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Social Credit System in China

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Abstract: The EU Commission proposed a regulation on artificial intelligence (AI) on 21 April 2021, which categorizes the use of AI in "social credit" as a prohibited application. This paper examines the definition and structure of the Social Credit System in China, which comprises various systems operating at different levels and sectors. The analysis focuses on two main subsystems: the database and one-stop inquiry platform for financial credit records, and the social governance tool designed to facilitate legal and political compliance. The development of the commercial customer credit reference is also explored. This paper further discusses the impacts and concerns associated with the implementation of the Chinese social credit system to raise awareness. The objective is to offer insights from the existing system and contribute to the ongoing discussion on regulating AI applications in social credit within the EU.

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I. The EU Draft AI Act

1   On 21 April 2021, the EU Commission proposed a regulation on Artificial Intelligence (AI) that categorized AI applications as prohibited, high risk and non-high risk. AI applications—those that distort human behaviors, engage in social scoring, and employ "real-time" remote biometric identification systems in publicly accessible spaces for law enforcement—were prohibited because they hold unacceptable risks and contradict Union values. Of particular interest was the EU's position on social scoring, defined as "the evaluation or classification of the trustworthiness of natural persons over a certain period of time based on their social behaviour or known or predicted personal or personality characteristics." Of interest here is social score, which results from evaluation or classification and leads to detrimental or unfavorable treatment that occurs in unrelated social contexts to the original behavior or is unjustified or disproportionate to their social behavior or its gravity. Noteworthy, the EU Commission's proposal initially limited the prohibited scope to public authorities. However, both the revised version in the General Approach by the EU Council and Amendments adopted by the European Parliament on 14 June 2023 extends the prohibition to private actors.

2   In contrast, AI used for credit scoring is classified as a high-risk AI application, defined in Annex III 5(b) as "evaluat[ing] the creditworthiness of natural persons or establish their credit score," while the small-scale providers applying such AI for their own use are exempted.

The distinction between prohibited and high-risk AI applications concerning a person's creditworthiness, then, lies in the evaluation-based behaviors: whether they are social behavior or known or predicted personal characteristics, and whether the treatment following the evaluation is unrelated or unjustifiably negative. If the credit rating AI application meets both conditions, it is prohibited. Otherwise, it can be developed under the requirements applicable to high-risk AI. One of the most well-known social scoring systems is the Social Credit System [Shehui Xinyong Tixi (社会信用体系)] (SCS) in China.

While it is widely promoted and presented as an innovative, omnipresent AI-based governance system,[1] this paper aims to critically analyze the SCS in China.

II. The Social Credit System

1. Structure and Design

The SCS in China is an embodiment of the policy concept known as "top-level design [dingcheng sheji (顶层设计)]," introduced in a central government document in 2011.[2]

3   In contrast to China's traditional approach of "crossing the river by feeling for stones [mozhe shitou guohe (摸着石头过河)]," where innovative policies are implemented as local pilot projects, the new concept emphasized a comprehensive, long-term plan developed by the central government. Local governments are then tasked with endorsing and implementing policies that align with the central plan while considering their unique local conditions.[3]

4   The SCS comprehensive, top-level plan is outlined in the "Planning Outline for the Construction of a Social Credit System (2014–2020)[4] (the Outline)," promulgated by the State Council of China in 2014. In the Outline, local governments are encouraged to explore establishing social credit systems, and certain cities were designated model cities

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[1] For example, Rachel Botsman, *Big Data Meets Big Brother as China Moves to Rate Its Citizens*, WIRED (21 Oct. 2017), https://www.wired.co.uk/article/chinese-government-social-credit-score-privacy-invasion; and Matthew Carney, *Leave No Dark Corner*, ABC NEWS (31 July 2020), https://www.abc.net.au/news/2018-09-18/china-social-credit-a-model-citizen-in-a-digital-dictatorship/10200278.

[2] Quanguo Renmin Daibiao Dahui (全国人民代表大会) [Nat'l People's Cong.], *Zhonghua Renmin Gongheguo Guomin Jingji he Shehui Fazhan Dishierge Wunian Guihua Gangyao (中华人民共和国国民经济和社会发展第十二个五年规划纲要) [The Twelfth Five-Year Plan for National Economic and Social Development of the People's Republic of China]* (2011).

[3] Wen-Hsuan Tsai et al., *Hobbling Big Brother: Top-Level Design and Local Discretion in China's Social Credit System*, 86 CHINA J. 1,1–2 (2021).

[4] Guowuyuan (国务院) [The State Council], *Shehui Xinyong Tixi Jianshe Guihua Gangyao (2014–2020 Nian) (社会信用体系建设规划纲要 (2014–2020年)) [Planning Outline for the Construction of a Social Credit System (2014–2020)]* (2014), translation available at: https://chinacopyrightandmedia.wordpress.com/2014/06/14/planning-outline-for-the-construction-of-a-social-credit-system-2014-2020 (updated 15 Apr. 2015).

by the National Development and Reform Commission (NDRC) and the General Office of the People's Bank of China (PBoC).[5]

5   Consequently, the SCS implementation varies across the country, resulting in diverse versions with different standards, mechanisms, and relevant behaviors and technologies.

2. Definition

6   At the national level, there is no specific definition of social scoring or credit. The SCS remains a vague yet ambitious goal of enhancing social honesty and trust, strengthening and establishing social administration, and achieving a harmonious socialist society where individuals take pride in their honesty, are ashamed of dishonesty, and hence are naturally inclined to act honestly and trustworthily.[6] The Outline includes examples of dishonest behaviors, such as serious/extremely serious production safety accidents, food and medication safety incidents, commercial fraud, production and sale of counterfeit products, tax fraud and evasion, fraud in benefits application, or academic misconduct. Thus, social credit, or social honesty, pertains to legality and integrity, which the 18th Party Congress classified into four areas:[7] government integrity, business integrity, social sincerity, and judicial credibility.

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[5] The NDRC and PBoC have designated four groups of model cities with the time evolves. Twelve cities were designated in 2017 as the first group, 16 cities/districts were added in 2019, 34 more in 2021, and 68 more in 2023. Guojia Fazhan Gaigewei Bangongting (国家发展改革委办公厅) [The General Office of NDRC] & Renmin Yinhang Bangongting (人民银行办公厅) [The General Office of PBOC] [hereinafter NDRC Gen. Off. & PBoC Gen. Off.], *Guanyu Yinfa Shoupi Shehui Xinyong Tixi Jianshe Shifan Chengshi Mingdan de Tongzhi (关于印发首批社会信用体系建设示范城市名单的通知) [Notice on Issuing the List of the First Group of Cities Demonstrating the Development of Social Credit System]* (2017); NDRC Gen. Off. & PBoC Gen. Off., *Guanyu Yinfa Dierpi Shehui Xinyong Tixi Jianshe Shifan Chengshi/Qu Mingdan de Tongzhi (关于印发第二批社会信用体系建设示范城市/区名单的通知) [Notice on Issuing the List of the Second Group of Cities/ Districts Demonstrating the Development of Social Credit System]* (2019); NDRC Gen. Off. & PBoC Gen. Off., *Guanyu Yinfa Disanpi Shehui Xinyong Tixi Jianshe Shifan Qu Mingdan de Tongzhi (关于印发第三批社会信用体系建设示范区名单的通知) [Notice on Issuing the List of the Third Group of Districts Demonstrating the Development of Social Credit System]* (2021); and NDRC Gen. Off. & PBoC Gen. Off., *Guanyu Yinfa Disipi Shehui Xinyong Tixi Jianshe Shifan Qu Mingdan de Tongzhi (关于印发第四批社会信用体系建设示范区名单的通知) [Notice on Issuing the List of the Fourth Group of Districts Demonstrating the Development of Social Credit System]* (2023).
[6] The Outline, *supra* note 4.
[7] *Id*.

7   However, even the Draft of the Social Credit System Construction Law of People's Republic of China,[8] published in November 2022 to gather the public's opinion on the new law, lacked a clear definition of social credit. Article 2 Section 2 refers to SCS construction as "the State initiates and guides the government, market and all parties in society to promote government integrity, business integrity, social sincerity and judicial credibility construction, to complete the credit reporting system, to regulate the credit information process, to enhance credit supervision and to make sound of the systematic mechanism of reward for honesty and punishment for dishonesty, to promote the construction of culture of honesty." Meanwhile, Article 2 Section 4 defines dishonesty as dishonest behavior of credit information subjects[9] recognized and confirmed by the State's organs in accordance with the laws.

8   Nevertheless, at the local level, 20 provincial governments have introduced their own social credit laws, with two other drafts published for the public's input. The laws use the same definition of social credit, first established in Shanghai City in 2017: "the status of compliance with legal obligations or adherence to contractual obligations of a natural person with full capacity to make juridical acts, a legal person or a non-incorporated organization in social and economic activities."[10]

3. Two Pathways of Infrastructure and Development

9   The SCS has evolved along two distinct paths:[11] First, the SCS is a potentially useful tool for social governance, led by the NDRC, a macroeconomic management agency under

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[8] NDRC et al., *Zhonghua Renmin Gongheguo Shehui Xinyong Tixi Gianshe Fa (Xiang Shehui Gongkai Zhengqiu Yijian Gao) (中华人民共和国社会信用体系建设法(向社会公开征求意见稿)) [Law of the People's Republic of China on the Establishment of the Social Credit System (Draft Released for Solicitation of Public Comments)] ("SCS Law Draft")* (2022), translation available at: https://www.chinalawtranslate.com/en/social-credit-law (posted 14 Nov. 2022).

[9] There is no definition for "credit information subjects" in the SCS Law Draft, but if read together with the definition of "credit information" in Article 2 Section 3, credit information subjects can be inferred to be the "natural persons with full civil competency, legal persons, and unincorporated organizations."

[10] There are variations in the range of subjects and behaviors in some of the laws. For instance, there is no "with full capacity to make judicial acts" in that of Liaoning Province and Chongqing City, a municipality at the provincial level. Another example is that the behaviors include "keeping promises" in that of Chongqing City and the draft of Sichuan Province.

[11] Chuncheng Liu, *Multiple Social Credit Systems in China*, 21 ECONOMIC SOCIOLOGY: THE EUROPEAN ELECTRONIC NEWSLETTER, no. 1, 2019, at 22, 23, https://www.econstor.eu/bitstream/10419/223109/1/Econsoc-NL-21-1-04.pdf.

the State Council. This approach led to the creation of nationwide governmental blacklists/redlists[12] by various central agencies and the piloting of municipal governmental SCS at the local level. Second, the SCS is viewed as an essential infrastructure for economic and financial activities. PBoC, China's central bank, is taking the lead in designing and implementing a nationwide governmental financial credit system.

a) SCS Led by NDRC

aa) Blacklists/Redlists and Joint Punishment and Reward Mechanism

10 Under the NDRC-led pathway, the SCS is designed to achieve the frequently cited slogan, "dishonest in one area, facing restrictions everywhere [yichu shixin, chuchu shouxian (一处失信，处处受限)]."[13] The aim, then, is to discourage citizens from

engaging in dishonest behavior, ultimately fostering honesty across all sectors of society. To meet this goal, four mechanisms were developed and integrated into SCS's operation: information gathering, information sharing, labeling and joint sanctions.[14] Each is addressed in turn below.

(1) Information Gathering Mechanism

11 The first step in nationwide information gathering from individuals and businesses is the "social credit unified code" (SC Unicode) registry. Each individual and organization is

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[12] Redlist is a term used in China when people who should be awarded are listed. It is a synonym to "whitelist" when used outside of China.

[13] Zhonggong Zhongyang Bangongting (中共中央办公厅) [Gen. Off. of the Communist Party of China's Central Committee] & Guowuyuan Bangongting (国务院办公厅) [Gen. Off. of the State Council], *Guanyu Jiakuai Tuijin Shixin Beizhixingren Xinyong Jiandu, Jingshi he Chengjie Jizhi Jianshe de Yijian (关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见) [Opinion on Accelerating the Development of a System of Credit Supervision, Warning and Sanctions for Trust-Breakers on the Defaulters' Lists]* (2016) [hereinafter Accelerating Opinion], https://www.gov.cn/zhengce/2016-09/25/content_5111921.htm (last visited 23 Nov. 2023).
This is a slogan meaning that if a person/entity is deemed dishonest in one area, then the restrictions against the person/entity should be at everywhere. It declares the nature of disproportional sanctions against persons deemed dishonest of SCS. There are several versions of translation of this slogan, such as "trust-breaking in one place, restrictions everywhere," or "dishonesty in one place leading to restrictions everywhere."

