國立清華大學 106 學年度碩士班考試入學試題

系所班組別：科技法律研究所碩士班　甲組（科技專業組）

考試科目（代碼）：文獻評析（含中文文獻及英文文獻）（4202）

一、請閱讀以下文章，並以英文回答問題：（20%）

(The Atlantic, October 20, 2015, with certain modifications)

After 10 Years, Google Books Is Legal

By Robinson Meyer

On Friday, a federal circuit court made clear that Google Books is legal. A three-judge panel on the Second Circuit ruled for the software giant against the Authors Guild, a professional group of published writers which had alleged Google's scanning of library books and displaying of free "snippets" online violated its members' copyright. To some digital-rights followers, the Google Books case had seemed to drag on forever: The Authors Guild first filed suit 10 years ago. But the theory behind the eventual ruling was a quarter-century in the making.

In 1990, a district-court judge named Pierre Leval published an article in *Harvard Law Review* proposing a new theory of fair use. Fair use—which lets people use and adapt copyrighted works without getting the explicit permission of their owner—is a distinctly American concept. Instead of setting out specific statutory exemptions to copyright, as many other countries do, U.S. law issues four broad factors which guide whether the permission-less use of a copyrighted work is fair. This means that fair use can evolve and change over time; it also means that the only real way to find out if something is "fair use" is to ask a federal court.

In his article, Judge Leval argued that the degree to which some kind of use transformed the original work should principally guide fair-use rulings. Fair use "must employ the quoted matter in a different manner or for a different purpose from the original," he wrote:

> *A quotation of copyrighted material that merely repackages or republishes the original is unlikely to pass the test; in Justice Story's words, it would merely*

"supersede the objects" of the original. If, on the other hand, the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings, this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.

Transformative uses may include criticizing the quoted work, exposing the character of the original author, proving a fact, or summarizing an idea argued in the original in order to defend or rebut it. They also may include parody, symbolism, aesthetic declarations, and innumerable other uses.

"It's a famous passage," says James Grimmelmann, a law professor at the University of Maryland and the director of that school's intellectual-property program. Leval had "written a couple of decisions that dealt with authors whose works engaged with existing ones and necessarily had to quote a lot. He put together an idea that wove together some major themes in the cases: Fair use protects people who make transformative uses of existing works."

In 2004, Google began scanning books—copyrighted and non-copyrighted alike—in academic libraries with the plan of making portions of that material available online for free. Users of Google Books now know how this works: You can search Google's scanned-book database for a fact or a quote and see part of the page that includes that fact or quote. Google Books will then show you a "snippet" of the book without revealing the rest of the book.

In 2005, the Authors Guild sued Google to halt the plan. The case has bounced through the courts since. The two parties almost settled in early 2011, when they proposed creating an online payment system that would have made Google Books more expansive than ever before—but a judge threw that out, saying it would give Google a "de facto monopoly." In November 2013, that same judge, Denny Chin, issued a district-court ruling that found Google Books to be fair use.

"It advances the progress of the arts and sciences, while maintaining respectful consideration for the rights of authors and other creative individuals, and without adversely impacting the rights of copyright holders," wrote Judge Chin.

The Authors Guild appealed to the Second Circuit. And there it wound up back in the lap of a familiar figure—Judge Pierre Leval. Would Leval rule that Google Books really wasn't the kind of transformational use he had in mind back in 1990? No: In fact he ruled the opposite. As Grimmelmann told me, it's as if Leval is saying: "This is transformative use. They got it exactly right."

"For nearly 300 years, since shortly after the birth of copyright in England in 1710, courts have recognized that, in certain circumstances, giving authors absolute control over all copying from their works would tend in some circumstances to limit, rather than expand, public knowledge," writes the judge in his decision. Later he summarizes:

> *Google's unauthorized digitizing of copyright-protected works, creation of a search functionality, and display of snippets from those works are non-infringing fair uses. The purpose of the copying is highly transformative, the public display of text is limited, and the revelations do not provide a significant market substitute for the protected aspects of the originals.*

In other words, Google Books is legal. And not only that, but the case is likely resolved for good. In 2012, a district court ruled that Hathitrust, a university consortium that used Google Books's scans to make books accessible to blind students, was not only a legal form of fair use but also required by the Americans with Disabilities Act. Experts say that the Supreme Court is unlikely to hear an appeal, because so many district court judges, and two different federal circuits, have found themselves so broadly in agreement about the nature of transformative use online.

