

**Translation**

The following document describes, in broad strokes, the Chinese Communist Party's guidelines for how big data can be used to spur economic development. It emphasizes data sharing, but also calls for restrictions on the sharing of classified and personally identifiable information. This document also urges the breaking up of "data monopolies" and warns that China will reciprocate if subjected to data export controls by foreign countries.

**Title**

Opinions of the CCP Central Committee and the State Council on Constructing a Basic System for Data and Putting Data Factors of Production to Better Use

中共中央 国务院关于构建数据基础制度更好发挥数据要素作用的意见

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## **Opinions of the Chinese Communist Party (CCP) Central Committee and the State Council on Constructing a Basic System for Data and Putting Data Factors of Production to Better Use**

**(December 2, 2022)**

As a new factor of production (生产要素), data is the basis of digitalization, networkization (网络化), and intelligentization (智能化), and has been rapidly integrated into various aspects of production, distribution, circulation, consumption, and the management of social services, profoundly changing modes of production, living, and social governance. Construction of a basic system for data (数据基础制度) concerns the

overall situation of national development and security. The following opinions are proposed in order to accelerate the construction of the basic system for data, give full play to China's advantages of massive data and rich application scenarios, activate the potential of data factors of production (数据要素), strengthen, enhance, and expand the digital economy, reinforce the new drivers of economic development, and build new national competitive advantages.

## I. Overall Requirements

(i) Guiding ideology. Guided by Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, deeply implementing the spirit of the 20th Party Congress, completely, accurately, and comprehensively implementing the new concept of development (新发展理念), accelerating the construction of the new pattern of development (新发展格局), and adhering to reform, innovation, and systematic planning, with maintaining national data security and protecting personal information and trade secrets as preconditions, and with promoting the compliant and efficient circulation and use of data, and empowering the real economy as the main lines, taking data property rights, circulation transactions, income distribution, and security governance as the focus, we should participate deeply in the formulation of international high-standard digital rules, and build a basic system for data that is adapted to the characteristics of data, conforms to the fundamental principles of digital economy development, safeguards national data security, and demonstrates innovative leadership, so as to fully realize the value of data factors of production, promote sharing by all the people in the dividends of digital economy development, and provide strong support for deepening being innovation-driven, promoting high-quality development, and the modernization of the nation's governance system and governance capacity.

### (ii) Work principles

— Follow the fundamental principles of development and innovate institutional arrangements. Fully understand and grasp the basic governing principles of data property rights, circulation, trading, use, distribution, governance, and security; explore property rights systems and market systems conducive to data security protection and the effective utilization and compliant circulation of data; improve the institutional mechanisms of data factor of production markets; and improve through practice while developing through exploration, thereby promoting the formation of new relations of production adapted to digital productive forces (生产力).

— Adhere to sharing and common use in order to release value dividends. Reasonably lower the threshold for market players to obtain data, enhance the

shareable nature and universality of data factors of production, stimulate innovation, entrepreneurship, and creativity, and strengthen anti-monopoly and anti-unfair competition efforts, forming a development model featuring regulation by law, joint participation, each taking what they need, and shared dividends.

— Strengthen quality supply and promote compliant circulation. In line with the trend of digitalization-based transformation of the economy and society, promote the adjustment and optimization of the supply of data factors of production, and improve the quantity and quality of data factors of production supplied. Establish a trustworthy data circulation system to boost the levels of data availability, trustworthiness, circulation, and traceability. Achieve dynamic management of the whole process of data circulation, and activate the value of data in its compliant circulation and use.

— Refine the governance system to ensure secure development. Coordinate development and security, implement the holistic approach to national security, strengthen construction of a data security assurance system, incorporate security throughout the whole process of data supply, circulation, and use, and delineate supervisory bottom lines and red lines. Strengthen the categorized and graded (分类分级) management of data, control what should be controlled and liberalize what should be liberalized, actively and effectively prevent and defuse various data risks, and form a data factor of production governance structure with coordination between government supervision and market self-discipline and between the rule of law and industry autonomy, and with domestic-international integration.

— Deepen open cooperation to achieve mutual benefits and win-win outcomes. Actively participate in the formulation of international rules for cross-border data flows, and explore joining regional institutional arrangements for international cross-border data flows. Promote bilateral and multilateral consultations on cross-border data flows, and advance the establishment of mutually beneficial rules and other institutional arrangements. Encourage the exploration of new ways and new models of cross-border data flow and cooperation.

## **II. Establish a data property rights system for the protection of rights and interests and the compliant use of data**

Explore the establishment of a data property rights system, promote the structural separation and orderly circulation of data property rights, strengthen the supply of high-quality data factors of production, taking into account the characteristics of data factors of production; under the national data categorization and grading protection system, promote data categorization and grading-based confirmation of rights, authorization of use, and market-oriented data circulation and trading; improve

the system for protecting the rights and interests of data factors of production, and gradually form a data property rights system with Chinese characteristics.

