

## The momentum of control and autonomy: a local scene of peer-to-peer music-sharing technology

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This commentary examines the tensions arising from the current international power struggle between the dominant system of copyright and the autonomous use of information. It does so by observing the social construction of a particular technology within a newly industrialized economy; specifically, this study analyses the case of a South Korean online music-swapping site called Soribada, which means 'sound ocean'. Soribada is technically very similar to Napster, the popular US online music-sharing service. The Korean music service faced a crisis when it was indicted for copyright infringement. Through the legal pressure of copyright holders and lobbyists, Soribada was forcibly changed, by court order, to a commercial music service. Napster also travelled along the same path of commercialization, with the revised music service, 'Napster 2', being subordinated to proprietary vendors.

Soribada has been called 'the Korean version of Napster', and indeed, Soribada may be seen as the distorted mirror image of Napster. Soribada has followed the exact same developmental path as Napster, with some temporal lag: both were designed purely for free file-sharing among users, but both had to change into privatized online music services in order to survive the repeated lawsuits of proprietary vendors. Comparing the archaeological histories of these two music-swapping services allows us to see how, despite the great physical distance between the two online services, the legal constraints imposed on Napster in the US established an 'ideological precedent' for the path of technological development in South Korea, and, more generally, how precedents established by Western nations influence the social applications of technologies in less advanced nations. Examining groups that resist ownership laws on the internet may reveal ways in which domestic end users and other related civic groups attempt to transform corporate control into an autonomous act of populist music-sharing. This study seeks to uncover both the dominant logic that conditions the technical design and the counter-action that tries to escape from that dominant logic.

### **The dual momentum of a technological artefact**

To structuralist determinism, technology always becomes an instrument of domination rather than liberation, of the masculine rather than the feminine, and of the authoritarian rather than the democratic. Technology is deployed in the reproduction of social dominance. Technology in terms of control overrides all other questions, such as, for instance, the political utilization of advanced technologies to express the autonomous voices of the masses. Seeing technology as control risks ignoring the potential for resistant change in the architecture/design that occurs through the cultural innovations of active users. The rigid determinism falls short of its alternative design. Thus technology is qualified as 'the rationale of dominance itself' (Adorno and Horkheimer, 1976: 121).

If we instead view technology as process, control is merely a 'brake' or 'reverse salient' that suppresses and retards radical potential in a limited way (Hughes, 1987; Winston, 1998: 11). Even in the seemingly rigid embodiment of control, a political tension exists between the codification of power and rearrangement through the intervention of human agents. The production of new technology is a contingent process that always has the potential to go in many different directions. Thus, technical code is not a technical architecture that results solely from a power game among policy-makers or technocratic experts. Rather, dialectical tensions always exist within the field of technology between emancipation and constraint, between agency and structure, and between lifeworld and systems world (Garnham, 2000: 66).

Acknowledging the counter-action of users provides an alternative approach that can challenge the dominant technological systems of capitalism. Such an approach is similar to considering 'how it comes about that structures are constituted through action, and reciprocally how action is constituted structurally' (Giddens, 1976: 161). A reflective approach to structure brings to an end the chronic bias that has regarded technology users as 'a mere bearer' or 'the epiphenomena of structure' (Bourdieu, 1990: 9). Including the relatively autonomous users within the structure ensures that technology is construed as 'part' of the structure, not the whole of it. The crux of the issue is the degree to which the democratic value of agency can override the dominant hierarchy of the technical code in capitalism (Feenberg, 1999: 120–1). In a real sense, examining how both control and autonomy relate to a peer-to-peer technology could help design alternative paths that lead to new re-appropriations of the technological artefact.

### **Living as a courteous child in a less developed country**

Another significant dimension to these issues is the international context in which the technological artefact of a less advanced country is embedded. In the construction of technological artefacts, factors outside national boundaries can significantly affect the design and engineering process. Since the West is the source of technological legitimacy, the local technocratic elite in a developing country has usually imitated and embraced Western models, specifically those regarding the newly constructed information and telecommunication policies and legal cases. Embedded in the technological artefacts of a developing country, therefore, is a structure of dominance that mirrors the ideological values of developed nations, and a developing country has little room 'from below' to choose different paths of technological development that are relatively free from the values of a developed country.

