I. **Introduction**

a. Interest and Expertise of IJC:

i. The International Justice Clinic (IJC) at the University of California, Irvine School of Law, directed by former United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Professor David Kaye, respectfully submits this brief as amicus curiae to the Supreme Court of Korea. IJC promotes international human rights law at corporate, regional, national, and international levels, in the United States and globally. [IJC: We will tailor this part to the present case.]

b. Summary of our discussion

i. [Hinako: We can start the summary with a one-paragraph summary of the facts, i.e., what KCSC did, based on which authority, and what are the consequences, in addition to what is KCSC; then the summary of our legal arguments.]

1. On December 13, 2020, the KCSC issued a ruling to block in-Korea access to WoW.
2. KCSC is an administrative body that has the authority to take down content that is deemed "illegal". However, along with content that is "illegal", KSCS has shut down the entire website, including content that is not illegal.
    a. "Illegal" - donating/selling prescription medicine without a physician.
    b. Article 44-7 (Ban on Exchange of Illegal Information)
        i. 1.9. Any other information aimed at or aiding or abetting a crime.
3. Consequences:
    a. The KCSC's decisions are not notified to the posters whose contents are taken down by KCSC, insulating its actions from any appeal or judicial review.
    b. Women in KoR are at risk of being deprived autonomy and access to safe and legal abortions and denied access to information about sexual and reproductive health and rights
4. Korea Communications Standards Commission is an administrative institution that regulates communication including, television and internet, without first notifying the allegedly breaching party.
5. Summary of legal arguments

ii. In the present case, WOW's expression and the right to information of people in Korea, both of which are protected under the ICCPR Art. 19(2) is being inhibited by a blocking in-Korea access to womenonweb.kr, a website that provides information on women's health, sexual and reproductive rights, medical abortion, and thereby helps women to obtain safe, timely and affordable abortion care. KCSC has alleged that this website facilitating the sale of unprescribed drugs by non-pharmacists.

iii. KCSC's ruling to block in-Korea access to womenonweb.kr does not pass the stringent test of legality, legitimacy, and necessity and proportionality under Article 19(3) of the ICCPR.

c. Overview
    i. This court should resist endorsing approval for the present inadequacy of notice and review that KSCS currently possesses. Continued allowance threatens freedom of expression and exacerbates the continued broad and excessive website takedowns facilitated by the KCSC, thereby violating Article 19(2)(3) of the ICCPR.

II. **Article 19 of the ICCPR**

a. The ICCPR, to which RoK ratified on April 10th, 1990, obligates States to respect and ensure a range of fundamental civil and political rights.
b. ICCPR is a multilateral treaty that commits 173 member states to ensure civil and political rights of individuals within their jurisdiction.
c. Article 19: Right to Opinion + Expression
    i. Article 19(2): Article 19(2) of the ICCPR guarantees the right to freedom of opinion and expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media."[1] The Human Rights Committee, the expert treaty body that monitors compliance with the ICCPR, notes, "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression."[2]
    ii. Article 19(2) of the ICCPR guarantees the right to freedom of opinion and expression, which includes both (i) Women's rights to "seek, receive" information regarding women's health and sexual/reproductive rights in Korea and (ii) the right to "impart" information through WoW.
        1. General Comment 34
            a. The Human Rights Committee, the expert monitoring body for the ICCPR, stated in its highly regarded interpretation of Article 19, General Comment No. 34, that the right to freedom of expression includes "all forms of audio-visual as well as electronic and internet-based modes of expression."
    iii. Article 19(3)(3 part test) + Limits [Hinako: What does this limit mean? How this does this "limit" part support our argument?]
        1. As a result of the centrality of freedom of expression to the ICCPR and its promise of public participation and robust democratic debate, Article 19(3) provides a set of strict conditions for the lawfulness of any restrictions on the freedom of expression.
            a. *Legality.* For a restriction on freedom of expression to be "provided by law," it must be precise, public and transparent, and avoid providing government authorities with unbounded discretion.[3]

i. Vague/ (Restrictions must be provided by law)
    1. *Kim v. RoK; Shin v. RoK*: UNHRC [Human Rights Committee?] found that the law [Which law?] was too vague and broad, which failed the requirement that restrictions be provided by law be clear and accessible. Broadcasting law lacked clarity and lacked the requisite quality for it to be lawful under Article 19(3) ICCPR.

b. *Legitimacy.* Restrictions may only be imposed to protect legitimate aims, which are limited to (a) respect of the rights or reputations of others or (b) the protection of national security or of public order (ordre public), or of public health or morals. A State must show in specific and individualized fashion the precise nature of the threat at issue.[4]

c. *Necessity and Proportionality.* Restrictions must "target a specific objective" and be proportionate to the aim pursed.[5] The restrictions must further be "the least intrusive instrument among those which might achieve" the desired result.[6]

iv. **Sufficient Safeguards:** States' obligation to "ensure" the right to FOE (Article 2(1) of ICCPR and GC 31) – states should implement safeguards which are sufficient to ensure that any restriction of FOE meets the three-part test). We would argue that judicial authorization would be an element of safeguards required under Article 2(1) and Article 19(2)(3).]

