Negative: Case Title

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***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

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Negative: Social Scoring Ban

MINOR REPAIR – More study and monitoring

Social scoring can be good or bad: We need more study to find best policies and to monitor it carefully to minimize risks

Jean Tirole 2020. (Toulouse School of Economics and Institute for Advanced Study in Toulouse; paper was funded by the European Research Council) Digital Dystopia 17 Dec 2020 https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/by/tirole/digital\_dystopia\_171220.pdf

Social scores have the potential to enhance trust in society; indeed, they have already promoted better behavior on e-commerce and ride-hailing platforms around the world, and slower and more careful driving in some Chinese cities; besides, many countries have long had a credit rating system that financial institutions can use to ward off bad borrowers, and big data analytics have enabled a more inclusive access to funding for Chinese SMEs. But, as we saw, the private interest of those who design such scores may make them socially dysfunctional. A key challenge for our digital society will be to come up with principle-based policy frameworks that discipline governments and private platforms in their integration and disclosure of data about individuals. The exact contours of such disciplined principles are yet to be identified, but the analysis in this paper suggests leaving out information about divisive issues- in particular those from which the government, a majority or a platform could derive gains from-, and about the social graph. It also suggests monitoring platforms’ foray into political coverage unless platform regulation is performed by one or several entirely independent agencies.

INHERENCY

1. Status Quo policy

US/EU agreement in Oct 2021 opposes government social scoring system

David Matthews 2021 (journalist) US-EU agreement on artificial intelligence seen as a swipe at China – but little else for now 5 Oct 2021 <https://sciencebusiness.net/news/us-eu-agreement-artificial-intelligence-seen-swipe-china-little-else-now> (accessed 10 Dec 2021)

The EU and US will “seek to develop a mutual understanding on the principles underlining trustworthy and responsible AI,” the agreement says. But exactly what this means in practice remains to be fleshed out. While both sides said they have noted each other’s domestic regulatory proposals on AI, there is no mention of coordinating their approaches. One of the most concrete areas of agreement was a condemnation of “rights-violating systems of social scoring.” This is widely seen as a swipe at China’s social credit system, a data sharing programme purporting to measure the trustworthiness of businesses and individuals. “The European Union and the United States have significant concerns that authoritarian governments are piloting social scoring systems with an aim to implement social control at scale,” the joint statement says. The EU’s proposed AI Act already contains a prohibition on social scoring systems.

HARMS / SIGNIFICANCE

1. Social scoring doesn’t exist

“Threat” of China’s system is exaggerated and social scoring is a science fiction story that doesn’t actually exist

David Matthews 2021 (journalist) US-EU agreement on artificial intelligence seen as a swipe at China – but little else for now 5 Oct 2021 <https://sciencebusiness.net/news/us-eu-agreement-artificial-intelligence-seen-swipe-china-little-else-now> (accessed 10 Dec 2021)

Western reporting of China’s social credit system, characterising it as having Orwellian potential to monitor and crush dissent, has been “overblown and incorrect”, said Daniel Leufer, Europe policy analyst at Access Now, an NGO that campaigns for digital rights. “The actual system is, in most [respects], a relatively banal system for keeping track of administrative sanctions, and has nothing to do with AI,” said Leufer. “This applies to the [EU] AI Act’s prohibition on social scoring too: they are trying, badly, to prohibit a sci-fi application that doesn’t exist.”

China’s “scoring” system isn’t really “social scoring”

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

Even though the social credit scoring system in China is a great example for a centralized scoring, it does not necessarily correspond to the term social scoring. Social scoring is an algorithm-based evaluation of all publicly available information online as well as offline, which is either collected or purchased, to rate a person in relation to a comparison group. An important factor about social scoring as it will be regarded in this paper is that this classification process is based on big data accumulated on- and offline and carried out by algorithm.

2. Not harmful

We all do scoring all the time and we have for years – in our everyday social interactions

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

Regardless, evaluating people is not an innovative trend – we assess people, we interact with, every day. As an example, when doing a business contract, we evaluate the looks, behavior and speeches of the business partner and based on the given information, make up our mind about the persons trustworthiness. First impressions count, a decision about trustworthiness can be assessed within seconds (Willis and Todorov, 2006: 597, 2006: 592). Grades in schools, which later on affect chances to access follow-up educational institutions, are another great example for scoring methods with a long tradition.