What is at issue here is how technological and legal 'precedents' set by the US affect local policies and laws. In South Korea, a developing country where the

social construction of peer-to-peer digital technology has never been experimented with, the precedent of the US becomes the 'standard' of technical code. The ideological effect of US precedent and its embodiment in local policies demonstrate the new pattern of 'dependency' in less developed countries. At a local level, US legal decisions act as invisible powers that directly affect the path of domestic laws.

Nevertheless, thanks to the relative immaturity of technological dominance in Korea, autonomous acts of information-sharing continue to increase and even resist the application of copyright laws or policies. The new condition of resistance encourages action by users, despite the proprietary appropriation of technological artefacts by copyright owners. Furthermore, the gradual growth of a new anti-copyright camp demonstrates that, on both a local and a global scale, attempts to alter the technical code of copyrights have become new patterns of action, such as, for example, the development of new open source technologies. Further, the dominance through technology in a developing country can neither encompass the whole society as systematically nor refine its own hegemony as effectively as in a developed country, because a developing country is too socially unstable to create a systematic mechanism of dominance such as the technological rationalization based on the Enlightenment project found in developed countries. Thus, in the local construction of technology, there coexists both a momentum towards assimilation of the proprietary model and resistance to it. In a less developed and developing country, resistance is directed not only against the local private vendors but also against the international copyright regime that regulates the worldwide system of technology.

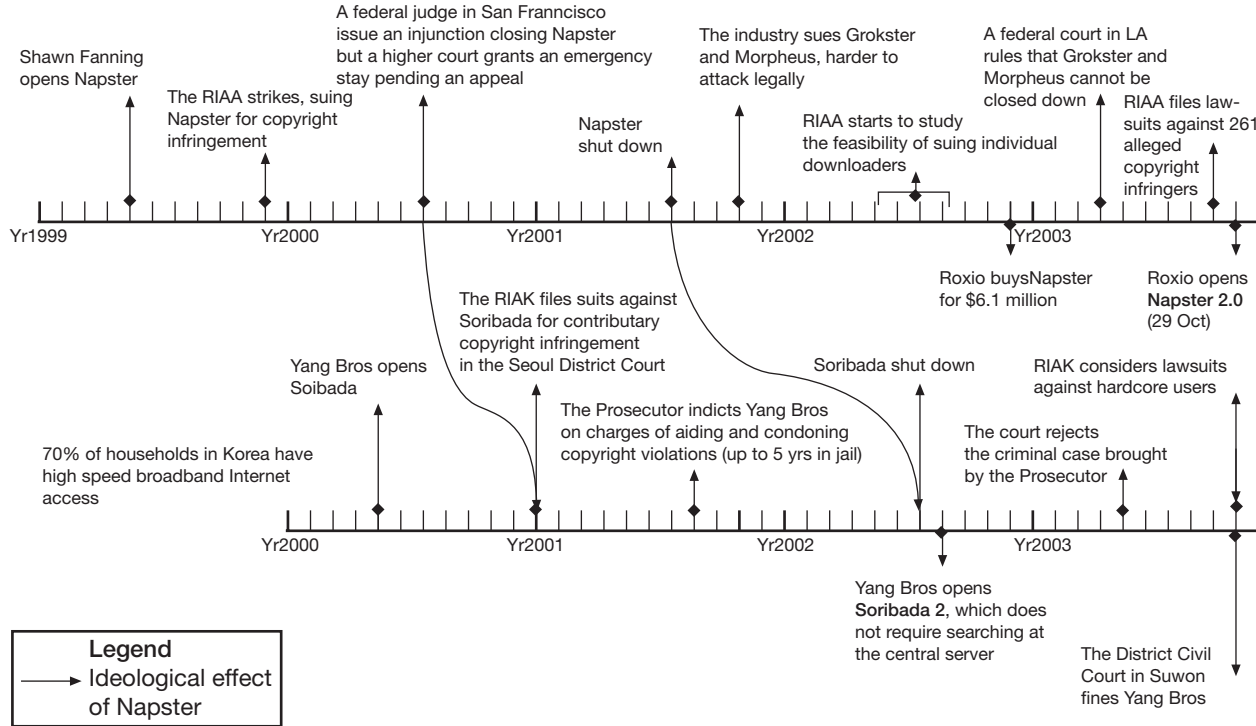
### **The wider context of Soribada**

In South Korea, the population of internet users and the economic growth of digital-based industries have developed rapidly since the mid-1990s. In January 2001 the material conditions for using mp3 online swapping sites were fully ripe: Korea's internet population already accounted for over 22.3 million people, and Korea was then the country with the fourth highest level of internet use in the whole world. In home-based internet use, Koreans spent the longest time per month surfing the net with a remarkable average of 16 hours and 17 minutes, nearly double the 9 hours and 8 minutes global average time spent per month (Nielson/NetRatings, 2001).

