



自由與限制：論言論自由與霸凌之界線

# 從法制觀點看網路霸凌問題

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# 網路霸凌問題受到主要國家共通關注

- 無所不在、無時無刻特性，使網路霸凌較傳統霸凌更難處理

## 轉學移民都沒用 網路霸凌逼死16歲英國少女

2017年05月22日

網路帶來方便，也會帶來許多負面影響，英國沃靈頓的一名少女在美國念書時，因為向同儕透漏自己的同志傾向，之後便飽受霸凌。之後她在母親的安排之下，回到英國繼續念書，但霸凌仍透過網路繼續騷擾她，最後導致她自殺身亡。

根據《每日郵報》報導來自英國沃靈頓的少女茱莉亞（Julia Derbyshire），在美國密蘇里州的一個宗教社區就讀國中，在她11歲時向朋友表示她可能「喜歡女孩子」，但卻遭到朋友將此秘密到處宣傳，讓她在學校飽受霸凌，在網路上也常常收到「你會下地獄」等等的霸凌言論。

資料出處：<http://hottopic.chinatimes.com/20170522001076-260803> (last visited June 10, 2017).



# 網路霸凌問題受到主要國家共通關注

- 數位原住民具明顯的網路依存現象，加劇網路霸凌之傷害程度

## 網路霸凌氾濫！「自殺」成日本青年主要死因

2017/05/19

日本厚生勞動省匯總的2017年版《自殺對策白皮書》指出，年輕人的自殺情況十分嚴重，其中15至39歲的青年死亡主因是自殺，去年就多達320名18歲以下的少年選擇自我了結，其中多起案件就與校園霸凌有關。

根據統計，日本2015至2016年間一年有超過22萬件的霸凌事件！當地媒體就曾報導，許多學生不堪霸凌，以及網路、簡訊與部落格上受騷擾，所以選擇結束寶貴生命。專家也表示，日本欺凌同儕的方式很糟糕，都是以群體進行，而不是針對一、兩個人。

為了阻止青年自殺情況，日本已視為重要課題，積極建立完善互聯網的信息發佈及諮詢機制。此外，有研究顯示，藍色燈光有助於降低自殺及犯罪率，所以日本鐵路公司（JR）近年陸續將車站的燈光從一般的白光換成藍光，每想到真的讓車站內的自殺率因此下降。

資料出處：<http://www.setn.com/News.aspx?NewsID=254160> (last visited June 10, 2017).





# 惟言論管制具高度爭議－韓國經驗 (1/2)

## ■ 層出不窮的網路匿名言論攻擊事件，曾促使韓國推動網路實名制

6/30/2005

### PUPPY POO GIRL

Korean bloggers have been having a field day over the behavior of a young woman who refused to clean up the mess after her dog pooped on the floor of a subway.

Unfortunately for her, there was a person with a digital camera nearby. And judging by the gesture she was making with her left hand, the woman was aware she was being photographed and is fluent enough in sign language to flash a digital salute.



It began in a subway train with a girl whose dog made a mess on the train floor. When nearby elders told her to clean up the mess, she basically told them to fuck off. A nearby enraged netizen then took pictures of her and posted it, without any masking, on a popular website which started a nationwide witchhunt.

Within hours, she was labeled *gae-ttong-nyue* (dog-shit-girl) and her pictures and parodies were everywhere. Within days, her identity and her past were revealed. Request for information about her parents and relatives started popping up and people started to recognize her by the dog and the bag she was carrying as well as her watch, clearly visible in the original picture.

