

KOREAN REGULATION OF THE SHUTDOWN LAW
(셧다운제), AND THE ISSUE OF MINORS USING
ELECTRONIC GAMES AND SOCIAL MEDIA¹

1. Introduction

European and Polish legal literature lacks broader analysis of the negative effects from using electronic games and social media, in particular by minors. The lack of adequate research in this area prompted the considerations undertaken in this article. First, the aim of the study was to provide a broad overview of the problem of the use of electronic games and social media and to present the latest relevant data. This allows the reader to become familiar with the topicality and relevance of the subject in a social context and to perceive the overall context and the multifaceted nature of the issues discussed. Second, the aim of the study was to indicate possible directions for political and legislative measures to ensure adequate protection of minors from the threats described. This issue was particularly important because of the lack of sufficient English-language literature and the predominance of legal regulations and research conducted in East Asia. The final aim of the paper was to discuss Korean legal regulations related to the Shutdown Law (셧다운제, *Syeotdaunje*). Korea, as a leading democratic legal state in the adopted research area, required the necessary analysis with regard to Korean legal doctrine. Indeed, from 2011 to 2021, it had some of the toughest laws restricting minors' access to online gaming, which enabled valuable conclusions to be drawn and to garner experience. The research thesis of the article is that modern legislations should introduce appropriate legal mechanisms to counteract the negative effects of minors misusing electronic games and social media.

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2. The problematic use of electronic games and social media by minors

2.1. Introductory remarks

Today, the continuing global development of technology associated with the fourth industrial revolution and its ubiquity in human life brings with it both many benefits and a variety of risks. The trend toward the increasing importance and growing use of electronic devices in societies is projected to continue steadily.² Minors are one of the groups of people who are particularly vulnerable to the negative effects of various technological products. It seems reasonable to identify at least two problem areas that pose significant social risks to minors, namely the use of electronic games (hereinafter games) and social media. Given the similarities between these two areas, including risks and degrees of impact, it seems appropriate to consider these phenomena together in the following sections. One of the important consequences of inappropriate use of games and social media is the loss of both physical and mental health in their users. This includes, first, the quantitative aspect, i.e., the specific amount of time spent on games and social media, taking into account the length of individual sessions, their frequency, a person's lifestyle, and their individual characteristics. Secondly, it also covers the qualitative aspect, which describes the types of content viewed and interactions viewers have with it. Examples of negative effects caused by inappropriate use of games and social media include cyber addiction, sleep disturbance, aggression, obesity, impaired socialization, reduced productivity, neglect of school responsibilities, problems with concentration, and poor personal hygiene.³ The issues described here are multifaceted, which makes it difficult to delineate precisely the different areas of research.⁴ However, there is no doubt that the majority of minors remain exposed to negative health consequences in this area. With games,

² See, for example, the ongoing work on the Metaverse iteration of the Internet; the developing Extended Reality (XR) technologies, i.e., augmented (AR), virtual (VR) and mixed reality (MR); the phenomena of dematerialization; devices that enable computers to translate human thought into action (e.g., Neuralink), the development of genetic engineering, and the robotization of human life.

³ Cf. inter alia N. Männikkö, J. Billieux, M. Kääriäinen, *Problematic digital gaming behavior and its relation to the psychological, social and physical health of Finnish adolescents and young adults*, "Journal of Behavioral Addictions" 2015, vol. 4(4), pp. 281 *et seq.* with errata in "Journal of Behavioral Addictions" 2017, vol. 6(3), 2017, p. 444; as well as G. Pons-Salvador, X. Zubieta-Méndez, D. Frias-Navarro, *Internet Use by Children Aged six to nine: Parents' Beliefs and Knowledge about Risk Prevention*, "Child Indicators Research" 2018, vol. 11(6), pp. 1983 *et seq.*

⁴ From a global perspective, games and social media have a momentous and wide-ranging impact on people's lives, including those of minors. See further the concept of "Internet gaming disorder"; <https://www.who.int/news-room/questions-and-answers/item/addictive-behaviours-gaming-disorder> (accessed: 20.11.2022) and "Social Media Disorder".

a minority of players suffer far-reaching consequences from their misuse.⁵ This can also be analogous to the misuse of social media, which are playing an increasingly important and influential role in society.

2.2. Statistical data

In order to gain a better understanding of these problems on European and global levels, it is worth citing extensive statistical data. According to a comprehensive study, Northern and Western Europe are the top two regions in terms of the total number of Internet users in relation to the entire populations living there, which was to 97.5% and 93.7%, respectively. The global average in October 2022 was to 63.5%.⁶ The global share of whole-population Internet users was the highest in East Asia (24.7%), South Asia (18%), Southeast Asia (9.9%), North America (6.9%), South America (6.7%) and Eastern Europe (5%). In the second quarter of 2022, the daily time spent using the internet by a user aged 16 to 64 was 6h 37min.⁷ Among respondents, those between 16 and 24 years of age spent the most time using the Internet (7h 41min women and 7h 7min men). The amount of time decreased with each subsequent age group.⁸ Among the main reasons for using the Internet were searching for information (58.4%), followed by contacting friends and family (54.2%), staying up to date with news and events (50.8%), watching videos, TV programs, and films (49.8%), finding out how to do things (48.1%), looking for ideas and inspiration (44.4%), searching for products and brands (44%), and accessing and listening to music (43.5%). Gaming is the main reason for using the Internet for 30.4% of all users surveyed. The most frequently visited websites and applications were chat rooms and instant messaging (95.2%), social media (94.9%), and search engines or portals (82.2%). Entertainment accounted for 40.3% and gaming for 34.1% of this figure. For gaming, 81.4% of users used any of their devices: 65.7% smartphones; 38% laptops or computers; 25.4% games consoles; 16.5% tablets; 13.1% portable gaming

⁵ See together with the literature cited therein: O. Király, M.D. Griffiths, D.L. King *et al.*, *Policy responses to problematic video game use: A systematic review of current measures and future possibilities*, "Journal of Behavioral Addictions" 2018, vol. 7(3), pp. 503–504.

