy of the country, the earthquake in 1987, the international financial crisis of 1997- 1998. Lastly, in 1998 the loss of the national currency. The dollarization process began; all of these factors affected the Ecuadorian government in that time, inflation was increasing, as well as the external debt.

country. In the First Transitional Provision of the new constitution, it was established that the legislative body should enact 11 laws on priority issues, which included the creation of a Communications Law. As a result, in 2011, a referendum was initiated with two questions related to the media activity, the creation of a Regulation Council and the ownership of media companies to avoid media concentration in particular groups of the population. The citizenry supported the idea and in June 2013, the OCL issued.

The aforementioned Law represented a progress to the country. Their purpose is to develop, protect and regulate the communication rights and freedom of expression established in the constitution. Historically, media ownership was concentrated among the wealthy elites of the country, who had the "monopoly of information". According to the Radio and Television Frequency Audit Commission, the media landscape in Ecuador was dominated by eight main groups: Eljuri Group, Isaías Group, Vivanco Group, Egas Group, Alvarado Group, Mantilla Group, Pérez Group and Martínez Group. Additionally, 92% of the radio and television frequencies were private media, 8% public media and no frequencies for the community media. (CORDICOM, 2016)

Table 3.- Radio and Television Frequencies Distribution

Before the Law:

Total of Frequencies (1521)		
Private Frequencies	**Public Frequencies**	**Community Frequencies**
1404 (92%)	117 (8%)	0 (0.0%)

After the Law:

Total of Frequencies (1593)		
Private Frequencies	**Public Frequencies**	**Community Frequencies**
1193 (75%)	340 (21%)	60 (4%)

Source: (CORDICOM- Research and Analysis Unit, 2016)

However, after the approval of the Law, the situation started to change. The percentage of public and community media increased to 21% and 4% respectively. The new conceptualization of the communication known as the "democratization of the media" promoted diversity in the media by including other voices that traditionally have been excluded. To support this, the law established the equitable redistribution of the frequencies of television and radio, which should be even between private, public and community media, allocating 33% to the private and public media and 34% to the community media.

Additionally, the law created two bodies, the Superintendence of Information and Communication[2] (SUPERCOM), and the Council of Regulation and Development of Information and Communication (CORDICOM). Currently, CORDICOM is the institution in charge of designing and implementing policies developed to protect and regulate the communication and information rights established in the Constitution and the OCL (CORDICOM, 2013).

[2]"The former president, Lenin Moreno, confirmed that on Friday, May 18, the Executive branch will submit to the National Assembly. In the text, the suppression of SUPERCOM is included". (The Telegraph, 2017)

Nevertheless, regarding the technological changes that currently many societies are experiencing, the Communication Law in Ecuador regulates the circulation of contents on radio, television, and press that can violate the rights of the children and teenagers (Article 32), discriminatory content (Article 61), violent content (Article 67), and sexually explicit content (Article 68). The failure to comply the aforementioned will be punish by the law. However, the law does not regulate contents on the Internet.

*"*Article 4.- the law does not regulate the information or opinions expressed by individuals on the internet. This provision does not exclude criminal or civil actions to which they may be liable as a result of offences against other laws committed on the internet" (Communication Law, 2013). The government do not block or filter any content on the Internet. "Access to contents of Internet is not blocked or filtered by the State. In general, persons can access and publish any contents on Internet, except for child pornography, which is against the law". (UNESCO, 2011).

In this sense, the law left the content regulation on the Internet outside any control. However, when the election campaign in February 19, 2017 took place, the social media accounts of candidates and communication experts were hacked and a lot of fake information and news were diffused through the Internet and social media. Many rumors about politicians and other public figures were also spread on the Internet. In that context, the need of a law to stop the circulation of fake, harmful and discriminatory content on the Internet was needed in Ecuador.

Therefore, few months later, on May 23, 2017 a new law project about Internet and social networks regulation was submitted to the National Assembly of Ecuador. The current law will be applied to the "Providers of Services

Enterprises" that function through internet platforms, or technologies of similar nature that allowed the users share and broadcast content between them. (Law Project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks, 2017)

As mentioned before, "governments of each country have differing views as to what they regard as intolerable information" (Hanley, 1998). In the case of Ecuador, the intolerable information proposed in the law project to regulate the content on the Internet is related to hate and discrimination acts in Social Media and the Internet. "In particular, the Internet could be used as a mean to commit discriminatory and hate acts. Defamation through social media, could be manifested through strong and swear words motivated by the ethnic group, place of birth, sex, gender, age, cultural identity, marital status, language, religion, ideology, political preferences, judicial past, socio-economic conditions, migratory status, sexual orientation, health condition, HIV status, disabilities, or any other physical differences" (Law Project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks, 2017)

Regarding the telecommunications sector in the country, the new constitution also has made a lot of changes in that area. "In February 2015, Ecuador's National Assembly passed the Organic Law of Telecommunications. Not to be confused with the similarly named Communications Law passed in 2013, the Organic Law on Telecommunications radically changed the regulation of the telecommunications sector. The new telecommunications law created a regulatory body, the Agency for the Regulation of Telecommunications (ARCOTEL), which is attached to the Ministry of Telecommunications and is responsible for the technical aspects of administration, regulation, and control

of the telecommunications sector and the radio-electric spectrum". (Freedom House, 2015)

In general terms, the new OTL "sets up mechanisms that strengthen the institutional structure and processes of regulation and unification of the regime of telecommunications" (Freedom House, 2016). Additionally, the law protects "net neutrality" (Article 3) and in the article 22, establishes that the subscribers, costumers and users have the right "to access to any application or service available on the Internet. The providers cannot limit, block, interfere, discriminate, obstruct or restrict the right of the users or subscribers to use, send, or offer any content, application, development or legal service through the Internet or other information and communication technologies, neither limit the right of a user or subscriber to use any kind of instruments, or devices on the network, if they are legal (…)". (Organic Telecommunications Law, 2015) In this sense, the Communications Law nor the Telecommunications Law can regulate the contents on the Internet.

During the period of stability of 2007-2017, many changes were introduced in the country, beginning by the creation of the new constitution. The Ecuadorian State recover their function of planning and management of the country and develop legislations and create institutions needed in the country. Nowadays, with the constantly changing reality which is significantly influenced by the development of the ICTs, it is also important to take that into account and start improving the mechanisms such as laws and institutions that the country already have to assure a healthy use of the Internet.

4.3. Advertising Boycott in South Korea

The most significant example in South Korea to illustrate the role of the KCSC and how the law to regulate content on the media works in practice is the "advertising boycott against advertisers who placed advertising in the major newspapers that supported the Korean government's trade policies on beef imported from the United States" (Park, Haygood, & Yun, 2014). In May 29, 2008 the Korean government informed an agreement with the USA of beef imports to Korea. However, many citizens were concerned about it because of the mad cow disease. Therefore, dissatisfied citizens organized themselves, and participated in a protest called the "Candlelight Protest".

Additionally, Korean citizens were also dissatisfied with the coverage of the media towards this issue, especially by the coverage of the three major daily newspaper of the country, ChoSunIibo, JoongAngIlbo, and Dong-A Ilbo, whose "market share, based on sales figures for the same year, totaled almost 67% with ChoSunIibo, JoongAngIlbo, and Dong-A Ilbo at 24.5%, 22.9%, and 19.9% share, respectively" (Park, Haygood, & Yun, 2014). Korean citizens believed that the information provided by these three major newspapers were biased, distorted and skewed in favor of the government's position because the opinion of these three newspapers with the previous government were against the American beef import policy, but with the next government, they changed their position in supporting the new trade policy.

In this context, the Korean citizens still wanted to express their points of view and opinions towards this issue. As consequence, "an online community was launched, carrying the name, The Press Consumerism. On May 31, 2008, on the daum.net portal website, about 55,500 Korean netizens formed an online

community as members of “The Press Consumerism” or OCM (Online Community Member)” (Park, Haygood, & Yun, 2014).

This online community was popular within the Korean internet users who were against the coverage of the newspaper towards the trade policy with the United States of America. The main objective of the online community was to developed an advertising boycott against the advertising companies who collaborated with the aforementioned newspapers. “The idea was to strike at the revenue streams of the newspapers since advertising is the primary method for newspapers to generate revenue. An advertising boycott is more aggressive netizen activity compared to the previous protests against newspapers because of the significance of advertising revenue to newspapers overall financial health. Specifically, the breakdown of the two main revenue streams for Korean newspapers is: 90% from advertising revenue and 10% from subscriptions”. (Park, Haygood, & Yun, 2014)

The idea was to pressure on the advertisers who work with the three major newspapers to withdraw their advertising from them, which will cause a serious economic damaged to the newspapers. Therefore, many companies decided to withdraw their advertising from these newspapers, thus the boycott was considered effective to influence the behavior on the citizens, companies and media. “This Korean netizen’s advertising boycott was partially successful because forty-three companies withdrew their advertising from these newspapers and thirty-four companies apologized to customers in June, 2008”. (Park, Haygood, & Yun, 2014)

The Korean government also got involved in this situation through the KCSC. This entity deliberated and decided that the material found in the portal website

fell under Article 44-7 item 9 “aimed at or aiding and abetting a crime” and “through correction requests, deleted on July 1 at least 58 entries on an online bulletin board at www.daum.net/stopcjd” (Park K.-S. , 2018). The KCSC established the advertising boycotts to be illegal and ordered the blog owners to delete the information. Regarding the new trade policy, the Korean government kept the agreement with the American beef import policy.