[14] Yu-Jie Chen et al., *"Rule of Trust": The Power and Perils of China's Social Credit Megaproject*, 32 Columbia J. Of Asian L., no. 1, 2018, at 1, 10, https://journals.library.columbia.edu/index.php/cjal/article/view/3369/3393.

identified with a unique 18-digit SC Unicode. For an individual, it is the sole and unalterable permanent ID card identity number,[15] also used in income, tax, and social insurance payment registration.[16] For legal entities and social organizations, the SC Unicode system replaces and integrates the fragmented registration code system used by different sectors and authorities. Following this reform, the SC Unicode is employed in commercial and industry permission, taxation, organization, social security, and statistics registration.[17]

12   The next step in information gathering from individuals and businesses is the prevention of anonymous actions:[18] real-name registration requirements are enforced, including in the digital environment. These obligations apply to telephone users,[19] internet users,[20] and internet forum users.[21] The national biometric identification database expansion also

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[15] Law of the People's Republic of China on Resident Identity Cards art. 3 (2011).

[16] Chen et al., *supra* note 14, at 10.

[17] Press Release, Guowuyuan (国务院) [The State Council], *New Social Credit Code System to Increase Administrative Efficiency* (17 June 2015, 2:37 PM), http://english.www.gov.cn/policies/latest_releases/2015/06/17/content_281475129090642.htm; Guowuyuan (国务院) [The State Council], *Guanyu Pizhuan Fazhan Gaigewei deng Bumen Faren he Qita Zuzhi Tongyi Shehui Xinyong Daima Zhidu Jianshe Zongti Fangan de Tongzhi (关于批转发展改革委等部门法人和其他组织统一社会信用代码制度建设总体方案的通知) [Notice of Permission and Forwarding the Overall Plan for Constructing the Unified Social Credit Code System for Legal Entities and Other Organizations proposed by NDRC and relevant departments]* (2015); and Guowuyuan (国务院) [The State Council], *Guanyu Jiakuai Tuijin "Wuzheng Heyi, Yizhao Yima" Dengji Zhidu Gaige de Tongzhi (关于加快推进"五证合一、一照一码"登记制度改革的通知) [Notice concerning Accelerating the Promotion of the "Uniting Five Licenses, One License One Code" Registration System Reform]* (2016).

[18] Rogier Creemers, *China's Social Credit System: An Evolving Practice of Control* (9 May 2018), at 20, https://ssrn.com/abstract=3175792 (last visited 31 Dec. 2023).

[19] Gongye he Xinxihua Bu (工业和信息化部) [Ministry of Industry and Information Technology], *Dianhua Yonghu Zhenshi Shenfen Xinxi Dengji Guiding (电话用户真实身份信息登记规定) [Telephone User Real Identity Information Registration Regulations]* (2013), translation available at: https://chinacopyrightandmedia.wordpress.com/2013/07/16/telephone-user-real-identity-information-registration-regulations (updated 23 July 2013).

[20] Guojia Hulianwang Xinxi Bangongshi (国家互联网信息办公室) [Cyberspace Administration of China], *Hulianwang Yonghu Zhanghao Mingcheng Guanli Guiding (互联网用户账号信息管理规定) [Internet User Account Name Management Regulations]* (2015), translation available at: https://chinacopyrightandmedia.wordpress.com/2015/02/04/internet-user-account-name-management-regulations (posted 4 Feb. 2015).

[21] Guojia Hulianwang Xinxi Bangongshi (国家互联网信息办公室) [Cyberspace Administration of China], *Hulianwang Luntan Shequ Fuwu Guanli Guiding (互联网论坛社区服务管理规定) [Provisions on the Management of Internet Forum Community Services]* (2017), translation available at: https://chinacopyrightandmedia.wordpress.com/2017/08/25/provisions-on-the-management-of-internet-forum-community-services (updated 20 Sep. 2017).

plays a role in identifying individuals and their behaviors, eliminating anonymous actions within the territory.[22]

13 As to the kind of information collected, the social credit system's construction is driven by the issue of trust in the market, which arose during the transition from a society of acquaintances to a society of strangers.[23] Moreover, the SCS was proposed in response to emerging incidents of fraud, production safety, academic misconduct, and counterfeit in the food industry,[24] which caused anger and panic in Chinese society. Therefore, the national SCS includes 12 types of public credit information: (1) basic registry information, (2) information on judicial judgments, rulings, and enforcement (3) administrative management information, (4) professional title and position information, (5) information on lists (or status) as irregular business operations (activities), (6) information on lists of seriously untrustworthy entities, (7) information on the performance of related contracts, (8) information on credit pledges and fulfillment of them, (9) information on credit assessment outcomes, (10) information on compliance, (11) information on honors related to honesty and trustworthiness, and (12) credit information that is voluntarily provided by market entities.[25]

(2) Information Sharing Mechanism

14 Most information collected was data registered or stored by relevant authorities even before the digital age.[26] The challenge for the SCS is to overcome information

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[22] Stephen Chen, *China to build giant facial recognition database to identify any citizen within seconds*, SOUTH CHINA MORNING POST (12 Oct. 2017, 9:00 PM), https://www.scmp.com/news/china/society/article/2115094/china-build-giant-facial-recognition-database-identify-any.

[23] Bi Honghai, *Old Regulatory Wine in a New Bottle of Technology--A Critical Analysis of China's Social Credit System*. 16 U. PA. ASIAN L. REV. 282, 287 (2021), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1072&context=alr.

[24] These fields were listed in the Outline, *supra* note 4**Fehler! Textmarke nicht definiert.**.

[25] NDRC & PBoC, *Quanguo Gonggong Xinyong Xinxi Jichu Mulu (2021 Nian Ban) (全国公共信用信息基础目录(2021年版) [Basic National Catalogue of Public Credit Information (2021 Edition)]* (2021 National Catalogue) (2021), translation available at: https://www.chinalawtranslate.com/en/public-credit-information-list (posted 3 Jan. 2022); and NDRC & PBoC, *Quanguo Gonggong Xinyong Xinxi Jichu Mulu (2022 Nian Ban) (全国公共信用信息基础目录(2022年版) [Basic National Catalogue of Public Credit Information (2022 Edition)]* (2022). The scope of information collected is listed in 2021 National Catalogue except for "(10) information on compliance," which was added in 2022.

[26] For example, the traditional "dang'an" regime has long been adopted by the Party State. In this regime,

asymmetries or, differently put: break information barriers,[27] enabling information sharing across sectors, regions, and between public and private sectors.[28] To facilitate this function, the Inter-Ministerial Joint Conference on SCS Construction (Joint SCS Conference) was established in 2007. Conference members are required to meet regularly, conduct research, propose SCS policies and measures, coordinate among different agencies, and address implementation challenges. [29] Initially comprised of 14 members, including NDRC, PBoC, Ministry of Commerce, Ministry of Finance, and Taxation Administration,[30] the conference reflected the economic nature and focus on trustworthiness and creditworthiness in the marketplace.[31]

15   However, as expectations for the SCS expanded from enhancing trust in commercial affairs to transforming the governance strategies related to social and political morality after the Decision of the 6th Plenum of the 17th Central Committee of the Chinese Communist Party (CCP)[32] in 2011, the Joint SCS Conference was expanded to 35 members in 2012. The newly participating members include the Supreme People's Court (SPC), the Supreme People's Procuratorate, the Central Discipline Inspection Committee, the Central Political Legal Committee, the Central Propaganda Department and the Central Leading Group for Spiritual Civilization Construction. The NDRC and

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a secret personal file is kept and is used while determining whether the person was illegible for a job, a promotion, or a Communist Party member. For more detailed discussion, *see* Lena H. Sun, *China's Secret Personnel Files: A Tool of Communist Control*, WASH. POST (17 Mar. 1992), https://www.washingtonpost.com/archive/politics/1992/03/17/chinas-secret-personnel-files-a-tool-of-communist-control/8f0e2fce-43a2-42fa-a22c-d2578a94ba28/?utm_term=.4bc9ac4a5fd2.

[27] Accelerating Opinion, *supra* note 13.

[28] The Outline, *supra* note 4 (this concept was emphasized in the Outline and mentioned repeatedly in various documents concerning SCS).

[29] Guowuyuan Bangongting (国务院办公厅) [Gen. Off. of the State Council], Guanyu Jianli Guowuyuan Shehui Xinyong Tixi Jianshe Buji Lianxi Huiyi Zhidu de Tongzhi (关于建立国务院社会信用体系建设部际联席会议制度的通知) [Notice on Establishing Inter-Ministerial Joint Conference on Social Credit System Construction in State Council] (2007), https://www.gov.cn/gongbao/content/2007/content_632090.htm (last visited 29 Dec. 2023).

[30] *Id.*

[31] Creemers, *supra* note 18, at 9, 12.

[32] Zhongguo Gongchandang Zhongyang Weiyuanhui (中國共產黨中央委員會) [Central Committee of the CCP], *Guanyu Shenhua Wenhua Tizhi Gaige de Jueding (关于深化文化体制改革的决定) [Decision Concerning Deepening Cultural Structural Reform]* (2011), translation available at: https://chinacopyrightandmedia.wordpress.com/2011/10/18/central-committee-of-the-chinese-communist-party-decision-concerning-deepening-cultural-structural-reform (updated 26 Feb. 2014).

PBoC have been designated as the leaders.[33] Subsequently, the conference was further expanded to 46 members in 2019.[34]

16   Under the Joint SCS Conference, the National Credit Information Sharing Platform (Sharing Platform) was launched in 2015[35] to connect various government agencies and enable information sharing among them. As of October 2022, the Joint SCS Conference members and 31 local credit platforms were connected to this platform. The platform has accumulated over 10 billion information entries and covers sectors such as food and drugs, transportation, and public security.[36]

17   Additionally, the Credit China website was established at the national and local levels to provide publication and one-stop inquiry services. The national Credit China website (https://www.creditchina.gov.cn) publishes lists of enterprises in 25 sectors. In some sectors, the website publishes a "blacklist" of enterprises, while in others, users can search for enterprises and access the Sharing Platform to obtain information such as registry details, administration management information, redlists, serious dishonesty lists, abnormal operations, credit pledges, credit rating, and judicial judgments. Abnormal operations may include failure to disclose information properly according to the Interim Regulation on Enterprise Information Disclosure, or reachable by the contact information and address registered. However, not all information on the blacklists is included in the public credit information report.

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[33] Guowuyuan (国务院) [The State Council] *Guanyu Tongyi Tiaozheng Shehui Xinyong Tixi Jianshe Buji Lianxi Huiyi Zhize he Chengyuan Danwei de Pifu (关于同意调整社会信用体系建设部际联席会议职责和成员单位的批复) [Reply on Agreeing on Adjusting Responsibilities and Members of Inter-Ministerial Joint Conference on Social Credit System Construction]* (2012), https://www.gov.cn/gongbao/content/2012/content_2199083.htm (last visited 29 Dec. 2023).

[34] *Xinzeng 4 Jia! Shehui Xinyong Tixi Jianshe Buji Lianxi Huiyi Chengyuan Danwei Tiaozheng wei 46 Jia (新增4家！社会信用体系建设部际联席会议成员单位调整为46家) [Adding 4 Agencies! Members of Inter-Ministerial Joint Conference on Social Credit System Construction Are Adjusted to 46 Agencies]* (31 July 2019, 8:56 PM), https://www.sohu.com/a/330663180_774283.

[35] Guojia Gonggong Xinyong Xinxi Zhongxin (国家公共信用信息中心) [National Center of Public Credit Information], *Quanguo Xinyong Xinxi Gongxiang Pingtai Jianjie (全国信用信息共享平台简介) [Introduction to National Credit Information Sharing Platform]* (22 Oct. 2020), http://www.ncpci.org.cn/ztzl/202010/t20201022_213912.html.

[36] *Id.*

(3) Labeling Mechanism

18   At the national level, the SCS's primary labeling mechanism involves placing individuals and entities deemed to have engaged in "trust-breaking" behaviors [shixin xingwei (失信行为)] on blacklists; and those deemed to have engaged in "trust-keeping" behaviors [shouxin xingwei (守信行为)] on redlists. Trust-breaking behaviors can include law violations, non-performance of legal obligation, and breach of rules, regulations, or industry standards.[37]

19   The most well-developed and influential blacklists are the Lists of Dishonest Persons Subject to Enforcement (the Defaulters' List) published by the courts. According to the SPC Provisions on Publishing Judgment Defaulters' List (SPC Publishing Provisions) issued in 2013 and revised in 2017, 38 all courts nationwide are required to include all subjects with the ability to fulfill effective legal documents but refusing to do so on the Defaulters' List and upload them to the SPC's public database for publication on national websites. Blacklisting is used for its naming and shaming effect to motivate defaulters to fulfill their obligations, so courts go beyond mere publication on official websites. For instance, if the defaulter is a civil servant, the court may give the defaulter's information to their work institution and relevant departments[39] and publicly display their name and photo (some also include ID number or amounts owed) on TVs, bus boards, and train

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[37] The Outline, *supra* note 4.