⁶ See together with the sources cited therein: *DataReportal, Digital 2022: October Global Statshot Report*, 20.10.2022, <https://datareportal.com/reports/digital-2022-october-global-statshot> (accessed: 20.11.2022). The regions with the next highest numbers of internet users were North America (92.5%), Southern Europe (88.2%), Eastern Europe (87.5%), South America (78.2%), East Asia (75.2%), West Asia (74.6%) and Southeast Asia (73.9%).

⁷ *Ibidem*; above the world average (6h 37min) were South Africa, Brazil, the Philippines, Thailand, the UAE, Romania, and the United States. Below average were Poland (6h 30min), the UK (6h 3min), Italy (6h 1min), Spain (5h 48min), Switzerland (5h 41min), France (5h 29min), Germany (5h 18min), South Korea (5h 16min), China (5h 12min) and Japan (3h 46min).

⁸ For the purpose of comparison, for those aged 25–34 it was 6h 57min for women and 6h 56min for men, while for the last age group (54–64) it was 5h 19min and 5h 11min, respectively.

devices. Other devices (including but not limited to virtual reality kits) accounted for less than 10% each. Of all internet users aged 16–64, an average of 81.4% were gamers. Of the money spent on online content, digital content purchases of film and TV streaming services accounted for the largest share (32.3%), followed by music streaming services (25.4%) and music downloads (20.3%). The purchase of in-game content accounted for 17.4% and included, among other things, micro-payments, subscriptions, and app purchases for games.⁹

With regard to social media, the number of active users as a percentage of the total population was the highest in Northern Europe (83.7%), Western Europe (83.4%), and Southern Europe (76.2%). This was followed by North America (76.1%) and South America (74.9%). In East Asia, the result was 72.3% and in Eastern Europe it was 70.3%. The global average was 59.3%.¹⁰ In the second quarter of 2022, the average daily use of social media by internet users aged 16 to 64 worldwide was 2h 28min.¹¹ Of the groups surveyed, those between 16 and 24 years old spent the most time using social media (3h 10min women and 2h 39min men). The amount of time decreased in each subsequent age group.¹² In terms of the number of active users, the most popular social media platforms were Facebook (2.934 billion), YouTube (2.515 billion), WhatsApp (2 billion), Instagram (1.386 billion), WeChat (1.299 billion), TikTok (1 billion) and Facebook Messenger (976 million). The average time per month spent using each platform by application on Android phones was 23.4h for YouTube; 22.9h for TikTok; 19.7h for Facebook; 17.3h for WhatsApp; 11.7h for Instagram in the period studied.¹³

From the statistics thus outlined, it should be stressed that they only covered a narrow proportion of minors, i.e., minors aged 16 and over. Nevertheless, they illustrate an overall perspective of the significant impact of the Internet and related games and social media worldwide. According to a report on Germany, France, Italy, Spain, and the UK in 2020, 68% of children aged 6–10, 79% of 11–14 year olds, and 72% of 15–24 year olds were gamers (using a variety of electronic devices). This means that the vast majority of minors are game users. Together, these three

⁹ *DataReportal, Digital 2022: October...*

¹⁰ One of the highest number of active users was recorded in the UAE (115.2%), Cyprus (95.7%), South Korea (91.7%), and Singapore (91.1%) while the Netherlands, Germany, Spain, the UK, and France all also scored above 80%. In Japan, the figure was 78.9%, the United States 75%, Italy 72.9%, China 70%, and Poland 66.7%.

¹¹ *DataReportal, Digital 2022: October...*; all European countries, the USA and China are under the average spending around 2h per day. In Poland this was 1h 56min. Significantly below average were Belgium (1h 39min), the Netherlands (1h 35min), Austria (1h 30min), South Korea (1h 11min) and Japan (49min).

¹² For those aged between 25 and 34, these were 2h 52min for women and 2h 39min for men, and for the last age group (54–64), 1h 38min and 1h 25min respectively.

¹³ *DataReportal, Digital 2022: October...*

age groups accounted for 40% of the total gaming sector in the study area. The average time per week spent on games was 9.5h and on social media 14h; however, the time results indicated were for the age range 16–64.¹⁴ From the Polish perspective, the population in Poland at the beginning of 2022 was 37.77 million people, 51.6% of whom were women. The urbanization level was 60.2%. Rounding up, 5% of the population were children under 4 years of age; 8.1% from 5 to 12 years of age; and 5.1% from 13 to 17 years of age. Thus, minors represented a total of about 18.2% of the entire Polish population, i.e., about 6.874 million people under the age of 18. In January 2022, the number of Internet users in Poland was 32.86 million (87% of the population).¹⁵ In 2021, the number of gamers in Poland exceeded 20 million and 49% were women. About 20% of all gamers, i.e., 4 million, were minors. This means that of all Polish minors, more than 58.1% are gamers. It is estimated that the value of the entire consumer gaming market in Poland will total 1.2176 billion USD in 2022.¹⁶

In turn, the number of all Polish social media users was 27.2 million (72% of the population) in the third quarter of 2021.¹⁷ The most frequently used social media platforms in Poland were Facebook (88.1%), Messenger (79.8%), Instagram (59.6%), WhatsApp (49.8%), and TikTok (34.1%). In terms of the approximate number of Polish users (looking at advertising data on each of the platforms indicated), YouTube counted 27.2 m; Facebook 17.65 m; Messenger 15.8 m; Instagram 10.7 m; TikTok¹⁸ 7.7 m, and Snapchat 4.9 m. The demographic cross-section of Meta's social media platforms (Facebook, Instagram, and Messenger) revealed that of all users in Poland, 4% of girls and 3.2% of boys were aged 13–17; 12.5% and 11.7% of 18–24; 12.7% and 12.1% of 25–34; and 11% and 9.1% of 35–44, respectively.¹⁹

It is also worth noting that while social media use is online, the use of electronic games does not necessarily require an internet connection. In relation to offline electronic gaming, there is a lack of relevant empirical data, which does not detract from

¹⁴ See: *Interactive Software Federation of Europe* report compiled from *GameTrack* data provided on request by Ipsos MORI, <https://www.isfe.eu/wp-content/uploads/2021/10/2021-ISFE-EGDF-Key-Facts-European-video-games-sector-FINAL.pdf> (accessed: 20.11.2022). Revenues generated by digital gaming services within the countries mentioned more than tripled in 2020 compared to 2015.