1. How is "Google Books" consistent with the notions of "fair use" and "transformative use"? (10%)

2. What are the likely legal consequences of this case (particularly for non-profit user organizations and librarians in the United State as well as other countries)? (10%)

二、請閱讀以下文章，並以中文回答問題：（30%）

(The Guardian, Thursday 31 May 2012, with certain modifications)

New York Mayor Bloomberg v Big Soda

By Bettina Elias Siegel

New York City Mayor Michael Bloomberg has made headlines by announcing his administration's plan to ban the sale of sugary drinks offered in containers larger than 16 ounces. The proposed "large soda" ban would affect food service establishments like restaurants, movie theaters and street vendors, but would not affect grocery or convenience stores. (Diet sodas, fruit juices, milk-based drinks and alcoholic beverages would be exempted.)

As a writer who blogs daily about kids and food, I'm deeply immersed in the issue of childhood obesity and its related ills. I've reported on children needing weight-related knee replacements and new research indicating that diabetes, which is on the rise among teens, may be a much more pernicious illness in pediatric patients than in adults. I also know that excess sugar consumption harms the health of *all* children, even those who are not overweight. [Sugar consumption is also the leading cause for non-communicable diseases worldwide.] So, you might assume I'd welcome Bloomberg's large-sized soda ban with great enthusiasm.

Instead, I feel ambivalent about it.

Don't get me wrong: I'm no fan of the soda industry (one that rightly has been compared to Big Tobacco) and while some commentators are dubious, I accept the proposition that the consumption of sugary beverages, particularly soda, has been a major driver of our current obesity and health crisis. I support the idea of a soda tax; I even approved of a more controversial proposal (also Bloomberg's), which would have exempted soda purchases from the food stamps program.

I stand behind any measures to curb the advertising of soda to children, including the intrusion of beverage companies into schools through bus advertising, vending machines and support of athletic programs. I'd even be OK with sticking a warning label on non-nutritive sugary beverages. In short, I have absolutely no problem with public policies that encourage health-promoting behavior and disincentives which lead people to avoid harmful behavior.

But forbidding people outright to buy the size of soda they desire strikes me as quite *paternalistic* [emphasis added] and intrusive and – if my Twitter feed is any gauge of public sentiment – likely to fuel resentment. And while it's true that Bloomberg's other, similarly coercive health measure – the banning of smoking in restaurants – was controversial when announced but is now widely accepted, one key difference is that smoking in restaurants not only adversely affects the smoker, but also the non-smokers around him. With soda, though, there is no immediate harm to bystanders that might otherwise justify the proposal in the minds of many New Yorkers.

There may also be problems implementing the ban. First, one clear flaw is that at fast food establishments and other venues where free refills are the norm, nothing in the proposal would prevent customers from bypassing the soda limit by simply refilling their 16-ounce cup. Similarly, convenience stores like 7-Eleven (which are currently expanding in New York City) might be exempt from the ban, ironically preserving the most iconic super-sized sugary drink of them all: the Big Gulp.

Second, there's the possibility that the ban will actually create the perverse economic result of normal soda drinkers subsidizing the excess soda-drinking of others in establishments offering free refills. And if determined soda-buyers choose to buy multiple smaller containers and/or vendors raise soda prices, the plan could conceivably function as a back-door soda tax – but one that lines the pockets of soda purveyors, instead of providing revenue to the government (which may use the funds to defray obesity-related healthcare costs).

Third, such a ban is likely to disproportionately affect poorer New Yorkers. This might seem like an odd concern from someone who supported the food stamp soda ban, but I see a categorical difference between the use of government-issued supplemental food benefits for an entirely non-nutritive beverage, versus spending one's own money on it. Therefore, (with 81g of sugar) would be banned, but the much pricier 24-ounce Starbucks White Chocolate Mocha Frappucino (with 87g of sugar) would likely not, due to its milk content.

Finally, while no fault of Bloomberg's, nothing in his proposal gets at one of the roots of Americans' over-consumption of soda – that is, the wrongheaded agricultural subsidies that have resulted in a liter bottle of Coke being cheaper than a similar-sized container of skim milk.

All of this said, though, I do admire Mayor Bloomberg for his dogged, forward-thinking approaches to improving public health in his city, where, currently, over half of adults are overweight or obese. Undeterred by the prior defeat of his proposed soda tax and food stamp/soda ban – and the $70m spent by the soda lobby around the country since 2009 to defeat such measures – Bloomberg's latest salvo does show ingenuity and real political courage.