On the international level, the US government, on behalf of its software, music and film industries, has been pressuring newly industrialized economies to enforce international treaties that protect copyrights. In Korea, the legal and policy structure has been entirely subordinated to international intellectual property agreements. Historically, the national copyright system has been shaped by a WTO-based framework for Trade-Related Aspects of Intellectual Agreement (TRIPs), by the agreement with the World Intellectual Property Organization (WIPO) and by other unofficial pressures. The local copyright system has succumbed easily to the global vendors, especially the US vendors who became the net copyright exporters of the late 20th century. On the local scene, the copyright law, revised several times, has restricted the 'fair use' principle of copyright materials even more severely.

Under these material conditions, Soribada was founded by the two young Yang brothers, Jung-Hwan and Il-Hwan, in May 2000.<sup>1</sup> It has grown to be Korea's biggest music-sharing service, with over 4.5 million registered users and over 300,000 service users each day. Technically, however, Soribada does not rely on

**FIGURE 1**  
**Timetables of Napster and Soribada**



Source: The Napster timetable, partly from *Businessweek* (29 September 2003: 94–5).

central servers to index the files shared by users, unlike Napster, which has its own music database system. Like the Gnutella or Freenet distribution models, the Soribada program enables users to tap into an ever-changing peer-to-peer network with other music-swappers to reciprocally search computers for mp3 music files and to download them. Soribada’s decentralized architecture is fundamentally different from that of Napster, and this feature makes its users liable for their own violations of copyright regulations.

In January 2001, just a few days after Napster’s shutdown by a US appeals court, Soribada was sued for copyright infringement. The plaintiff, the Recording Industry Association of Korea (RIAK), a lobbying group made up of 133 local music labels, filed a copyright infringement lawsuit against the Soribada website. The Seoul District Court dismissed the criminal case in May 2003 on the grounds of insufficient evidence. In contrast, in a civil lawsuit in October of the same year, the Songnam branch of the Suwon District Court sided with the copyright holders by slapping a 19.6 million *won* (\$16,300) fine on the Soribada operators. Almost two months after the decision in the criminal court, and just a month after the Recording Industry Association of America (RIAA) – the official representative of the US music recording industry – began suing file-swapping users in the US, the RIAK also warned targeted P2P ‘hard-core’ users that it would sue them directly, and filed a criminal suit against individuals.

Figure 1 shows that the major legal events in the Soribada case were greatly affected by the Napster case. As time goes by, the effect of US precedent is increasingly apparent. Figure 1 demonstrates that the ideological learning effect determines not only the legal discourses within a local court but also the economic actions of local copyright holders. Table 1 sets forth the many commonalities between Napster and Soribada. The main difference between the two is that while

**TABLE 1**  
**Comparison between Napster and Soribada**

	<b>Napster in the US</b>	<b>Soribada in Korea</b>
Beginning of service	May 1999	May 2000
Registered users	50–60 million	4.5–5 million
Files swapped	mp3	mp3
Developer	Shawn Fanning	Yang Brothers
Technical method	Peer-(mediated by servers)-Peer	Peer-(no servers)-Peer
Lawsuit	Brought by US vendors	Brought by local vendors
Change of service	From music sharing model to fee-based model	(From music sharing model +) Fee-based service model
Service model now used	Fee-based model (Napster2)	Fee-based model (Soribada 2.0)
Main opponents	Transnational music labels	Trans-/national music labels
Alternative P2Ps	Gnutella, Freenet, Grokster, Kazaa . . .	Sinbat, K-tella, Bugs, Orangeland . . .

Soribada only plays a relaying role for its users, Napster has a list archive of users saved in its central servers, and it is this centralized listing that makes it more liable than Soribada to claims of copyright infringement.