¹⁵ See together with the sources cited therein: *DataReportal, Digital 2022: Poland*, 15.02.2022; <https://datareportal.com/reports/digital-2022-poland> (accessed: 20.11.2022).

¹⁶ For an overview of the Polish games sector, see, together with the data cited therein: J. Marszałkowski, S. Biedermann, E. Rutkowski, *The game industry of Poland – Report 2021*; https://www.parp.gov.pl/storage/publications/pdf/GIoFP_2021_FINAL.pdf (accessed: 20.11.2022).

¹⁷ However, this figure does not really reflect individuals alone.

¹⁸ In the case of TikTok, the result concerned only adult users and therefore does not reflect the actual number, due to the omission of an important group of Polish users between 13 and 18 years of age.

¹⁹ See with references: *DataReportal, Digital 2022: Poland...*

the importance of this aspect as a part of a wider societal problem. Furthermore, the data presented above do not capture the increasingly popular viewing of gaming content (Gaming Video Content) as part of entertainment, including streamed live video games. In the third quarter of 2022, the number of hours watched on the leading live game streaming platforms worldwide was 5,712 m hours for the Twitch platform; 1,176 m hours for YouTube Game Live, and 382 m hours for Facebook Gaming.²⁰ In May 2022, the age of users on Twitch was as follows: 22.3% between 16–24; 49.7% between 25–34; 17.5% between 35–44; 7.4% between 45–54, and 3.2% over 54. Although there is a threshold of reaching the age of 13 to be able to use the social media platforms, there is no data on users under the age of 16.²¹ However, there is no doubt that minors view gaming content, including in connection with the dynamic development of electronic sports (e-sports), the on-demand gaming market, the popularization of professional gamers, and emerging trends. What is more, the development of new technologies is constantly increasing the importance of the mobile gaming market and its ubiquity. Mobile games have the lowest entry threshold because of their general availability and the prevailing business and consumption model of freemium.²²

2.3. Legislative actions

Ensuring an adequate degree of protection for persons who have not reached the age of majority is an important task of the legislators of respective jurisdictions. The inappropriate qualitative and quantitative use of games and social media, including viewing inappropriate content, is a growing systemic problem, and there is a need in public health for relevant legal regulation. Minors' use of games and social media should be regulated at the statutory level to ensure an adequate degree of protection. Games and social media are designed to be enjoyed by as many people for as long as possible, which means they are potentially highly addictive. Many factors, including the personal characteristics of the user, contribute to the complex phenomenon of their problematic nature.²³ Therefore, as in the case of

²⁰ Hours watched on leading gaming live stream platforms in the third quarter of 2022, 16.11.2022, <https://www.statista.com/statistics/1030795/hours-watched-streamlabs-platform/> (accessed: 20.11.2022).

²¹ Distribution of Twitch.tv users worldwide as of May 2022, by age group, 12.08.2022, <https://www.statista.com/statistics/634057/twitch-user-age-worldwide/> (accessed: 20.11.2022).

²² On the development of the global games market see: Mordor Intelligence, *Gaming Market – Growth, Trends, Covid-19 Impact, and Forecasts (2022–2027)*, <https://www.mordorintelligence.com/industry-reports/global-gaming-market> (accessed: 20.11.2022).

²³ Cf. e.g. O. Király *et al.*, *Policy responses...*, p. 504; F. Gioia, S. McLean, M.D. Griffiths *et al.*, *Adolescents' selfie-taking and selfie-editing: A revision of the photo manipulation scale and a moderated mediation model*, "Current Psychology" 2021, *passim*.

the harmfulness of and addiction to alcoholic beverages, tobacco products, and gambling, the legislator should provide protective mechanisms for minors in this area. However, the form and scope of permissible interference with the freedom of these individuals is a problematic issue. The constitutional standards adopted in certain legislations might allow for a specific form of protection, limits, or, finally, not permit the introduction of such laws.

With regard to social media, current regulations of them focus particularly on the protection of personal data and marketing. An accepted obligation imposed by social media platforms is the requirement that the minimum age for creating an account on them is 13.²⁴ From the perspective of protecting the health of minors and other users on social media, the amendment to the Norwegian Marketing Act, which entered into force on 1 July 2022,²⁵ deserves praise. Under it, advertisers and persons designing advertisements must ensure that advertisements in which the body shape, size, or skin has been altered by retouching or other manipulations is labelled in accordance with regulations issued by the Ministry of Children and Family Affairs. Violation of this obligation results in criminal liability. The Norwegian regulation covers, among other things, posts and time-limited content on social media, including those created by influencers. A proposal for a similar regulation is currently in the legislative works of the Danish parliament.²⁶ The *ratio legis* for the legislation introduced in Norway is, inter alia, the protection of underage users. Contact with visually manipulated content, without information on changes made to it, is misleading and often causes, among other things, lower self-esteem and self-confidence, increased insecurity and complexes, and contributes to the intensity of pressure on appearance and favoritism of inappropriate patterns, which harm both the mental and physical health of underage social media users.²⁷

²⁴ Cf. the regulations of the various social media platforms. Furthermore, the GDPR (in Polish: RODO) regulation applicable within the European Union regulates that the processing of data of users who are children requires the consent of their parent or guardian (between 13 and 16 years of age, depending on the national legislation of the Member State).

²⁵ *Lov om kontroll med markedsføring og avtalevilkår mv. (markedsføringsloven)* from 9 January 2009, amended by the Act from 11 June 2021, No. 62, which entered into force 1 July 2022 (OJ 2021-0946); <https://lovdata.no/dokument/LTI/lov/2021-06-11-62> (accessed: 20.11.2022).

