

考試科目	社會議題分析	系所別	法律科際整合研究所	考試時間	2月18日(一)第3節
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一、Below presents an excerpt from *the Guardian*. Please read and answer the questions that follow (write your answer in Chinese or in English):

“In a world where false and misleading information reaches billions instantly and online manipulation is becoming ever more sophisticated, governments are increasingly turning to legislation to combat fake news. But unlike, say, hate speech, terrorism advocacy or child pornography, fake news is a tricky area for the law: it has not, generally, been illegal – and in democracies, political speech is seen as deserving the strongest of free speech protections. Lawyers, technology experts, media representatives and free speech campaigners have expressed fears that hastily drawn-up domestic measures outlawing fake news may at best prove ineffective, and at worst counterproductive.

From Europe to Asia, leaders are rushing to adopt anti-fake news laws. France – where “fake news”, necessarily narrowly defined so as to protect free speech, has been illegal since 1881 – aims to allow judges to order the deletion of false online content in election periods. The legislation will also oblige social media platforms to name advertisers who are financing content, and say how much they are paying, and permit France’s independent broadcasting authority to suspend media seen as trying to destabilise a vote, notably if “influenced by foreigners”. Germany earlier this year also introduced an online hate speech law, giving platforms with more than 2 million users 24 hours to remove “obviously illegal” terror content, racist material and fake news or face fines of up to €50m (£44m). Other offensive material must be blocked with seven days. Malaysia has passed a law setting fines of up to £88,000 and jail terms of up to six years for offenders who use traditional news outlets, digital publications and social media – including outside Malaysia – to spread fake news. Opponents have said the law takes the country “one step close to a dictatorship”. Thailand, too, has a cybersecurity law making the spread of false information liable to a jail term of up to seven years, while Singapore is preparing a report on measures to counter “deliberate online falsehoods” and the Philippines is mulling anti-fake news legislation that would punish offenders with up to 20 years in jail.

*Besides legislation, civil society measures being increasingly adopted to counter fake news, including fact-checking and debunking, also may not ultimately prove effective, Alemanno said. “The problem here is simply that fact-checkers don’t step in until after publication, by which time it’s too late.” Christophe Deloire, the Executive Director of Reporters Without Borders (RSF), stated “False and reliable information now circulates in the same channels, and ‘bad’ news circulates faster than ‘good’. We have to give a real advantage to those who produce reliable journalism.” Deloire said he was not opposed to “a good balance between self-regulation and regulation”. But as the EU prepares to unveil a plan for voluntary self-regulation by internet giants such as Facebook, Twitter and Google, with the threat of laws to follow if they fail to comply, experts doubt that simply demanding the platforms take responsibility is a long-term solution. “There are questions around the time and resources social networks will put in to do that job, and also whether they are necessarily the best judges of the material,” said Lisa-Maria Neudert of the Oxford Internet Institute. “In France, decisions will be made by judges on a case-by-case basis, so there will at least be juridical oversight.” (Excerpt from Jon Henley, *Global Crackdown on Fake News Raises Censorship Concerns*, April 24, 2018, *the Guardian*, with certain modifications)*

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Questions:

1. Many countries are taking various measures to crackdown fake news. Taiwan is also weighing options to do the same. Should the government and the law play any role in countering fake news? Why? (15%)
2. In addition to introducing new legislations, what would be other effective alternatives to prevent fake news? (15%)