“Threats” are no worse than the benefits

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

Companies like Facebook or Google collect so much user data that they know far more about them than any government has ever known about its citizens (Lanchester, 2017: 11). And not only do they use the data, they collect, themselves but they also add information from other data miners. Facebook, for example, is collaborating with Experian, a company that is monitoring consumer purchases by working closely with marketing firms, credit card companies and retailers (Lanchester, 2017: 10). Combining all these data by rating and evaluating the information given, Facebook can create comprehensive and exact user profiles to allow targeted advertisement. Since the company is not really differentiating who is advertising which content or products to which target group, addressing a specific interest group offers as many opportunities as it offers threats.

3. Participation is voluntary

Consumers voluntarily give up their private information for more personalized products & services

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

One of the major goals of algorithmic data analysis lies in the personalization of services and products, usually based on the examination of an individual’s behavior, other (similar) user’s behavior as well as socio-demographic factors (Just and Latzer, 2016: 247– 248, 2016: 247). In exchange for more personalized products and services, giving access to private information appears to be a fair trade-off for many users.

4. Promotes good behavior

Social scoring rewards and promotes good behavior like trust, kindness and manners

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

In this respect, scoring nudges behavior (Yeung, 2016: 119). It rewards trust, kindness and engagement (or whatever behavior or skills the initiator of the score sets as goal). At the same time, at least with centralized and validated systems such as the one in China, chances are that criminals, free riders and abusers can be ruled out, for the score directly shows, whether a person is trustworthy or not (Botsman, 2010: 93). A low score results in limited access to products and services. Knowing that behavior and manners will have a direct impact on opportunities and chances (maybe even have an indirect impact on family and friends), users will focus on creating a good (online) reputation based on responsible and trustworthy behavior (Botsman, 2010: 140).

5. No clear definition of the “privacy” they’re trying to protect

We don’t agree on what is “private” and what is “public” any more. And you probably don’t know either

Mark Rasch 2018 (Cyber Law Editor) SECURITY CURRENT 29 June 2018 “Privacy is Dead. Long Live Privacy” <https://securitycurrent.com/privacy-is-dead-long-live-privacy/> (accessed 16 Oct 2021)

Privacy is dead because we can’t agree on what we mean by “privacy” generally, and “private information” in particular. We can’t agree on who “owns” that information, and what rights individuals and entities have to collect, store, process or use that information. On the flip side, we don’t agree on what is “public” information. You saunter to the local shopping mall and buy a pair of faded denim jeans at the local Gap — in full view of dozens of other customers and security cameras. Private? Public? When you parked in the mall lot, with your vanity license plate (GO CAPS) prominently displayed on the back of your car – public? The window stickers which advertise your life membership in the NRA or Sierra Club — private information?

6. No impact

Facial recognition is so widespread that no one cares and no one has any reasonable expectation of privacy

Riya Anchi 2020 (JD candidate at Penn. State Univ. Law School) Facial Recognition Technology: A Fourth Amendment Violation? 24 Feb 2020 PENN STATE LAW REVIEW https://www.pennstatelawreview.org/the-forum/facial-recognition-technology-a-fourth-amendment-violation/

Furthermore, it is also unlikely that society recognizes “the expectation of privacy from facial recognition technology in public places” as reasonable. Today, the use of video surveillance systems in public places is commonplace.  Most people are aware of the use of these surveillance systems.  It is improbable that people would not expect to be subjected to some form of video surveillance in public places. Because video surveillance is the basis of facial recognition, it is unlikely that society would view the expectation of privacy from the use of such technology as reasonable.

Corporate facial recognition doesn’t violate any expectation of privacy

Susan McCoy 2002 (JD candidate, John Marshall Law School) O'BIG BROTHER WHERE ART THOU?: THE CONSTITUTIONAL USE OF FACIAL-RECOGNITION TECHNOLOGY, JOHN MARSHALL JOURNAL OF COMPUTER & INFORMATION LAW, Spring 2002 <https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1143&context=jitpl> (accessed 16 Oct 2021)

No individual can reasonably expect to maintain privacy in a public forum. Facial-recognition technology will be implemented in public places, such corporate and government buildings, busy sidewalks, sports events and airports. These public places are analogous to open fields. Courts have held there can be no legitimate and reasonable expectation of privacy in an open field.