²⁶ Legislative proposal in the form of proposal No. 134 L (2020–2021) to the Folketinget – amendments to the Marketing Act (designation of retouched advertising) recommended by the Ministry of Children and Family Affairs on 9 April 2021 and approved by the government on the same day; <https://www.regjeringen.no/contentassets/85aab0707dfb42c88ffdd2b32ebbb536/no/pdfs/prp202020210134000dddpdfs.pdf> (accessed: 20.11.2022); as well as: M. Jessel, *Legislators propose targeting commercial image manipulation in Denmark*, “World Trademark Review”, 10.11.2022; <https://www.worldtrademarkreview.com/article/legislators-propose-targeting-commercial-image-manipulation-in-denmark> (accessed: 20.11.2022).

²⁷ See, for example: F. Gioia *et al.*, *Adolescents’ selfie-taking...*

A study of minors attending Danish primary schools published in 2020 examined ways to reduce pressure and stress in children and young people, including in the use of digital services. The data collected showed that 34% of girls in primary six (ages 12–13) and 38% of girls in primary nine (ages 15–16) modify their photos before publishing them on social media, using, for example, editing software or filters. For boys, this was 28% and 14% respectively. Girls aged 12–13 (47%) and 15–16 (54%) declared that they deleted pictures they posted on social media because they did not gain enough popularity (e.g., because of a lack of likes or hearts). The corresponding figures for boys were 27% and 17%. In both surveys, minors who had not posted any pictures on social media were not taken into account.²⁸ The Norwegian regulation described above is, therefore, an expression of the legislator's concern and a way of mitigating the negative impact of social media on the lives and health of users, including minors.

With regard to the use of games, it is surprising there is a lack of legislative action to ensure comprehensive regulation to increase the protection of users, particularly of minors, and thus counteract the negative effects of inappropriate game usage. This applies to both international, including European, and individual legal systems. Of all the lines of possible action, the three main areas of response to this issue are as follows.

- 1) Limiting the availability of games. This includes limiting the time available for gaming, discouraging gaming for longer periods of time, increasing the price of games and their subscriptions, and introducing parental controls that make it possible, for example, to filter the content viewed by a minor, set time limits, and monitor children's activity.
- 2) Reducing the risk and harmfulness of games. This includes mandating warnings about the risks of excessive game use and its consequences, introducing a rating system to indicate the degree of potential addictiveness of a game, similar to systems currently in place (e.g., the PEGI system that informs consumers about age recommendations and describes game content), and introducing restrictions at the game development stage to make them less harmful.
- 3) Providing assistance to players. This includes providing consumers with clear, reliable information on games and the consequences associated with their misuse, and organising program to help combat negative effects.²⁹

Despite a growing body of empirical research from the fields of medicine and social sciences that highlight the many dangers and problems associated with game misuse including among minors, and the increased attention paid to the issue in the

²⁸ See: *Pres og stress, Hvordan mindsker vi presset på børn og unge? Krop, køn og digital adfærd* report, carried out in Denmark by Børns Villkår and published in 2020; <https://bornsvillkar.dk/wp-content/uploads/2020/06/Pres-og-stress-Krop-køn-og-digital-adfærd.pdf> (accessed: 20.11.2022).

²⁹ See: O. Király *et al.*, *Policy responses...*, pp. 506 *et seq.*

public domain, only a few legislative bodies have chosen to take explicit legislative action in this area. Protective regulations in relation to the use of games by minors are largely in place in Asian countries, in particular China, South Korea, Thailand, and Vietnam.³⁰ China and South Korea are the leaders, and they influence other countries.

China's gaming regulations are the most restrictive in the world. The general trend of the Chinese legislature toward the gaming industry for several years has been to increase controls and introduce numerous restrictions. In the light of Chinese Communist Party policy, the use of games is seen as spiritual opium (精神鸦片, *jīng shén yā piàn*). Therefore, this represents one of the many areas of increased legislative action that is driven by established ideologies. Examples of applied regulations include the introduction in 2019 of a general rule prohibiting minors from playing games, with the exception of 90 minutes each day from Monday to Friday and three hours each on Saturdays and Sundays (maximum 7.5 hours per week). In 2021, the above regulation was tightened and only allows minors to play from 20:00 to 21:00 from Friday to Sunday (a total of 3h per week). Minors aged 8–16 can spend up to 200 CNY on digital services while those aged 16–18 can spend up to 400 CNY monthly. Furthermore, censorship in all Chinese games is extensive, and, among other things, it is forbidden to show blood, ghosts, and skeletons or too much skin or exposed cleavage. Using games requires registering with a real name and data verification with an appropriate document. Other bans and restrictions have also been applied in the past, including a total ban on the possession of game consoles, which was later relaxed, or periods of several months during which no licenses were issued to allow the release of new games for the Chinese market.³¹

At the time of writing of this paper, one of the most recent regulation introduced to restrict access to gaming was in Kagawa Prefecture (香川県) in the Shikoku region of Japan. On 18 March 2020, the regulation against online gaming addiction in Kagawa Prefecture was promulgated (香川県ネット・ゲーム依存症対策条例, *kagawa ken netto gēmu izonshō taisaku jōrei*).³² It was aimed at all persons under 18 years of age residing in the prefecture and introduced a general legal framework to counteract the negative effects of gaming, in particular addiction and reduced learning ability and physical performance (e.g., social withdrawal, sleep and vision impairment). In accordance with art. 1 of the Regulation, it sets out the basic principles for

³⁰ *Ibidem*, pp. 504–507.

³¹ See for example: M. Haldane, *China vs video games: why Beijing stopped short of a gaming ban, keeping Tencent and NetEase growing amid crackdown*, 19.11.2021, <https://www.scmp.com/tech/big-tech/article/3156540/china-vs-video-games-why-beijing-stopped-short-gaming-ban-keeping> (accessed: 20.11.2022).