The two music-swapping services differ somewhat in their initial goal of service. While Shawn Fanning was forced to alter Napster from a free service model into a fee-based one by legal pressure from major music brands, the Yang brothers had it in mind that Soribada was going to move to a business model from the start. In one interview, Yang Jung-Hwan confessed that he hoped 'to continue its service through a fee-based swapping system' (2001). This is also made clear in a legal opinion of the Suwon District Court: 'Even though at that time in 2001, the Yang brothers were well aware of the controversial case in the US court, the main reason they intended to launch the P2P service was that they were inspired by the commercial success of Napster.'<sup>2</sup> In this respect, Soribada could not escape charges of misusing the non-proprietary ethic of information-sharing to increase users and make a profit. Nevertheless, the Soribada case is worth examining because it contributed to disseminating a free internet culture at a local level, even though its operators' initial aim was directed towards commercialization.

### The local scene of control: bottling up Soribada

Two regimes of controlling access to mp3-sharing exist in South Korea: one relies on market power and the other on legal entities. Both regimes presume that sharing mp3 files must be controlled because it can disturb and even threaten the stability of the capitalist market. Representing local music labels, the RIAK has claimed that the overall sales loss of the national record labels reached an estimated 200 billion *won* (\$150 million) between the time Soribada began the free music file-sharing service on the internet in May 2000 and January 2001. The sales rate of Korean songs at that time, however, steadily increased. Sales data posted on the RIAK website indicate that Korean music sales showed a modest rising curve until

**TABLE 2**  
**Music industry in South Korea, 1995–2003 (unit: 1 billion *won*)**

	1995	1996	1997	1998	1999	2000	2001	2002	2003
Scale of music industry	379.0	404.5	416.0	353.0	380.0	410.4	373.3	286.1	183.3
Whole online music market			N/A			450	911	1345	1850
MP3 music market			N/A		35	424	594	891	N/A
Music labels (number)	81	98	118	125	325	568	812	955	1,053
Domestic record sale	137.9	150.4	196.4	166.9	183.6	205.6	201.5	165.2	135.4
I/E									
Import	9.3	9.4	17.1	2.3	4.2	8.6	11.7	12.1	10.6
Export	7.7	8.5	9.4	11.2	10.6	10.3	9.4	5.5	4.2
Korean songs				71	74	75	76	74	78
Sales (%)									
Pop		N/A		24	22	20	20	22	18
Classical				5	4	5	4	4	4

Source: RIAK, <http://www.riak.or.kr>; Ministry of Culture and Tourism, <http://www.mct.go.kr>; Korea IT Industry Promotion Agency, <http://www.kipa.or.kr>

early 2001, rather than a sharp decline, which only began in 2002 when the economic recession started to devastate whole local industries.

As indicated in Table 2, total music sales reached a peak of 410 billion *won* (\$300 million) in 2000, when not-for-profit online music-sharing was widespread. The rapid decline of music CD and cassette-tape sales only began in 2002. The decline in sales matches with the year when the commercial (for cost) mp3 music market, including streaming music service, abruptly increased; since then the scale of the commercial online music market has rapidly grown and has outpaced CD music sales. Before 2001, the RIAK lacked sufficient evidence of a drop in sales. In sum, the downturn was not caused by free file-sharing through Soribada, but by the rapid growth of the commercial mp3 market at the expense of CD sales. This shows that the RIAK either misunderstood P2P file-sharing as causing a downturn of music sales or failed to read the epochal change from the non-commercial exchange of music files to the growth of the proprietary online music market.

Another reason for the downturn in the music market was the 'humble' structure of the domestic music distribution market. Despite the superficial growth of the Korean music industry, it suffers from many chronic ailments, such as 'the redundant competition in monopolized genres like dance music, the overproduction of compilation records, the distorted structure of music distribution, and the saturation of pirated music records in the off-line world' (Lee, 2001). The domestic music market, therefore, suffers from two problems: the underdeveloped structure of the local music market<sup>3</sup> and the commercial desire to establish rules controlled by music copyright holders.

As copyright holders saw it, 'If Soribada switched to the fee-based model from the free-charge model, the RIAK would at last have complete control over what kind of music content could be distributed or prohibited.'<sup>4</sup> In this respect, the Soribada case goes beyond a simple conflict among the related stakeholders but is instead something with much larger socio-economic effects. Since the court rejected the criminal charges on which Soribada was indicted in May 2003, the local music copyright owners turned to using the carrot (bargaining) and the stick (lawsuit) for fear they might risk losing their own market share to the growing commercial online music services.

