# Social Credit Systems May Be Illegal In The USA - An ACCESS Special Report

October 9, 2019 - There has been quite a bit of talk about social credit systems in the news lately. That's probably because the Chinese government has rolled one of these Orwellian systems out in mainland China. Late on your bills? You may not be able to leave the country. Owe taxes? You may find yourself unable to board a train. Express thoughts that the government doesn't like? You could find yourself unable to obtain credit, open a bank account, find housing or to travel by any means of public transportation. It's worth noting that American companies are helping China build this system.

But as disturbing as this system is, it really isn't limited to China. Companies here are trying to mimic certain aspects of it, and have already started denying services to consumers in certain cases. Only one problem for those companies. This isn't China and some of the things already being done are clearly illegal. Here is what you need to know to protect yourself.

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A number of Silicon Valley companies are already using forms of social credit systems. Based on your behavior on their platforms, they can give you some sort of internal score that they can use to promote or demote the content you post. That may or may not be illegal. Social networks and websites are private property and they're free to serve or exclude whomever they please. But when they start using a scoring systems to deny services - which Google and Facebook appear to be doing already - they are certainly violating the spirit of existing law; namely the Fair Credit Reporting Act (FCRA). There have already been some well publicized cases of companies demonetizing content creators - meaning, making it impossible for content creators to make money through advertising - based on their political or social viewpoints. Just do a Google search on "YouTube demonetize" (you can also replace YouTube with Facebook) and you'll get a long list of returns.

The issue of legality becomes more important though if and when these services become available commercially. Let's just say that your favorite, large social network implements its own social credit scoring system for internal use. Then, after they think they have the bugs worked out, they take that system and make it available to others... doesn't matter if they do this for free or charge for it. As soon as that happens, they legally become a consumer reporting agency. And that places them squarely in the cross hairs of the FCRA.

That probably seems a little odd. Obviously, the FCRA - with its first iteration in the 1970's - was never intended to deal with something like "social credit" or the internet. But the law clearly defines what constitutes a consumer reporting agency, and companies falling within the definition, also fall within the law. It reads, "The term "consumer reporting

agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."

Interestingly, in the "Definitions" section of the FCRA, credit is never defined as being a financial transaction. Therefore the law doesn't appear to be limited to financial transactions.

And consumer reports don't just include credit information. The law specifically mentions reports that concern "reputation." That means that if such a system gathers information on your politics, you views on social issues, you're off-line activities, etc... and downgrades or upgrades you based on those things and that you are granted or denied services as a result of that rating, it is functioning as a consumer reporting agency. By law they need to have set rules on the way their scores are issued, insure that their report or scoring method is accurate and objective, and have a process in place to make corrections. From what we can see, no company using this type of scoring for social credit is currently operating within the law as laid out in the FCRA.

A good example of this is a company called PatronScan. Among the services they provide is an ID scanner that is marketed to bars and nightclubs. The scanner ensures that ID's are not fake and it flags those that are. So far, so good. But the service goes beyond that. If an ID is legitimate, and you are allowed to proceed into the bar, you can still wind up in trouble. The bar has the ability to flag you as a trouble-maker.

As of this past January, PatronScan limits that definition to violence, sexual assault and destruction of property. But you might think that the company would also require a police report to be filed for any action defined as violence, sexual assault or destruction of property prior to the time that they started denying services to consumers. That doesn't appear to be the case because we couldn't find such a requirement on their website. That alone leaves the system open to abuse because the company then shares this reported information with other bars and clubs that subscribe to their service. This means that if you are flagged as a troublemaker in Los Angeles, you may be denied access to a bar in Aspen, even if you have never set foot in Aspen before.

To us, the company appears to be functioning as a CRA. They claim to have established a list of more than 40,000 people whose ID's have been flagged for banning. If no police report is required, it would appear that you can get placed on the list simply because a bar employee is having a bad day, and there is no clear cut appeal process. The company advises that if you want to have a "flag" on your name cleared, the place to start is with the bar that reported you in the first place. If that doesn't work, after two weeks you have the option of appealing to PatronScan directly. But as you'll see if you click on this link, the appeals process leaves a lot to be desired. There are no clear cut instructions to the person initiating the appeal even though the company says on its site that they have a transparent process. Moreover, there doesn't appear to be a clear cut set of rules that the company uses when an appeal does reach them. It's up to the company to determine if you remain on the "banned" list. And it isn't at all clear that the determination will be evidence based. All of that appears to violate the FCRA. The law specifically states that adverse information on consumer reports must be substantiated or removed.

If a consumer does appeal their placement on the list and they lose, the FCRA also grants consumers the right to place a written dispute on their consumer report. By law, that dispute must appear on any subsequent report issued to other businesses; in this case, to other bars. It's not clear that PatronScan is doing that. In fact, we would be surprised if that was the case because the company's service provides for electronic scanning of ID's and near instant results that are relayed to the establishments using them. It doesn't appear that a written report is generated to the bars using the service, yet those bars are denying services to consumers based on the information stored by PatronScan. Again, our reading of the law would appear to make that process illegal.

It is also likely that the bars using the service are in violation of federal law when they deny access to someone based on information provided by this type of service. That's because the FCRA provides clear-cut guidelines requiring specific notifications to consumers for adverse action taken against them. And those notification need to come from the user of the consumer report; again, in this case bars. Users of consumer reports are also required to provide the contact information of the consumer reporting agency to the consumer; either orally, electronically or in written form.

This is just one company and bars are only a part of their customer base. They also work with property management firms, telecommunications companies and rental car companies. Again, if they were just screening ID's for legitimacy,

that would probably be just fine. But that isn't what they are doing. On their property management page the company states, "The PatronScan network will alert you when someone has been flagged by another location for fraudulent or poor behavior. Your locations are notified of exactly when and why the flag was placed, so you can keep your property and tenants safe." In other words, they are compiling a consumer report that provides information on your reputation and allowing their customers to use that report to grant or deny services.

There is no doubt that bar owners and property managers have a vested interest in making sure they screen out those that would cause trouble for their other customers and for themselves. Services such as the ones we're talking about certainly can help with that. But consumers have legal rights when it comes to consumer reporting, and any company that is providing this type of service needs to respect those rights.

In the United States we need to think long and hard about social credit systems. Using Chinese government policies to come up with systems for use here is probably a bad idea under any circumstances. The implications of large-scale use of social credit are frightening and will have a chilling effect on public expression of opinions. That's something that can swing one way today and another way tomorrow and it should frighten anyone who believes in freedom of expression.

To the best of our knowledge, nobody has used the FCRA to challenge any of these emerging systems, but we sincerely hope that changes. The FCRA gives consumers a right of private action. We hope that someone who is denied service by a social credit system finds an enterprising attorney and files suit as a result. Then, let the chips fall where they may. It is time to stop this kind of nonsense.

As a final note, FastCompany published an article in August on the use of these systems in the United States. It is well worth reading. You can find it here.
by Jim Malmberg
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