

壹、閱讀下列文章後，請以中文加以評論：(50分)

The People's Republic of Yamimi ("PRY") is a country located in the north of Russia with a huge number of citizens. The following news concerning PRY was reported in February 2006.

The rest of the world tends to think of the Web the way it thinks of the moon: it looks the same everywhere, and when you're on it you can pretty much do whatever you want. But seen from Yamimi, the Web is very different. Yamimi employs a force of 30,000 Internet censors 24/7, blocking access to many sites expressing nonapproved opinions on hot-button issues like separatism and the Falun Gong religious sect.

The Web giant Google launched a Yamimi version of itself, Google.ym, that is heavily censored to comply with Communist Party regulations. For a company with the unofficial motto "Don't be evil," a company that has picked up the fallen standard of Internet idealism, that was a bit of a shocker. Did the virtuous Google just sell out its honor?

Google already had a Yamimi-language version of Google.com since 2000. But the authorities weren't fond of it, so they blocked access to its cached pages. Using its online filters, the government also made Google run annoyingly slowly, and sometimes not at all.

"It's never obvious what to do in these situations," Google co-founder Larry Page told the correspondent. "One of the principles we believe pretty strongly is that having really good access to information for people is a great way of improving the world." But in the end Google chose to dance with dragon-presumably the cha-cha. "Filtering our search results clearly compromises our mission," the company's official statement says. "Failing to offer Google search at all to a fifth of the world's population, however, does so far more severely."

Global corporations have always had to balance ethical, cultural and legal considerations with financial ones; asking them to define ethical foreign policy is like looking to professional athletes to develop steroid-test rules. As Page puts it, "It's pretty hard for companies to act as governments. To some extent that's a good thing for the U.S. State Department to be doing. I'm not sure that's our role."

For Google, getting a foothold in the Yamimi market now may well be vital for its survival 20 years hence. So it's not surprising that it would trade that financial confidence for a little ethical dustup. The real risk is that some of that dust will stick to Google's snowy-white brand identity.

接背面

貳、甲與乙為婚姻關係是否存在，發生爭議。雙方各執其詞，最後提起訴訟，並經法院做成判決。雙方之主張及法院之認定事實與適用法律，摘錄如下：

甲主張：伊與乙於民國五十七年一月九日結婚，婚後於七十一年二月間同往美國創業，迨七十四年十一月一日為順利取得美國居留權，辦理假離婚協議，再經美國加州聖塔巴巴拉郡高等法院於同年月六日據該假離婚協議判決兩造離婚。惟兩造並無離婚之真意，其後仍繼續同居共財，維持夫妻之實質關係。詎乙因與訴外人丙同居生子，欲取得與丙女之正式婚姻關係，竟向台北市戶政事務所辦理兩造離婚之戶籍登記。甲即有請求確認兩造間婚姻關係存在之必要等情。求為確認兩造間婚姻關係存在之判決。

乙則以：兩造業經在美國當地之法院判決准許離婚，足見兩造之離婚，並非通謀之虛偽意思表示。至於離婚後兩造仍有往來，乙甚至為甲之父服喪，均係離婚後之事，不得因而謂兩造婚姻仍然存在等語，資為抗辯。

法院認為：本件兩造為夫妻，於七十一年二月間同往美國創業，於七十四年十一月六日經美國加州聖塔巴巴拉郡高等法院判決離婚之事實，有該法院判決書及翻譯本附卷可稽，並為兩造所不爭執。查美國訂立台灣關係法與我國繼續實質關係，從而對於彼此法院之判決，非無國際相互之承認。前開美國加州聖塔巴巴拉郡高等法院又係兩造離婚原因事實發生時之居所地管轄法院，該法院判決兩造離婚，於訴訟程序並無不合。惟外國法院之判決，有背公共秩序或善良風俗者，不認其效力，民事訴訟法第四百零二條第一項第三款定有明文。且此規定所指，不以外國法院判決所宣告之法律上效果，有背公共秩序或善良風俗者為限，其本於有背公共秩序或善良風俗之原因，而宣告法律上之效果者，亦包括在內。經查兩造於七十一年二月間同往美國，即在加州經營汽車旅館。雖於七十四年十一月一日協議離婚，乙仍將該汽車旅館交由甲管理，兩造日常生活繼續保持密切關係，甲之信用卡亦由乙使用，乙因病住院之帳單，係由甲支付，甚且甲之父於七十七年三月二日去世，乙仍以女婿身分服喪參加吊祭等各項事實，有信用卡開戶證明、使用信用卡紀錄、醫院帳單支付證明、訃聞影本及照片等件在卷足憑。又該次協議離婚，就兩造所生子女，應由何人負扶養監護之責，乙對甲之贍養等問題，均未論及等情節，兩造之協議離婚，非出於真意，已堪認定。甲主張其時為順利取得美國之居留權，辦理假離婚協議，即可採信。美國加州聖塔巴巴拉郡高等法院本於該假離婚協議所為准許兩造離婚之判決，依前開說明，應不得承認其效力。甲請求確認兩造間婚姻關係仍然存在，洵屬正當云云。為其得心證之理由，爰維持乙敗訴之判決，於法核無違誤。上訴論旨，猶執前詞，指摘原審取捨證據、認定事實之職權行使，為違背法令，聲明廢棄原判決，非有理由。

以上所引述之事實及問題，係參考我國法院判決。其主要爭議，在於兩造間婚姻關係是否存在及離婚是否有效等問題。此屬於婚姻身分關係之法律爭議，但於此不要求以解答法律問題方式回答此一問題，以及其解答在法律觀點上是否正確或有無理由，特此註明。解答本題時，請留意先分析整理其雙方之爭議及主張或答辯之要點，然後詳加論述何者之主張或答辯比較有理由？（50分）

附註：民事訴訟法第四百零二條：「外國法院之確定判決，有下列各款情形之一者，不認其效力：

- 一 依中華民國之法律，外國法院無管轄權者。
- 二 敗訴之被告未應訴者。但開始訴訟之通知或命令已於相當時期在該國合法送達，或依中華民國法律上之協助送達者，不在此限。
- 三 判決之內容或訴訟程序，有背中華民國之公共秩序或善良風俗者。
- 四 無相互之承認者。

前項規定，於外國法院之確定裁定準用之。」



試題隨卷繳回