The importance of this case is that it opened the path for the government to regulate the content on the Internet. “Lee Myung-bak's government, which was essentially a conservative political faction that replaced the ten-year rule of progressives led by Presidents Roh Moo-hyun and Kim Dae- jung, has been troubled by the diffusion of social communication networks and real-time opinion exchanges among people since taking office. Mass demonstrations and critical opinions were directed at the government arising from the re-import of American beef as they were thought to increase the risk of mad-cow disease. The new South Korean government and the ruling Grand National Party shared the impression that a lot of misinformation had been spread without any checks on the Internet, so the best measure against this conundrum was to control this diffusion mechanism at the infrastructural level. With Web controls in place, major social unrest and mass protests should no longer be influenced by wild rumors and unreasonable critiques on the Net. This control is exercised when the KCC monitors and checks the major ISPs which manage the Internet gateways for most Internet users in South Korea. These ISPs, having initially failed in facilitating a well- informed order on the Net, might now be transformed into filtering platforms for 'emotional, unfounded, and rampant messes' generated by unruly public opinion”. (Min, 2013)

As a consequence, South Korean government efforts to regulate the content on the Internet began involving mainly the web portal service providers who are given the responsibility of the content published in their websites. “Generally, telecommunications business operators and internet service providers are not subject to liability for content carried over their networks since they do not have control over the content produced by an audio-visual media company such as an internet media website. In contrast, for example, web portal service providers have been held to be liable for content when they have the ability to edit content, subject to various other requirements. ISPs have a general duty to detect, delete and prevent distribution of child pornography, and may be subject to criminal liability if negligent in exercising such duty”. (Telecoms, Media and Internet 2018| Korea, 2018)

4.4. Circulation of Illegal and Harmful Information on the Internet: Measures applied in South Korea

In both countries the emergence of the ICT, such as the Internet and the smartphones, etc., has facilitated the exchange of information and opinions but it also has been the place in where violence, discrimination, defamation and harmful information can be found and can affect the users directly. If we focus on the common problem, South Korea and Ecuador, like many other countries around the world have experienced the circulation and proliferation of illegal and harmful information on the Internet. Nowadays, "governments of all Internet using countries are faced with a dilemma: how to allow the free exchange of information while at the same time prevent socially unacceptable information from entering their country via the Internet" (Hanley, 1998). However, due to the structure of the Internet that allows anonymity and the free exchange and transmission of "any type of information with few repercussions" (Hanley, 1998) it has become very challenging.

In South Korea, there are many laws related to Internet regulation, which is separated from the traditionally broadcasting media such radio and tv. In that sense, Internet regulation required the creation of other laws different from the ones that regulate the traditional media. The law that establishes a prohibition on circulation of unlawful information is the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., "Existing law related to the Internet regulation is distributed between the Act on Promotion of Information and Communication Network Utilization and Information Protection, etc., the Telecommunications Business Act, the Juvenile Protection Act, the Juvenile Sexual Protection Act, the Punishment of Sexual Crimes and Protection of Victims Act, the Sound Recording, Video

Products and Games Software Act, the Broadcasting Act, etc. Furthermore, in Korea, the legal position of the Internet is understood as a communication medium in nature, which allows no regulation by either newspaper law or broadcasting law, but rather requires legislation related to information communication above and beyond existing press-related legislation. That is, broadcast communication legislation is considered to prepare a double framework that must distinguish traditional broadcasting from Internet media". (Choi & Ji, 2014)

As a consequence, to deal with this common issue of the internet and the circulation of harmful information, South Korea is "carrying out state-led administrative deliberation" (Choi & Ji, 2014). The Korean government deliberated what they consider to be illegal and harmful information and then advocates the support of the "providers of information and communication services", defined as "telecommunications business operators (…) who provide information or intermediate to provide information commercially by utilizing services provided by a telecommunications business operator" (Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., 2016), for a measure of correction that could be deletion or blocking of the content "upon receiving a request for deletion or rebuttal of the information under paragraph (1)[3]".

[3] Paragraph (1), Article 44-2 (Request for Deletion of Information); "Where information provided through an information and communications network purposely to be made public intrudes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who managed the information to delete the information or publish a rebuttable statement (hereinafter referred to as

In this matter, the government, the ISPs and the users have responsibilities in order to achieve a healthier information society[4]. However, not all the telecommunications business operators have the same responsibility in this issue. The Telecommunications Business Act classifies the telecommunications business operators in the following way:

"deletion or rebuttal"), presenting explanatory materials supporting the alleged violation. <*Amended by Act No. 14080, Mar. 22, 2016*>

[4] "**Article 3 (Responsibilities of Providers and Users of Information and Communications Services)** (1) Every provider of information and communications services shall contribute to protection of rights and interests of users and enhancement of users' abilities to use information by protecting personal information of users and providing information and communications services in a sounder and safer way. (2) Every user shall make efforts to help to establish a healthier information society. (3) The Government may provide support to organizations composed of providers or users of information and communications services for their activities for protecting personal information and protecting juvenile in information and communications networks".

Table 4.- Classification of the Telecommunications Business Operators in South Korea

Business Type	**Definition by the Law**	**Business Description**	**Authorisation Type**	**Review Criteria**	**Certain Key Services Requirements**
Common Telecommu-nications Business Operators	The common telecommunications business shall install telecommunications line equipment and facilities, and thereby provide common telecommunications services. (Subparagraph 2, article 5 of the Telecommunication s Business Act) Common Telecommunication	Provision of services for transmitting or receiving sound data, and images such as telephone or internet services; or leasing equipment and facilities for the transmission or receipt of sound, data and images.	License	The Ministry of Science and ICT has wide discretion in deciding whetheher to issue a common telecommunications business licence. The key document that will be evaluated by the Ministry is the applicant's business plan. The Ministry will consider the following factors: -Financial capability -Technical	-Filling of report to the Ministry regarding charges and terms of use -Provision of contract terms to users -Sufficient verification of user identity for mobile communications

	s Services: “means telecommunications services for transmitting or receiving sound, data, images, etc. without any change in the form or details thereof and for leasing telecommunications line equipment and facilities for the use of transmission or reception of sound, data, images, etc., such as telephone services or Internet services: Provided”. (Subparagraph 11, article 2 of the Telecommunications Business Act)			capability -Sufficiency of measures to ensure user protection -Sufficiency of plans for investment in upgrades	
Special-Category Telecommu-	“The special-category	Provision of telecommunications services	Registration	Any person seeking to operate a special-category	-Commencement of business within one year of registration

nications Business Operator	telecommunications business shall be as follows: 1. Business that provides common telecommunications services by using telecommunications line equipment and facilities, etc. of a person who has obtained a license for the common telecommunications business prescribed in Article 6 (hereinafter referred to as "common telecommunications business operator"); 2. Business that installs telecommunications equipment and facilities in the premises prescribed by Presidential Decree, and provides	through the use of telecoms networks owned by a person that has a common telecommunic ations business licence		telecommunications business must register with the Ministry and submit the following: -Operation plan -Details of principal facilities to be used in business -Terms of use applicable to users The company must meet certain minimun capital requirements ranging from KRW 300 million to KRW 3 billion depending on the type of business. The Ministry may impose conditions on the rgistration if it deems necessary	-Implementation of user protection measures -Retention of certain qualified employees such as a licensed radio electronic communication engineer

	telecommunications services therein by using such equipment and facilities". (Subparagraph 3, article 5 of the Telecommunications Business Act)			to ensure fair competition, protect users and improve service quality.	
Value-Added Telecommu-nications Business Operator	"The value-added telecommunications business shall provide value-added telecommunications services". (Subparagraph 4, article 5 of the Telecommunications Business Act) **Value-Added Telecommuications Services:** "means telecommunications services, other than common telecommunications services"	Provision of non-core services using telecoms network	Report	Any person seekin to operate a value-aded telecomunications business must file a report with the Ministry including: -A schematic diagram of the user protection measures -Detailed statement of user protection measures The report must also show that the company implements	The following are some key requirements that apply to value- added telecoms businesses: -Commencement of business within one year of registration -Implementation of technical measures to protect minors -Implementation of technical measures to protect against computer viruses and malicious code

	(Subparagraph 12, article 2 of the Telecommunications Business Act) **Special value-added telecommunications services:** "means any of the following services: (a) Value-added telecommunications services provided by a special online service provider prescribed in Article 104 of the Copyright Act; (b) Value-added telecommunications services through which text messages are sent by directly or indirectly connecting a text message sending			technical measures to prevent online copyright infrigment Those providing services via the Internet with less that KRW 100 million in capital are exempt from filling a report	

	system to telecommunications equipment and facilities of a telecommunications business operator; (Subparagraph 13, article 2 of the Telecommunications Business Act)				

Source: (Telecommunications Business Act, 2016); (Telecoms, Media and Internet 2018| Korea, 2018)

As aforementioned, in the case of the telecommunications business operators and the ISPs, they "are not subject to liability for content carried over their networks since they do not have control over the content produced by an audio-visual media company such as an internet media website" (Telecoms, Media and Internet 2018| Korea, 2018). However, their duty is to detect, delete and prevent the distribution of information consider illegal and harmful for the users. "While obscene or harmful information generated by personal Internet broadcasting is not filtered on the Internet, the current Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., only comprehensively prescribes the duties not to circulate illegal information (Article 44.7) [5] punishes failure to comply with the Commission's correctional order by imposing penalty [6] ". (Korea Communications Commission, 2016)

In this sense, the government through the KCC and KCSC "never performs pre-censorship on Internet contents but rather engages in post-deliberation on illegal information" (Choi & Ji, 2014). The process is the following: "KCSC deliberates on whether the material falls under any of the 9 categories[7], and if the material does, KCSC decides on whether to take it down and KCC is supposed to enforce that takedown decision by issuing administrative orders to relevant intermediaries, who must comply or face punishment" (Park K.-S. , 2018).