³² Kagawa Prefecture Ordinance 2020, No. 24 (令和2年香川県条例第24号, *ryō wa 2 nen kagawa ken jōrei dai gō*), which came into force on 1 April 2020. Text of the regulation: <https://www.pref.kagawa.lg.jp/documents/10293/0324gj24.pdf> (accessed: 20.11.2022).

promoting the prevention of Internet gaming addiction, clarifies the responsibilities of the prefecture, schools, guardians and others, and provides the basis for action against Internet gaming addiction. The aim is to comprehensively and systematically promote countermeasures against Internet gaming addiction, thereby contributing to the healthy development of children who will lead the next generation and the realization of a society in which the people of the prefecture can live in health. Article 18(1) of the Regulation states that parents, when allowing their children to use smartphones, computers and the like, must take into account, among other things, the age of the child and the actual conditions in the household. The harmful effects of excessive use of games should be discussed with the children and rules regarding their use established and reviewed. Article 18(2) of the Regulation stipulates that legal guardians should limit the number of hours per day for the use of games that can lead to game addiction, so as to ensure that minors sleep and to develop appropriate lifestyle habits. Gaming time has been set at no more than 60 minutes per day, with the exception of holidays when this time is extended to 90 minutes per day. Additionally, the use of smartphones by minors who are under compulsory education can take place until 21:00 and for other minors 22:00. However, this prohibition does not apply to the use of phones for contacting family or for studying.

The lack of sanctions for violations of the rules established in the regulation described above is interesting from the point of view of research. Most of the legal norms contained in the regulation are therefore of a *lex imperfecta* nature in that they only create legally unenforceable expectations and aspirations to provide minors with an adequate degree of protection. However, they are not an example of soft law, as they are not absolutely legally non-binding. Their dispositions are legally binding, but their implementation is not guaranteed by law.³³ The Japanese regulation is, therefore, an example of a more cautious and flexible approach to the challenges associated with minors using games. In a lawsuit against Kagawa Prefecture in 2021, the Takamatsu District Court ruled that the regulation does not violate fundamental human rights in Japan, including art. 13 of the Japanese Constitution (the right to life, liberty, and the pursuit of happiness). Indeed, the rationale behind the regulation is to establish an obligation on prefectural residents to make a concerted effort to combat the negative effects of technological dependence, but not to restrict their rights. The Japanese court stated that, despite the lack of well-established scientific findings in this field, the possibility that excessive time spent playing games or on the Internet might lead to difficulties in or harmful effects on minors' social life cannot be denied. Consequently, the regulation is not an inappropriate legislative measure.

³³ See: D.D. Mielewczyk, *Rozważania nad prawem i zwyczajem w systemie prawa kontynentalnego* [Remarks on the law and custom in the civil law system], "Studia Prawnicze KUL" 2022, no. 2(90), pp. 238, 252–254.

3. The Korean regulation of the Shutdown Law (셧다운제)

South Korea's legal system has opted for some of the most far-reaching restrictions on the use of games by minors of any democratic capitalist state. Based on a diverse, dispersed legal regulation, the Republic of Korea also has increased censorship to cover many areas including content posted on the Internet.³⁴ In view of the above, as well as the extensive literature and the distinctive influence and similarities with European legal thought,³⁵ the analysis in the remainder of this article will focus on the regulation introduced in this legal order. Two legal acts are of particular importance in terms of increasing the protection of minors who use games. These are the Act of 3 March 1997 on the protection of minors (청소년보호법, Cheongsoneyonbohobeop; hereinafter: p.m.a.)³⁶ and the Act of 28 April 2006 on the promotion of the gaming industry (게임산업진흥에 관한 법률, Geimsaneopjinheunge gwanhan beomnyul; hereinafter: g.i.p.a.)³⁷. The purpose of the former is to regulate the distribution of media products and medicines harmful to minors, their to business establishments that can be harmful to their health, and the protection and release of minors from harmful environments so that minors can mature into healthy personalities (art. 1 p.m.a.). Under art. 1 g.i.p.a., on the other hand, the purpose of the second law is to contribute to the development of the national economy and to improve the quality of cultural life by promoting the gaming industry and to create a healthy gaming culture by laying the foundations for the gaming industry, and to regulate matters concerning the use of gaming products. Both acts have been amended several times over the years.

The recognition of the risks associated with the improper use of games by minors resulted first in four unsuccessful attempts to amend the Act on the protection of minors in 2005, twice in 2008, and in 2009. Subsequently, the Ministry of Gender Equality and the Family (여성가족부, Yeoseonggajokbu) and the Ministry of Culture, Sports and Tourism (문화체육관광부, Munhwacheyukgwangwangbu) prepared legislative amendments independently of each other. However, because

³⁴ Among other things, content detrimental to the public interest, pornographic content, or content favoring the North Korean regime is banned; see further *Freedom of the Net 2021* report, published by Freedom House; <https://freedomhouse.org/country/south-korea/freedom-net/2021> (accessed: 20.11.2022).

³⁵ See further: D.D. Mielewczyk, *System prawa cywilnego Republiki Korei – zarys zagadnień* [The civil law system of the Republic of Korea – an outline of lecture], "Folia Iuridica Universitatis Wratislaviensis" 2021, vol. 9(2), pp. 115 *et seq.*

³⁶ Law No. 5297, which came into force on 1 July 1997. The Act on the protection of minors was drafted by the Division for the Protection of Youth and the Environment (청소년보호환경과, Cheongsoneyonbohohwangyeonggwagwa) in the Ministry of Gender Equality and the Family.

³⁷ Act No. 7941, which came into force on 29 October 2006. The Act on the promotion of the gaming industry was drafted by the Gaming Content Industry Division (게임콘텐츠산업과, Geimkontencheusaneopgwagwa) in the Ministry of Culture, Sports and Tourism.

of the subject matter of the regulation intended to protect minors and the jurisdiction of the respective ministries, it was necessary for these ministries to work together. The result of their cooperation was a bill amending the Act on the protection of minors proposed by the Ministry of Gender Equality and Family, which was subsequently promulgated on 19.05.2011 by the National Assembly of South Korea (대한민국 국회, Daehanmingung gukoe).³⁸ The law partially amending the Act on the protection of minors entered into force on 20 November 2011.