7. Fear itself

Lots of past fears of technology came and went without doing any harm

Michael McLaughlin 2020 (Research Analyst, Information Technology and Innovation Foundation) testimony Before the California State Assembly Privacy and Consumer Protection Committee and the Assembly Select Committee on Emerging Technologies and Innovation Hearing on “Shaping the Future of Facial Recognition Technology in California: Identifying Its Promises and Challenges” March 10, 2020 <https://www2.itif.org/2020-california-facial-recognition-testimony.pdf> (accessed 16 Oct 2021)

Fifth, the fear of facial recognition technology that has led to calls for bans is similar to claims about other technologies that have not had their fears realized. For example, in the 1960s, many people feared transistors would spell the end of privacy, with miniature electronics used to eavesdrop on private conversations. In the early 2000s, privacy advocates called for bans of radio frequency identification (RFID) chips, which use radio waves to transmit data, in several use cases, including on government identification documents. These advocates warned that stores, governments, and even terrorists would use RFID to track the movements of individuals. For example, the Electronic Frontier Foundation (EFF) argued that a 2005 U.S. State Department proposal to require RFID chips in passports would turn passports into “terrorist beacons,” stating “that's precisely what they'll become if we allow the State Department to move ahead with this plan.” The fears of stores, governments, or terrorists tracking individuals with RFID never materialized. Moreover, just as transistors did not give rise to widespread eavesdropping, neither will facial recognition lead to pervasive surveillance.

SOLVENCY

1. Won’t get your privacy back

Social scoring is just a conglomeration of existing data in the public domain. You have no control over it no matter what

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021) (brackets and ellipses in original)

Another way to define it comes from Interviewee-1, who describes social scoring as “[…] the cluster of individual characteristics of a person […] to then analyze the information”. With the goal to identify interests and behavior patterns, all data available gets categorized, clustered and analyzed. He sees the central use cases in marketing activities and opinion building. One of the main characteristics, basically the ‘social’ within the term ‘social scoring’, in his point of view is the fact that scoring is based on data which is published by a third party and not necessarily from the consumer or scoring party. It means in effect that the consumer not necessarily has an active influence on the data considered to create the score. During the interview, he underlines that ‘privacy is an illusion’: “Data is collected in the public sphere permanently, whether wanted or unwanted” (Interviewee-1).

DISADVANTAGES

1. First Amendment violation

Link: Ban on social scoring stops private companies from expressing opinions or sharing their data

In this country, anyone is entitled to talk to someone else or share information or opinions. As we see in…

Link: Banning communication of information violates the 1st Amendment, even if you say it’s for upholding “privacy”

Prof. Eugene Volokh 2000 (law professor, UCLA Law School) FREEDOM OF SPEECH, INFORMATION PRIVACY, AND THE TROUBLING IMPLICATIONS OF A RIGHT TO STOP PEOPLE FROM SPEAKING ABOUT YOU, Stanford Law Review Vol. 52 No. 5 May 2000 <https://poseidon01.ssrn.com/delivery.php?ID=782003117027013004125122095019119089020016006059021006029106001097092085029102023065064106123110078072025043021025030071003102093068070122117031073027010093124006086019091068102015110125114&EXT=pdf&INDEX=TRUE> (accessed 16 Oct 2021) (ellipses and brackets in original)

Privacy is a popular word, and government attempts to “protect our privacy” are easy to endorse. Government attempts to let us “control . . . information about ourselves” sound equally good: Who wouldn’t want extra control, especially of things that are by hypothesis personal? And what fair-minded person could oppose requirements of “fair information practices”? The difficulty is that the right to information privacy—the right to control other people’s communication of personally identifiable information about you—is a right to have the government stop people from speaking about you. We already have a code of “fair information practices,” and it is the First Amendment, which generally bars the government from “control[ling the communication] of information” (either by direct regulation or through the authorization of private lawsuits), whether the communication is “fair” or not. While privacy protection secured by contract turns out to be constitutionally sound, broader information privacy rules are not easily defensible under existing free speech law.

Example: Twitter uses “social scoring” to share information and give coupons. AFF would ban them!

Huy Nguyen 2013 (doctoral student at Univ. of Houston Dept. of Computer Science) PhD Dissertation INTERACTIONS ON COMPLEX NETWORKS: INFERENCE ALGORITHMS AND APPLICATIONS, May 2013 <https://uh-ir.tdl.org/bitstream/handle/10657/410/NGUYEN-DISSERTATION-2013.pdf?sequence=1&isAllowed=y> (accessed 10 Dec 2021)

We present in this chapter an empirical study of Twitter in conjunction with influence measurement services, which are “social scoring systems” that assign each user a numeric score based on the user’s ability to drive actions and provoke interactions within others. Such services are popular nowadays, including Klout, PeerIndex, Kred, Empire Avenue, PROskore, just to name a few. The basic idea is as follow: those services scrape social network data, use it to create profiles of individuals, and assign each an “influence score”. Twitter users do not have to register with the measurement services to have their profile evaluated, since their information can be obtained via Twitter’s API interface. Once the user registers, the service will have full access to their data and provide more accurate measurement results. In exchange, user with high influence score (normally higher than 40) will be eligible for perks (discounted coupons, promotions, etc.) from many retailers