[5] See Annex 2
[6] See Annex 3
[7] See Annex 2, Article 44-7 (Prohibition on Circulation of Unlawful Information)

The following charts shows what is consider to be illegal and harmful information and the contents that can be reported:

Table 5.- Definitions of Illegal and Harmful Information in South Korea

Illegal Information	Defined as all sorts of information against the positive law of the Republic of Korea, that is, information infringed upon the public interests and social orders.
Harmful Information	Defined as harmful information from the Internet in a broad sense, and, to be concrete, immoral, violent, obscene, seculative and antisocial information notified by KCSC and the Commission o Youth Protection.

Source: (Korea Communications Standards Commission, 2018)

Table 6.- What to Report? The Types of Report

Obscenity	Lewd information
	Children sexual trafficking/ prostitution
	Obscene phone services
	Information related to Sales – Purchase – Exchange of Obscene Materials
	Games promoting obsceneness and violence
	Obscene broadcasting for adults
	Obsecen spam
	Child pornography
Defamation	Information of cyber defamation and sexual violence
Violence/ Cruelty	Violence – Killing - Bizarrerie

Incitement of the Gambling Spirit	Gambling – Seculative game – Illegal direct
Public Order	Runaway, Production of Bomb, Suicide
	Information realted to the State
	The others
Others	Breach of putting a mark, "Harmful Information for Youths"
	Information related to the State
	The others

Source: (Korea Communications Standards Commission, 2018)

Furthermore, in that modality, "There was a total of 204,493 cases of communications civil complaints in 2016, which increased 88.0% (95,668 cases) from last year (108,825 cases). Among these, 7,427 cases were handled internally through telephone consultations, and 197,066 cases were received and registered to the civil complaints handling system". (Korea Communications Standards Commission, 2016)

Regarding the type of civil complaints, the civil complains related to prostitution and pornography, infringement of rights and illegal food and drug have increased. "Civil complaints on 'other illegal and harmful information,' such as illegal finance, promotion of abortion, swearing, brutal information, etc. (32,915 cases, 16.8%) have also increased" (Korea Communications Standards Commission, 2016). Just civil complaints "related to 'promotion of speculation' information, such as illegal sports betting and gambling, etc. (15,740 cases, 8.1%) and 'infringement of rights' information, such as defamation, portrait rights, etc. (13,195 cases, 6.8%) have decreased slightly". (Korea Communications Standards Commission, 2016)

Graph 2.- Status of Communications Civil Complaints for Each Type (2015-2016)

[Table 7] Status of Communications Civil Complaints for Each Type for 2015 and 2016

(Unit: Case, %)

Classification	Communications Review Requests						Inquiry Related to Communications Review	Total
	Prostitution and Pornography	Infringement of Rights	Illegal Food and Drug	Promotion of Speculation	Other Illegal and Harmful Information	Sub-Total		
2015	52,387 (53.2)	13,662 (13.9)	1,167 (1.2)	17,576 (17.9)	13,632 (13.9)	**98,424 (100)**	1,795	**100,219**
2016	117,492 (60.1)	13,197 (6.8)	16,091 (8.2)	15,740 (8.1)	32,915 (16.8)	**195,435 (100)**	1,631	**197,066**

Source: (Korea Communications Standards Commission, 2016)

Therefore, the regulation of content involving the telecommunications business operators requires a complaint for the user and a deliberation process to verify if the content is harmful or illegal. Additionally, telecommunications business operators must also be involved in constantly detecting any kind of illegal and harmful content on the Internet in order to delete or block it if may be needed. "Under the ICNA, the KCC may order a telecommunication service provider or a website operator to prohibit, limit or refuse to process information that is obscene or defamatory in nature". (Telecoms, Media and Internet 2018| Korea, 2018)

However, in the case of the "special value-added telecommunications business operators" such as the web portals or blogs, the process is different because they have the ability to edit or manipulate the content, as a consequence, they are subject to liable for the content carried over their websites. Special value-

added telecommunications business operators "are required to take technical measures to prevent distribution of illegal obscene information" (Korea Communications Commission, 2016).

In this context, the KCC investigated the status and technical measures applied by these business operators, and "established a permanent system to monitor all of the web hard business operators (60 companies and 75 sites, as of January 2016) whether they comply with laws on prevention of illegal information circulation in January 2016. In March, the Commission evaluated web hard business operators' compliance with technical measures to prevent circulation of obscene information, taking administrative measures and imposing fines on violating companies". (Korea Communications Commission, 2016)

Graph 3.- Key Details of Technological Measures

| Table III-36 | Key details of technological measures

- Measures to recognize illegal information (title, characteristics, etc)
- Measures to prevent search and transmission of illegal information
- Measures to prevent search and transmission if illegal information is circulated despite technical measures
- Measures to send warming message to those who transmit illegal information

Source: (Korea Communications Commission, 2016)

From the evaluation, three companies failed to apply technical measures related to word filter, block posting and downloading of obscene material.

Graph 4.- Measures on Problematic Businesses

| Table Ⅲ-37 | Measures on problematic businesses

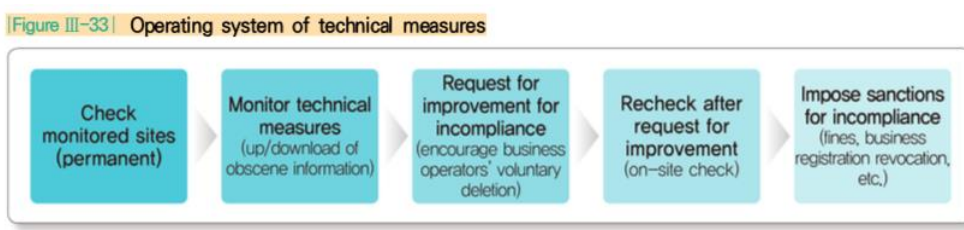
Classification	Name of company	Site
1	○○○○○○ition	http://www.file****.com
2	△△△lusion	http://www.***wn.com
3	□□□s	http://file****.co.kr
4	☆☆on*	http://www.file****.co.kr

Note) * : The company excluded from investigation due to site shutdown and revocation of business registration

Source: (Korea Communications Commission, 2016)

The KCC and the special value-added business operators work together on a regular basis in order to apply the proper technical measures to prevent the circulation of harmful and illegal information. "As a result, a total of 47,081 cases of illegal information circulation have been addressed" (Korea Communications Commission, 2016).

Graph 5.- Operating System of Technical Measures



Source: (Korea Communications Commission, 2016)

Lastly, all telecommunications business operators "who provide telecommunications services to minors must provide measures to block content that is harmful and obscene" (Telecoms, Media and Internet 2018| Korea, 2018). Under the Telecommunications Business Act (Article37.7 "Blocking Media

Products Harmful to Juveniles"[8]), ISPs should block media products harmful and obscene to juveniles. Additionally, the KCC is constantly conducting "promotional campaigns to parents who need practical information about such services. (…) The Commission also strived to block harmful information to juveniles by sending text messages about applications to block obscene material on a regular basis" (Korea Communications Commission, 2016)

[8] Article 32-7 (Blocking Media Products Harmful to Juveniles)
(1) In entering into a contract for the provision of telecommunications services with a juvenile who is subject to the Juvenile Protection Act, a telecommunications business operator who uses frequencies allocated under the Radio Waves Act shall provide means to block media products harmful to juveniles defined in subparagraph 3 of Article 2 of the Juvenile Protection Act and information with obscene content referred to in Article 44-7 (1) 1 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (2) The Korea Communications Commission may inspect the status of the means of blocking referred to in paragraph (1). (3) Matters necessary for the methods, procedures, etc. for the provision of means of blocking under paragraph (1) shall be prescribed by Presidential Decree. (Telecommunications Business Act, 2016)

4.5. Circulation of Illegal and Harmful Information on the Internet: Future measures to be applied in Ecuador

Similar to South Korea, Ecuador is currently developing a law to regulate hate acts and discriminatory content on the Internet and social networks by involving the ISP too. The law project suggests the usage of definitions of discrimination and hate acts established in the Comprehensive Organic Criminal Code (COIP) amended in 2016.