[38] Zuigao Renmin Fayuan (最高人民法院) [SPC], *Zuigao Renmin Fayuan Guanyu Gongbu Shixin Beizhixingren Mingdan Xinxi de Ruogan Guiding (*最高人民法院关于公布失信被执行人名单信息的若干规定*) [SPC's Several Provisions on Publishing Judgment Defaulters List]* (2017), translation available at: https://www.chinalawtranslate.com/en/%E9%AB%98%E9%99%A2%E5%85%B3%E4% BA%8E%E5%85%AC%E5%B8%83%E5%A4%B1%E4%BF%A1%E8%A2%AB%E6%89%A7%E8%A1% 8C%E4%BA%BA%E5%90%8D%E5%8D%95%E4%BF%A1%E6%81%AF%E7%9A%84%E8%A7%84% E5%AE%9A%EF%BC%882017%E5%B9%B4/ (posted 1 Mar. 2017).

[39] *Id.* art. 8(3) (the implication also reminds people of the traditional *dang'an* regime).

station screens, [40] or even create short Douyin videos. [41] Some courts cooperate with local telecommunications companies to change the defaulters' ringtone to "the person you are calling has been placed on the court's defaulter list. Please urge him/her to perform the obligation." [42]

20   While these measures raise concerns about privacy and personal information rights, surprisingly, they are not considered infringements on privacy or personal information rights. According to Article 262 of the Civil Procedure Law, when a person subject to enforcement fails to fulfill an obligation determined by a legal document, the court can take measures such as restricting them from leaving the country, recording their status in the credit reference system, publishing their information through media, and take other lawful measures. This article means that the Defaulters' List Regulation, which carries legal binding force, [43] authorizes courts to publicize the Defaulters' List, [44] including defaulters' name, gender, age, and ID number. [45]

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[40] Hou Linliang (侯琳良), G*uangchang Shai "Laolai" Chengjie haishi Xiuru (广场晒"老赖" 惩戒还是羞辱) [Publicizing "Laolai" Information on Screens on a Square: Is It to Punish or Humiliation?]*, RENMIN RIBAO (人民日报) [PEOPLE'S DAILY] (3 Feb. 2015, 5:02 AM), http://finance.people.com.cn/n/2015/0203/c1004-26495471.html ("Laolei" is a newly made Chinese word, which means "always refusing to pay," literally, and is used specifically to call those on the Defaulters' List); and *Nin Boda de Jizhu shi Laolai, Zhe Neng Pojie Zhixing Nan? Bie Dou le (您拨打的机主是老赖，这能破解执行难？别逗了) [The Person You Are Calling is Laolei. This Can Break the Obstacles in Enforcement? Quit Kidding]* (14 June 2017, 09:10 AM), https://www.sohu.com/a/148709694_268525.

[41] *Shua Douyin Jing Shuachu Jiaren shi "Laolai"! Wangyou: Jiyi Ren Zhengzai Weiguan Nimen Laizhang, Kuaikuai Hauanqian! (刷抖音竟刷出家人是"老赖"！网友：几亿人正在围观你们赖账，快快还钱！) [Viewing Douyin Videos and Suddenly Found a Family Member is a "Laolai"! Netizen: Thousands of Millions of People Are Watching You Refuse to Pay. Hurry Up and Pay!]*, GUANCHAZHE WANG (观察者网) [GUANCHA.CN] (3 July 2018, 10:08 PM), https://mp.weixin.qq.com/s/dRNRnDbXyFIkZlIPemg2rw (Douyin is the Chinese version of TikTok).

[42] Chang Fang (张帆), *"Nin Boda de Jizhu shi "Laolai" Dengfeng Fayuan Wei Bufen "Laolai" Dingzhi "Shixin Cailing" (您拨打的机主是"老赖" 登封法院为部分"老赖"定制"失信彩铃") [The Person You Are Calling is "Laolai." Dengfeng Court Has Designated "Trust-Braking Ringtone" For Some "Laolais."]* (16 June 2017, 08:03 AM), https://www.sohu.com/a/149316255_115402.

[43] Zuigao Renmin Fayuan (最高人民法院) [SPC], *Zuigao Renmin Fayuan Guanyu Sifa Jieshi Gongzuo de Guiding (最高人民法院关于司法解释工作的规定) [SPC's Provisions on the Work Concerning Judicial Interpretation]* art. 5 (2021). For an English introduction to the provisions, *see* Laney Zhang, *China: Supreme People's Court Introduces New Type of Judicial Interpretation*, LIBRARY OF CONGRESS (29 July 2021), https://www.loc.gov/item/global-legal-monitor/2021-07-29/china-supreme-peoples-court-introduces-new-type-of-judicial-interpretation.

[44] SPC Publishing Provisions, *supra* note 38, art. 7(2).

[45] *Id.* art. 6 item 2.

(4) Joint Sanctions Mechanism

21 The final component of the blacklist/redlist system is the joint punishment mechanism for dishonesty and joint reward system for honesty to further motivate honest behavior and deter dishonest behavior.[46] In this mechanism, the blacklisted subjects face restrictions in sectors other than the one in which the misconduct occurred, provided that the authority participates in the mechanism.

22 The first blacklist leading to the joint punishment system was the aforementioned Defaulters' List published by the courts. Several Provisions of the Supreme People's Court on Restricting High Consumption of Judgment Debtors (SPC Provisions) were published and put into effect in 2010, and amended in 2015.[47] Accordingly, listed debtors are restricted from high consumption, including purchasing first-class train and flight tickets, real estates, and expenses related to vacations.[48] Additionally, children of blacklisted individuals are prohibited from attending private schools.[49]

23 In practice, various authorities supervising different sectors participate in the joint punishment mechanism through Memorandum of Understanding (MoU). Signing an MoU to achieve joint punishment and reward goals in social credit system construction began in late 2015, with the Joint Disciplinary Actions against Relevant Responsible Parties of Illegal and Dishonest Listed Companies, in which the China Securities Regulatory Commission sent companies punished or prohibited from the market to joint punishment. SPC also signed an MoU with other 44 agencies to expand the sanctions against listed

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[46] Guowuyuan (国务院) [The State Council], *Guanyu Jianli Wanshan Shouxin Lianhe Jili he Shixin Lianhe Chengjie Zhidu Jiakuai Tuijin Shehui Chengxin Jianshe de Zhidao Yijian (关于建立完善守信*联合激励和失信联合惩戒制度加快推进社会诚信建设的指导意见*) [Guiding Opinions Regarding Establishing and Improving the System of Joint Incentive for Keeping Faith and Joint Punishment for Losing Faith and Accelerating the Advancement of the Development of Social Honesty]* (2016).

[47] Zuigao Renmin Fayuan (最高人民法院) [SPC], *Zuigao Renmin Fayuan Guanyu Xianzhi Beizhixingren Gaoxiaofei de Ruogan Guiding (最高人民法院关于限制被*执行人高消费的若干规定*) [SPC's Several Provisions on Restricting High-Spending and Related Spending by Persons Subject to Enforcement]* (2015), translation available at: https://www.chinalawtranslate.com/en/supreme-peoples-courts-several-provisions-on-the-restricting-high-spending-and-related-spending-by-persons-subject-to-enforcement (posted 22 July 2015).

[48] *Id.* § 3.

[49] *Id.*

defaulters.[50] However, this trend ended in 2018, and no central-level MoU has been signed since 2019. Currently, 51 MoU covering a wide range of sectors were signed at the national level, including 43 for joint punishment of dishonesty, five for joint rewards for honesty, and three for both systems.[51]

24 The MoU may list the behaviors leading to blacklisting explicitly, referring to the responsible authority's departmental regulatory documents or authorize the responsible authority at different levels to include them.[52] Due to a lack of clear standards at the central level, different local authorities' thresholds under the third category are inconsistent across the country. Yet the first two categories provide regulated clarity and specificity. Of the 226 listed or referred joint punishable behaviors, 214 are repetition of law-violating acts, while 12 are violations of contractual obligation previously subject to civil liabilities but now included in a joint punishment mechanism.[53]

25 Criticisms against the broad application of MoU include that they are only departmental regulatory documents,[54] instead of laws promulgated by the National People's Congress,

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[50] NDRC et al., *Guanyu Dui Shixin Beizhixingren Shishi Lianhe Chengjie de Hezuo Beiwanglu (关于对失信被执行人实施联合惩戒的合作备忘录) [Memorandum of Understanding on Taking Joint Disciplinary Actions against Dishonest Persons Subject to Enforcement]* (2017).

[51] The participating sectors include cultural markets, statistics, accounting, government procurement, intellectual property (patents), social insurance, scientific research, medical services, tourism, public resources trading, housekeeping services, transport engineering construction, marriage registration, charity donation, Entry-Exit Inspection and Quarantine, work safety, Payment of Wages to Migrant Workers, Domestic Trade Circulation, Foreign Economic Cooperation, insurance, Transportation and Logistics, Petroleum and Natural Gas, Real Estate, salt, Electronic Authentication Service, Customs, finance, Agricultural Supplies, taxation, Management and Use of Fiscal Funds, Quality, Environmental Protection, youth volunteers, judicial enforcement, and listed companies.

[52] Peng Chun (彭錞), *Shixin Lianhe Chengjie Zhidu de Fazhi Kunjing ji Chulu--Jiyu Dui 41 Fen Zhongyangji Shixin Chengjie Beiwanglu de Fenxi (失信联合惩戒制度的法治困境及出路———基于对41份中央级失信惩戒备忘录的分析) [The Legal Dilemma and Way Out of the Joint Punishment System for Dishonesty – Based on the Analysis of 41 Memorandums of Joint Punishment for Dishonesty at Central Level]*, 38 FASHANG YANJIU (法商研究) [STUDIES IN L. AND BUS.], no. 5, 2021, at 47, 53, https://fsyj.zuel.edu.cn/_upload/article/files/10/64/9834af1540a6bc0a750419e16083/f5204baf-52e1-4f8f-9488-afcb4a321e3b.pdf.

[53] *Id.* at 53–54.

[54] A departmental regulatory document belongs to level 4 of China's legal authority, where level 1 is The Constitution of the People's Republic of China, level 2 is laws promulgated by the National People's Congress and its Standing Committee, level 3 is administrative regulations enacted by the State Council and its standing committee, level 4 is ministerial regulations, and level 5 is rules issued by Bureaus under the Ministries and Commissions. For more detailed introduction to the authority of China's legal authority, *see* China Tax, *Authority of the PRC Laws, Regulations, Rules and Decrees*, https://www.china-tax.net/prc-law-in-brief/authority-of-the-prc-law-regulation-and-rules.html (last visited 1 Jan. 2024).

so the authority to restrict citizens' rights or impose additional obligations are questioned.[55] However, 91% of the punishments listed in the MoUs merely provide details of effective laws or involve their repetition. From this perspective, an MoU is just a user-friendly memo for the individual rather than forms of new laws constructing the SCS.[56] Nonetheless, the remaining 9% of measures that create new requirements, such as qualifying for administrative permits by not being on the blacklists, should not be neglected.[57]

bb) Social Credit Scores in Local Pilot Projects

26 The quantification of social or non-financial creditworthiness, although not implemented at the national level, can be observed in numerous local pilot programs, each displaying significant variation[58] As of May 2019, at least 21 cities had introduced such programs,[59] which deduct points for designated trust-breaking behaviors while adding points for demonstrated trust-keeping acts. The evaluated targets are then classified into different ranks based on their accumulated points. These pilot programs differ in default points, scope, indicators, and other aspects.