So it may well be that, after a lot of initial grumbling, New Yorkers will eventually grow accustomed to thinking of a "large soda" as containing 16 ounces, which, it's worth noting, is still *twice as large* as the serving size Americans thought of as "standard" back in the 1950s. Moreover, if the measure proves at all successful in lowering the city's rates of disease and/or obesity, that data could prove to be a powerful tool in future battles against Big Soda.

1. 請於閱讀以上短文後，簡述所謂「soda industry」所造成的公共健康問題，以及紐約市提出之法律因應措施。(10%)
2. 請分點摘要本文作者針對該法律因應措施所提出之評論意見。(10%)
3. 請嘗試針對本文作者之評論意見，提出您個人見解。(10%)

國立清華大學106學年度碩士班考試入學試題

系所班組別：科技法律研究所碩士班　甲組（科技專業組）

考試科目（代碼）：文獻評析（含中文文獻及英文文獻）（4202）

三、請閱讀以下敘述，以中文回答問題：(25%)

請閱讀以下司法院針對大法官第728號解釋所發布之新聞稿：

祭祀公業條例於 96 年 12 月公布，97 年 7 月 1 日施行，其第 4 條第 1 項前段規定：「本條例施行前已存在之祭祀公業，其派下員依規約定之。」聲請人呂碧蓮(贅婚)為祭祀公業呂萬春派下員呂進榮之長女，聲請人呂家昇為呂碧蓮之子(從母姓)。呂進榮受聲請人等撫養，惟另有 3 子均無男嗣。呂進榮與 2 子先後亡故，僅餘三子呂學川 1 人。依祭祀公業呂萬春管理章程（75 年 7 月 31 日訂定，下稱管理章程）第 4 條前段規定，登記在案派下員亡故時，由直屬繼承人公推 1 名代表繼任派下員，惟依政府有關規定，凡女子無宗祠繼承權，致僅由呂學川繼任派下員。 聲請人等不服，循序爭訟敗訴後，認上開管理章程規定違憲，聲請解釋。大法官作成釋字第 728 號解釋，宣告祭祀公業第 4 條第 1 項前段規定(系爭規定)合憲。理由：(一)祭祀公業管理章程並非得據以聲請解釋 之法令。系爭規定為確定終局判決所適用並進而引用管理章程內容為判決，可認聲請人等係就系爭規定而為聲請，自得作為違憲審查之標的。(二) 祭祀公業係設立人捐助財產以祭祀為目的，其設立及存續涉及設立人及 其子孫之結社自由、財產權及契約自由。(三)系爭規定雖因規約多依循 傳統宗族觀念以男系子孫(含養子）為派下員，致多數女子不得為派下 員而形成差別待遇，惟該規定形式上並未以性別為認定派下員之標準， 且其目的在於維護法秩序安定及法律不溯既往原則，況規約係設立人及 其子孫所為私法上結社及財產處分行為，基於保障結社自由、財產權、契約自由及私法自治，原則上應予尊重。是系爭規定縱形成差別待遇，亦非恣意，尚難認與憲法保障性別平等意旨有違，致侵害女子財產權。惟解釋亦指出，同條例第 4 條第 1 項後段規定，無規約或規約未定者，以性別作為認定派下員之分類標準，已形成差別待遇，雖該條例已 有其他減緩規定，且就條例施行後之情形，亦基於平等原則為規範，但整體差別待遇仍然存在。有關機關應與時俱進，就該條例施行前已存在之祭祀公業，其派下員認定制度之設計，適時檢討修正。

此一解釋，引起許多學者，甚至包含數位大法官之批判。以李震山大法官的不同意見書為例，即指出此號解釋與憲法所保障之平等原則有所違背。請閱讀以下李震山大法官的不同意見書（摘錄）：