"*Art.176.- Discrimination.* The person who, except in the cases conceived as affirmative action policies, propagates practice or incites any distinction, restriction, exclusion or preference based on nationality, ethnicity, place of birth, age, sex, identity of gender or sexual orientation, cultural identity, marital status, language, religion, ideology, socioeconomic status, immigration status, disability or health status with the aim of nullifying or impairing the recognition, enjoyment of the rights in conditions of equality, will be sanctioned with imprisonment of one to three years. If the infraction specified in this article is ordered or executed by the public servants, it will be sanctioned with imprisonment of three to five years". (COIP, 2016)

"*Art.177.- Hate Acts.* The person who commits hate acts of physical or psychological violence against one or more people based on their nationality, ethnicity, place of birth, age, sex, gender identity or sexual orientation, cultural identity, marital status, language, religion, ideology, socioeconomic status, migratory status, disability, health status or carrying HIV, will be punished with imprisonment of one to three years. If acts of violence cause injury to the person, it will be sanctioned with the penalties provided for the crime. If the acts of

violence result in the death of a person, it will be punished with imprisonment from twenty-two to twenty-six years". (COIP, 2016)

Furthermore, Ecuador defines the ISP as "enterprises service providers", which are the ones that work through telematic communication, internet platforms, or similar technologies that allow users to share content with other users or openly. (Law Project aimed to regulate Hate Acts and Discriminatory Content on Social Media and the Internet, 2017)

The Ecuadorian legislation recognizes the following types of providers:

Table 7.- Types of Service Providers in Ecuador

Type of Service	**Definition**	**Providers**	**Definition**	**Authorization Type**
Telecommunications Services	These are services that are supported over telecommunications networks in order to allow and facilitate the transmission and reception of signs, signals, texts, video, images, sounds or information of any nature, to meet telecommunications needs of the subscribers, customers, users.	Fixed Telephone and Mobile Service Providers	Can provide bearer and value-added services too.	License
		Bearer Service Providers	Provide the necessary capacity for transport and routing the communications signals. Constitute the main means of interconnection between telecommunications services and networks	License
		Value-added Service Providers	Services that use final telecommunications services (SMA, Fixed Telephony) and / or telecommunic	Registration

			ations carrier services to reach their end users, and incorporate applications that allow transforming the content of the information transmitted. Example of value-added service is access to the Internet.	
Broadcasting Services	Services that can transmit, emit and receive signals of image, sound, multimedia and data through stations of public, private or community type based on what is established in the Organic Law of Communication	Open signal Services	Sound Broadcasting	License
			Television Broadcasting	
		Subscription Services	Services that can only be received by users who have previously signed a contract.	Authorizatio n

Source: (Organic Telecommunications Law, 2015); (ARCOTEL, 2018)

In this sense, the law project to regulate the content on the Internet and social media will be for the enterprises service providers in this case, value-added services. In the following chart there are some important points proposed in the law for the ISPs.

Table 8.- Summary of the important aspects of the Law Project aimed to regulate Hate Acts and Discriminatory Content on Social Media and the Internet

ARTICLE	CONTENT
Article 3.- Reports	The service providers should elaborate a quarterly report about the management of the complains received of illegal content made by the users. The report should be submitted to the Ministry of Justice.
Article 4.- Content of the Report	Some of the important points that the report should include: 1. Indicate the actions and efforts made by the service provides has made in order to prevent criminal acts in the websites and platforms 2. Establish a process to treat the complains and reports received about illegal content; as well as the criteria used to decide the block or deletion of the illegal content. 3. Provide statistics of the complains and reports received during a certain 4. Specify in detail the organization, staff, major of the people responsible of receiving the complains
Article 5.- Management of the illicit content	The service provides should establish an effective process to solve the complains and reports of illegal content which has to be simple, accessible and constantly available. The process must include the following aspects: 1. Register immediately the complaint and report, and examine if the content is illegal, if it is it should be deleted or disable the access 2. The alleged illegal content should be removed or blocked within 24 hours since the reception of the complaint. 3. The illegal content should be eliminated or disable the access within 72 hours.

	4. The illegal content deleted should be kept as a backup in Ecuador 5. Notify the users about any decisions 6. Remove the copies of the illegal content that could be circulation on the platform
Article 7.- Designation of an internal agent of the process	The service providers should designate an internal agent responsible of the compliance of the obligations established in the law, of presenting the reports to the authorities, as well as to communicate the acts consider illegal to the Prosecutors of the State
Article 8.- Administrative Infractions	1. The lack of the quarterly report, if it is not accurate, incomplete, out of time or if does not follow what was established in the article 4 of the law 2. The absence of the process to manage the complaints and reports established in the article 5 3. If the process used to manage the complaints is not effective or not available 4. Inappropriate treatment, supervision and management of the complaints received 5. Problems to solve issues that could affect the process 6. If the service provider does not provide training or assistance when needed 7. Lack of designation of an internal agent
Article 9.- Sanctions	The Ministry of Justice will be the institution in charge of setting the economic fines which can vary from 37.50-375.000 USD

Source: (Law Project aimed to regulate Hate Acts and Discriminatory Content on Social Media and the Internet, 2017)

Although the Ecuadorian law to regulate the content on the Internet is still on debate, the principal point in common with the South Korean law is the solution they are given to this matter. Both legislations recognize three important actors in the regulation: the government, the ISP and the users. Both countries are

aware that 'self-regulation' through the ISPs is the way many democratic countries are facing this matter. "Self-regulation acknowledges the presence of indecent material on the Internet. However, due to the structure of the Internet and the protection of freedom of expression, self-regulating countries confront this material at its terminal destination. Whether a nation's government chooses government censorship or self-regulation may reflect the government's relationship with its people". (Hanley, 1998)

In Ecuador and in South Korea freedom of speech is important and it is recognized in each Constitution respectively. In the case of South Korea, "The traditional meaning of freedom of expression is stipulated by Art. 21 of the Constitution[9], clauses 1 and 2, while the degree of realizing and securing freedom of expression has such great significance as to be a measure of a government based on a democratic society. Cases of freedom of expression under Art. 21 of the Constitution, Clause 4, however, may be restricted except for violation of the essential substance of Constitution Art. 37, Clause 2" (Choi & Ji, 2014). In other words, freedom of speech "may be restricted by Act only when necessary for national security, the maintenance of law and order or for

[9] "Article 21
(1) All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.
(2) Licensing or censorship of speech and the press, and licensing of assembly and association shall not be recognized.
(3) The standards of news and service and broadcast facilities and matters necessary to ensure the functions of newspapers shall be determined by Act.
(4) Neither speech nor the press shall violate the honor or rights of other persons nor undermine public morals or social ethics. Should speech or the press violate the honor or rights of the persons, claims may be made for the damage resulting therefrom". (Constitution of the Republic of Korea, 1987)

public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated". (Constitution of the Republic of Korea, 1987)

In the case of Ecuador, the constitution "recognizes and guarantees (Article 66-6) all persons the right to give their opinion and express their thinking freely and in all forms and manifestations. (…) Article 384 determines that the social communication system will ensure exercise of the rights of communication, information and freedom of expression, and will strengthen citizen participation. That same Article establishes that the State will formulate public policy on communication, with unrestricted respect for freedom of expression and for the rights to communication enshrined in the Constitution and in international instruments on human rights" (UNESCO, 2011)

Moreover, in the OCL, freedom of expression and opinion is guarantee in the article 17, "all people have the right to express and give their opinion freely by any mean, and they will be responsible of their own expressions according to the law". (Organic Communication Law, 2013).

In this sense, involving ISPs in the Internet regulation is a practice used in democracies because in general the role developed by ISPs in the regulation will not be directly related "to censor" the contents on the Internet, rather they will merely block or websites, or information that contains "intolerable information", previously define by each the government, which has been published and receive complains from the user.

4.6. Similarities between both legislations: South Korea and Ecuador

Although the laws and institutions created in South Korea and Ecuador to regulate the content on the Internet responds to different contexts, priorities and needs of each country respectively. There still are some similarities that are important to highlight:

- In South Korea, the telecommunications sector, including the internet, networks and services are regulated by Telecommunications Business Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. The Telecommunications Business Act "comprise the main laws that regulate telecoms networks and services. The TBA provides the requirements and procedures for obtaining the relevant licenses, ownership and operations requirements, and rules related to fair competition and use of land". (Telecoms, Media and Internet 2018| Korea, 2018). While the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. "sets forth specific requirements applicable to network and service providers that are intended to protect consumer rights such as protection of personal information and minors" (Telecoms, Media and Internet 2018| Korea, 2018).

- Additionally, the Telecommunications Business Act in South Korea authorizes the Ministry of Science and ICT, an executive ministry under the authority of the Prime Ministry, "to grant licenses and registrations for telecoms business and establish policies regulating

such business while granting the KCC with authority to decide on competition matters related to telecommunications" (Telecoms, Media and Internet 2018| Korea, 2018). However, the role of the KCC, a regulatory agency directly under the authority of the President, is important protect users and guarantee fair competition while the Ministry "has a wider range of responsibility with respect the telecoms businesses and establishing policies regulating such businesses". (Telecoms, Media and Internet 2018| Korea, 2018)

- In the case of Ecuador, the Organic Telecommunications Law comply with the role of the Telecommunications Business Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., in setting the rules to regulate the telecommunications regime and the radioelectric spectrum of the country, its services, network and infrastructure, as well as the rights and duties of the service providers and users (See Table 7). Furthermore, it creates ARCOTEL, attached to the Ministry of Telecommunications and Information Society responsible for the administration, regulation and control of the telecommunications and broadcasting, as well as its management and technical aspects of the media frequencies.

- In South Korea, under the Act on the Establishment and Operation of Korea Communications Commission, the KCSC was established to deliberate regarding Internet contents post publication in order to verify if the information is illegal or harmful. In Ecuador, CORDICOM in the institution in charge of regulating the contents on the "traditional media"

such as television, radio and audio and video subscription. However, the content circulating on the media is not object of regulation yet.