(iii) Explore systems for the structural separation of data property rights.

Establish a system of categorization and grading-based rights confirmation and authorization for public data, enterprise data, and personal data. Based on data sources and data generation characteristics, separately define the legal rights enjoyed by each participant in the process of data production, circulation, and use; establish a property rights operation mechanism to separate the right to hold data resources, the right to process and use data, the right to operate data products, etc.; for non-public data, promote new modes for the "common use and sharing of benefits" in a market-oriented manner; and provide basic institutional assurance for activating data factor of production value creation and value realization. Study new ways of registering data property rights. Under the precondition of assuring security, push data processors to develop and utilize raw data in accordance with law, support data processors to exercise, in accordance with law, rights related to data application, promote the reuse of and full utilization of data use value, and promote the exchange and market circulation of data use rights. Treat raw data circulation and trading behavior prudently.

(iv) Promote the implementation of public data rights authorization mechanisms.

For public data generated by Party and government organs at all levels, and by enterprises and public institutions<sup>1</sup> in the course of performing their duties or providing public services, strengthen aggregation, sharing, and open development, strengthen the coordination of authorized use and management, and promote interoperability, so as to break down "data silos." Under the preconditions of protecting personal privacy and ensuring public security, and in accordance with the requirement that "raw data does leave the domain [of the data provider], and data is available but not visible," encourage the provision of public data to society in the form of modeling, verification, and other products and services; for public data that does not bear personal information or affect public security, promote expansion of the scope of supply and use based on what use it is to be put to. Promote the conditional uncompensated use of public data for public governance and public welfare, and explore the conditional compensated use of public data for the development of industries and trades. Refrain from making open any public data that is classified (保密) according to law and

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<sup>1</sup> Translator's note: "Public institutions" (事业单位) are organizations created and led by Chinese government departments that provide social services. Unlike state-owned enterprises (SOEs), public institutions do not create material products and are non-profit. Public institutions are not considered government agencies, and their employees are not civil servants. Most public institutions are fully or partially government-funded, but some fully privately funded (but still government-led) public institutions exist. Public institutions typically provide services in areas such as education, science and technology, culture, health, and sanitation.

regulations, and strictly control the direct entry into the market of raw public data that has not been made open according to law and regulations, so as to safeguard the public interest in the supply and use of public data.

(v) Promote the establishment of rights confirmation and authorization mechanisms for enterprise data. For data that are collected and processed by all kinds of market entities in their production and business activities and that does not involve personal information or the public interest, where such market entities enjoy the right to hold, use, and obtain revenue from them in accordance with law, assure that such entities earn reasonable returns on the labor and other factors of production they invest in, so as to strengthen incentives for the supply of data factors of production. Encourage the exploration of new models for the authorized use of enterprise data, give full play to the leading role of state-owned enterprises, guide industry-leading enterprises and internet platform enterprises to fully play their leadership role, and promote two-way fair authorization with micro-, small, and medium-size enterprises, and the joint reasonable use of data with them, thereby empowering the digital transformation of micro-, small, and medium-size enterprises. Support third-party institutions and intermediary service organizations in strengthening data collection and quality assessment standards, and promote the standardization of data products, so as to develop industries such as data analysis and data services. In the performance of their duties, government agencies may obtain relevant enterprise and institutional data in accordance with law, but must agree to and strictly comply with use restriction requirements.

(vi) Establish and improve authorization mechanisms for personal information-related data. For data bearing personal information, push data processors to collect, hold, host, and use data within the scope of personal authorization and in accordance with law; regulate processing activities for personal information; and do not allow the use of "blanket authorization," forced consent, and other ways to over-collect personal information, so as to promote the reasonable use of personal information. Explore mechanisms wherein trustees representing the interests of individuals supervise the collection, processing, and use of personal information-related data by market players. Relevant units may be authorized in accordance with law to use special personal information-related data that concerns national security. Increase the protection of personal information, push key industries to establish and improve long-term protection mechanisms, strengthen the main responsibility of enterprises [to protect data], and regulate the conduct of enterprises in collecting and using personal information. Innovate technical means to promote the anonymization of personal information, and protect information security and personal privacy when personal information-related data is used.