(1) Rongcheng Example

27 Among the local pilot projects, the one in Rongcheng City is most well-known,[60] garnering frequent media attention.[61] The initiative started by declaring the year 2012 as the "Year

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[55] *See* Shen Yilung (沈毅龙), *Lun Shixin de Xingzheng Lianhe Chengjie ji Qi Falü Kongzhi (论失信的行政联合惩戒及其法律控制) [Discussion On The Administrative Joint Punishment For Dishonesyt and Its Legal Control]*, FAXUEJIA (法学家) [LEGALIST], no. 4, 2019, at 120; Wang Reixue (王瑞雪), *Zhengfu Guizhi zhong de Xinyong Gongju Yanjiu (政府规制中的信用工具研究) [Research on The Credit Tool in Government Regulation]*, ZHONGGUO FAXUE (中国法学) [CHINA L.], no. 4, 2017; Shen Gui (沈岿), *Shehui Xinyong Tixi Jianshe de Fazhi zhi Dao (社会信用体系建设的法治之道) [The Legal Way to Construct Social Credit System]*, ZHONGGUO FAXUE (中国法学) [CHINA L.], no. 5, 2019.
[56] Peng, *supra* note 52, at 55–56.
[57] *Id.* at 56–57.
[58] Liu, *supra* note 11, at 25–27.
[59] *Id.*
[60] Jeremy Daum, *Getting Rongcheng Right* (29 Mar. 2019), https://www.chinalawtranslate.com/en/getting-rongcheng-right.
[61] For example, Laowhy, *How Does China's Social Credit System Work?*, YOUTUBE (27 Nov. 2020), https://www.youtube.com/watch?v=PVkWokLqPOg; and Laowhy, *Is China's Social Credit System Real? - I Found Out*, YOUTUBE (21 Oct. 2021), https://www.youtube.com/watch?v=s22tMR4YoN0 (Youtuber Laowhy has introduced China's Social Credit System based on Rongcheng's project in these videos).

of Credit Construction." After two years of extensive discussion and preparation, the social credit system was officially launched, encompassing the entire process from data collection, evaluation, to publication and application.[62] To provide a legal foundation and establish clearer standards for the creditworthiness score implementation, a notice was issued in 2016, introducing three measures and one regulation.[63]

28   The Rongcheng SCS comprises four subsystems targeting natural persons, legal persons, party and government institutions, and village and community organizations.[64] Notably, it is the first social credit system to include party and government institutions, as well as village and community organizations.[65] The system covers over 601,000 local residents, 30,000 immigrants, 35,000 sole proprietorships, 16,000 enterprises, 140 party and government departments, and 940+ village and community organizations.[66] For individuals, an extensive array of information is collected, from personal data and commercial activities to social management and judicial enforcement. Certain industry professionals' behaviors are also incorporated. Some examples of information are included in each category below:

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[62] Interview with Liu Changsung (刘昌松), Rongcheng Shiwei Fushuji, Shizhang (荣成市委副书记、市长) [Deputy Party Secretary and Mayor of Rongcheng City], *Rongcheng: Jian Xinyong Tixi, Chuang "Shifan Chengshi" (荣成：建信用体系　创"示范城市") [Rongcheng: Constructing Credit System, Creating "Demonstration City"]* (13 July 2017, 6:20 PM), http://k.sina.com.cn/article_1787920531_6a918093034002uyh.html.

[63] Rongchengshi Renmin Zhengfu (荣成市人民政府) [The People's Government of Rongcheng City] [hereinafter Rongcheng Gov.], *Rongchengshi Ziranren Zhengxin Guanli Banfa (荣成市自然人征信管理办法) [Rongcheng Municipal Measures on Credit Reference of Natural Persons]* (2016); Rongcheng Gov., *Rongchengshi Shehui Faren Zhengxin Guanli Banfa (荣成市社会法人征信管理办法) [Rongcheng Municipal Measures on Credit Reference of Social Legal Persons]* (2016); Rongcheng Gov., *Rongchengshi Ziranren he Shehui Faren Xinyong Xinxi Pingjia Guiding (荣成市自然人和社会法人信用信息评价规定) [Rongcheng Municipal Provision on Credit Assessments of Natural Persons and Social Legal Persons]* (2016) [hereinafter 2016 Credit Assessment Provision]; and *Rongcheng Gov., Rongchengshi Geren Xinyong Jiangcheng Guanli Banfa (荣成市个人信用奖惩管理办法) [Rongcheng Municipal Measures on Personal Credit Rewards and Punishments]* (2016) [hereinafter 2016 Credit Rewards and Punishments Measures].

[64] Interview with Liu Changsung (刘昌松), *supra* note 62.

[65] *Xinyong Tixi Jianshe Lilun Shijian Wenti Yantaohui zai Rongcheng Zhaokai (信用体系建设理论实践问题研讨会在荣成召开) [Seminar on Questions Regarding Theory and Practice of Credit System Construction was Held in Rongcheng]*, ZHONGGUO SHANDONG WANG (中国山东网) (24 Dec. 2017, 10:06 AM), http://k.sina.com.cn/article_1688743504_64a82e50020002aqu.html.

[66] Interview with Liu Changsung (刘昌松), *supra* note 62.

–   Personal data: name, gender, date of birth, ID number, address, contact, employment status, family members, education level, marital status.

–   Commercial activities: loans or guarantees from financial institutions, public services payment, loan from or payment to businesses.

–   Social management: administrative suits, penalties and compulsion, tax payments, social benefits, social insurance payment, academic plagiarism, party discipline, government sanctions, negative impacts on society due to enterprise activities.

–   Judicial enforcement: criminal records, civil judgments, fraudulent lawsuits, avoidance of legal obligations, refusal to fulfill obligation from effective legal documents.

29 After gathering this information, every subject in the system receives a report on their public credit information, and the system incorporates the blacklist/redlist mechanism, as an information entry in the system. Rongcheng's system further links each information entry with a score to be either added or deducted to provide each subject with an overall credit score. The scheme assigns a default 1000 points to every subject, and the scores are adjusted based on a list of creditworthy and untrustworthy behaviors and their corresponding points. If an individual exhibits any listed behavior, their creditworthiness score is adjusted accordingly. For a natural person, the list includes 570 items that result in point deductions and 150 items for earning points.[67] The subject is subsequently categorized into one of the six credit levels based on their accumulated scores. The chart below illustrates the six credit levels and their corresponding score ranges.

Level	Sublevel	Corresponding Points
Model of Creditworthiness (AAA)	-	above 1050
Exceptional Creditworthiness (AA)	-	1030–1049
Creditworthy (A)	A+	1001–1029
	A	1000
	A-	960–999
Creditworthiness Warning (B)	-	850–959 or directly level drop

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[67] *Id.*

Untrustworthy (C)	-	600–849 or directly level drop
Seriously Untrustworthy (D)	-	Below 600 or directly level drop

30 The credit level can also drop directly to level B, for example, if an individual engages in specific trust-breaking behaviors, such as drunk-driving. Penalties from administrative detention or criminal detention, facing expulsion from the CCP or being representative of enterprises placed on the SPC's Defaulters' List results in a drop to credit level C. A credit level drop to D occurs if placed on SPC's Defaulters' List, received a principal penalty for intended crime, or serving a sentence of more than three years for a crime of negligence.[68]

31 The consequences of each credit level are as follows:

- Credit Level B: The authorities provide education, credit reminders, conduct interviews, and increase scrutiny to enhance management.

- Credit levels C and D: Social benefits and subsidies are canceled, honors are revoked, routine inspections are more frequent, access to loans, government procurement, bidding and recruitment is restricted or prohibited, and professional qualification is suspended or canceled and publicized.[69]

32 The evaluation index and the corresponding added/deducted scores were updated in 2019[70] to enhance consistency, precision, and inclusiveness in areas of community management and policy promotion. Furthermore, scores for voluntary/community services, money and blood donation were elevated[71] to encourage increased participation in these activities.

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[68] 2016 Credit Assessment Provision, *supra* note 63, art. 5–11 (the scenarios causing level drop are listed).
[69] 2016 Credit Rewards and Punishments Measures, *supra* note 63, art. 13–15.
[70] Rongcheng Gov., *Rongchengshi Shehui Chengyuan Xinyong Jifen he Xinyong Pingjia Guanli Banfa (荣成市社会成员信用积分和信用评价管理办法) [Rongcheng Municipal Measures on the Management of Members of Society's Credit Points and Credit Assessments]* (2019).
[71] Rongcheng Gov., *Guanyu "Rongchengshi Shehui Chengyuan Xinyong Jifen he Xinyong Pingjia Guanli Banfa" de Zhengce Jiedu (关于《荣成市社会成员信用积分和信用评价管理办法》的政策解读) [Policy Interpretation of "Rongcheng Municipal Measures on the Management of Members of Society's Credit*

33   In July 2018, NDRC emphasized that municipal government-developed credit scores should only be associated with the reward mechanism. For instance, individuals with higher credit scores may benefit from shorter assessment or process periods for applications requiring authority approval and receive discounts or be exempt from deposits for public transportation services. However, punishments resulting from low credit scores are prohibited. Importantly, the right to basic public service and the right entitled by law cannot be restricted based on credit scores.[72]

34   Rongcheng City government, in accordance with the NDRC's instruction, prohibited joint punishment based on an individual's credit score in its 2021 updated measures.[73] Residents could also opt out of the scoring program,[74] resulting in a report with only scoreless social credit information. The mechanism to drop to B and C was removed, and reasons to drop to D, were restricted to blacklisting or having a criminal record. Accordingly, the corresponding score for levels C and D is adjusted so that scores below 849 are categorized as level C. Level D is for those blacklisted or having a criminal record.

35   Moreover, the indexes causing point deduction in the updated score scheme were significantly reduced and limited to clear determinations by authority or legal violations. For instance, defaulting on a loan does not cause point deduction. Still, if such obligations are confirmed and required by an effective legal document from courts or authorities, the refusal to perform leads to point deduction or even level drop. Another example is spreading negative information on the internet. While the act itself is not an index for point deduction, making the list of seriously untrustworthy entities for seriously undermining the order of cyberspace transmissions can lead to a direct credit level drop to D. For positive

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Points and Credit Assessments"] (2019).

[72] Xu Wen (许雯), *Fagaiwei: Geren Xinyongfen Jin Yongyu Chengjie Bude Xianzhi Difenzhe Fading Quanli (发改委：个人信用分禁用于惩戒 不得限制低分者法定权利) [NDRC: Personal Credit Score Cannot Be Used for sanctions or limiting the Statutory Rights of individuals]*, Xɪɴᴊɪɴʙᴀᴏ (新京报) [Bᴇɪᴊɪɴɢ Nᴇᴡs] (18 July 2019, 8:12 PM), http://www.bjnews.com.cn/news/2019/07/18/605095.html.

[73] Rongcheng Gov., *Rongchengshi Shehui Xinyong Guanli Banfa (荣成市社会信用管理办法) [Measures for Administration of Social Credit in Rongcheng City]* art. 50 (2021); and Rongcheng Gov., *Rongchengshi Geren Chengxin Jifen Guanli Banfa (荣成市个人诚信积分管理办法) [Measures for Administration of Individual Credit Score in Rongcheng City]* [hereinafter 2021 Individual Credit Score Measures] art. 16 (2021).

[74] 2021 Individual Credit Score Measures, *supra* note 73, art. 7.

information, blood donation was removed as a score-adding index.[75] Now, the updated scheme includes only 70 items causing point deduction, 30 blacklists, and 49 items for earning points for a natural person.

36   From a punitive perspective, the credit score system serves a similar or even redundant role as the blacklists and the joint punishment mechanism. And the indexes used in the credit score system are violations of laws or regulations, leading some to view it more as a "rap sheet" than a credit score.[76] To promote implementing the credit system in Rongcheng City, (1) all city government policy documents now include credit level requirements, (2) citizens and entities seeking approvals must include credit pledges[77] in their submitted documents,[78] and (3) public resources, such as subsidies, supports, government bidding and procurements, prioritize individuals and entities with better credit.[79] For instance, most public institutions now require applicants to have a credit rating higher than C for recruitment purposes.[80]

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[75] Interview with Li Mingchun (李明君), Rongchengshi Shehui Xinyong Zhongxin Fuzhuren (荣成市社会信用中心副主任) [Deputy Director of Rongcheng City Social Credit Center], *Shi Shehui Xinyong Zhongxin Zaixian Huida Wenti (市社会信用中心在线回答问题) [City Social Credit Center Answers Questions on Radio]* (27 Oct. 2022), http://www.rongcheng.gov.cn/art/2022/10/27/art_40577_3096533.html (last visited 24 Nov. 2023).

[76] Daum, *supra* note 60.

[77] SCS Law Draft, *supra* note 8, art. 7(2) ("credit pledges" are defined as "pledges made to relevant departments (units) or the public by credit information subjects about their credit status or future performance of obligations").

[78] Press Release, Weihai Shiwei Xuanchuanbu (威海市委宣传部) [Propaganda Department of Weihei City], *Xianyu Shehui Xinyong Tixi Jianshe de "Rongcheng Moshi" (县域社会信用体系建设的"荣成模式") ["Rongcheng Model" of County-Level Social Credit System Construction]* (26 Nov. 2020, 4:07 PM), https://www.sdxc.gov.cn/jzyl/shzyhxjzg/202011/t20201126_11633723.htm (credit pledges have been added by Rongcheng government as a mandatory document to submit for an application to the government).

[79] *Id*.