Table 9.- Telecommunications and Internet Laws related to Iillegal, Harmful, Discriminatory, and Hate acts in South Korea and Ecuador

Country	Law	Purpose of the Law
South Korea	Telecommunications Business Act	"**Article 1 (Purposes)** The purpose of this Act is to contribute to the promotion of public welfare by encouraging sound development of the telecommunications business and ensuring convenience to the users of the telecommunications business through proper management of such business and efficient operation of telecommunications" (Telecommunication Business Act, 2016)
	Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.	"**Article 1 (Purpose)** The purpose of this Act is to contribute to improving citizens' lives and enhancing public welfare by facilitating utilization of information and communications networks, protecting personal information of people using information and communications services, and developing an environment in which people can utilize information and communications networks in a healthier and safer way". (Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.,2016)

Ecuador	Organic Telecommunications Law	"**Art.1.- Object. -** The purpose of this Law is to develop the general telecommunications regime and the radioelectric spectrum as strategic sectors of the State that includes the administration, regulation, control and management throughout the national territory, under the constitutionally established principles and rights". (Organic Telecommunications Law, 2016)
		Art2.- Scope. - "The current Law shall be applied to all activities of establishment, installation and operation of networks, use and exploitation of the radioelectric spectrum, telecommunications services and to all those natural or legal persons that perform such activities in order to guarantee compliance with the rights and duties of the service providers and users. The networks and infrastructure used for the provision of sound and television broadcasting services and the networks and infrastructure of audio and video subscription systems are subject to the provisions of this Law" (Organic Telecommunications Law, 2016).
	Organic Communication Law	"**Art. 1.- Purpose and scope. -** The purpose of this law is to develop, protect and regulate, in the administrative sphere, the exercise of the constitutionally established communication rights". (Organic Communication Law,2013)
	Law Project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks	**"Art.2.- Object.-** The objective of this law is to regulate the accions of the service providers described in the aticle 1of the current law that should adopt for the treatment of the content and information that can represent acts of discrimination and hate, previously defined in the articles 176 and 177 of the Comprehensive Organic Criminal Code (COIP)" (Law Project

		aimed to regulate Hate Acts and Discriminatory Content on Social Media and the Internet, 2017)

Source: (Telecommunication Business Act, 2016); (Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.,2016); (Organic Telecommunications Law,2016); (Organic Communication Law,2013); Law Project aimed to regulate Hate Acts and Discriminatory Content on Social Media and the Internet, 2017)

Table 10.- Institutions involved to Prevent the Circulation of Illegal, Harmful, Discriminatory Contents and Hate Acts on the Internet in South Korea and Ecuador

Country	Institution	Mission or Vision of the Institution
South Korea	Ministry of Science and ICT	"The Ministry of Science and ICT will focus efforts on accelerating innovation across the whole society through building an environment that promotes autonomous and audacious research, securing source technologies and growth engines, and converging science and technology with ICT. At the same time, the Ministry will endeavor to reform regulations and systems for new industries such as artificial intelligence and biotechnology, and to make mobile phone service available at a more affordable price so that anyone can enjoy the benefits of quality mobile communications" (Ministry of Science and ICT, 2018).
	Korea Communications Commission (KCC)	**"**The Commission is responsible for regulating the broadcasting and telecommunications sector and ensuring user protection and broadcasting independence. Major functions of the KCC include the following: policy-making regarding terrestrial broadcasting, general programming channel and all news channel; investigating and imposing sanctions against broadcasters in violation of relevant laws; formulating and implementing policies to protect

		users and their privacy; and preventing circulation of illegal and harmful information on the internet. The KCC also works on policies related to broadcast advertising and programming evaluation, media diversity, inter- Korean exchanges and international cooperation in communications". (Korea Communications Commission, 2018)
	Korea Communications Standards Commission (KCSC)	The Korea Communications Standards Commission (hereinafter referred to as the "Korea Communications Standards Commission") shall be established to perform its duties independently, with the purposes of guaranteeing the public nature and fairness of broadcasting contents, creating a sound culture in the areas of information and communications and creating an environment where information and communications are used in an appropriate manner". (Act on the Establishment and Operation of Korea Communications Commission, 2015)
Ecuador	Ministry of Telecommunications and Information Society	"Be the entity responsible for the development of information and communication technologies in Ecuador, including the telecommunications and the radio spectrum in order to issues policies, general plans and monitor and evaluation of their implementation, coordinating actions with the actors of the strategic sectors to guarantee equal access to services and promote their efficient and effective use, to ensure the progress towards the information society for the good living of the Ecuadorian population". (Ministry of Telecommunications and Information Age Society, 2018)
	Agency for Regulation of the Telecommunications (ARCOTEL)	"Regulate, manage and control the use and exploitation of the radioelectric spectrum and the services of the telecommunications in order to guarantee the right to access services with optimal coverage and availability; in an environment of competition, universality and at affordable prices;

		protecting the security of communications and data protection throughout the national territory". (Agency for the Regulation of the Telecommunications, 2018)
	Council of Regulation and Development Information and Communication (CORDICOM)	"The institution in charge of designing and implementing policies developed to protect and regulate the communication and information rights established in the Constitution and the Organic Communication Law". (CORDICOM, 2013)

Source: (Ministry of Science and ICT, 2018); (Korea Communications Commission, 2018); (Act on the Establishment and Operation of Korea Communications Commission, 2015); (Ministry of Telecommunications and Information Age Society, 2018); (Agency for the Regulation of the Telecommunications, 2018); (CORDICOM, 2013)

Table 11.- Brief summary of the Results Obtained through the Application of the Comparative Methodology

Method	Question	Answer	Analysis
Historical	Which is the role of the government in South Korea and Ecuador to regulate the	The South Korean government developed an important role regarding the content regulation on the Internet. "South Korea has become a model of government-led industrialization in the field of IT and media industries such as telecommunications companies, cable television operators, IT manufacturers and software developers" (Min, 2013). The South Korean government succeed in building a strong ICT infrastructure.	Since the beginning, the government has been actively involved in the creation of a strong telecommunication infrastructure which has made South Korea a competitive country in that area and has contributed to their economic growth. In 1997, approximately, the telecommunication industry was opened to the market to improve their service and obtain more economic benefits. As a consequence, to promote fair competition and protect the user, the Korea Communications Commission (KCC) was established in 2008. Additionally, with the development of the new technologies, such as the Internet, the South Korean government adopted new policies to face the current reality and in the same year, the Korean Communications Standard Commission (KCSC) was created to regulate the content on the Internet.

	content on the Internet?	Between the period of 2007 and 2017, the Ecuadorian government developed an important role in creating laws and institutions aimed to regulate the telecommunication sector and the communicational activity in the country. During that period many changes were introduced in the country due to political and economic stability of the country.	Before 2007, the Ecuadorian political and economic situation has not been stable, which had affected the development of the country. The privatization of the telecommunications in Ecuador began 1993 (earlier than in South Korea), when the State, following the guidelines and recommendations proposed by the Washington Consensus, enacted the "Modernization Law" which established the transference of certain public services, including the telecommunications services, to the private sector. However, the objectives proposed to privatize the telecommunications sector were not accomplished because they ignore the national reality of the country, and instead of achieving stability and development, it weakened the role of the State and create more inequalities in the country. As a result, in 2007 during Rafael Correa's administration, the State recovered its faculties of planning, regulation and control. A national referendum to establish a new constitution was executed, and in 2008, the new constitution was issued, as well as an Organic Comunication Law in 2013, an Organic Telecommunications Law in 2015, and recently in 2017, the Law Project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks
Law in context	Which case can be used	The most significant case in South Korea to illustrate	The importance of this case is that it opened the path for the Korean government to regulate the content on the Internet.

	to illustrate how the law has been applied in South Korea?	the role of the KCSC and how the law to regulate content on the media works in practice is the "advertising boycott against advertisers who placed advertising in the major newspapers that supported the Korean government's trade policies on beef imported from the United States" (Park, Haygood, & Yun, 2014).	Korean citizens believed that the information provided by these three major newspapers were biased and in favor of the government. Therefore, citizens launched an online community to express their opinions about it. The idea was to pressure on the advertisers who work with the three major newspapers to withdraw their advertising from them, which will cause a serious economic damaged to the newspapers because most of the newspapers revenues comes from advertising. This was partially successful because 43 companies withdraw their advertising. The Korean government interfere through the KCSC and decided that the material found in the portal website fell under Article 44-7 item 9 "aimed at or aiding and abetting a crime" and "through correction requests, deleted on July 1 at least 58 entries on an online bulletin board at www.daum.net/stopcjd". (Park K.-S. , 2018). As a result, "web portal service providers have been held to be liable for content when they have the ability to edit content, subject to various other requirements. Internet service providers have a general duty to detect, delete and prevent distribution of child pornography, and may be subject to criminal liability if negligent in exercising such duty". (Telecoms, Media and Internet 2018| Korea, 2018)