二、請閱讀下面這篇社論，並回答底下的問題（以中文作答）：

以下節錄並修改自「再論新創踩紅線孰之過？」，工商時報社論，2018年11月12日：

「我們在9月初曾經針對連續兩起金融科技新創踩到監管甚至司法紅線的案例，呼籲大家注意到創新與合規之間的糾結。在大陸法系國家，創新幾乎命定要違法，因為創新就是為了解決痛點，如果痛點的解方在現行法規之內很容易處理，現有業者自己提出解決方案即可，哪有其他業者以創新方案處理的機會？不管是模式創新或技術創新，新的解決方案常走在法律的灰色地帶。顯示現行法規落後於痛點解決，因而創新幾乎必然違法。.....本文所提到的兩個金融新創，命運大不同。8月6日金融新創公司櫻桃支付（CherryPay）被檢調搜索，並查扣上千萬元新台幣。尷尬的是，櫻桃支付的創辦人兼執行長在業界相當活躍，其團隊於2017年入選新加坡金融科技新創加速器 SBC（StartupbootCamp）前10名，被譽為「台灣之光」，更是資策會受金融總會委任承辦「金融科技創新基地」（FinTechBase）輔導的指標案例。櫻桃支付的商業模式與全球知名金融匯兌新創 TransferWise 相似，功能近似跨境匯款，以平台媒合，分別在各地完成資金交付，雖有跨境匯款之功能，但外觀並無跨境匯款之行為。支持者讚嘆其手續費低廉、完成交易快，能解決現行跨境匯款機制時間長、費用高、匯率差等痛點，因而入選新加坡金融科技新創加速器 SBC 決選的前10名。不認同櫻桃支付商業模式者則認為，只要有跨境匯款之實，就應受銀行法第29條「非銀行不得辦理國內外匯兌服務」的約束。櫻桃支付因為外觀並無跨境匯款之行為，遊走於銀行法第29條的灰色地帶。並因受主管金融創新的金管會給予肯定，而主管外匯監理的央行也沒有表態反對，再加上 TransferWise 已受各界肯定，櫻桃支付原本一直在「台灣之光」的光環中備受稱頌。然而檢警分析165詐騙專線的報案大數據，發現詐騙集團利用櫻桃支付進行地下匯兌，初步統計，該公司所經手的金流已經超過1億，收取手續費約300餘萬。檢調是以涉嫌違反「銀行法」29條第一項「除法律另有規定者外，非銀行不得辦理國內外匯兌業務。」移送法辦。如果櫻桃支付執行長被判有罪，將面臨3至10年的刑期，一夕之間從金融科技的明星，變成可能坐牢的嫌犯。

踩紅線，但命運不同的另一個金融科技新創則是街口支付。街口支付在8月下旬預告，將

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<p>於9月3日推出台版餘額寶「街口託付帳戶」，主打高於定存利率，保障年收益1.2%至1.8%，且每日給息、採複利每日計息（每日利息自動滾入本金再賺利息）。街口支付的「保障年收益」、「高於定存利率」、「每日計息」事實上違反了多項相關法令。首先，存款和儲值不同，若街口支付對儲值支付付「利息」，就可能違反「銀行法」和「電子支付機構管理條例」；此外，若將支付利息解釋為行銷行為，就違反「電子支付機構從事行銷活動自律規範」不得對儲值進行任何行銷行為的規範。「街口託付帳戶」保障年收益1.2%至1.8%若是信託收益，街口支付既非投信業者，就違反「投信投顧法」；即使與證券投信業者合作（如同餘額寶與天弘基金合作的模式），也當知信託不保本、不保息。</p> <p>街口支付與櫻桃支付命運不同之處，在於街口支付還沒有付諸行動，就被金管會強制下架；而櫻桃支付因已有實際業務，被檢調以涉嫌違反銀行法移送。換言之，主管機關的行動，嚴重影響金融新創的命運；對於街口支付快速要求踩剎車，對於櫻桃支付則積極鼓勵踩油門。據報導，前金管會官員曾說：「我覺得這個（銀行法）不是問題。它並沒有把資金直接匯出去，所以不是（匯兌業務）。」但檢調單位則以105年金上重訴字第7號判例，「無論是否賺有匯差，亦無論行為人係以自營、仲介、代辦或其他安排之方式，均構成未經許可辦理匯兌業務罪。」顯示行政機關與檢調單位對同一個銀行法29條，雙方認知嚴重歧異；這將使科技新創無所適從，甚至產生寒蟬效應。」</p> <p>問題：</p> <ol style="list-style-type: none"> 1. 文中指出：「在大陸法系國家，創新幾乎命定要違法，因為創新就是為了解決痛點...不管是模式創新或技術創新，新的解決方案常走在法律的灰色地帶。」你是否認同此觀點？理由為何？（20%） 2. 以本文所述的櫻桃支付及街口支付案為例，你認為法律或監理制度是否應該進行任何調整？若否，理由為何？若是，如何調整？（50%） 					
備註	一、作答於試題上者，不予計分。 二、試題請隨卷繳交。				