# TIME



## South Koreans Are Shaken by a Celebrity Suicide

By JENNIFER VEALE / SEOUL  
Monday, Oct. 06, 2008

Actress Choi Jin Sil was found dead at her home in Seoul on Oct. 2  
Newsis / Reuters

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She was more than South Korea's Julia Roberts or Angelina Jolie. For nearly 20 years, Choi Jin Sil was the country's cinematic sweetheart and as close to being a "national" actress as possible. But since her body was found on Oct. 2, an apparent suicide, she has become a symbol of the difficulties women face in this deeply conservative yet technologically savvy society. Incessant online gossip appears to have been largely to blame for her death. But it's also clear that public life as a single, working, divorced mom — still a pariah status in South Korea — was one role she had a lot of trouble with.

資料出處：<http://www.time.com/time/world/article/0,8599,1847437,00.html>  
(last visited May 15, 2013).



## 惟言論管制具高度爭議－韓國經驗 (2/2)

- 有鑑於網路實名制衍生了個資大量外洩等諸多爭議，韓國通訊委員會(Korea Communications Commission, KCC)於2011年12月宣布逐步取消網路實名制
- 韓國憲法法院(Constitutional Court of Korea)更於2012年8月直接裁定網路實名制度違憲

### South Korea Court Knocks Down Online Real-Name Rule

August 24, 2012

SEOUL—The Constitutional Court ruled Thursday that a law requiring South Koreans to use their real names on Internet forums was unconstitutional, forcing the government to change the five-year-old regulation created to reduce anonymous criticism of politicians and celebrities.

The court said the requirement amounts to prior censorship. It also said the law violated citizens' privacy, was technically difficult to enforce and was ineffective at stopping online criticism.

資料來源：<http://online.wsj.com/article/SB10000872396390444082904577606794167615620.html> (last visited June 10, 2017).



- 1、網路霸凌應否立法加以管制
- 2、網路霸凌應否視為犯罪行為





# 以美國各州立法作為觀察對象 (1/3)

	Bullying law	Include "cyberbullying" <sup>1</sup>	Include electronic harassment	Criminal sanction	School sanction	Requires School Policy	Include off campus behaviors? <sup>2</sup>
Alabama	YES	NO	YES	NO	NO	YES	NO
Alaska	YES	NO	NO	YES	YES	YES	NO
Arizona	YES	NO	YES	NO	YES	YES	NO
Arkansas	YES	YES	YES	YES	YES	YES	YES
California	YES	YES	YES	NO	YES	YES	YES
Colorado	YES <sup>3</sup>	NO	YES	YES	YES	YES	NO
Connecticut	YES	YES	YES	NO	YES	YES	YES
Delaware	YES	NO	YES	NO	YES	YES	NO
Florida	YES	YES	YES	NO	YES	YES	YES
Georgia	YES	proposed	YES	NO	YES	YES	proposed
Hawaii	YES	YES	YES	proposed	YES	YES	NO
Idaho	YES	NO	YES	YES	YES	YES	NO
Illinois	YES	YES	YES	NO	YES	YES	YES
Indiana	YES	NO	YES	NO	YES	YES	NO
Iowa	YES	NO	YES	YES	YES	YES	NO
Kansas	YES	YES	YES	NO	YES	YES	NO
Kentucky	YES	proposed	YES	YES	YES	YES	NO
Louisiana	YES	YES	YES	YES	YES	YES	YES
Maine	YES	YES	YES	NO	YES	YES	NO
Maryland	YES	NO	YES	YES	YES	YES	NO
Massachusetts	YES	YES	YES	NO	YES	YES	YES
Michigan	YES	YES	YES	proposed	NO	YES	NO
Minnesota	YES	YES	YES	NO	YES	YES	YES
Mississippi	YES	NO	YES	YES	YES	YES	NO
Missouri	YES	YES	YES	YES	YES	YES	NO

資料出處： Sameer Hinduja & Justin W. Patchin (January 2016).