The amendment added to the Act on the protection of minors chapter 2(2) entitled. “Prevention of Internet gaming addiction among minors,” which contained two provisions. Article 23(3) p.m.a. based on which providers of online games (games provided in real time via a telecommunications network) shall not make online games available to minors under 16 years of age from 0:00 to 6:00.³⁹ The second provision was art. 23(4) p.m.a. that provided the legal basis for enabling the coverage of prevention, counseling, treatment, and rehabilitation of minors who have suffered physical, psychological, or social harm as a result of the misuse or abuse of media material.⁴⁰ Pursuant to art. 51(6-2) p.m.a., the consequence of violating the prohibition of making online games available to minors under 16 years of age during the designated night hours was imprisonment for up to two years or a fine of up to 10 million KRW (approximately 36,000 EUR). Based on art. 6 p.m.a., the law takes priority over others on the criminalization of violations related to environments harmful to minors. The Korean legislator has, for the first time, singled out a new problem area in which interference is advisable to ensure the protection of minors.

The regulation introduced in 2011 prohibiting the provision of online games during the night hours is called the “Forced Shutdown System” (강제적 셧다운제, *Ganjejeong syeotdaunje*), which was most often abbreviated to “Shutdown Law” or “Shutdown System” (셧다운제, *Syeotdaunje*).⁴¹ The Forced Shutdown System was one of two functioning regulations protecting minors within the scope described. Pursuant to the amendment of 22 March 2013, the contents of art. 23(3) and 23(4) were transferred to the new Chapter 3 and the new art. 26 and 27 p.m.a., respectively. Furthermore, art. 27 p.m.a. requires the Minister for Gender Equality and Family Affairs to consult with the head of the competent central administrative authority

³⁸ Law No. 10659, which came into force on 20 November 2011.

³⁹ During the Forced Shutdown System, the Minister for Gender Equality and the Family, in consultation with the Minister for Culture, Sport and Tourism, was required to assess every two years whether the list of online games subject to night-time restrictions on availability was adequate, in accordance with the presidential decree, and to take measures to correct this.

⁴⁰ The details of this support were set out in a later presidential decree.

⁴¹ There is also the less common name of the ‘Healthy Internet Gaming System for Minors’ (청소년 인터넷 게임 건전이용제도, *Cheongsongyeon inteonen geim geonjeoniyongjedo*) and the humorous name ‘Cinderella’s Law’ (신데렐라법, *Sinderellabeop*) in public circulation.

to prevent Internet gaming addiction, which includes physical, psychological, and social damage from which Internet gaming users cannot easily recover in their daily life because of the excessive use of Internet gaming).⁴² Under the amendment of 7 December 2021,⁴³ art. 26 p.m.a. was repealed, which is tantamount to the repeal of the Forced Shutdown System. Chapter 3 changed its title to “Prevention of Internet gaming addiction and excessive immersion in minors.”

In 2006, the Ministry of Culture, Sports and Tourism made an unsuccessful attempt to amend the Act on the promotion of the gaming industry. Under the amendment of 19 January 2007, art. 12(2) g.i.p.a. was added to Chapter 3 entitled “Promoting Gaming Culture” from 20 April 2007, which obliged the Korean government to prevent excessive immersion in games,⁴⁴ by establishing and implementing a basic plan for the prevention and treatment of immersion in games, researching the actual conditions of games and immersion, implementing advisory, educational, and promotional activities to prevent excessive immersion in games, and supporting professional personnel, institutions, and organisations to prevent excessive immersion in games. The next step was the promulgation of the Amendment Act on 21 July 2011, which came into force on 22 January 2012. Under it, a new protective regulation was introduced alongside the Korean regulation of the Forced Shutdown System, which, before coming into force, was called the “Game and Immersion Prevention System” (게임과몰입 예방제도, *Geimgwamorim yebang-jedo*). Subsequently, the nomenclature was changed to the “Selective Shutdown System” (선택적 셧다운제, *Seontaekjeong syeotdaunje*), which, due to its similarity to the Forced Shutdown System, was eventually referred to as the “Game Time Selection System” (게임시간 선택제, *Geimsigan seontaekje*).⁴⁵ However, as mentioned above, only the Game Time Selection System has been in operation in Korea since 2022.

According to newly added art. 12(3) g.i.p.a., entities providing services that enable the public to use gaming products via a telecommunications network are obliged to take measures to prevent excessive use of gaming products. This applies in particular to:

- registering game users for membership, verifying their real surname, age, and identity;
- ensuring that a minor’s legal representative consents to them acquiring membership;
- limiting the use of game products, their duration, and the like, at the request of a minor or his legal representative;

⁴² Law No. 11673, which came into force on 23 September 2013.

⁴³ Law No. 18550, which came into force on 1 January 2022.

⁴⁴ Immersion is the process of the deep involvement of the senses, of a person being “absorbed” by virtual reality.

⁴⁵ The Game Time Selection System is sometimes also referred to as the “Real Name Game” (게임 실명제, *Geim silmyeongje*).

- notifying minors and their legal representatives of essential points regarding the features of game products provided, charging rules, duration of use, and the like;
- providing alerts to prevent excessive use of game products;
- displaying details of elapsed time on the game user’s screen;
- other matters set out in the presidential decree to prevent excessive use of game products by users.

Pursuant to art. 12(3)(4–6) g.i.p.a., the Minister for Culture, Sport and Tourism may request from operators of gaming products the submission of data and reports on preventive measures taken by them in accordance with the presidential decree. Submission can only be refused for a specific reason. If the designated minister considers that the preventive measures are insufficient, he/she can order improvements in this respect. Within 10 days of receipt of a corrective order, the operator shall report to the minister which improvements were made. Pursuant to newly introduced art. 12(4) g.i.p.a., the Korean government can provide the necessary support for education on the proper use of games and is obliged to do so as part of school curriculums. Corresponding amendments to the criminal law provisions (art. 45 and 48 g.i.p.a.) have also been added to the amended scope of the regulation.

