

The background features abstract, overlapping green geometric shapes in various shades of green, creating a modern and dynamic look. The shapes are primarily located on the left and right sides of the slide, framing the central text.

Korean Privacy

Innovations and Internationalization

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What is meant by “Privacy”?

- ▶ Frequently assessed in terms of public and private dimensions
- ▶ Alternate approach: privacy is personal, yet defined by the acts of third parties:
 - ▶ Privacy in three dimensions: collection, processing, and sharing of personal information; autonomy over personal decisions and actions; government surveillance
 - ▶ Commercialization vs. surveillance/collection
 - ▶ Autonomy vs. exclusion
- ▶ Privacy's first principles
 - ▶ What creates value?
 - ▶ What captures value for individuals, and the public?
 - ▶ Genuine question of sound democratic culture: isn't information a public good, and isn't more information an asset for a democracy?

In what sense is privacy “Public International Law”?

- ▶ Social values manifested in differing approaches to privacy. Individual control over information, bureaucratically determined privacy practices.
- ▶ Customized solutions to facilitate commerce.
- ▶ Are all modern privacy problems also international issues?
- ▶ Technology and information economy practices are moving targets; continuity must come from political values.
 - ▶ *The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual.*
 - ▶ *Of all the hard things to bear, to be cut by your neighbors and left in contemptuous solitude is maybe the hardest.*

Korean Privacy: Background and Context

- ▶ Active legal/regulatory approach to privacy law issues.
- ▶ Policy objective to actively influence Internet and information culture.
- ▶ Problematic side: Name verification.
 - ▶ Officially, at least, about online civic culture, not national security
 - ▶ Unique in scope and in extent of implementation
 - ▶ Mostly ineffective, unconstitutional as-implemented; but also a harbinger of an explicitly post-anonymous Internet
- ▶ (Arguably) positive side: Personal Information Protection Act.

Personal Information Protection: Distinctive Approach, Familiar Challenges

- ▶ Honoring the privacy preferences of each individual
- ▶ Creating a culture of transparency and accountability
- ▶ Korea as personal consent and control advocate; empowering the judiciary
 - ▶ Ensure individual agency over personal information, bring transparency to data collection practices, and empower regulators and the courts to hold collectors and users of personal information accountable for any violations of PIPA's detailed requirements
- ▶ Does consent work? *Homeplus*.
 - ▶ Domestic courts as fulcrum point
- ▶ Inevitable tension: BigData; AI
- ▶ Weighing the public interest; can personal rights be placed on the scale?

Korean situation: Looking forward

- ▶ Continue to balance personal protections with other interests
 - ▶ Rise of civil liberties jurisprudence changes (if not transcends) the “calculus”
- ▶ Government surveillance and online culture
- ▶ Era of mistrust: can institutional intermediaries (public or private, architectural or consequential) provide credibility?
- ▶ Building on PIPA: “Creative Commons” of privacy law.
- ▶ Common ground for privacy advocates and commercial concerns? Unified regulatory structure

Korean situation: Looking abroad

- ▶ Korea-EU: Shared values? Compatible regulatory structures?
- ▶ Korea-U.S.: Security relationship; CLOUD Act
 - ▶ Protection for nationals
 - ▶ Reciprocal law enforcement benefits?
- ▶ Globalizing the Big Data economy
- ▶ Privacy rights as human rights: Korea's leadership role in Asia

Conclusion:

Korea's enlightened self-interest

- ▶ Framing future debates:
 - ▶ Moving from domestic to transnational (E-commerce, law enforcement)
 - ▶ Moving from transnational to international
- ▶ An intensely personal collective action problem:
 - ▶ Greater international law process highly likely
 - ▶ Future debates must be simultaneously informed by perspectives on individual rights and economic and security-driven policy considerations
- ▶ Korea's active regulatory approach provides insight and a path forward