Impact: Compromising Freedom of Speech is really bad. It’s the foundation of nearly all other human rights

Prof. Stephen J. Wermiel 2018. (professor of practice of constitutional law at American University Washington College of Law) The Ongoing Challenge to Define Free Speech (article is undated but says it was written 227 years after the ratification of the Bill of Rights in 1791) <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/> (accessed 6 Oct 2021)

Freedom of speech, Supreme Court Justice Benjamin Cardozo declared more than 80 years ago, “is the matrix, the indispensable condition of nearly every other form of freedom.” Countless other justices, commentators, philosophers, and more have waxed eloquent for decades over the critically important role that freedom of speech plays in promoting and maintaining democracy.

A/T “But it’s a corporation / commercial activity” – Doesn’t matter, constitutional protection still applies

Prof. Eugene Volokh 2000 (law professor, UCLA Law School) FREEDOM OF SPEECH, INFORMATION PRIVACY, AND THE TROUBLING IMPLICATIONS OF A RIGHT TO STOP PEOPLE FROM SPEAKING ABOUT YOU, Stanford Law Review Vol. 52 No. 5 May 2000 <https://poseidon01.ssrn.com/delivery.php?ID=782003117027013004125122095019119089020016006059021006029106001097092085029102023065064106123110078072025043021025030071003102093068070122117031073027010093124006086019091068102015110125114&EXT=pdf&INDEX=TRUE> (accessed 16 Oct 2021)

Some might argue that there’s something inherently un-speech-like in corporations communicating to other corporations, but there’s no reason why this would be so. To begin with, the corporate status of the speaker or the listener can’t be relevant; surely it can’t matter for privacy purposes whether customer information is communicated by and to corporations, partnerships, or sole proprietorships. And the Court has specifically held that speech doesn’t lose its constitutional protection because the speaker is a corporation, which makes sense for various reasons, among them that almost all media organizations are corporations.

2. Increased economic discrimination

Scoring enables fairer decision-making, reducing discrimination

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

Today, scoring logics are omnipresent in many people’s daily lives. In the US, a credit or behavior scoring of an adult is done at least once a week [**END QUOTE**] (Thomas, 2000: 149). Companies such as Facebook, Equifax or Kreditech create profiles and scores based on people’s browsing data (Hüfner, 2014; Lanchester, 2017: 11; Schep, 2017; van Doorn, 2014: 362, 2014: 363). These scores and profiles are the core of many business models. Facebook sells ads, which can be targeted to a specific audience with high accuracy (Lanchester, 2017: 11). [**SHE CONTINUES LATER IN THE CONTEXT QUOTE:]** Equifax is a credit scoring provider that inter alia sells data about the spending power of consumers (Equifax, 2018). Similarly, Kreditech analyzes web browsing data, social media data as well as all other available online data from users to generate a credit score. Thus, online behavior or social networks have a direct impact on the creditworthiness of the customer (Hüfner, 2014). Indeed, both Equifax and Kreditech do not operate in Germany, since the legal guidelines for using personal data are stricter than in the United States of America. The goal of such scoring systems is to enable objective and fairer decision-making by treating everybody equally and therefore reducing discrimination (Citron and Pasquale, 2014: 4).

3. Harms the poor and disadvantaged

Low-income customers would benefit from social scoring instead of economic scoring

Hanna Willems 2019. (Master’s thesis at Hamburg Univ., Germany) “SOCIAL SCORING – A TREND ANALYSIS THE PERCEPTION OF EXPERTS ON THE RISING IMPACT OF SOCIAL SCORING BY ALGORITHM” <https://www.blog.digital-markets.info/wp-content/uploads/2019/01/Masterthesis_Scoring_Willems2.pdf> (accessed 10 Dec 2021)

Firms such as Kreditech claim that they use network-based credit scoring practices to broaden opportunities, especially for low-income customers. Those customers would not have much chance to actually access a credit based on the classic creditworthiness evaluation instruments (Eisert, 2016; Wei et al., 2016: 234). An 11 example is citizens in third world countries, who neither have a permanent residence nor job or bank account. Without this kind of information, there is hardly a basis for a classic credit investigation. Providing access to browser history and social network activities to create a credit score could be an immense chance to gain access to financial funding.