### **The global scene of control: the ideological effect of Napster**

Nothing can be done to control the speed and the way in which the dominant effect of the US copyright reaches Korea.<sup>5</sup>

Resistance to the US copyright system is impossible in the current domestic situation. Once again, the US internet vendors and technocrats have forced the Third World into a new type of dependency related to copyright. It is depressing that we should be controlled by the US, not only in the process of industrialization, but also of digitization.<sup>6</sup>

The Napster ruling reverberated throughout the Korean music community, having a huge ideological effect on the domestic online world. The local daily newspapers promoted a conservative agenda by reporting on the Napster case extensively from early in 2001. At that time, the RIAK was one of the major interest groups most sensitive to the US case. As soon as a US federal court ordered Napster to block users from sharing mp3s, local music labels in Korea filed similar complaints. In addition, Chang-Ju Lee, an executive director of the RIAK, announced publicly, 'Following [the path of] the US court's decision to stop file sharing of Napster is

quite clear to us.<sup>7</sup> Jeon, one of my interviewees, recalled the active response of the RIAK when the RIAA won in the US court in early 2001.<sup>8</sup>

With the US decision that shut down Napster, the RIAK was quite confident that it would win the copyright battle against Soribada. The Korean Prosecutor was also very concerned about the US Napster case. Since March 2001, when the Prosecutor launched a probe into Soribada, the Prosecutor's Office had paid close attention to how to treat the Napster case (Hau, 2001). The lawsuit against Soribada gained momentum just after the US federal court's ruling against Napster. In addition to the demands of the local music vendors, psychological anxiety about Napster swung the pendulum dramatically away from a fair decision in the local courts. As one interviewee said:

The US has more precedents of legal and policy issues concerning digital technologies than any other country. I personally have heard a [Korean] judge say that domestic courts decide on the basis of US precedents, especially in legal cases concerning copyright infringement.<sup>9</sup>

The October 2003 decision of the Suwon District Court also cites the US Napster case several times in defending the rights of the copyright holders. It is clear that in the mind of Korean technocrats and vendors, it seems self-evident and natural to follow US legal precedents. The Napster case comes to be a global 'standard' or 'measurement' for policy and legal decisions in a local sphere. Furthermore, the legal standard gains a universal power that determines the technological path in a less advanced country. The dominant effect comes not in direct commands that control local policies or laws but in the wake, so to speak, of an imperial power that overshadows them.

### **The path of flight: a real alternative to Soribada**

While the copyright regime has desperately tried to outlaw 'stealing' copyrighted mp3s, the P2P networks have been developing in a way that makes it easier and easier for people to share information. Borrowing Deleuze and Guattari's (1987: 7–21) words, the nomadic move of P2P users responds to the 'multiplicity of nerve fibre' of the non-hierarchical internet structure. It was difficult for the copyright system to prevent users from using the decentralized and anonymous medium that makes digital information replicate all over the internet. Ultimately, the distributive pattern of information use, moving nomadically, could be transformed to gather new social energy in order to change the old technical regime of control. The users' energy for counter-actions constitutes an available means of escape from the forces of repression marshalled by the copyright regime. Thus it is exactly as Deleuze and Guattari said: users have arrayed themselves across 'a line of flight enabling one to blow apart strata, cut roots, and make new connections' (1987: 15).

Just as Napster users had done,<sup>10</sup> so Korean users organized autonomous online campaigns to save Soribada. Many 'anti-RIAK' websites sprang up as civil rights activists became concerned about how users could organize to transfer files in the closed copyright system. It was a clash between copyright holders and users. No matter how the recording lobby groups aimed to block such 'illegal' activities, music file exchange between individual users could never be controlled. By the way, after being attacked by domestic music vendors, Soribada has survived in the distorted form of a fee-based business model, but such a model can never be an alternative for users. Soribada's commercialization only qualifies as a small backlash of more democratic possibilities of the internet.



Both Soribada and Napster are part of a larger issue than that of music theft. The larger question is one of full rights to share information through the internet. Users should have easy access to and easy use of information, and should be able to debate and to criticize without fearing lawsuits, as long as they do not sell the copies or display them in a public setting that can dilute the market value of the original. From this perspective, even though the music-swapping culture was an insurgent force locally opposing the centralized music structure, both Soribada and Napster were an imperfect experience for users, who wanted to feel perfect freedom in information-sharing. To configure information-sharing in a socially oriented democratic model, it must go beyond being a mere music-swapping tool, or else there is neither philosophy, nor movement, nor social or cultural resistance behind the current pattern of music-swapping. The diminishing power of users, whose fate is dependent on the force of the market, needs to be underpinned by the kind of social movement that restrains the unlimited property rights of copyright owners and makes them abandon their proprietary rights on the internet.<sup>11</sup> The goal should be to build and share the global databases of all non-commercial information for nomadic use. The method could be to set up a communal culture, based on a free, open, decentralized, uncommercializable digital-activism.