Pursuant to art. 4 of the Korean Civil Code (민법),⁴⁶ in the Republic of Korea, unlike in most countries, the age of majority is attained at the age of nineteen. And according to art. 2(1) p.m.a. and art. 2(1) g.i.p.a., a “minor” (청소년) is a person under the age of 19. However, the law does not apply to persons who reach the age of 19 after 1 January of a given year, so the protection mechanisms of the two systems do not apply to all minors. The statutory definition in art. 2(2) p.m.a. lists the broad meaning of the term “media product” at the same time as indicating the acts that regulate the different types of media products. Media products include film and video products, game products, music files, speeches, codes, words, and sound and visual information transmitted by telecommunications systems. In accordance with art. 7 *et seq.* p.m.a., the Committee for the Protection of Minors considers and determines which media products are harmful to minors. The Act on the protection of minors also regulates substances and objects harmful to minors. These include alcohol, tobacco, drugs, and objects that can seriously damage the psyche and body of minors, unless they have already been restricted due to the fact that they encourage participation in obscene, lewd, violent, anti-social or unethical behavior.

Persons exercising parental authority over or having custody of minors must make every effort to prevent minors from coming into contact with or having access to an environment harmful to them, and they must immediately stop minors from using media products harmful to them (art. 3 p.m.a.). The Act also imposes society-wide obligations, as it provides that everyone should endeavor to take the

⁴⁶ Law No. 471, enacted on 22 February 1958, which came into force on 1 January 1960.

measures necessary to protect minors in the form of preventing contact with or access to environments harmful to minors, or preventing minors from using harmful media products or drugs, committing violence against or abuse of another minor, and directing such minors back to a healthy path (art. 4 p.m.a.). Among the obligations of state and local authorities is the development of and sensitivity to the necessary policies to clean up environments that are harmful to minors in order to protect them. They must also make every effort to advocate for the addition of the necessary technologies and research projects to the processes of developing technology, related new forms of media products, and drugs to protect minors from any harm to their physical and/or mental health (art. 5 p.m.a.). The Act on the promotion of the gaming industry contains an analogous standardization.

There have been numerous criticisms of the Forced Shutdown System and even the Game Time Selection System in Korean literature. With regard to the former, critics underscore the failure to achieve sufficient social consensus and the problems of the Korean gaming industry. Seonghye Park highlighted that instead of imposing unilateral regulations with a provisional degree of effectiveness, attention should be focused first and foremost on the underlying causes of minors immersing excessively in games. It is appropriate to call for targeting related social problems, such as the breakdown of communication between minors and parents, the neglect of minors, and stress relief. Studies have shown that, in general, the problem of inappropriate use of games by minors increases with increasing levels of poverty. Therefore, it seems more effective to implement programmes to support minors and provide better education in this area.⁴⁷ The Forced Shutdown System has also been accused of being inflexible to changes in the political environment, while harming the Korean economy, and lacking effective inter-ministerial cooperation. Jeongmyeong Wan said that the regulation unjustifiably failed to fully reflect all interest groups in favor of the children's health coalition. Gaming by its nature has positive and negative economic and social impacts. Increased social costs from the negative effects of games are a factor that is taken into account and state intervention is only legitimate through proportionate measures.⁴⁸

In its 2014 decision, the Korean Constitutional Court did not declare the Forced Shutdown System unconstitutional.⁴⁹ The issue at hand is multifaceted, as it concerns,

⁴⁷ See: S. Park (박 성혜; Bak Seonghye), 청소년 보호법의 인터넷 게임 셧다운제에 대한 헌법적 검토; (*Cheongsoneon bobobeobui inteonen geim syeotdaunjee daehan heonbeopjeong geomto*) [A constitutional review of the Internet Game Shutdown System in the Youth Protection Act], Seoul 2015, pp. 121–122.

⁴⁸ See: J. Wan (완 정명; Wan Jeongmyeong), 게임산업 정책실패 연구; (*Geimsaneom jeongchaeksilpae yeongnu*) [Study on game industry policy failure], Busan 2021, pp. 65–68.

⁴⁹ See: Case No. 659 of 24 April 2014, <https://www.law.go.kr/헌재결정례/청소년보호법%20제23조의3%20등%20위헌확> (accessed: 20.11.2022); cf. with Case No. 683 of 22 October 2013, <https://www.law.go.kr/LSW/detcInfoP.do?detcSeq=31714&mode=2> (accessed: 20.11.2022).

among other things, the violation of fundamental constitutional rights, excessive state protection of minors, state interference and intervention in individual entertainment and recreational activities, and the restriction of economic activities within the online gaming industry. The Korean Constitutional Court found that Internet games themselves were not harmful, but given the high rate of use by minors and the possession of highly addictive characteristics, the protection of minors' health was justified and did not violate the principle of proportionality. Some critics point out that the Game Time Selection System might violate the minors' rights to access to culture and the freedom to play. Critics also mention that there are risks associated with identity verification and the collection and gathering of the personal data of minors, which increases the likelihood of them being harmed. However, the Game Time Selection System is used in a negligible number of cases,⁵⁰ although it is more effective than the method of coercive and uniform regulation. Granting legal guardians of minors a greater degree of autonomy is therefore a qualitatively better solution, although its optionality raises quantitative problems.⁵¹

In spite of several revisions and regular data collection, the most significant drawback of the Forced Shutdown System was its failure to produce the expected results, with a profound level of interference. Empirical research showed that the regulation did not induce any significant change in the playing and sleeping times of minors.⁵² Additionally, the sleep times of the group of minors most engrossed in online gaming decreased as a consequence of the resulting shift in gaming use from night to day as a result of the restrictions.⁵³ In contrast, another study showed that total gaming time did not change significantly, but that gaming time at night decreased, which was not reflected in increased sleep times.⁵⁴ Furthermore, there was a shift in time preferences from computer games, which decreased, to mobile

⁵⁰ J. Park (박 중현; Bak Jonghyeon), 「게임산업진흥에 관한 법률 상」 상 본인인증제도에 대한 헌법학적 평가 – 현재 2015.3.26. 2013 헌마 517 결정례에 대한 검토를 중심으로 –; *Tetgeimsaneopjinbeunge gwanhan beomnyul sangtelsang bonininjeungjedoe daehan beonbeopakjeong pyeongga – Heonjae 2015.3.26. 2013 heonma 517 gyeoljeongnyee daehan geomtoreul jungsimeuro–* [Constitutional evaluation of the personal authentication system under the Game Industry Promotion Act – Focusing on the review of the Constitutional Court 2015.3.26. 2013 Heonma 517 decision], Seoul 2019, pp. 3 *et seq.*

⁵¹ Cf. J. Wan, *Geimsaneom jeongchaeksilpae yeongu...*

⁵² See: S. Hong (홍 성협; Hong Seonghyeop), 게임 셧다운제가 청소년의 게임시간, 수면, 여가활동 등에 미치는 효과 분석 (*Geim syeoldajungja cheongsonyeonui geimsigan, sumyeon, yeogabwaldong deunge michineun hyogva bunseok*) [Analysis of the effect of the Game Shutdown System on game time, sleep, and leisure activities of adolescents], Seoul 2017, pp. 16–24.