Functional	Which solution is given in South Korea and Ecuador to prevent the circulation of illegal and harmful information on the Internet?	In both countries, legislation aimed to regulate the Internet recognizes and involve three important actors: the government, the ISPs and the user.	Both countries are aware that 'self-regulation' through the ISPs is the way many democratic countries are facing this matter. "Self-regulation acknowledges the presence of indecent material on the Internet. However, due to the structure of the Internet and the protection of freedom of expression, self-regulating countries confront this material at its terminal destination. Whether a nation's government chooses government censorship or self-regulation may reflect the government's relationship with its people". (Hanley, 1998) The role developed by ISPs in the regulation will not be directly related "to censor" the contents on the Internet, rather they will merely block websites, or delete information that contains "intolerable information", previously define by each government. In South Korea, there are 3 types of telecommunications business operators: (1) Common Telecommunications Business Operator, (2) Special Category Telecommunications Business Operator, (3) Value-Added Telecommunications Business Operator. Each of them with different responsibilities and roles in the Internet regulation. The Common and the Special Telecommunications Business Operators who provide Internet service, are not subject to liability of the content carried over their network. Their duty is to detect, delete and prevent the distribution of information consider illegal and harmful for the users. Addtionally, if a user complaints about

			a content on the Internet with the KCSC, the institution has to deliberate to verify if the content is harmful or illegal in order to delete or block it if is needed. If the ISP refueses, they can receive penalties. On the other hand, regarding the special value-added Business Operators (for instance, web portal service providers) the treatment is different. The KCC has a system to monitor them and they are required to take technical measures to prevent the circulation of illegal information, such as recognizing illegal information by a title, characteristics, word filter, block posting and downloading of obscene material. Lastly, all service providers should block the content consider harmful information for juveniles. Telecommunications Business Act (Article37.7 “Blocking Media Products Harmful to Juveniles” In the case of Ecuador, similar to Korea, the law project pretends to regulate the contents on the Internet and Social Media involving the telecommunications services that provide value-added services just when there is a complaint and report of illegal content. Unlike South Korea, the law does not mention about a general duty of these enterprises to detect and take actions about other illegal information circulating on the Internet that have not been reported.

			However, to issue the law project, the Organic Telecommunications Law and the Communications Law need to be amended. The first protects net neutrality (Art.3) and leaves the service providers out of the process of the content regulation (Art.22). The second one (OCL), excludes regulation for any kind of information and opinions expressed by the individuals on the Internet (Art. 4). Another possibility could be to include in the Organic Telecommunications Law, as in South Korea, the responsibility of the ISP of providing good services in a safe and sound way (Art.3). So, there will be no need to create and additional law to do that.
Common-core	Which are the similarities between both legislations?	Although the laws and institutions created in South Korea and Ecuador to regulate the content on the Internet responds to different contexts, priorities and needs of each country respectively. There are still some similarities important to highlight.	-In South Korea, the telecommunications sector, including the internet, networks and services are regulated by Telecommunications Business Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. Additionally, the Telecommunications Business Act in South Korea authorizes the Ministry of Science and ICT, an executive ministry under the authority of the Prime Ministry, "to grant licenses and registrations for telecoms business and establish policies regulating such business while granting the KCC with authority to decide on competition matters related to telecommunications" (Telecoms, Media and Internet 2018| Korea, 2018).

			-In the case of Ecuador, the Organic Telecommunications Law comply with the role of the Telecommunications Business Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., in setting the rules to regulate the telecommunications regime and the radioelectric spectrum of the country, its services, network and infrastructure, as well as the rights and duties of the service providers and users. Furthermore, it creates the Agency for the Regulation of Telecommunications (ARCOTEL), attached to the Ministry of Telecommunications and Information Society responsible for the administration, regulation and control of the telecommunications and broadcasting, as well as its management and technical aspects of the media frequencies. -In South Korea, under the Act on the Establishment and Operation of Korea Communications Commission, the KCSC was established to deliberate regarding Internet contents post publication in order to verify if the information is illegal or harmful. In Ecuador, CORDICOM in the institution in charge of regulating the contents on the "traditional media" such as television, radio and audio and video subscription. However, the content circulating on the Internet is not object of regulation yet.

Conclusions

The current research focus on Internet regulation and related aspects of two particular societies: South Korea and Ecuador. It is important to understand how countries like South Korea are preventing the circulation of illegal information on the Internet in order to identify good practices that could be incorporated in the Ecuadorian legislation. In this sense, the methodology of comparative legal research applied, which included the functional method, the law- in- context method, the historical method and the common- core method was helpful to compare and enhance the understanding of these two different legal systems and identify what Ecuador can learn from South Korea.

However, it is important to highlight that the comparison of the two legal systems was done with a legislation that is currently functioning while the other is still on debate. The Ecuadorian Law Project to regulate the content on the Internet is still on debate, which means that the National Assembly still needs to approve it. However, some of the findings of the current research can be considered when approving the Ecuadorian legislation.

Additionally, in Ecuador nowadays, some institutions and laws such as Organic Communicational Law, are being merged and amended respectively, due to the change of government. Although, this law is not the object of study of the research, it is important to highlight it because the reforms proposed for the law are not approved yet; therefore, the media, the media workers, and in general the communicational activity in the country still follows what it is established under this law, and it stills represents a milestone for the country.

Regarding the Internet regulations, the Internet has many unique features that difficult a complete or total regulation of the contents circulating on the Internet. It was created and developed to use it openly without any control, allowing anonymity and faster distribution of the information. Additionally, there is a lack of an international law governing the Internet. There are no international laws covering specific problems of it because the States have different approaches to do it. States that are more interested in protecting social values would have a different approach than States that support freedom of speech.

However, there are still efforts made by the States to prevent the circulation of illegal and harmful information on the Internet. For instance, South Korea has developed laws such as the Telecommunications Business Act and the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc., and institutions like the Korea Communications Commission and the Korea Communications Standard Commission to face this matter.

The South Korean government have decided to regulate the malicious content on the Internet by involving the service providers who acts as intermediaries in the transmission of information. However, not all service providers have the same level of responsibility on the issue. Generally, service providers are not subject to liability of the content published on their websites, however they have a general duty to detect, delete and prevent the distribution of illegal and harmful information, especially when there has been a complaint of a particular content. Moreover, when the information is harmful to the juveniles or children, service providers must provide measures to block that kind of content.

On the other hand, the special value-added service providers, such as web portals or blogs, are subject of liability for the content they carry on their websites because they can edit and manipulate it. In fact, the KCC has a system to monitor them and they are required to take technical measures to prevent the circulation of illegal and harmful information, such as recognizing illegal information by a title, characteristics, word filter, block posting and downloading of obscene material.

In the case of Ecuador, similar to Korea, the law project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks pretends to regulate the contents on the Internet and Social Media by involving the telecommunications services that provide value-added services when there is a complaint or report of illegal content. Unlike South Korea, the law project of Ecuador does not mention about a general duty of these enterprises to detect and take actions about other illegal information circulating on the Internet that have not been reported. This is because the current legislation and institutions, such as the Organic Telecommunications Law and the Organic Communications Law, the Agency of Regulation and the Council of Regulation and Development of Information and Communication respectively, do not contemplate the regulation of the content circulating on the Internet.

As a consequence, to do so the Organic Telecommunications Law needs to be amended too because it protects net neutrality (Art.3) and establishes that the service providers cannot limit, block, interfere, discriminate or restrict the right of the users to use, send, or offer any content through the Internet or other information and communication technologies (Art.22). Additionally, the Organic Communications Law excludes of regulation any kind of information and opinions expressed by the individuals on the Internet (Art. 4). In this sense,

the current Communications Law and the Telecommunications Law cannot regulate the contents on the Internet, neither involve the service providers on the regulation.

Another possibility to be considered could be to include in the current Organic Telecommunications Law, as in South Korea, the responsibility of the ISP of providing good services in a safe and sound way (Art.3 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.); add as a general duty of these enterprises to detect and take actions about illegal and harmful information circulating on the Internet. Therefore, the service providers will be involved in the content regulation on the Internet and there will be no need to create and additional law to do that (Law Project to Regulate Hate Acts and Discriminatory Content on the Internet and Social Networks).

Moreover, following the example of South Korea, the role of the State is very important in building a strong telecommunications infrastructure. They should be able to design a proper planning to achieve the goals desired. In the case of preventing the circulation of illegal information on the Internet, government censorship should not be an option, especially in democratic societies. However, self-regulation through the service providers could be an alternative, acknowledging that there is a huge amount of indecent material on the Internet that is possible to detect, and block or deleted if it affects the users.

In democratic societies civil liberty and freedom of speech of its citizens must be guarantee; however, following the ideas of John Stuart Mills, the only reason for governments to exercise their power over a citizen is to prevent harm to others. Governments must not try to limit or control public expressions of any

citizen; nevertheless, this freedom of expression must also be rightfully exercised by the citizens, avoiding behaviors or comments that could hurt other people.

In this sense, a healthy use of the Internet will depend on various factors. First, on the education and values of the users whose opinions in forming or influencing the others are important specially on issues related to elections, public policies, and social and political matters. Second, a service provide enterprise whose goals have to be aligned with the goals and ideals of the society. Lastly, a government actively involved on the issue, able to set a proper planning, laws and institutions in benefit of the citizens without affecting their rights.