## 以美國各州立法作為觀察對象 (2/3)

	Bullying law	Include "cyberbullying" <sup>1</sup>	Include electronic harassment	Criminal sanction	School sanction	Requires School Policy	Include off campus behaviors? <sup>2</sup>
Montana	YES	NO	YES	YES	NO	NO	NO
Nebraska	YES	proposed	YES	NO	YES	YES	proposed
Nevada	YES	YES	YES	YES	NO	YES	NO
New Hampshire	YES	YES	YES	NO	NO	YES	YES
New Jersey	YES	NO	YES	YES	YES	YES	YES
New Mexico	YES	YES	YES	NO	YES	YES	NO
New York	YES	YES	YES	proposed	YES	YES	YES
North Carolina	YES	YES	YES	YES	YES	YES	NO
North Dakota	YES	NO	YES	YES	YES	YES	NO
Ohio	YES	NO	YES	NO	YES	YES	NO
Oklahoma	YES	NO	YES	NO	YES	YES	NO
Oregon	YES	YES	YES	NO	YES	YES	NO
Pennsylvania	YES	NO	YES	NO	YES	YES	NO
Rhode Island	YES	YES	YES	NO	YES	YES	NO
South Carolina	YES	NO	YES	NO	YES	YES	NO
South Dakota	YES	NO	YES	NO	YES	YES	YES
Tennessee	YES	YES	YES	YES	YES	YES	YES
Texas	YES	NO	YES	NO	YES	YES	NO
Utah	YES	YES	YES	NO	YES	YES	NO
Vermont	YES	NO	YES	NO	YES	YES	YES
Virginia	YES	YES	YES	NO	YES	YES	NO
Washington	YES	YES	YES	YES	YES	YES	NO
West Virginia	YES	NO	YES	NO	YES	YES	NO
Wisconsin	YES	NO	NO	YES	YES	YES	NO
Wyoming	YES	NO	YES	NO	YES	YES	NO

資料出處： Sameer Hinduja & Justin W. Patchin (January 2016).







## 以美國各州立法作為觀察對象 (3/3)

- 截至2017年6月，美國全數的州均已制定網路霸凌相關立法，期有效遏止網路霸凌行為
- 惟相關立法中，將網路霸凌直接視為「犯罪行為」者，事實上僅有18個州，突顯出此一議題的敏感程度。但頻傳的爭議事件，仍讓各州思考以刑事處罰的可能性

州名	法案名稱	通過年	刑事責任	行政處罰
Massachusetts	An Act Relative to Bullying in Schools(chapter92)	2010	×	○

**Woman who admitted bullying  
Phoebe Prince faces new criminal  
harassment charges**

February 27, 2017



資料出處：[http://www.masslive.com/news/index.ssf/2017/02/woman\\_who\\_admitted\\_bullying\\_ph.html](http://www.masslive.com/news/index.ssf/2017/02/woman_who_admitted_bullying_ph.html)(last visited June 10, 2017).



## 爭議內容可否/如何 移除



# 澳洲立法例

國家	法案名稱	內容
澳洲	加強兒童網路安全法 (Enhancing Online Safety for Children Bill 2014)	<p>1.一般規定： 終端使用者透過社群媒體服務(social media service)本身的申訴機制通知後，於48小時內移除該網路霸凌相關內容。</p> <p>2.進階規定： 社群媒體服務提供條款，已明文禁止使用者張貼網路霸凌文字，服務提供者經申訴知悉有網路霸凌資訊後，48小時內移除該相關內容。 Part 4 (Social media services ),Section 29 (Request for removal of cyber-bullying material ), <i>Default rule</i> (1) (c) the material was not <b>removed</b> from the service <b>within</b>: (i) <b>48 hours</b> after the complaint was made; or (ii) such longer period as the Commissioner allows; and , the Commissioner may give the provider of the service <b><u>a written notice requesting the provider to:</u></b> (g) <b><u>remove</u></b> the material from the service; and (h) do so <b><u>within 48 hours</u></b> after the notice was given to the provider. <i>Special rule ...</i></p>

資料來源：[http://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r5387](http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5387)

(最終瀏覽日：2017年6月10日)







# 國內在網路霸凌因應上的關鍵課題