⁵³ *Ibidem*, pp. 26–27.

⁵⁴ This is also confirmed by the reduction of playing time by only 0.3% in 2019, which was indicated in the report of the National Assembly's Special Committee on the 4th Industrial Revolution, and the consequent failure to achieve the legislative objectives of the Forced Shutdown System. See: 국회 4차 산업혁명 특별위원회 결과보고서 (*Gukhoe 4cha saneopyeongmyeong*

games, which increased. Thus, even if the Forced Shutdown System was extended to mobile games it is plausible that the predicted effect would have been changes in preference to other types of games and media platforms. It follows that the Forced Shutdown System was not the ultimate solution to prevent addiction or to safeguard minors' rights to sleep.⁵⁵

4. Conclusions

In view of this analysis, it should be unequivocally stated that modern legislation must introduce appropriate legal mechanisms to counteract the negative effects of the misuse of electronic games and social media by minors. This stems from both the current state of affairs and the continuous intensification of the development and use of technology. There are several important conclusions to be drawn from the current research.

First, with the widely outlined and socially momentous issue of the development of technology, the urgent need for conducting in-depth empirical research at international level (including by the European Union) and individual countries should be postulated. Only on the basis of detailed data, which should also include minors, it will be possible to consider the optimal model for protection policy and related legal regulations for the protection of minors from the misuse of games and social media.

Second, both games and social media are important problem areas, although not the only ones, concerning minors in relation to technological developments. Because of their similarities, impacts on users and the potential for them causing significant harm, they should be considered together. However, this does not imply that the same standardization should apply to them.

Third, mechanisms should be put in place to adequately verify the need for and application of particular protective measures.

Fourth, future protection measures must meet high legislative standards (including the principle of proportionality) because of the potential conflict with human rights, personal rights, and principles of law in legal systems.

Fifth, the overriding consideration of the legislator should be to ensure there is no interference with minors' freedom unless it is particularly justified, and that interference be kept to the minimum necessary to ensure the adequate protection of minors.

tenkbyeorwivonhoe gyeolgnabogoseo), [National Assembly 4th Industrial Revolution Special Committee Result Report], June 2019, p. 119.

⁵⁵ H. Son (손 혀림; Son Hyeorim), *셋다운제도의 시행과 청소년의 게임행태 우아함 변화에 대한 연구* (*Syeotdannjedoni sibaengma cheongsonyeonui geimbaengtae naham byeonhvae daehan yeongu*), [A Study on the Implementation of the Shutdown System and Changes in the Elegance of Youth Game Behavior], "Eungyonggyeongje" (응용경제 [Applied Economics]) 2021, vol. 23(3), p. 18.

Sixth, the example of the Korean legal system clearly demonstrated the difficulties, lack of intended effectiveness, and social resistance regarding legal norms that significantly interfered with minors' freedoms. Intensified safeguards in this regard not only do not appear to be necessary in many developed democratic states, but are also flawed, and, at the very least, do not appear to be constitutional.

Seventh, in order to bring about changes in policy and legislation, it will be necessary to take a holistic perspective within legal systems. The individual problem areas are closely interlinked and extend far beyond the single parameters of, for example, adopting a particular form of limitation on the amount of time minors spend playing online games. Achieving highly satisfactory results is only guaranteed by tackling the dangers of the inappropriate use of games and social media comprehensively and not just in points. This must be implemented on as many levels as possible, which includes in public education (including school education and the running of campaigns and programs), the provision of appropriate environments for the development of minors (including gaming and social media), the support of legal guardians, and the provision of specialist assistance for affected minors.

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STRESZCZENIE

KOREAŃSKA REGULACJA *SHUTDOWN LAW* (셧다운제), A PROBLEMATYKA KORZYSTANIA Z GIER ELEKTRONICZNYCH I MEDIÓW SPOŁECZNOŚCIOWYCH PRZEZ MAŁOLETNICH

Dotychczas w literaturze przedmiotu, a w szczególności w naukach prawnych, brakowało badań, które w sposób szeroki objęłyby problematykę korzystania z gier elektronicznych i mediów społecznościowych przez małoletnich. W artykule postawiono tezę, że współczesne ustawodawstwa powinny wprowadzać odpowiednie mechanizmy prawne przeciwdziałające negatywnym skutkom nieprawidłowego korzystania z gier elektronicznych i mediów społecznościowych przez małoletnich. W pierwszej części artykułu zarysowany został problem badawczy, w tym negatywne skutki nieprawidłowego korzystania ze wskazanych wytworów technologii przez małoletnich, a także przytoczono obszernie dane statystyczne na ten temat. W drugiej części wskazano możliwe działania polityczne i legislacyjne oraz regulacje prawne, które zmierzają do zapewnienia odpowiedniej ochrony małoletnim w kontekście opisanych zagrożeń. Ze względu na nasilony stopień ingerencji ustawodawczej uwaga została poświęcona w znacznej mierze porządkom prawnym regionu Azji Wschodniej, a w szczególności Korei Południowej. Na ostatnią część artykułu złożyła się szczegółowa analiza koreańskiego unormowania ograniczającego dostęp do gier przez małoletnich, z wyróżnieniem regulacji *Shutdown Law* (셧다운제), która to funkcjonowała przez ponad 10 lat, do 2021 r. Podjęte tu rozważania umożliwiły dostrzeżenie całościowego kontekstu, wieloaspektowości omawianych zagadnień oraz analizę doświadczeń i rozwiązań prawnych wyróżniających się prawodawstw.