「祭祀公業的形成，大多由子孫捐獻、集資購置或以分家產時預留的田產等，作為祭祀團體的財產，並以其收益提供祭祀祖先所需的費用。其建置與運作，本係親屬間慎終追遠、敬祖睦親的倫理道德私領域行為，國家應儘可能保持中立並尊重其自治。惟民國九十六年底所制定公布的祭祀公業條例（下稱本條例），除在「孝道發揚」、「宗族傳統延續」的「共同承擔祭祀」之立法目的外，以地籍清理為重點，大量融入國家管理之公共性規範內容，而具濃厚增進公益之目的。更重要的是，本條例順應民法揚棄以男性為中心的宗祧繼承規範，於第五條中將性別平等的基本權利效力引入私人與私人關係間，主動破除「既屬私法自治範圍，即不生違反平等原則」之迷思。縱於此情形下，本件解釋仍僅以「原則上應尊重私法自治」為前提，並加上「為維護法秩序之安定」 的概括說辭，試圖淡化性別平等原則的適用，再據以審查本條例第四條第一項前段規定：「本條例施行前已存在之祭祀公業，其派下員依規約定之。」（下稱系爭規定），並獲得合憲的結論。該釋憲的結果，導致既存祭祀公業之「原始規約」，縱然於認定派下員 資格存在男女不平等之要求，國家仍無限期予以容忍，亦即國家 就「無分男女在法律上一律平等」、「維護婦女之人格尊嚴」、「消除性別歧視」及「促進兩性地位之實質平等」之憲法要求（憲法第七條及憲法增修條文第十條第六項規定參照），可以不必有任何作為義務，形同將該領域打造成銅牆鐵壁的「憲法外空間」。對此，本席礙難贊同，爰提本意見書。

壹、對「私法自治」的尊重，並不等同於將私人間法律關係 私人間法律關係 私人間法律關係皆排除於「基本權利效力」之外

本條例第一條前段規定：「為祭祀祖先發揚孝道，延續宗族傳統」，應是祭祀公業成立之初始目的，本不具有公共性。但祭祀公業派下員彼此間，長久以來就其公同共有財產之管理權、使用收益權、繼承權、派下義務等問題，屢生齟齬。且在性別平等意識漸受重視的催化下，益發使身分權與財產權彼此糾葛不清而複雜難解，經代代相傳進而成為影響土地經濟與利用的公共議題。本條例第一條後段規定：「為……健全祭祀公業土地地籍管理，促進土地利用，增進公共利益」，就成為公權力介入祭祀公業紛爭解決的法律上正當性基礎。基此，本條例除祭祀公業之申報、法人登記、新訂規約及其監督等公法規定外，並連結地籍清理相關規範而採「標售」與「囑託登記為國有」等具有濃厚公權力色彩的強制措施（本條例

第五十條、第五十一條及第五十五條規定參照）。因此，系爭規定中祭祀公業派下員之規約，已非純屬自治或自律的私權範圍，其所衍生之相關爭議，自非僅以「私法自治，原則上應予尊重」，就可一語帶過，亦非僅得以私法爭訟方式解決。顯見本件解釋一廂情願的預設與命題，既不合時宜，又作繭自縛。更關鍵的是，本條例第五條規定：「本條例施行後，祭祀公業及祭祀公業法人之派下員發生繼承事實時，其繼承人應以共同承擔祭祀者列為派下員。」明白承認除第四條規定情形以外，本條例施行後之祭祀公業派下員資格，只以「共同承擔祭祀」為要件，既不能再以性別為門檻，且繼承人與被繼承人亦不必屬同一姓氏，將傳統依宗祧繼承歧視女性之習俗，排除在現代憲政秩序之外。這正意味著，基本權利的效力不應僅及於國家與人民間的雙面關係，而可由法律直接賦予所謂「基本權利的第三人效力」(Drittwirkung der Grundrechte) 。猶如勞資關係本屬私人關係，但於勞動基準法及其相關法令規範下已非純私人間關係，無須再經由代表公益的法院以詮釋「公序良俗」、「誠實信用」等抽象概念為途徑，「間接」迂迴地展現平等權拘束私人間法律關係的效力。

據此，祭祀公業派下員之爭議屬私法自治領域而不應生違反平等原則問題之認知，即可不攻自破。所餘的問題則是，何以容許同一規範（本條例）中併存兩種對立的憲政秩序。換言之，僅以「法律生效時點」及「有無規約」區隔，立法者就可築起一道高牆，一邊是性別平等的和諧空間，另一邊卻是完全剝奪女性參與空間的性別隔離狀態？釋憲者除「私法自治」外，是否再添加「法安定性」為理由，就可使牆內牆外互不得越雷池一步？

貳、「法安定性」並不能作為既有祭祀公業派下員資格認定派下員資格認定派下員資格認定時，不受平等原則拘束之受平等原則拘束之當然理由

在臺灣這塊土地上，祭祀公業隨著漢人移入而開展，先民缺乏男女平權理念，應可以理解。但三十六年底施行的憲法，其第七條規定即已例示「男女在法律上一律平等」，該啼聲初試的「特別平等」保障，卻格於非常態憲政戒嚴體制，縱在一般公法領域都難以開展，遑論在與傳統文化、禮俗、儀典聯結甚深的祭祀公業領域。動員戡亂時期終止後的八十一年五月，憲法增修條文第十八條第四項規定：「國家應維護婦女之人格尊嚴，.....消除性別歧視，促進兩性地位之實質平