### **Cultivating the public domain**

This study leads to two practical points: one is rejection of the global copyright ideologies; the other is the development of a public model against copyright. In less developed countries, users have been overdetermined by the dual threat of both global and national copyright holders. There is hope, however, that these users will become resistant.

In practice, to occupy a salient position of counter-copyrights, it is urgent that we develop a public property model that allows anyone to freely copy, share, perform and adapt copyrighted works in exchange for providing credit to the artist for his or her gift to users. Borrowing Gramsci's (1988) concept, we now need to explore 'the war of position', an incessant struggle against the enormous copyright regime over a long span of time. This anti-system of private ownership could both weaken copyright monopolies and create a 'counter-ideology' against property myths at the global level, that is, a new system of values for social welfare. The public model could be realized by rebuilding 'the public domain' as a resource for public goods for the citizenry. Works in the public domain are considered part of the public's cultural heritage where anyone can use and build upon them without 'permission'. For instance, IPleft,<sup>12</sup> an organization for designing alternative public models, distributes a public licence model adequate for a locally defined copyright ground. The local licence model called 'Open Access Licence' was greatly influenced by the US idea of freedom on the internet, which embodied open licensing models for the public interest to counteract the surge of privatization and monopolization.

The strength of the public licence is that it goes beyond the scope of the 'fair use' privilege, because the public licence grants the additional public rights to use works released under it in ways otherwise prohibited by law. Even though establishing a new deal between creators and the public will not be easy at first, the experiment will grant more freedom for both creators and users to become the real actors in knowledge production and distribution, and will ultimately extend the public domain. Locally/globally defined experiments in alternative forms of information goods go beyond the 'formal' perspective that the tension between private property and the public domain has to be resolved within the scope of the

legal codes. Rather than solely residing in a framework of a formal doctrine to passively defend fair use in a hugely private realm, public licences are searching out tactically advantageous and even threatening tools to cultivate fertile public values against the entirely privatized realms.

When our economic and social reality is defined by cooperative communication and network relationships, the public values of insubordination to copyright could be the radical antidote needed to enrich the public domain, which is free from private property right-holders. It requires a degree of insurgency. What is at issue is 'the will to be against' or 'being-against' (Hardt and Negri, 2000: 210). Disobedience to copyright authority is ripening, and all that is solid in private hands is slowly melting.

## Notes

I would like to thank my readers, David Phillips, Joseph Straubhaar, Philip Doty, Laura Stein and Andrew Feenberg, and the five interviewees, for giving me their useful insights and suggestions in the preparation of this article.

1. Legal resources about Soribada ([www.soribada.com](http://www.soribada.com)) can be obtained at an anti-RIAK website (<http://freeinternet.jinbo.net>).

2. *RIAK v. Yang Brothers*, a civil lawsuit case in the Suwon District Court (24 October 2003).

3. Email interview (5 September 2001) with Won-Jae Lee, chief of the Information and Telecommunication Policy Department at the Civil Alliance for Cultural Reform. The author interviewed informants by email to obtain clearer information about the Soribada case. The five informants were selected from among active agenda-setters involved in the P2P phenomenon. The five interviewees were contacted by email over the five-week period after the indictment of Soribada by the prosecutor.

4. Email interview (20 October 2001) with Hee-Seob Nam, a patent attorney.

5. Email interview (5 November 2001) with Wook-Inn Paik of the Seoul National University of Technology, who has participated in public hearings and discussions of the Soribada case.

6. Email interview (25 October 2001) with Byoung-II Oh, a secretary-general of the Jinbo Network Center, the civil rights movement groups' Internet network.

7. *Korea Times*, 21 February 2001.

8. Email interview (6 November 2001) with Hyun-Sung Jeon, a founder of the Korea Peer-to-Peer Association.

9. Email with Nam.

10. On the day before a court-ordered shutdown of its service, Napster announced the 'Napster Buy-cott Weekend' against the RIAA. At the same time, users organized anti-copyright user groups such as 'Boycott RIAA' and 'Anti-Authority'.

11. Email with Paik.

12. Information about the activities of ILeft are available at <http://www.ileft.or.kr>

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