[80] For instance, Rongchengshi Guoyou Zichan Fuwu Zhongxin (荣成市国有资产服务中心) [State-owned Assets Service Center of Rongcheng City], *Rongchengshi Guoyou Zichan Fuwu Zhongxin Shishu Guoyou Qiye Caiwu Fuzeren Zhaopin Jianzhang (荣成市国有资产服务中心市属国有企业财务负责人招聘简章) [Recruitment of the Chief Financial Officer of Municipal State-Owned Companies Recruited by State-owned Assets Service Center of Rongcheng City]* (2 June 2023, 3:42 PM), http://www.rongcheng.gov.cn/art/2023/6/2/art_40961_3689385.html (requiring at least a rating of B for personal credit); Rongchengshi Renshejü (荣成市人社局) [Rongcheng Municipal Bureau of Human Resources and Social Security], *2023 Nian Rongchengshi Zhaopin Shequ Gongzuo Renyuan Jianzhang (2023年荣成市招聘社区工作人员简章) [Recruitment of Community Workers by Rongcheng City in 2023]* (22 Feb. 2023, 4:38 PM), http://www.rongcheng.gov.cn/art/2023/2/22/art_80792_3425154.html (compared with CFO, which requires a higher standard in financial records, this position also requires at

37   In contrast to its conservative approach towards penalties, Rongcheng's SCS system employs various innovative and creative incentives to encourage individuals to improve their credit scores. Under the city-wide framework, 55 departments participate in offering 209 prestigious measures for people with high credit ranking.[81] These measures include benefits like guarantee-free personal loan up to ¥300,000 with a repayment period up to five years and more than a 30% interest rate discount for AA and higher ranking holders,[82] free public transportation for AAA ranking holders, a 50% discount for AA ranking holders, and no deposit required for hospitalization expenses below ¥50,000 for an AAA ranking holder and below ¥20,000 for an AA ranking holder.[83]

38   Rongcheng's SCS effectiveness is evident from belonging to the first group of 12 model cities and its top-ranking position among 383 county-level cities in city credit monitoring since 2018.[84] The city's SCS has even been selected as one of the 95 "Practical Cases Deeply Enforcing Socialism with Chinese Features in The New Era of Xi Jinping,"

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least a rating of B for personal credit); Rongchengshi Jiaoyu he Tiyu Jü (荣成市教育和体育局) [Rongcheng Municipal Bureau of Education and Sports], *2022 Nnian Rongchengshi Jiaoyu he Tiyu Jü Gongkai Zhaopin Jiaoshi Jianzhang (2022年荣成市教育和体育局公开招聘教师简章) [Public Recruitment of Teachers by Rongcheng Municipal Bureau of Education and Sports in 2022]* (27 Apr. 2022, 5:53 PM), http://www.rongcheng.gov.cn/art/2022/4/27/art_80792_2828340.html (the recruitment of elementary and middle school teachers also required at least a rating of B for personal credit).

[81] Interview with Li Mingchun (李明君), *supra* note 75.

[82] Press Release, Rongchengshi (荣成市) [Rongcheng City], *Rongchengshi Difang Jinrong Fuwu Zhongxin Yituo "Xinyong+" Youhua Yingshang Huanjing (荣成市地方金融服务中心 依托"信用+"优化营商环境) [Rongcheng City Local Financial Service Center Optimizes Business Environment by "Credit+"]* (14 Aug. 2023), https://www.rccredit.cn/wcm/content/detail/20230814143405_100189.html.

[83] Interview with Li Mingchun (李明君), *supra* note 75.

[84] Press Release, Rongchengshi (荣成市) [Rongcheng City], *Rongchengshi Chengshi Xinyong Jiance Paiming Lianxu Wu Nian Chanlian Quanguo Xianjishi Diyi (荣成市城市信用监测排名连续五年蝉联全国县级市第一) [Rongcheng City Has Ranked Number One for Five Years in A Row in City Credit Monitoring Among County-level Cities Across The Country]* (21 Feb. 2023), https://www.rccredit.cn/wcm/content/detail/20230221110309_100014.html.

categorizing it under the social management sector.[85] Notably, it stands as the only case selected specifically regarding credit system construction.[86]

(2) Suining Example

39   Suining County also launched a populace credit evaluation system in 2010. The default score for each citizen is 1000, comprised of four categories:[87]

−   Commercial service information: accounts for 150 scores and includes factors such as repayment on bank credits, credit card usage, contract performance, and repayment on other individuals or institutions.

−   Social service information: assigned 120 scores and includes aspects like tax payment, payment for utilities bills, and social insurances.

−   Social administration information: 530 scores are allocated based on records of theft, bribery, rule-breaking behaviors in city management, production and sale, business, family planning, domestic violence and traffic rules. Participating in cult activities, failing to fulfill the family maintenance obligations, and spreading rumors via the internet, messages, and mails also lead to point deductions.

−   Special information of social credit: contributes 200 scores and includes records of losing civil suits, as well as administrative and criminal punishments.

40   Participating in charity or volunteer services or receiving honors from the government also increases one's credit scores. Yet the CCP members' and public servants' score is

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[85] Press Release, Rongchengshi Rongmeiti Zhongxin (荣成市融媒体中心) [Rongcheng City Convergence Media Center], *Rongcheng Xinyong Gongzuofa Ruxuan "Shenru Guanche Xi Jinping Xinshidai Zhongguo Tese Shehui Zhuyi Sixiang Shijian Anli" (荣成信用工作法入选"深入贯彻习近平新时代中国特色社会主义思想实践案例") [Rongcheng's Credit Implementation Method Is Selected As One of The "Practical Cases Deeply Enforcing Socialism with Chinese Features in The New Era of Xi Jinping"]* (7 Feb. 2021, 8:07 AM), http://www.rongcheng.gov.cn/art/2021/2/7/art_40743_2528392.html.
[86] *Id*.
[87]   Suiningxian   Renmin   Zhengfu (睢宁县人民政府) [The   People's   Government   of   Suining County], *Suiningxian Dazhong Xinyong Xinxi Pinggu Xize (睢宁县大众信用信息评估细则) [Suining County Public Credit Information Evaluation Rules]* (2010), https://bkso.baidu.com/item/睢宁县大众信用信息评估细则 (posted 15 Mar. 2010).

deducted when being punished by the Party. Based on the credit scores, citizens are classified into four ranks:

−   Rank A: Points above 970

−   Rank B: Points between 850 and 969

−   Rank C: Points between 600 and 849 (also referred to as credit-warning level)

−   Rank D: Points below 600 (also known as discredit).

41   Normally, the scores are reevaluated annually. However, certain punishments can place a citizen in rank C, regardless of their previous scores, and they will remain in rank C for specified years. For example, those expelled from the CCP or positions in government will remain in rank C for three years, while individuals sentenced to imprisonment will stay in rank C for five years.

42   However, once the Suining municipal government's credit rating system proposal was published, it faced widespread criticism for two primary reasons. First, the government conducted the scoring system, which raised concerns about its impartiality and objectivity. Second, the government included irrelevant behavior in its assessment criteria, so the classification system was eventually abandoned.[88] Also, despite the various incentives and punishments based on credit scores listed in the proposal, an official admitted four years later that the application scope and effectiveness were much narrower than expected.[89] This admission sheds light on the project's experimental and pilot nature, revealing that the SCS is not as all-encompassing and influential as it was originally promoted to be.

cc) Credit Cities with More Advanced Algorithms

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[88] Creemers, *supra* note 18, at 10.

[89] Chang Yonhsheng (张永生) & Sun Beibei (孙贝贝), *Xuanwo zhong de Suiningxian Zhengfuban Zhengxin (漩涡中的睢宁县政府版征信) [Suining Government-led Credit Reference Is in Trouble]*, XINJINBAO (新京报) [BEIJING NEWS] (2 July 2014, 2:30 AM), http://www.bjnews.com.cn/inside/2014/07/02/323585.html.

43   Despite the consistent promotion of AI integration in SCS construction by central government policy documents,[90] most SCS implementations at the national and local levels have remained at a basic counting level, [91] as illustrated in the examples discussed earlier. Nonetheless, some local projects have taken a more innovative approach by collaborating with technology companies to implement more advanced algorithms.[92] For example, Suzhou, a city with a population of 10.6 million located approximately 100 km from Shanghai, established its credit scoring system, Fragrans Score [Guihua Fen (桂花分)] in collaboration with Ant Financial Services Group [Mayi Jinfu (蚂蚁金服)] (Ant Group).[93] Launched in 2015, the Fragrans Score System encompasses five dimensions of information, including basic, stability, moral, and asset. The collected information can be further categorized into 22 types and 243 items. The credit score is calculated using the Analytic Hierarchy Process, resulting in a comprehensive credit profile for each citizen. The score system ranges from 0 to 200, with 100 basis points assigned to every citizen as default, and 100 additional points[94] can be earned primarily through moral behaviors, such as participation in voluntary activities. Conversely, dishonest acts, such as being blacklisted, cause point deductions from the basis points.[95] A high score enables citizens to enjoy various privileges in public services, such as discounts on public transportation or deposit-free along with extended borrowing options from libraries.[96] And

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[90] Guowuyuan (国务院) [The State Council], *Guanyu Yinfa Xinyidai Rengong Zhineng Fazhan Guihua de Tongzhi (关于印发新一代人工智能发展规划的通知) [Notice on The Issuance of The New Generation AI Development Plan]* (2017).

[91] Kevin Werbach, *Orwell That Ends Well: Social Credit as Regulation for the Algorithmic Age*. 2022 U. ILL. L REV. 1417, 1430, https://illinoislawreview.org/wp-content/uploads/2022/09/Werbach.pdf.

[92] Shazeda Ahmed, *Credit Cities and the Limits of the Social Credit System*, in ARTIFICIAL INTELLIGENCE, CHINA, RUSSIA, AND THE GLOBAL ORDER 55, 56 (Nicholas D. Wright ed., 2019), http://www.jstor.org/stable/resrep19585.13 (last visited 1 Jan. 2024).

[93] *Id.* at 58 (the name of the score in the cited article is translated as "Osmanthus Points." However, the website uses "Fragrans Score," so this paper adopted this version); Ant Financial Services Group changed its name to Ant Group [Mayi Jituan (蚂蚁集团)] in June 2020, and it is referred to as "Ant Group" in this paper for consistency. For a more detailed introduction to Ant Group, *see* discussion *infra* Section II.3.2(B).

[94] Su Yan (苏雁), *"Guihuafen" Dazao Shimin Chengxin Tixi ("桂花分"打造市民诚信体系) ["Fragrans Score" Builds Credit System for Citizens]*, GUANGMING RIBAO (光明日报) [GUANGMING DAILY] (24 July 2017), https://epaper.gmw.cn/gmrb/html/2018-07/24/nw.D110000gmrb_20180724_5-04.htm.

[95] *Id.*

[96] *Id.*

the rolled-out results are mainly awards, while the "punishment" for individuals with a low score is exclusion from these benefits.[97]

dd) The Unbalanced Development of Different Aspects

44   Another important aspect of the NDRC-overseen SCS is its collection and publication of public credit information now targets mainly enterprises, with a few exceptions related to individuals. These exceptions include the Defaulters' List published by the courts, the List of Serious Default on Payment of Wages to Migrant Workers, and the List of Serious Violation of Law and Dishonesty for Overloading Transporting Vehicles.

45   The same unbalanced focus can be observed at the local level. Local governments categorize social credit into three aspects, business, government, and social, each targeting different entities. Among these, the business aspect benefits from clearer regulations and precedents in both law and practice, enabling a more effective determination of entities' honesty and misconduct. Consequently, this area has seen significant progress with active involvement from both local and central governments.[98] However, in stark contrast, the lack of precedents, specific regulations, and clear indicators at the national level, coupled with the fear of public attention and criticism, has made local officials extremely cautious. They are aware of the political risks associated with implementing policies that may not align with national expectations, which could jeopardize their political careers. Consequently, the scoring system targeting individuals in the social perspective has seen the least development among the different aspects of social credit.[99]

b) SCS led by PBoC

aa) Credit Reference Centre

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[97] Ahmed, *supra* note 92, at 59.
[98] Tsai et al., *supra* note 3, at 10.
[99] *Id.*

46   The PBoC-led SCS infrastructure boasts a nationwide state-held financial credit information system and is one of the most mature systems among all SCS initiatives.[100] It is a public credit reporting system operated by the Credit Reference Centre (CRC) (http://www.pbccrc.org.cn/crc/). Operating under the PBoC's supervision, CRC is an independent credit information service institution designed to establish, operate, and maintain the national centralized credit reporting system. The system's development began in 2004, with the integration of both commercial and consumer credit reporting systems and support from China's banking sector. Subsequently, the system was officially launched in 2006. In 2013, the Regulation on the Administration of Credit Investigation Industry's (RACII) implementation officially defined the credit reporting system as the Basic Financial Credit Information Database. The system is the world's largest credit information database, covering all enterprises and individuals with credit activities.[101]

47   The CRC mainly collects credit information from institutions providing credit, such as commercial banks, rural credit cooperatives, and micro-finance, which are mandated to upload data in accordance with RACII.[102] Additionally, the database is enriched with public information, including social security payments, housing provident fund payments, administrative penalties, awards related to environmental protection, tax arrears, and court judgments.

