A Study on Trend and Characteristics of Industrial SECURITY Regulatory Legislation in KOREA

Choi Pan-am
Kyungwoon University, Gumi, Republic of Korea
Kim Young-hoon
Kyungwoon University, Gumi, Republic of Korea

Abstract

Korea has seen a constant increase in highly sophisticated, intelligent, and advanced industrial spying crimes, such as leakage of state-of-art technologies, infringement upon intellectual properties, etc., as industrial technology competitiveness is strengthening. State-led control is being pushed forward at policy level to prevent such industrial spying crimes. For that, legal grounds need to be clarified for authority, mechanism, and obligations of competent government ministries as the leader of industrial security protection at national level. Currently, laws have already been enacted to control industrial technology leakage, infringement of business secret and others in Korea.

This study was intended to examine trends of regulatory legislation related to industrial security, such as leakage of industrial technologies and infringement upon business secrets, in Korea and to discuss implications associated with industrial security policies and system nationwide by identifying characteristics of regulatory legislation on industrial security.

In Korea, regulatory laws pertaining to industrial security is legalized with separate laws such as ‘Act on Prevention of Leakage and Protection of Industrial Technology’, ‘Act on Prevention of Unfair Competition and Protection of Business Secret’, ‘Act on Protection of Small Medium Company’s Technology’, etc. Thus, applicable laws may vary, depending on cases. Moreover, laws need to be applied based on individual statutes under the status of special laws and interpretation needed to be made in consideration of complementary application of statutes as general laws.

Regulatory legislation on industrial security in Korea involves appointment of concerned management and supervision organizations, along with clarification of responsibilities of state and government for industrial security despite different entities covered by individual laws. Private corporate business secrets, as well as nation’s key technologies, are protected, controlled, and supported under the leadership of state.

Industrial security system in Korea emphasizes punishment for leakage and infringement which are components of specific crimes, with management and supervision from the standpoint of ex post facto response to leakage of technologies and infringement upon secrets based on government policies. However, it is more important to create an environment conducive to prevention of such leakage and infringement in the realm of private sector, particularly for small and medium companies. That calls for specialization related to industrial security mechanism.

Therefore, it should be considered to develop professional manpower with concerned expertise and implementation capabilities and to introduce national certification system necessary for increasing related public confidence.

1. Introduction

Industrial security refers to the activities preventing infringement upon industrial secrets, including valuable persons, documents, facilities, technology worthy of protection, and preclude access of unauthorized person[1], and is classified into preventive activities with a focus on protection of tangible and intangible assets of entities retaining industrial secrets and immediate counteractive actions made in response to leakage of industrial secrets[2].

According to the ‘Industrial Security Operation Manual’ published by the National Intelligence Service(NIS), industrial security is defined as the activities protecting technologies, management information, and related personnel, documents, facilities, communication, etc., owned and retained by industries and research institutes, in order to prevent infringement by various hazard elements including competing countries, industrial spies, current(incumbent) or former officials/employees, foreign scientists in Korea, etc. The Manual also suggests that industrial security is for prevention of leakage and protection of industrial technologies[3].

Korea witnessed 438 cases involving detection of industrial spies from 2003 to 2014. Damage caused to companies as a result of technology leakage is protected to reach KRW 50 billion yearly. Particularly, large companies suffered from such damage which was four times as large as that inflicted upon small and medium-sized companies. Internal leakage caused by current and former officials and employees accounted for over 80% of whole leakage[4].

Korea has seen a constant increase in highly sophisticated, intelligent, and advanced industrial spying crimes, such as leakage of state-of-art technologies, infringement upon intellectual properties, etc., as industrial technology competitiveness is strengthening. State-led control is being pushed forward at policy level to prevent such industrial spying crimes. For that, legal grounds need to be clarified for authority, mechanism, and obligations of competent government ministries as the leader of industrial security protection at national level. Currently, laws have already been enacted to control industrial technology leakage, infringement of business secret and others in Korea.

Thus, this study was intended to determine the trends of regulatory legislation on industrial security in Korea, discuss the characteristics of industrial security policies and systems that could be derived, and present related implications.