1. **Judicial authorization**
    a. 2. "States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy."[7]
    b. "4. States should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression."[8]

2. **Transparency [Hinako: Was KCSC's order of blocking of WoW website lacking transparency?]**
    a. "5. States should publish detailed transparency reports on all content-related requests issued to intermediaries and involve genuine public input in all regulatory considerations." [Hinako: Citation? I think you can say transparency as an element of sufficient safeguards required under Article 2(1).]

III. **KCSP's blocking WoW website Restricts and Violates the Rights to Freedom of Opinion and Expression**
    a. **[INSERT: Whose/ what sort of/ whose rights KCSP's conduct has been restricting and how direct/ severely?]**
    b. **KSCP's violates 19(3) of the ICCPR [Hinako: In this section, we'll apply three-part test (legality, legitimacy, necessity & proportionality) + sufficient safeguards.]**
        i. **[A. Lack of sufficient safeguards] DUE TO** Web screening/ making a taking-down decision by administrative bodies, not judicial bodies, contradicts the request by Article 2(1) and Article 19(2)(3) of ICCPR, which guarantees freedom of expression; and (Can administrative bodies censor content alone) [Restriction of speech can happen only through a judicial body]; **Bantam books vs. Sullivan;**
            1. **Lack of judicial authorization.**
            2. **Lack of transparency**
            3. **Spanish SUPREME COURT: Chamber for Contentious-Administrative Proceedings Fourth Section; Judgment No. 1231/2022** [Hinako: Would this case be useful to support our position that judicial authorization is needed for website blocking? It seems this case is more useful to support our "excessive" argument below?]
            4. "HOWEVER, whatever the authority (administrative or judicial) that orders the interruption of access to the website, it must respect the principle of proportionality and, if technically possible, be limited to the section where the illegal activity, information or expression is contained."
        ii. Add other precedents which support the norm that Article 19(2)(3) requires pre-judicial authorization for a website blocking.
            1. Philippines[9] (Philippine Supreme Court)
                a. The Filipino High Court struck down a provision that gives the justice department the power to take down online content without a court warrant.
                    i. Categorically unconstitutional: Section 19 which pertains to restricting or blocking access to computer data.
                    ii. The SC decided that Section 19 – granting power to the Department of Justice (DOJ) to restrict computer data on the basis of *prima facie* or initially observed evidence – was not in keeping with the Constitution. The said automatic take-down clause is found in Section 19 of the cybercrime law.

1. Section 19 is “constitutionally impermissible, because it permits a form of final restraint on speech without prior judicial determination.”

2. France three strikes out (French Constitutional Court’s HADOPI decision)
    i. “The parties contend that by giving an administrative authority, albeit independent, the power to impose penalties in the form of withholding access to the internet, Parliament firstly infringed the fundamental right of freedom of expression and communication...”

3. Turkey
    a. Turkey’s Constitutional Court ruled their Administrative body’s (Telecommunications Directorate’s (TIB) authority to close websites within four hours on the basis of national security, protecting order, or preventing crime unconstitutional.

c. **[B. Failing to meet N&P test under three-part test] DUE TO** Taking down the whole WoW website is excessive, meaning it fails to meet **necessity & proportionality** among the three-part test of Article 19(3) of ICCPR. Article 19(3) states that a State infringing on Article 19(2) rights must meet the requirements of being proportionate and necessary.
    i. ***Necessity***: Specifically, in this case, RoK is likely to claim that the censorship of the WoW page is necessary to preserve either public order or public health, both of which are permitted under Article 19(3).
        1. RoK blocked the WoW website with the goal of stopping the illegal sale of unprescribed abortion drugs by non-pharmacists.
    ii. ***Proportionality***: Taking down the entire website, not just the portion deemed illegal, is excessive.
        1. General Comment 34, para. 43: “general ban” of websites is incompatible with Art. 19(2)(3).
            a. Add any sources which support/ solidify this norm, e.g., Special Rapporteur' reports, Human Rights Council’s resolutions (did Korea vote for?), OHCHR’s report?
        2. General Comment 34, para. 34: “Restrictions must not be overbroad. The Committee observed in general comment No. 27 that ‘restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the

law that frames the restrictions but also by the administrative and judicial authorities in applying the law'."

3. Add comparative analysis here: There should be some or many precedents at international/ regional/ domestic level where courts judged similar website blocking is illegal/ unconstitutional based on the proportionality prong, and show how these cases support our message that taking down the whole WoW website is not narrowly tailored, violating necessity prong.
    a. France HADOPI case
        i. Paragraph 29: "Such data shall be transmitted solely to this administrative authority or to the judicial authorities. It will be incumbent upon the National Committee on Data Processing and Civil Liberties, when requested to authorize such processing of data, to ensure that the manner in which such processing is carried out, in particular the conditions governing the conservation of such data, is strictly proportional to the purpose it is sought to achieve.

IV. Conclusion
    a. For the reasons identified above, we invite the Court to take this opportunity to reaffirm its commitment to international human rights law.