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Annexes

Annex 1

| Table II-1 | Laws under jurisdiction of the Commission

Law	Description	Dates enacted and amended
Act on the Establishment and Operation of Korea Communications Commission	• Legal basis for the foundation, organization, and administrative structure of the Commission • Duties and operational methods of the Commission and organization of review committees	Enacted on Feb. 29, 2008 Amended on Dec. 22, 2015
Framework Act on Broadcasting Communications Development	• Establishment of basic policy directions and plans for broadcasting and communications • Disaster management in broadcasting and communications and establishment of the Broadcasting Communications Development Fund	Enacted on Mar. 22, 2010 Amended on Dec. 22, 2015
Broadcasting Act	• Freedom and independence of broadcasting programming and public responsibility of broadcasting services • Licensing, re-licensing, approval/permission or re-approval of broadcasting service businesses	Enacted on Jan. 12, 2000 Amended on Feb. 3, 2016
Korea Educational Broadcasting System Act	• Capital and investments of the Korea Educational Broadcasting System • Appointment of officers and composition of the board of directors	Enacted on Jan. 12, 2000 Amended on Dec. 22, 2015
Foundation for Broadcast Culture Act	• Organization of officers for the Foundation of Broadcasting Culture • Legal basis for Culture Promotion Fund	Enacted on Dec. 26, 1988 Amended on Jun. 3, 2014
Special Act on Support for Regional Broadcasting Development	• Establishment of Plans for Regional Broadcasting Development and Support • Organization of Regional Broadcasting Development Committee	Enacted on Jun. 3, 2014
Act on Broadcast Advertising Sales Agencies, etc.	• Licensing of broadcast advertising sales agencies and restrictions on their ownership • Balanced development of broadcasting advertisement	Enacted on Feb. 22, 2012 Amended on Jan. 27, 2016
Internet Multimedia Broadcast Services Act	• Licensing of Internet multimedia broadcast services • Guarantee of fair competition	Enacted on Jan. 18, 2008 Amended on Dec. Jan. 6, 2016

Law	Description	Dates enacted and amended
Act on the Protection, Use, etc, of Location Information	• Classification of business operators and system for market entry • Use of personal location data by emergency aid agencies	Enacted on Jan. 27, 2005 Amended on Dec. 1, 2015
Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.	• Restriction of collection and use of personal data • Guarantee of information network security	Enacted on May 12, 1986 Amended on Mar. 22, 2016
Mobile Device Distribution Improvement Act	• Prohibition on discriminative subsidization and announcement of subsidies • Restriction on making independent contracts related to subsidies	Enacted on May 28, 2014
Telecommunications Business Act	• Classification of services and business operators, promotion of competition, and systems for fair competition • System for protecting network users	Enacted on Dec. 30, 1983 Amended on Jan. 27, 2016
Radio Waves Act	• Procedure for distribution, allocation, recollection and reallocation of frequency bands • Procedure for use of radio stations, including their licensing and inspection	Enacted on Dec. 30, 1961 Amended on Jan. 27, 2016

Note) Includes statutes that are jointly enforced by the Ministry of Science, ICT and Future Planning

Source: (Korea Communications Commission, 2016)

Annex 2

Article 44 (Protection of Rights in Information and Communications Network)	(1) No user may circulate any information violative of other person's rights, including invasion of privacy and defamation, through an information and communications network. (2) Every provider of information and communications services shall make efforts to prevent any information under paragraph (1) from being circulated through the information and communications network operated and managed by it. (3) The Korea Communications Commission may prepare a policy on technological development, education, public relations activities, and other activities to prevent violation of other persons' rights by information circulated through information and communications networks, including invasion of privacy and defamation, and may recommend providers of information and communications services to adopt the policy. *<Amended by Act No. 11690, Mar. 23, 2013; Act No. 12681, May 28, 2014>*
Article 44-2 (Request for Deletion of Information)	(1) Where information provided through an information and communications network purposely to be made public intrudes on other persons' privacy, defames other persons, or violates other persons' right otherwise, the victim of such violation may request the provider of information and communications services who managed the information to delete the information or publish a rebuttable statement (hereinafter referred to as "deletion or rebuttal"), presenting explanatory materials supporting the alleged violation. *<Amended by Act No. 14080, Mar. 22, 2016>* (2) A provider of information and communications services shall, upon receiving a request for deletion or rebuttal of the information under paragraph (1), delete the information, take a temporary measure, or any other necessary measure, and shall notify the applicant and the publisher of the information immediately. In such cases, the provider of information and communications services shall make it known to users that he/she has taken necessary measures by posting a public notification on the relevant message board or in any other way. (3) A provider of information and communications services shall, if there is any unwholesome medium for juvenile

	published in violation of the labeling method under Article 42 in the information and communications network operated and managed by him/her or if a content advertising any unwholesome medium for juvenile is displayed in such network without any measures to restrict access by juvenile under Article 42-2, delete such content without delay. (4) A provider of information and communications services may, if it is difficult to judge whether information violates any right or it is anticipated that there will probably be a dispute between interested parties, take a measure to block access to the information temporarily (hereinafter referred to as "temporary measures"), irrespective of a request for deletion of the information under paragraph (1). In such cases, the period of time for the temporary measure shall not exceed 30 days. (5) Every provider of information and communications services shall clearly state the details, procedure, and other matters concerning necessary measures in its standardized agreement in advance. (6) A provider of information and communications services may, if he/she takes necessary measures under paragraph (2) for the informations circulated through the information and communications network operated and managed by it, have its liability for damages caused by such informations mitigated or discharged.
Article 44-3 (Discretionary Temporary Measures)	(1) A provider of information and communications services may, if it finds that information circulated through the information and communications network operated and managed by him/her intrudes on someone's privacy, defames someone, or violates someone's rights, take temporary measures at its discretion. (2) The latter part of Article 44-2 (2), the latter part of Article 44-2 (4), and Article 44-2 (5) shall apply mutatis mutandis to the temporary measures under paragraph (1).
Article 44-4 (Self Regulation)	An organization of providers of information and communications services may establish and implement a code of conduct applicable to providers of information and communications services with an objective to protect users and

	render information and communications services in a safer and more reliable way.
Article 44-5 (Identity Verification of Users of Message Boards)	(1) Any of the following persons shall, if he/she intends to install and operate a message board, take necessary measures, as prescribed by Presidential Decree (hereinafter referred to as "measures for identity verification"), including preparation of methods and procedures for verifying identity of users of the message board: 1. A State agency, local government, public enterprise, quasi-government agency under Article 5 (3) of the Act on the Management of Public Institutions, or a local government-invested public corporation or a local government public corporation under the Local Public Enterprises Act (hereinafter referred to as "public institution"); 2. Deleted. *<by Act No. 12681, May 28, 2014>* (2) Deleted. *<by Act No. 12681, May 28, 2014>* (3) The Government shall prepare a policy to develop a safer and more reliable system to verify identity of users under paragraph (1). (4) A public institution, etc. may have its liability for damages caused by fraudulent use of a user's identity by a third party mitigated or discharged, if it has taken the measures for identity verification under paragraph (1) with care as a good manager. *<Amended by Act No. 12681, May 28, 2014>*
Article 44-6 (Claim to Furnish User's Information)	(1) A person who alleges that information published or circulated by a specific user has intruded on his/her privacy, defamed him/her, or violated his/her rights may file a claim with the defamation dispute conciliation division under Article 44-10 to demand the relevant provider of information and communications services to furnish the information he/she possesses about the alleged offender (referring to the minimum information specified by Presidential Decree, including the name and address, necessary for filing a civil or criminal complaint), along with materials supporting his/her allegation of the violation, in order to file a civil or criminal complaint against the alleged offender. (2) The defamation dispute conciliation division shall, upon receiving a claim under paragraph (1), make a decision on whether to furnish information, hearing the opinion of the relevant user, unless it is impossible to contact the relevant user or there is any particular reason otherwise. (3) A person who receives information about the relevant user under paragraph (1) may not use the information for any

	purpose other than the purpose of filing a civil or criminal complaint. (4) Other matters necessary for the contents of a claim to furnish information of a user and the procedure therefor shall be prescribed by Presidential Decree.
Article 44-7 (Prohibition on Circulation of Unlawful Information)	(1) No one may circulate information falling under any of the following subparagraphs through an information and communications network: <*Amended by Act No. 11048, Sep. 15, 2011; Act No. 14080, Mar. 22, 2016*> 1. Information with an obscene content distributed, sold, rented, or displayed openly in the form of code, words, sound, image, or motion picture; 2. Information with a content that defames other persons by divulging a fact, false fact, openly and purposely to disparage the person's reputation; 3. Information with a content that arouses fear or apprehension by reaching other persons repeatedly in the form of code, words, sound, image, or motion picture; 4. Information with a content that mutilates, destroys, alters, or forges an information and communications system, data, a program, or similar or that interferes with the operation of such system, data, program, or similar without a justifiable ground; 5. Information with a content that falls within an unwholesome medium for juvenile under the Juvenile Protection Act and that is provided for profit without fulfilling the duties and obligations under relevant statutes, including the duty to verify the opposite party's age and the duty of labeling; 6. Information with a content that falls within speculative activities prohibited by statutes; 6-2. Information regarding content of transactions of personal information in violation of this Act or other statutes concerning the protection of personal information; 7. Information with a content that divulges a secret classified by statutes or any other State secret; 8. Information with a content that commits an activity prohibited by the National Security Act; 9. Other information with a content that attempts, aids, or abets to commit a crime.