48   For the benefit of consumers and businesses alike, the CRC provides consumer and commercial credit reports upon request. The consumer credit report comprises four key sections: basic (or demographic) information, credit payment history, public records and query records. Under Article 17 of RACII, individuals have the right to access their own credit reports free of charge twice a year. This can be done through in-person queries at local PBoC branches, cooperating banks, or the CRC credit report inquiry

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[100] Lu Yu & Björn Ahl, *China's Evolving Data Protection Law and the Financial Credit Information System: Court Practice and Suggestions for Legislative Reform*, 51 HONG KONG L. J. 287, 288 (2021).
[101] Credit Reference Center, The People's Bank of China, *Overview*, http://www.pbccrc.org.cn/crc/zxgk/index_list_list.shtml (last visited 1 Jan. 2024).
[102] RACII art. 29(1), "[i]nstitutions engaged in credit business shall provide credit information to the Basic Financial Credit Information Database according to the relevant provisions."

website (https://ipcrs.pbccrc.org.cn).[103] Lending institution, prospective employers, and other authorized parties may also access an individual's credit report with their consent, for credit acquisition and management or pre-employment and pre-rental background checks.

49   Similarly, a commercial credit report is primarily utilized by banks for credit acquisition and management purposes. It is also referenced by government authorities in enterprise appraisals, procurement process, business audits, and investigations. Banks and government departments can access an enterprise's credit report with the enterprise's consent.

50   If individuals discover any incorrect or incomplete information in their credit report, they have the right to request correction from the CRC or the relevant banks or institutions responsible for submitting the information. If the complaint is not resolved satisfactorily, individuals may seek redress through the court. Several cases have already seen banks ordered to update or correct credit information they have submitted to the CRC.[104]

bb) The Commercial Consumer Credit Rating

51   Public authorities are not the sole participants in the development of consumer credit ratings. Many companies, particularly tech giants and platforms, developed consumer credit rating and took advantage of the considerable information they obtained from providing services and products. While the CRC's customer credit rating system included the information of 857 million individuals by the end of 2014, only about 350 million of

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[103] CRC, *Geren Xinyong Baogao（Gerenban）Zhanshi Yangben (个人信用报告（个人版）展示样本) [Sample of Self Inquiry Consumer Credit Report (detailed version)]*, http://www.pbccrc.org.cn/ewebeditor/uploadfile/20230426112754595001.pdf.

[104] For example, *Zhou Pingzhen Su Guangxi Shanglin Nongcun Shangye Yinhang Gufen Youxian Gongsi Mingyu Quan Jiufen An (周萍珍诉广西上林农村商业银行股份有限公司名誉权纠纷案) [Zhou Pingzhen v. Guangxi Shanglin Rural Commercial Bank Corp. Regarding Right to Reputation]*, 2021 Gui 0125 Minchu No. 1139 (2021桂0125民初1139号) (People's Court of Shanglin County of Guangxi Zhuang Autonomous Region 27 July 2021). In this case, the defendant, the bank, did not update the information after the plaintiff's guarantee liability expired, and thus infringed the plaintiff's right to reputation. As a result, the court issued a conjunction to ask the bank to update the credit information within ten days after the judgment came into effect. This case was selected as a classic case of judicial remedy on personality rights infringement by SPC in 2022.

them had credit records,[105] accounting for approximately 34.6% of those aged 15–64.[106] This gap created an opportunity for private entities, especially companies equipped with big data on commerce, to enter the field.

(1) The Trial License Period from 2015

52   In January 2015, PBoC issued a "Notice on the Preparation of Personal Credit Information Service," kickstarting commercial individual credit rating in China. Eight commercial companies (Sesame Credit, Tencent Credit, Ping An Bank's Qianhai Credit, Pengyuan Credit, China Chengxin Credit, IntelliCredit, Sinoway Credit, and Koala Credit) were granted trial licenses for individual credit rating and scoring systems.

53   One of the most well-known and extensive systems is Sesame Credit [Zhima Xinyong (芝麻信用)], launched by Ant Group, an affiliate of the Alibaba Group. Ant Group, which spun off from Alibaba, is also the owner of Alipay, initially introduced in 2003 as a payment tool for Alibaba's online shopping platform, Taobao.com. Alipay addressed the long-standing trust issue between merchant and consumers in China, which had been exacerbated in the e-commerce landscape. As a result, it was spun off from Alibaba and evolved into a third-party payment system, servicing other online retailers from 2004 onwards. Over time, Alipay expanded its services to offline payments with digital barcodes scanning, covering various sectors from e-commerce and travel booking to online insurance and bill payments. In the 2010s, Alipay further extended its services to include payment for investment fund companies, and launched its mobile wealth management platform, Yu'E Bao (余额宝), a popular alternative to traditional bank deposits due to its high annual return. In 2014, Alipay even established its own online-only bank, MyBank.

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[105]   CRC, *Zhengxin Xitong Jianshe Yunxing Baogao (2004–2014) (征信系统建设运行报告(2004–2014)) [Report on the Construction and Operation of Credit Rating System (2004–2014)]* (2015).
[106] China Statistics Press, National Bureau of Statistics of China, *Age Composition and Dependency Ratio of Population,* in CHINA STATISTICAL YEARBOOK-2015 (2015), https://www.stats.gov.cn/sj/ndsj/2015/indexeh.htm (last visited 1 Jan. 2024) (population aged 15–64 by the end of 2014 was 1,004,690,000).

54   Sesame Credit benefits from Alipay's position as the largest third-party payment service provider in China, boasting 451 million users in 2016,[107] and Taobao and T-mall being leading consumer e-commerce platforms with 407 million annual active buyers in 2015.[108] Thus, it has access to a vast customer database containing rich commercial and financial information not typically available to traditional banks.

55   Sesame Credit Score ranges from 350 to 950, with a higher score indicating greater creditworthiness. The score is calculated from 10,000 variables[109] powered by cloud-computing and machine learning and utilizes algorithms, such as logistic regression, decision trees, and random forest.[110] These variables are categorized into 70 factors across five dimensions, as listed below,[111] but the specific scoring algorithms and models remain confidential:[112]

56   Credit history (35%): Number of visited credit institutions, repayment and default amounts and cases in different time frame, length of credit history, and so forth.

57   Behavior preference (25%): Number of districts with delivery records, payment scenarios, transaction number and volumes in various product categories (baby products, games, furniture, cars, and traveling).

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[107] Daniel Slotta, *Annual Active Users of Third-Party Payment Tool Alipay in China from 2016 to 2019*, STATISTA (28 Sept. 2021), https://www.statista.com/statistics/1140297/china-annual-active-users-of-alipay.
[108] China Internet Watch Team, *Taobao/Tmall Users vs Tmall Global Users* (20 Apr. 2016), https://www.chinainternetwatch.com/17166/taobao-users-younger-tmall-global-uers.
[109] Bao Hui (包慧), *Qidi Zhima Xinyong "Buyiyang "de Shujuyuan (起底芝麻信用"不一样"的数据源) [Revealing the "Different" Data Source of Sesame Credit]*, 21 SHIJI JINGJI BAODAO (21世纪经济报道) (17 June 2015, 7:00 AM), https://m.21jingji.com/article/20150617/0c3b29fd50dd0a4a4b2f9d9e94f9cb99.html.
[110] Sesame Credit, *Zhima Fen (芝麻分) [Sesame Credit Score]*, https://www.zmxy.com.cn/index/detail/toc/2/0 (last visited 25 Nov. 2023).
[111] On the website and personal report, only a pentagon-shaped diagram indicating the performance of each dimension is shown, yet without number of each category; *Zhima Xinyong Yuansu Biao (DAS) Liebiao ji Hanyi (芝麻信用元素表(DAS)列表及含义) [List and Meaning of Factor of Sesame Credit (DAS, Data Attribute Service)]*(12 Mar. 2019), http://yinshihao.com/post/zhi-ma-xin-yong-yuan-su-biao-daslie-biao-ji-han-yi/ (the 70 factors, the detailed description and rubrics of each factor is shown in this document).
[112] Creemers, *supra* note 18, at 22.

58 Fulfillment capacity (20%): Illiquid assets (houses and cars), average amounts and returns of liquid assets and financial products in different time frames, payment and consumption amounts in various time frames, and so forth.

59 Identity characteristics (15%): Employer, occupational category, stability of consumption patterns, number of cellphone numbers used, days of steady cellphone numbers, days of steady delivery address.

60 Personal relationships (5%): Stability of social networks, social impact index, credit environment index.

61 One intriguing factor included in Sesame Credit's model is the type of consumed products. For example, diaper consumption suggests a higher score, as it signifies a sense of responsibility in the social context. Yet video game consumption might lead to an opposite result, as it is perceived as less responsible behavior.[113] However, while Sesame Credit did agree on the indication,[114] Hu Tao, general manager of Sesame Credit, clarified that the linkage between specific products and creditworthiness is not as straightforward. There is no direct positive correlation between a sense of family responsibility and credit defaults, or between frequent donation and credit defaults. Although when these two variables are combined, the model concludes that a person who both exhibits a strong sense of family responsibility and frequently donates is less likely to default.[115]

62 Sesame Credit quickly gained such significant influence and popularity that it is often mistakenly conflated with the governmental SCS. Its widespread use can be attributed to its vast user base and partnerships with various companies, within and outside the Alibaba Group. This positive feedback loop incentivizes other companies to collaborate

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[113] Liu, *supra* note 11, at 24.
[114] Celia Hatton, *China 'Social Credit': Beijing Sets Up Huge System*, BBC NEWS, Beijing (26 Oct. 2015), https://www.bbc.com/news/world-asia-china-34592186 (quoting an interview of Li Yingyun, Sesame's technology director, with Caixin, a Chinese magazine); and Bao, *supra* note 109.
[115] Bao, *supra* note 109.

with Sesame Credit, expanding its scope of application and attracting more users to opt-in.

63   A high Sesame Credit Score comes with privileges such as a deposit-free car, house and bike rentals, as well as borrowing umbrellas and power banks. Additionally, users' payment records while using these services contribute to their Sesame Credit Score. Besides, the credit limit in Ant Group's consumer credit products, Huabei (花呗) and Jiebei (借呗), is determined by one's Sesame score. Furthermore, Sesame Credit can substitute some of the documents required for a visa application and simplify the process for individuals (e.g., score 700 for a Singapore visa,[116] score 750 for a Luxemburg visa,[117] and a Sesame Report as proof of financial standing for a Canada visa).[118] Due to limited consumer credit records in traditional banking systems in China, Sesame Credit gained its prominence as an alternative method for credit institutions to assess creditworthiness. However, its increasing influence led to the rise of a black industry focused on boosting Sesame Scores.[119]

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[116]   Sesame Credit, *2015 Dashiji (2015大事记) [Significant Events in 2015]*, https://www.zmxy.com.cn/index/detail/about/1/0 (last visited 25 Nov. 2023); *Alitrip Introduces Credit-based Visa Application Service for Qualified Chinese Travelers*, BUSINESS WIRE (3 June 2015, 10:45 PM), https://www.businesswire.com/news/home/20150603006726/en/Alitrip-Introduces-Credit-based-Visa-Application-Service-for-Qualified-Chinese-Travelers (one example of various press reported this benefit announced by Sesame Credit); and c3zack, *Duoshou Yiwai zhi Xi: Zhima Xinyong 700+ Xinjiapo Qianzheng Qingsong Get (剁手意外之喜：芝麻信用700+ 新加坡签证轻松Get) [Pleasant Surprise Resulted from Over-Shopping: Get Singapore Visa Easily with Sesame Credit Score 700+]*, SHEME ZHIDE MAI (什么值得买) [WHAT WORTH BUYING] (3 Aug. 2016, 3:06 PM), https://post.smzdm.com/p/193118 (a post about a successful user experience on a website where people share shopping experiences and provide recommendations for things worth buying).

[117] Alitrip Introduces Credit-based Visa Application Service for Qualified Chinese Travelers, *supra* note 116; and *Alibaba Unit to Start Credit-Based Visa Application Services for Luxembourg*, CHINA DAILY (16 July 2015, 8:45 AM), http://usa.chinadaily.com.cn/epaper/2015-07/16/content_21301110.htm. However, it seems that the service has never been put into practice, since it is neither listed on Sesame Credit's website, nor on the Luxembourg's website for visa applications.

[118] Press Release, Government of Canada, *Innovative Collaboration Benefits Chinese Alipay Users as Ant Financial's Zhima Reports Are Now Accepted for Visitor Visa Applications* (23 Nov. 2018), https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/11/visitor-visa-applications-from-chinese-nationals-made-more-efficient.html.