等」（現列於第十條第六項規定），就憲法第七條的男女平權領域，已從形式上要求國家「不得恣意為無正當理由之差別待遇」，或要求涉及平等權之規範，「所採取之分類標準及差別待遇之手段與目的達成間，應有一定程度之關聯性」的消極階段，向前跨一大步，邁進了實質上課予國家積極保護義務的新階段。該憲法增修條文的內容，是否屬憲法第七條男女平等射程的保護範圍 (Schutzbereich) 而屬人民可請求的主觀公權利，如同本院釋字第四四五號解釋，將國家「應提供適當集會場所，並保護集會、遊行之安全，使其得以順利進行。」的積極義務納屬集會自由的保護範圍；抑或屬基本國策而僅得作為督促國家之依據，並非人民可主動請求之事項；皆須從實質內容觀察。以基本國策的方針性內容要去證立憲法人權清單所無之基本權利，並非易事，例如：環境權、健康權、文化權、社會權、和平權、語言權或集體權等，其除須結合憲法第二十二條規定外，尚要經詳細論證，方具說服力。但若基本國策規定之內容已相當明確，且又與憲法列舉權有直接關係，又另當別論。就本件解釋而言，如果僅因「消除性別歧視」規定於基本國策，就認其非為憲法第七條之男女平權應有的主觀功能，而將之定位為客觀上僅得作為國家視能力而選擇性執行之依據時，憲法第七條男女平權的規定，豈不成為失去靈魂的軀殼，而「國家應促進兩性地位實質平等」，將流於口號。就如同人民不能要求國家「保護集會自由安全」，僅要求國家消極不侵害，集會自由又該如何保障？應放諸人民「私法自治」或自力救濟嗎？不論如何，在此時期，祭祀公業男女不平等的現象，依然故我而紋風不動。隨著不分黨派、朝野或團體皆贊成將國際人權規範內國化作為國家施政重點，且付諸行動後，或才對祭祀公業中性別隔離產生春風解凍的效果，對本條例問世有促成之功效。緊接著九十八年制定「兩公約施行法」，於第二條規定：「兩公約所揭示保障人權之規定，具有國內法律之效力。」當然包括性別平等。行政院並設性別平等處，於一００年十二月公布「性別平等政策綱領」，企圖將臺灣性別主流意識與國際接軌，邁向共治、共享、共贏的永續社會。一０一年一月一日又施行「消除對婦女一切形式歧視公約施行法」。在此風潮下，社會上呼籲保障變性、跨性及同性應得到法律公平對待之議論，亦已甚囂塵上，而系爭規定自公布迄今，又已過了七個年頭。

本條例制定時，男女平等或性別平等的憲法規範與理念，已伴行以男性為中心的祭祀公業逾一甲子，各種涉及性別平等的法律皆已陸續翻新，應已給予祭祀公業中男性祭祀人，有足夠的時間與訊息，可以預期立法者會制定新的合乎憲法意旨

的規範。此時，欲將不遵守平等原則所生「憲法層次」的法安定性問題，矮化為既有祭祀公業維護男性為主的「法律層次」的安定性問題，再將之收納入「私法自治」的黑箱裏，欲使之永不見天日，實已缺乏正當性與說服力。若再以法律不溯既往所生之法安定性，去維護已不太值得保護的男尊女卑價值及所衍生之財產利益，能用力的空間就更加有限。誠如本院有關夫妻財產制亦涉及傳統與現代對立爭議所作成的釋字第六二0號解釋就指出：「本院釋字第四一0號解釋已宣示男女平等原則，優先於財產權人之『信賴』」。此種立論，應能對習於沈溺在傳統既得利益而不能自拔，且慣以法安定性」為盾牌者，產生振聾啟聵的效果才是！