2. Trend of Regulatory Legislation on Industrial Security in Korea

2.1. Act on prevention of leakage and protection of industrial technology

The ‘Act on Prevention of Leakage and Protection of Industrial Technology’ proclaims the prevention of leakage and protection of industrial technologies as duty of state[5] and requires prior approval of or report to the Minister of Trade, Industry and Energy when organizations with nation’s key technologies developed through government’s funding support for R&D(Research & Development) intend to export or proceed with overseas acquisition, merger, etc[6], and furthermore, specifies that concerned organizations may seek court injunction against infringement on industrial technologies[7].

Moreover, this Act typifies and bans leakage of and infringement upon industrial technologies specifically, such as acquisition of industrial technologies of concerned organizations through theft, fraud, intimidation and other unfair means or use or divulgence of industrial technologies that have been acquired[8]. Penalty provisions are contained in this Act, imposing punishment for their breach[9].

2.2. Act on prevention of unfair competition & protection of business secrets

Under this Act, those in possession of business secrets may register electronic fingerprints with original copy authentication organization that authenticates original copy of
electronic documents containing business secrets[10] and also may seek court injunction against infringement on business secrets[11]. In addition, those who acquired or used business secrets or disclosed them to any third party for the purpose of causing damage to entities possessing business secrets are punished with imprisonment of less than 5 years or fine worth less than KRW 50 million. The punishment will double if such illegal acquisition, use, or disclosure occur abroad[12].

2.3. Establishment of publicness in private security

Government should map out and implement comprehensive policies necessary to strengthen technology protection capabilities of small and medium-sized enterprises(SME) and protect technologies of SME[13]. Under this Act, Chief of the Small and Medium Business Administration may appoint organization dedicated to protecting technologies of SME[14]. The Act prohibits any person, who is performing works such as technology protection diagnosis, consultation, etc., or is or was employed by SME technology developer to carry out R&D works related to security technologies, from disclosure of secrets learned in the course of performance of works to any third party and from using such confidential information for any purpose other than for purposes of works[15]. Violation of which will result in imprisonment of less than 3 years and fine worth less than KRW 30 million[16].

3. Characteristics of Regulatory Legislation on Industrial Security in Korea

3.1. Complementary interpretation & application through individual legislation

There are no legal grounds under general laws for overall regulatory mechanism related industrial security. Provisions set forth in the Act on Prevention of Leakage and Protection of Industrial Technology are applicable, except to the extent that there are other special provisions specified in other laws in connection with prevention of leakage and protection of industrial technology[17]. However, other laws need to be interpreted in a complementary manner, applying the laws case by case.

There are some cases in which related laws, such as equity law under general statute, need to be considered comprehensively in relation to behaviors constituting leakage of industrial technologies and infringement upon business secrets when punishment is imposed. This suggests that applicable laws may vary, depending on difference in organizations such as large companies, small and medium-sized enterprises(SME), state-funded research institutes, or ordinary private organizations, etc.

3.2. Punishment imposition & actions based on status of special law

Different administrative management and supervision organizations are engaged, depending on difference in regulatory legislation by case, resulting in different administrative measures and punishment imposition. When industrial technology leakage and business secret infringement have components of crime, special law prevails over criminal law which falls under category of general law in accordance with regulatory legislation. In relation to that, individual laws specify behaviors constituting violation and stipulate penal provisions that impose responsibilities under criminal law in individual laws.

4. Conclusion & Recommendation

Inevitably, the role of private security is to expand to pursue public benefits, i.e., crime prevention, based on its publicness. For that, measures need to be explored to increase public confidence in private security. In other words, quality of private security service, which will form a backbone of collaborative security as joint producer of security service comparable to that of the police, should increase to a level that can fully accommodate the demand of citizens. Along with that, institutional improvement measures should be designed for autonomous implementation.

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5. References

5.1. Journal articles


5.2. Additional references


**Lead Author**
Choi Pan-am / Kyungwoon University Professor
B.A. Yongin University
M.A. Yongin University
Ph.D. Kyonggi University

Research field

Major career
- 2013~2016. Daegu Arts University, Lecture
- 2016~present. Kyungwoon University, Professor

**Corresponding Author**
Kim Young-hoon / Kyungwoon University Professor
B.A. Yongin University
M.A. Yongin University
Ph.D. Seonam University

Research field
- Effect of Atmosphere and Motive Scales on the Adaptation according to the Participation Level in Kumdo, Seonam University, Doctoral Thesis (2009).

Major career
- 2010~2016. Korea University Kumdo Federation, Director
- 2016~present. Kyungwoon University, Professor