[119] Ling He (零和), *Jiemi Zhimafen Shuafen: Diaosi Bianshen Haigui Jingying, Zhixu 400 Yuan (揭秘芝麻分刷分：屌丝变身海归精英，只需400元) [Uncovering the Secret of Sesame Credit: Losers Only Need 400 RMB to Become Elite Returnees]*, SOHU (10 July 2017, 7:41 PM), http://www.sohu.com/a/155992905_380621.

64   Although Sesame Credit operates independently of NDRC's SCS, it has collaborated with the SPC in Joint Punishment against Defaulters by signing an MoU. Through this collaboration and partnerships with various platforms, such as Taoboa, T-mall, China Auto Renting Inc., Qufenqi Consumer Credit, Alitrip, and Xiangyvu House Rental, Sesame Credit restricts the Defaulters from engaging in specific activities, such as applying for mortgages, borrowing money, purchasing airplane or soft sleeper train tickets, investment insurance products, and non-necessary cars or luxuries, or booking travel or hotels from 3-star level on all partnered platforms. Within five months of the collaboration's launch, 130,000 restrictions were exercised on those partnered platforms and more than 5300 punished persons repaid their debts, 1500 of whom had dodged the obligation for three to four years. Therefore, the joint punishment with Sesame Credit has been deemed effective in promoting compliance and debt repayment.[120]

(2) The Next Stage from Establishing Baihang Credit

65   Two years after publishing the notice marking the start of commercial individual credit rating in China, PBoC criticized the eight companies' practice for three reasons. First, each company based their information source on their own platforms, which led to separate market information, limited scope, insufficient product effectiveness and lack of information sharing among companies. Second, conflicts of interest existed between the credit scoring business and other business fields within the same enterprise or group, and thus independence of business and governance was absent. Third, without fully understanding the concept and regulation of credit scoring, the companies conducted credit scoring in divergent forms and based on limited information, which caused problems of wrongful collection and usage.[121] As a result, all eight companies were denied official licenses for personal credit reference.

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[120] Xu Jun (徐隽), *Zuigaofa Shouci Lianshou Zhima Xinyong Gongxiang Beizhixingren Xinxi (最高法首次联手芝麻信用共享被执行人信息) [SPC Cooperated With Sesame Credit and Share Information of People Subject to Enforcement Together for the First Time]*, Renmin Ribao (人民日报) [People's Daily] (4 Jan. 2016, 10:28 AM), https://www.court.gov.cn/zixun-xiangqing-16431.html.

[121] Wan Cuzhi (万存知), Zhongguo Renmin Yinhang Zhengxin Guanlijü Jüzhang (中国人民银行征信管理局局长) [the director of the PBOC's Credit Information System Bureau], *Geren Xinxi Baohu yu Geren Zhengxin   Jianguan*

66 In early 2018, PBoC granted the first license for customer credit reference to Baihang Credit. In this venture, the National Internet Finance Association of China (NIFA) held a 36% share, while the eight companies involved in the initial trial licenses each held an 8% share.[122] NIFA, established by PBoC, is a state-level self-regulatory organization, and Baihang Credit's shareholding structure was designed to foster cooperation, communication, and information sharing among shareholders. Despite this collaboration, Sesame's general manager clarified that while there was a technical exchange between Sesame Credit and Baihang Credit, no data sharing occurred.[123]

67 In early 2018, Sesame Credit faced controversy when an Alipay user wanted to view its annual report for 2017. The access page displayed the sentence, "I agree to Sesame Credit Terms and Conditions" written in small font, with the default setting "I agree." This agreement allowed a third party to access the user's information. Soon after receiving complaints, Sesame Credit apologized, made necessary changes to the setting, and explained that the default was set to inform the user and allow the record of deposit-free services from Sesame Credit's partnered platform to be included in the annual report. Sesame Credit clarified that no user information would be collected simply by clicking the agreement without activating a Sesame Credit account. The authorization was given willfully when an Alipay user enjoyed the service via Sesame Credit for the first time. The

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(个人信息保护与个人征信监管) [Protection of Personal Information and Supervision of Consumer Credit Reference], 11 ZHONGGUO JINRONG (中国金融) [CHINA FINANCE], no. 11, 2017, at 16; and Zhang Yuzhe et al., *China Gives Little Credit to Companies Handpicked to Develop Credit-Reporting Sector*, CAIXIN GLOBAL (15 May 2017, 5:00 AM), https://www.caixinglobal.com/2017-05-15/china-gives-little-credit-to-companies-handpicked-to-develop-credit-reporting-sector-101089851.html.

[122] Wu Yü(吴雨) & Sun Fei (孙飞), *Baihang Zhengxin Zhengshi Jiepai Kan "Xinlian" Ruhe Baohu Xinxi Anquan (百行征信正式揭牌 看"信联"如何保护信息安全？) [China's First Private Credit-Scoring Firm Starts Operation]*, XINHUASHE (新华社) XINHUA NEWS (24 May 2018), http://www.china.org.cn/business/2018-05/24/content_51509623.htm.

[123] Yuan Yang & Nian Liu, *Alibaba and Tencent Refuse to Hand Loans Data to Beijing*, FINANCIAL TIMES (18 Sep 2019), https://www.ft.com/content/93451b98-da12-11e9-8f9b-77216ebe1f17; Chen Yueshi (陈月石), *Zhima Xinyong: Liangsan Nian nei Bu Kaolü Yingli, he Baihang Zhengxin zhijian Meiyou Shuju Jiaohuan (芝麻信用：两三年内不考虑盈利，和百行征信之间没有数据交换) [Sesame Credit: Not thinking about Making Profits in two to Three Years, No Data Exchange with Baihang Credit]*, PENGPEI XINWEN (澎湃新闻) [PENGPEI NEWS] (31 Oct. 2019, 6:19 PM), https://www.thepaper.cn/newsDetail_forward_4827406; and Li Bing (李冰), *"Qu Jinronghua" Hou de Zhima Xinyong Weilai Ersan Nian Bu Kaolü Yingli ("去金融化"后的芝麻信用未来二三年不考虑盈利) [After "De-financialization," Sesame Credit Does Not Think About Making Profits in Two to Three Years]*, ZHENGQUAN RIBAO (证券日报) [SECURITIES DAILY] (5 Nov. 2019, 3:10 AM), http://www.zqrb.cn/jrjg/hlwjr/2019-11-05/A1572894681344.html.

company further assured users that the collection, processing, and sharing of personal information would be strictly compliant with the law and under informed consent to prevent excessive collection or misuse of information.[124]

68 With the establishment of Baihang Credit, commercial companies could only engage in the consumer customer credit reference business with an official license, and the initial eight companies could no longer conduct it independently. Excluded from conducting consumer credit rating business, as defined and limited as "providing service for financial and such activities" in the "Measures for the Administration of the Credit Reporting Business" published by PBoC in 2022, Sesame Credit stated that it discontinued providing services for financial institutes. Instead, it focused on developing commercial and personal credit markets, such as deposit-free rental services and "enjoy first, pay later" shopping mode.[125]

69 Due to stricter supervision in China's financial industry, particularly targeting tech giants involved in financial-related services but not the same level of supervision as traditional financial institutions, Ant Group's $37 billion IPO was halted by regulators in November 2020,[126] leading to restructuring. Huabei and Jiebei, Ant Group's consumer credit, were folded into the new consumer finance firm, Chongqing Ant Consumer Finance Co Ltd., while Ant Group transformed into a financial holding company, subjecting it to increased scrutiny[127] In September 2021, Huabei was integrated into CRC,[128] further reflecting the

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[124] Chen Yueshi (陈月石), *Zhima Xinyong Chengren Zhifubao Niandu Zhangdan She Moren Xuanxiang Cuo le: Beigouxuan de Ke Quxiao* (芝麻信用承認支付寶年度帳單設默認選項錯了:被勾選的可取消) *[Sesame Credit Admitted That the Default Setting On Alipay Annual Report Was Wrong: The Agreement Can Be Cancelled]*, PENGPEI XINWEN (澎湃新闻) [PENGPEI NEWS] (4 Jan. 2018, 7:38 AM), https://ppfocus.com/0/ed4fbb8c2.html.
[125] Li, *supra* note 123.
[126] Tony Munroe et al., *China Extends Crackdown on Jack Ma's Empire with Enforced Revamp of Ant Group*, REUTERS (12 Apr. 2021, 6:31 PM), https://www.reuters.com/business/chinas-ant-group-become-financial-holding-company-central-bank-2021-04-12; and Raymond Zhong, *Halting Ant's I.P.O., China Sends a Warning to Business*, N.Y. TIMES (24 Dec. 2020), https://www.nytimes.com/2020/11/06/technology/china-ant-group-ipo.html (within the previous month, the founder of Ant Group, Jack Ma, publicly criticized Chinese regulators for being too obsessed with minimizing risks and stifling innovation, and the speech was criticized by state-run media the next day).
[127] Cheng Leng & Ryan Woo, *Ant Group Consumer Finance Unit in Chongqing Wins Operating Approval*, REUTERS (3 June 2021, 1:09 AM), https://www.reuters.com/technology/ant-group-consumer-finance-unit-chongqing-wins-operating-approval-2021-06-03.
[128] *Ant Group's Consumer Credit Platform Huabei Integrated with China's Credit Reporting System*, CGTN

changing landscape of the consumer credit market in China. After the three-year investigation into Ant Group, a fine of nearly 1 billion was announced by the Chinese authorities in July 2023, marking the end of tough regulation for the fintech industry after the huge changes.[129]

4. The Perils of SCS

a) Expansion of State Control

70   A primary concern surrounding the SCS is the expansion of state control. While many behaviors categorized as "trust-breaking" are indeed violations of the law, some blacklisted behaviors are based on moral or social considerations or related to civil liabilities. For instance, donators breaking trust in donations through charity organizations and the courts have found them responsible, donators are blacklisted in the MoU regarding charity donation, while the judged responsibility is merely non-performance of civil liabilities. Similarly, failure to attend a university to which one was admitted was blacklisted by the Henan Provincial government,[130] even though it was not a violation of any norms or laws.

71   Moreover, the joint punishment mechanism within the SCS can be easily abused, turning it into a powerful and convenient tool for compliance and punishment. Reports include using the system to threaten Mongolian parents who disagreed with mandatory Mandarin curriculum for their children[131] or complainants who raised issues to higher authorities. In the latter case, the blacklisted behavior, bypassing and complaining, is not a punishable

(22 Sept. 2021, 8:52 PM), https://news.cgtn.com/news/2021-09-22/Ant-Group-s-Huabei-integrated-with-China-s-credit-reporting-system-13LthzH5YxG/index.html.

[129] Claire Fu, *China Fines Ant Group $985 Million, in Sign Crackdown Is Over*, N.Y. TIMES (7 July 2023), https://www.nytimes.com/2023/07/07/business/alibaba-ant-group-fine.html.

[130] *[Chengxin Jianshe Wanli Xing] Henan Chuzhao: Fang Gaoxiao "Gezi" de Shixin Kaosheng Jiang Shou Chengjie (*【诚信建设万里行】河南出招：放高校"鸽子"的失信考生将受惩戒*) [{Integrity Construction Miles} Henan's Move: the Untrustworthy Applicants Who Put Colleges and Universities Up Will be Disciplined]*, PENGPEI XINWEN (澎湃新闻) [PENGPEI NEWS] (16 July 2018), http://www.creditchina.gov.cn/zhuanxiangzhili/difangzhuanxiangzhilijingyan/201807/t20180716_120584.html.

[131] Alice Su, *"Threats of Arrest, Job Loss and Surveillance. China Targets Its 'Model Minority,'"* L.A. TIMES (23 Sept. 2020, 10:00 AM), https://www.latimes.com/world-nation/story/2020-09-23/inner-mongolia-china-model-minority-crackdown.

ᵇehavior in the Regulation on Complaint Letters and Visits, but the inclusion on blacklists can still lead to the joint punishment system and cause severe disadvantages for those affected. The arbitrary and irrelevant nature of some blacklisted behaviors became even more apparent during the Covid-19 era. While hiding travel history may be classified as a trust-breaking behavior and justify blacklisting, not wearing a mask in public was included as a blacklisted behavior in several cities as well, causing significant criticism.[132] In addition, a citizen was blacklisted for posting a video capturing an ambulance bringing away a person suspected of Covid-19 infected for "causing panic."[133]

72 The expansion of state control not only applies to behaviors but also targets. Foreign enterprises in China are obliged to comply with general business registration and sectoral regulations as part of the operation of the SCS.[134] For instance, according to Article 2 of Measures on Credit Management in Civil Aviation Industry,[135] the SCS has targeted individuals, legal entities, and other organizations that operate civil aviation activities within China's territory and also outside China if such civil aviation activities are subject to China's approval. For example, China's Civil Aviation Bureau issued an order to 36 foreign air carriers in April 2018, demanding that they rename the destination/departure "Taiwan" as "Taiwan, China" or "the Taiwan Region of China," and categorize it as a domestic stop in China rather than as a separate nation. Non-compliance with this order would result in blacklisting and joint sanctions.[136] As a result, most airlines followed the order to avoid negative consequences.