祭祀公業條例在調和傳統與現代的性別平等意識上，主管機關曾作出相當的努力，惜只顧及起、承、轉的階段上，卻在「合」的步驟上，未能接上憲政的常軌，而釋憲者又未能適時地協助挽回，頗為遺憾。為避免既存祭祀公業在既有規約效力範圍下，成為平等光輝永遠無法照射的陰暗面，亡羊補牢之計，建議主管機關或可比照本條例第七條、第十四條等規定，修法再設定過渡時間，至少應就現生存女性關係人繼承之方式與時點，另行斟酌設定實體與程序要件，讓繼承人中「願共同承擔祭祀」之女性皆有 請求納入派下員之權，逾時未申請方視同放棄，以定紛止爭。英格蘭著名詩人布雷克 (William Blake, 1757-1827) 有一首長詩名為「天真的預言」 (Auguries of Innocence) ，本意見書擬借其廣受傳誦詩首的前四句：「一顆沙裏看出一個世界，一朵野花 裏一座天堂，把無限放在你的手掌上，永恒在一剎那裏收藏。」作為隱喻。系爭規定像那顆沙般，能看出現實世界普遍存在的不平等歧視現象；本條例第五條規定也可如那朵野花，照應出眾生 平等花團錦簇的天堂和諧景象；若當多數人能將有助於提昇人性 尊嚴與幸福的平等權之「無限」或「無量」捧在掌上，動心轉念之際，剎那就有可能成為永恒。倡議積極保障人權者，究係引領 人們通往和平之路的天使，或是率眾通往奴役之途的魔鬼，皆會因政治意識型態或憲政價值觀的不同，而有殊異的主張，從而形成個別不同的「永恒」確信。當在此叉路須選擇或判斷時，本席仍願相信，致力於使平等光輝普照人間各個角落，不分彼此，不問過去或未來，才能不自愧於良知。」

如果您是大法官，您會支持多數見解抑或採取不同的立場，原因為何？請以中文敘述之。（25%）

國立清華大學 106 學年度碩士班考試入學試題

系所班組別：科技法律研究所碩士班　甲組（科技專業組）

考試科目（代碼）：文獻評析（含中文文獻及英文文獻）（4202）

四、請閱讀以下敘述，以中文回答問題：(25%)

Google 公司在其網頁上曾有以下的文字：
（來源：https://www.google.com.tw/intl/zh-TW/takeaction/whats-at-stake/）

「自由與開放的世界取決於自由與開放的網際網路。網際網路讓每個人都有發言、創作、學習與分享的權利。而且不受任何機構、個人或政府控管。網際網路將這這個世界連結在一起；如今，上網人數已突破二十億大關，接近全球人口的三分之一。

不過某些國家/地區的政府並不支持自由與開放的網路。

網際網路自由所受到的打壓日益嚴重。目前有 42 個國家/地區會過濾與審查網路內容。單在過去兩年，各國政府就已頒布 19 項新法律來限制網路言論自由。其中某些國家/地區的政府計劃在 12 月份舉行閉門會議，目的是要對網際網路進行監管。

國際電訊聯盟 (ITU) 打算召集各國的監管機構，重新商討幾十年前訂定的舊通信條約。

修改通訊條約會影響網路審查制度，也會危害網路創新。某些國家/地區的政府提議政府有權審查網路言論的合法性，甚至是切斷網際網路的連線。另外，某些提案建議使用 YouTube、Facebook 和 Skype 等服務的民眾，必須額外支付費用才能與國外使用者通訊。這將會限制人民對於資訊的取得，特別是在新興市場國家。

國際電信聯盟 (ITU) 無權決定網際網路的未來。在 ITU 這個組織中，只有政府才有發言的資格，包括根本不支持開放與自由網路的政府。工程師、公司以及打造和使用網路的民眾，完全沒有表達意見的機會。此外，ITU 的所作所為也不光明磊落，對於討論條約修改與建議事項，一概不對外公佈。

網際網路政策應該要像網際網路一樣，完全開放且兼容並蓄。

各國政府都不應該單方面決定網際網路的未來。全球數十億的網路使用者，外加打造及維護網路的專家，都應該有機會表達自己的意見。例如，任何人都可以出席網際網路治理論壇並發表意見，在這裡，政府官員和一般民眾都擁有同等的影響力。」

藉由以上資料，我們可以反省：網路世界是完全自由的嗎？除政府可能以法律對於言論、行為進行管制以外，市場、網路或相關軟硬體設計上，乃至於社會規範(social norm)，是否亦可能影響我們在虛擬世界的一舉一動。對於此等議題，請您以中文討論以下問題：

1. **網路空間的規範制訂者為誰？如果是政府，那麼那個國家對於網路具有主權可以管制？網路有國界嗎？如果政府僅為管制者之一，那麼還有哪些主體或因素可能影響網路管制？(15分)**
2. **您理想中在虛擬世界應如何管制？(10分)**