	(2) The Korea Communications Commission may order a provider of information and communications services or a manager or an operator of a message board to reject, suspend, or restrict management of information under paragraph (1) 1 through 6 and 6-2, subject to deliberation by the Communications Standards Commission: Provided, That if the information falls under paragraph (1) 2 or 3, the Commission shall not issue an order to reject, suspend, or restrict such management against the intention specifically manifested by the victim of the relevant information. <*Amended by Act No. 14080, Mar. 22, 2016*> (3) The Korea Communications Commission shall order a provider of information and communications services or a manager or an operator of a message board to reject, suspend, or restrict management of information under paragraph (1) 7 through 9, if the information falls under all the following subparagraphs: <*Amended by Act No. 14080, Mar. 22, 2016*> 1. There was a request from the head of a related central administrative agency; 2. A demand for correction was made pursuant to subparagraph 4 of Article 21 of the Act on the Establishment and Operation of Korea Communications Commission after deliberation by the Communications Standards Commission within seven days from the date on which the request under subparagraph 1 had been received; 3. The provider of information and communications services or the manager or operator of the message board has not complied with the demand for correction. (4) The Korea Communications Commission shall give an opportunity to the provider of information and communications services or the manager, operator, or relevant user of the message board to whom an order is to be issued pursuant to paragraph (2) or (3) to present his/her opinion in advance: Provided, That the Commission may not give an opportunity to present an opinion, if a case falls under any of the following subparagraphs: 1. If it is necessary to make an urgent disposition for public safety and welfare; 2. If there is a ground specified by Presidential Decree to believe that it is obviously impracticable or evidently unnecessary to hear an opinion;

	3. If a person concerned clearly manifests his/her intent to give up the opportunity to present his/her opinion.
Articles 44-8 and 44-9 Deleted. <*by Act No. 8867, Feb. 29, 2008*>	
Article 44-10 (Defamation Dispute Conciliation Division)	(1) The Communications Standards Commission shall have the defamation dispute conciliation division comprised of five members or less for efficient conciliation of disputes arising in connection with information that intrudes other persons' privacy, defames other persons, or violates other persons' rights including a member or more holding qualification of attorney-at-law. (2) The members of the defamation dispute conciliation division shall be commissioned by the chairperson of the Communications Standards Commission with consent of the Communications Standards Commission. (3) Articles 33-2 (2) and 35 through 39 shall apply mutatis mutandis to the procedure for conciliation of disputes by the defamation dispute conciliation division. In such cases, "Dispute Mediation Committee" shall be construed as "Communications Standards Commission," and "disputes over personal information" as "disputes arising in connection with information that intrudes privacy, defames other persons, or violates other persons' rights among information circulated through information and communications networks." (4) Necessary matters concerning the installation and operation of the defamation dispute conciliation division and the conciliation of disputes, and other related matters shall be prescribed by Presidential Decree.

Source: (Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.,2016)

Annex 3

Article 64-3 (Imposition, etc. of Penalty Surcharges)	(1) The Korea Communications Commission may impose, on a provider of information and communications services or similar, an amount equivalent to 3/100 or less of its sales related to a violation as a penalty surcharge, where he/she performs any of the following acts: *<Amended by Act No. 11322, Feb. 17, 2012; Act No. 12681, May 28, 2014; Act No. 14080, Mar. 22, 2016>* 1. Where he/she collects personal information without consent of the relevant user in violation of Article 22 (1) (including cases where Article 22 (1) shall apply mutatis mutandis pursuant to Article 67); 2. Where he/she collects personal information that is likely to seriously undermine rights, interests, or privacy of a person without consent of the relevant user in violation of Article 23 (1) (including cases where Article 23 (1) shall apply mutatis mutandis pursuant to Article 67); 3. Where he/she uses personal information in violation of Article 24 (including cases where Article 24 shall apply mutatis mutandis pursuant to Article 67); 4. Where he/she furnishes a third party with personal information in violation of Article 24-2 (including cases where Article 24-2 shall apply mutatis mutandis pursuant to Article 67); 5. Where he/she entrusts a third party with the management of personal information without consent of the relevant user in violation of Article 25 (1) (including cases where Article 25 (1) shall apply mutatis mutandis pursuant to Article 67); 5-2. Where a trustee violates the provisions of Chapter IV because it has neglected its control, supervision or education under Article 25 (4) (including cases where Article 25 (4) shall apply mutatis mutandis pursuant to Article 67); 6. Where he/she has lost, stolen, divulged, forged, altered, or mutilated a user's personal information, and not taken measures under Article 28 (1) 2 through 5 (including cases where Article 28 (1) 2 through 5 shall apply mutatis mutandis pursuant to Article 67); 7. Where he/she collects personal information of a child under 14 years old without consent of his/her legal representative in violation of Article 31 (1) (including cases where Article 31 (1) shall apply mutatis mutandis pursuant to Article 67); 8. Where he/she provides any user’s personal information to overseas without obtaining consent from the user in violation of the main sentence of Article 63 (2). (2) Where a provider of information and communications services or similar on whom penalty surcharge under paragraph (1) has been

	imposed refuses to submit data for computation of its sales or submits any false data, the sales may be estimated on the basis of accounting records such as financial statements, and the current status of business, such as the number of subscribers and the service charges of other providers of information and communications services which is similar in size: Provided, That penalty surcharge not exceeding 400 million won may be imposed where there was no sales or it is impracticable to compute the sales and where there is a ground specified by Presidential Decree. <*Amended by Act No. 11322, Feb. 17, 2012*> (3) The Korea Communications Commission shall, when it intends to impose penalty surcharge under paragraph (1), take the following factors into consideration: 1. The substance and degree of the violation; 2. The duration and frequency of the violation; 3. The amount of profits acquired by the violation. (4) The penalty surcharge under paragraph (1) shall be computed by taking the factors under paragraph (3) into consideration, but the specific guidelines and procedures for the computation shall be prescribed by Presidential Decree. (5) The Korea Communications Commission shall, if a person who is obligated to pay penalty surcharges under paragraph (1) fails to pay them by a deadline, collect an additional charge equivalent to 6/100 of the unpaid penalty surcharge per annum beginning on the day immediately following the deadline. (6) The Korea Communications Commission shall, if a person who is obligated to pay penalty surcharges under paragraph (1) fails to pay them by a deadline, remind the person to pay them within a period of time prescribed by the Commission, and shall collect them in accordance with the precedents for disposition against default on national taxes, if the person fails to pay the penalty surcharges and the additional charges under paragraph (5) within the prescribed period of time. (7) Where penalty surcharges imposed pursuant to paragraph (1) shall be refunded due to a judgment of a court or any other reason, an additional amount equivalent to 6/100 of the penalty surcharge per annum shall be paid from the date the penalty surcharges are paid and until the date they are refunded.

Source: (Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.,2016)

국문초록

대한민국과 에콰도르의 불법 유해 정보 유통 방지를 위한 인터넷 규제에 대한 비교 연구

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최근 정보통신기술의 발달에 따라 사회적으로 바람직하지 않다고 판단되는 정보에 대한 규제의 필요성이 커지고 있다. 그러나 이러한 규제는 다음과 같은 이유로 실행하기 어렵다. 첫째, 인터넷은 누구나 규제 없이 사용하도록 개발된 개방적 기술이며, 이로 인해 익명성이 보장되고 정보가 빠르게 확산된다. 예를 들어 정보의 게시를 차단해도 웹 상의 다른 공간에도 재게시 될 수 있으며, 암호화된 게시물일 경우 게시자를 추적하기도 어렵다. 둘째, 인터넷을 규제하는 국제법이 마련되어 있지 않다. 전화 등 정보를 유통하고 통신을 촉진하는 다른 기술은 국제법에 의한 규제를 받지만, 인터넷은 개별 국가들의 서로 다른 규제를 마련하고 있다.

표현의 자유를 중시하는 국가들과 공공성을 중시하는 국가들은 인터넷 규제에 있어 사뭇 다른 입장을 보인다. 대한민국은 불법 유해

정보 유통 방지를 위해 노력하는 나라 중의 하나이다. 한국에서는 건전한 인터넷 사용 환경을 조성하기 위해 정부, 인터넷 서비스 공급자, 인터넷 사용자가 모두 참여하고 역할을 부여 받도록 법과 제도를 설계하였다.

날이 갈수록 정보통신기술의 중요성이 강조되는 상황에서, 에콰도르는 아직 인터넷을 규제할 수 있는 제도적인 장치가 마련되지 않았다. 그렇기 때문에 다른 국가들이 불법 유해 정보의 유통을 막기 위해 어떠한 조치를 취하고 있는지를 이해하고, 그 경험으로부터 효과적인 인터넷 규제 방법에 대해 고찰할 필요가 있다.

본 연구에서는 법제 연구에서 사용되는 비교법 연구 방법을 적용하여 한국과 에콰도르의 법 체제를 비교함으로써 에콰도르의 인터넷 사용 환경을 개선시킬 방안을 도출해내고자 한다. 먼저, 선행연구를 통해 인터넷 사용환경, 규제 및 비교법연구방법론의 이론적인 토대를 마련하였다. 대한민국과 에콰도르의 인터넷 불법 유해 정보 규제를 비교하기 위해, 구적으로는 기능 분석, 맥락 분석, 역사적 고찰, 핵심적인 공통사항 등을 살펴보았다. 각 방법론을 적용함에 있어서 개별적인 명제와 가설을 설정하였는데, 이는 결국 대한민국과 에콰도르 정부가 인터넷 상 불법 유해 정보 유통 방지를 위해 어떠한 노력을 기울이고 있는지를 구체적인 맥락에서 비교하기 위한 것이었다.

주제어: 정보통신기술, 인터넷 규제, 불법 유해 정보, 차별과 증오 법

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