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[132] *Gonggong Changsuo Budai Kouzhao Suan Shixin? Shehui Xinyong Zhidu Yao Fang Lanyong (公共场所不戴口罩算失信？社会信用制度要防滥用) [Not Wearing a Mask in Public Places Counts as Trustbreaking? Social Credit System Should Prevent Abuse]*, Xɪɴʜᴜᴀ Xɪɴʏᴏɴɢ (新华信用) [Xɪɴʜᴜᴀ Cʀᴇᴅɪᴛ] (20 May 2020, 9:15 AM), http://www.jinshui.gov.cn/xydt/3321286.jhtml.

[133] Vincent Brussee, *No Credit for Culprits*, Mᴇʀᴄᴀᴛᴏʀ Iɴsᴛɪᴛᴜᴛᴇ ꜰᴏʀ Cʜɪɴᴀ Sᴛᴜᴅɪᴇs (21 July 2020), https://merics.org/en/analysis/no-credit-culprits.

[134] Chen et al., *supra* note 14, at 20–22.

[135] Zhongguo Minyong Hangkongjü (中国民用航空局) [Civil Aviation Administration of China], *Minhang Hangye Xinyong Guanli Banfa (民航行业信用管理办法) [Measures on Credit Management in Civil Aviation Industry]* (2021) (the temporary Measures were effective from 1 Jan. 2018, and updated to official Measures in 2021, while the target scope remained the same).

[136] Zhongguo Minyong Hangkongjü Zonghesi (中国民用航空局综合司) [Department of General Affairs of Civil Aviation Administration of China], *Guanyu Xianqi Dui Guanfang Wangzhan Zhenggai de Tongzhi (关于限期对官方网站整改的通知) [Notice to Correct Certain Information on Your Official Website]* (2018), https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/05/05/Editorial-

73   These instances highlight how the SCS can be used to extend the government's control beyond legal boundaries and impose consequences on individuals and entities for actions that may not necessarily warrant such severe measures. The potential for abuse and the lack of clear criteria for blacklisting raise significant concerns about the impact of the SCS on personal freedoms and human rights.

b) Disproportional Punishments

74   The SCS's joint sanction mechanism can result in punishments that extend far beyond the scope of the original behaviors, raising concerns about the proportionality of sanctions. For example, individuals placed on the Defaulters' List may face restrictions such as being prohibited from becoming public servants, being hired by public enterprises, purchasing real estate, buying an airplane ticket, participating in food and drug industries, and applying for subsidies and social benefits.[137] The broad range of sanctions prompts questions about whether they can be justified under the examination of proportionality.

75   However, notably, the SCS's nature is characterized by "dishonest in one area, facing restrictions everywhere," a frequently cited slogan in its promotion in China, and the treatment factor of social credit defined in the EU's AI Act draft. As a result, the SCS inherently involves disproportional disadvantages for those being evaluated. Consequently, punishments extending beyond the scope of the original behaviors are almost inevitable, if not intentionally desired by the system's designers for deterrence. The critical questions are to what extent the gravity of the behavior justifies such disproportional disadvantages, when the limits of these treatments should be drawn, and how checks and balances can be implemented to regulate such measures.

c) Exclusion and Discrimination

Opinion/Graphics/AirlineLetter.pdf?tid=a_mcntx.
[137] Memorandum of Understanding on Taking Joint Disciplinary Actions against Dishonest Persons Subject to Enforcement, *supra* note 50, art 3.

76 SCS implementation can also exacerbate discrimination against certain racial or geographical groups. As seen in the example of threatening to blacklist Mongolian parents, the system can be used to target specific groups, leading to enhanced discrimination.

77 When authorities intensify surveillance over a particular group, the likelihood of identifying misconduct within that group increases. This can be used as evidence to justify even stricter surveillance measures, perpetuating a cycle where discrimination is amplified. The implication becomes more concerning when additional technologies are integrated into the surveillance system.

78 For instance, the Uyghurs in Xinjiang already experienced social, economic, and political discrimination prior to the digital age.[138] Presently, they are subjected to the Integrated Joint Operations Platform (IJOP), an overarching mass surveillance system deployed in Xinjiang.[139] The IJOP collects an overwhelming amount of data from individuals living in Xinjiang, including DNA samples, fingerprints, iris scans, and blood types,[140] height, religious dress, beard length, electricity and gas usage, package deliveries, entry and exit records, movements around cities and the province, police records, addresses, vehicle registration, and details of international trips.[141] With the expansive collection of information, combined with mass surveillance facilitated by numerous check points all over the region,[142] advanced facial recognition cameras that cross-reference data with existing government biometric records,[143] and an application signaling public authorities with "suspicious" behaviors greatly linked to ethical or religious characteristics,[144] the day-

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[138] Chen et al., *supra* note 14, at 32.

[139] John Wagner Givens & Debra Lam, *Smarter Cities or Bigger Brother? How the Race for Smart Cities Could Determine the Future of China, Democracy, and Privacy*, 47 FORDHAM URB. L.J. 829, 859 (2020), https://ir.lawnet.fordham.edu/ulj/vol47/iss4/2 (last visited 25 Nov. 2023).

[140] *China: Minority Region Collects DNA from Millions*, HUMAN RIGHTS WATCH (13 Dec. 2017, 10:48 AM), https://www.hrw.org/news/2017/12/13/china-minority-region-collects-dna-millions.

[141] Maya Wang, *China's Algorithms of Repression: Reverse Engineering A Xinjiang Police Mass Surveillance App*, HUMAN RIGHTS WATCH (1 May 2019), https://www.hrw.org/report/2019/05/01/chinas-algorithms-repression/reverse-engineering-xinjiang-police-mass-surveillance.

[142] Givens & Lam, *supra* note 139, at 860; and *Id.* (quoted Human Rights Watch interview with former detainee Ehmet (pseudonym) conducted on 15 May 2018).

[143] Givens & Lam, *supra* note 139, at 860.

[144] *Id*. at 861.

to-day lives of Uyghurs in Xinjiang are subjected to unimaginable levels of scrutiny. Consequently, it is more likely that faults will be found among them, further intensifying bias and discrimination.[145]

d) Privacy Infringement

79   The SCS has introduced "an unprecedented model of data-based surveillance and control of society,"[146] leading to privacy infringement not limited to specific regions or minority ethnic groups. The invasion of personal privacy has become a common occurrence as the scope and collection of data under the SCS became increasingly intrusive and pervasive.[147] The situation may worsen with the integration of new technologies, innovative methods, and additional surveillance venues.[148] Of particular note is that media in China, being predominantly controlled by the State,[149] often place blame on private data collectors as privacy violators, while the scrutiny of privacy invasion by authorities receives far less attention in the media.[150]

e) Due Process

80   Another concerning aspect of the SCS is the difficulty faced by blacklisted subjects in seeking effective legal remedies when they believe that the information is incorrect or outdated. Even in cases when relatively detailed and complete procedures are in place, such as with the Defaulters' List managed by the SPC, the protection for blacklisted individuals still appears inadequate.[151] First, blacklisted subjects are not notified beforehand,[152] which delays the time for them to contest the listing.[153] Second, the

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[145] Chen et al., *supra* note 14, at 31.

[146] Anne S. Y. Cheung & Yongxi Chen, *From Datafication to Data State: Making Sense of China's Social Credit System and Its Implications*, 47 Law & Soc. Inquiry 1137, 1138 (2022).

[147] *Id.* at 32.

[148] *Id.*

[149] *Id.*

[150] Mareike Ohlberg et al., *Central Planning, Local Experiments: The Complex Implementation of China's Social Credit System* 9 (Mercator Institute for China Studies, 12 Dec. 2017), https://merics.org/sites/default/files/2020-04/171212_China_Monitor_43_Social_Credit_System_Implementation.pdf.

[151] Chen et al., *supra* note 14, at 33.

[152] Nicole Kobie, *The Complicated Truth about China's Social Credit System*, WIRED (7 June 2019, 12 :00 PM), https://www.wired.co.uk/article/china-social-credit-system-explained.

[153] Chen et al., *supra* note 14, at 33.

contestation must be submitted to the original court. And if dissatisfied with the result, the blacklisted subject can appeal to the upper-level court.[154] Throughout this process, the blacklisted information remains in place,[155] and there is no requirement for public hearings or outside scrutiny. Thus, correcting any errors solely depends on the court, and the impact on the subject's life and reputation persists,[156] despite relatively short review period (15 days for each level).[157]

81   For subjects placed on other blacklists through the SCS joint sanction mechanism, the situation becomes even more challenging. The mechanism involves three steps: listing, publication, and sanctioning, with multiple agencies included in the process.[158] The interconnection and dependency among these steps create confusion and complications, making it difficult for blacklisted individuals to obtain effective legal remedies.

82   An empirical study on cases until December 2020 identified several factors hindering blacklisted individuals from obtaining relief through administrative litigation.[159] First, for people blacklisted for petition and complaints, the blacklisting was deemed by the court as the decision responding petition. Therefore, it did not affect an individual's right, thus making it non-contestable. However, this argument confuses the decision on the content of petition and the petitioner's blacklisting, which clearly has negative effects on an individual's rights through joint sanctions.[160] Second, some institutions participating in joint sanctions, such as state-owned enterprises, party-led organizations, military institutions, or social organizations may be deemed as ineligible defendants in administrative litigation.[161]

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[154] SPC Publishing Provisions, *supra* note 38, art. 11, 12(1).
[155] *Id.* art. 12(2).
[156] Chen et al., *supra* note 14, at 33.
[157] SPC Publishing Provisions, *supra* note 38, art. 12(1).
[158] Peng Chun (彭錞), *Shixin Lianhe Chengjie Xingzheng Susong Jiuji Kunjing ji Chulu (失信联合惩戒行政诉讼救济困境及出路) [The Dilemma and Way Out of Administrative Litigation Remedy Contesting the Joint Punishments for Dishonesty]*, DONGFANG FAXUE (东方法学) [ORIENTAL L.], no. 3, 2021, at 171, 173.
[159] *Id.* at 172.
[160] *Id.* at 174–175.
[161] *Id.* at 175–176.

83   Third, determining the appropriate defendant to sue among the involved agencies poses the greatest challenge. Selecting the wrong one leads to a loss and no removal from the blacklists. However, this question depends on how the courts view the acts involved, which varies among courts, and no unified perspective has been established in the legal system.[162] Plaintiffs face two types of dilemmas. The first lies in the listing process, when one agency determines the behavior as "trust-breaking" and submits the information to another agency, which places the subject on the blacklist. Suing against the former agency may lead to a loss because the act is considered an uncontestable interior administrative act, while suing the latter may also result in defeat because the listing act only records existing information without substantively impacting the subject's right or obligation.[163] The second type of dilemma arises between the process of publicizing the blacklist and imposing joint sanctions. Suing against the former agency may lead to a loss because the act is merely information publication without impacting the subject's rights, while suing the latter may result in defeat because the sanction is an autonomic result of blacklisting without the discretion of the sanctioning agency.[164] Last, courts have been too negligent in scrutinizing whether there is an effective legal basis for contested sanction and they have confirmed the legality of sanctions too loosely.[165]

84   Notably, these due process concerns were raised before the involvement of AI techniques. With the introduction of AI, it is expected to become even more challenging for individuals to contest sanctions in the SCS, especially if black box algorithms are involved in the decision-making process.[166]

III. Conclusion

85   The current implementation of the SCS in China does not extensively involve AI, particularly in the government-led systems. Nevertheless, given the rapid technological advancements, the persistent ambition of the Chinese government in employing

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[162] *Id*. at 178–180.
[163] *Id*. at 177.
[164] *Id*. at 178.
[165] *Id*. at 181.
[166] Chen et al., *supra* note 14, at 34.

technology for social management and control, and the inclusion of the draft AI Act in the 2023 legislation agenda,[167] it appears that AI's eventual involvement is not far off. This paper discussed the perils and concerns associated with the existing SCS. Given these issues, it is imperative to exercise extreme caution when contemplating the application of AI in the social credit sector.

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[167] Guowuyuan Bangongting (国务院办公厅) [Gen. Off. of the State Council], *Guowuyuan 2023 Niandu Lifa Gongzuo Jihua (国务院2023年度立法工作计划) [The Legislation Agenda in 2023 of the State Council]* (6 June 2023), https://www.gov.cn/zhengce/content/202306/content_6884925.htm (last visited 29 Dec. 2023).