(vii) Establish and improve the system for protecting the legitimate rights and interests of all parties involved in data factors of production. Fully protect the legitimate rights and interests of data sources, promote modes of data circulation and use based on informed consent or the existence of legal reasons, and guarantee the rights enjoyed by data sources to obtain, copy, and transfer the data they generate. Reasonably protect the rights of data processors to exercise independent control over the data they hold in accordance with law. On the precondition of protecting the public interest, data security, and the legitimate rights and interests of data sources, recognize and protect rights to process and use data acquired in accordance with legal provisions or contractual agreements, respect the labor and other contributions—such as data collection and processing—of data processors, and fully protect the rights of data processors to use data and earn income. Protect the right to operate data or data-derived products formed by processing and analysis, and regulate the rights of data processors to license others to use data or data-derived products in accordance with laws and regulations, and thereby promote the circulation and reuse of data factors of production. Establish and improve mechanisms for the circulation of data-related property rights and interests based on legal provisions or contractual agreements. Promote the simultaneous transfer of relevant rights and obligations, in accordance with laws and regulations, when data processors are merged, split, dissolved, or declared bankrupt.

### **III. Establish a data factor of production circulation and trading system that is compliant and efficient, and combines on- and off-exchange trading**

Improve and standardize data circulation rules, build a trading system that promotes use and circulation and combines on- and off-exchange trading, standardize and guide off-exchange transactions, and cultivate and grow on-exchange trading; and develop cross-border data circulation and trading in an orderly manner, so as to establish a trustworthy data circulation system in which data sources can be confirmed, the scope of use can be defined, the circulation process can be traced, and security risks can be prevented.

(viii) Refine the system of rules for the whole data compliance and supervision process. Establish data circulation access standards and rules, and strengthen the whole data compliance management process for market entities, ensuring that the sources of circulated data are legitimate, privacy protections are in place, and circulation and trading are regulated. Taking into account the scope of circulation, degree of impact, and potential risks of data, and distinguishing between different scenarios, purposes, and amounts of use, establish norms for the data categorization and grading-based authorization of use, explore the construction of a data quality standardization system, and accelerate the standardization of data collection and

interfaces, thereby promoting data integration and interoperability. Support data processors in adopting modes such as open access, sharing, exchanging, and trading for the circulation of data—on and off exchanges—in accordance with laws and regulations. Encourage the exploration of data circulation security technology, standards, and programs. Support the exploration of diversified pricing models and price formation mechanisms that conform to the characteristics of data factors of production, and promote the compensated use of public data for digital development at government-guided pricing, and independent market pricing of enterprise and personal information data. Strengthen construction and supervision of the enterprise data compliance system, crack down on black market transactions, and stamp out the illegal data circulation industry. Establish and implement a data security management certification system, and guide enterprises to improve data security management through certification.

(ix) Coordinate the construction of standardized and efficient data trading venues. Strengthen the design of the data trading venue system, coordinate and optimize the planning layout of data trading venues, and strictly control the number of trading venues. Introduce administrative measures for data trading venues, establish sound data trading rules, and formulate a unified national standards system for data trading, security, etc., so as to reduce transaction costs. Guide the joint development of various types of data trading venues, highlight the compliance supervision and basic service functions of national data trading venues, and strengthen their nature of belonging to the public (共属性) and public welfare positioning, promote the separation of data trading venues and data business functions, and encourage all kinds of data businesses to enter exchanges for trading. Regulate regional data trading venues and industry data trading platforms set up by various regions and government departments, and build a multi-level market trading system, so as to promote regional and industry data circulation and use. Promote the interconnection of regional data trading venues and industry data trading platforms with national data trading venues. Build an intensive and efficient data circulation infrastructure, providing a low-cost, highly efficient, and trustworthy circulation environment for centralized on-exchange trading and decentralized off-exchange trading.

(x) Incubate a data factor of production circulation and trading services ecosystem. Centered around the requirements of promoting compliant, efficient, secure, and orderly circulation and trading of data factors of production, incubate a number of data vendors and third-party professional service organizations. Through data vendors, provide both sides of data transactions compliant, standardized, and value-added services for data assets and for the development, release, and underwriting of data products, thereby promoting the improvement of data transaction

efficiency. In key areas such as smart manufacturing, energy conservation and carbon reduction, green construction, new energy, smart cities, etc., vigorously incubate industry-specific and industrialized data vendors that hew closely to business requirements, and encourage data vendors with many different types of ownership (多种所有制) to develop together and compete on an equal footing. In an orderly fashion, cultivate third-party professional service (data integration, data brokerage, compliance certification, security audit, data notarization, data insurance, data hosting, asset evaluation, dispute arbitration, risk assessment, talent training, etc.) institutions to enhance service capabilities throughout the data circulation and trading process.

(xi) Build mechanisms for the safe, compliant, and orderly cross-border circulation of data. Carry out international exchanges and cooperation in data interaction, business interoperability, mutual recognition of supervision, and service sharing; promote the construction of cross-border digital trade infrastructure; and, taking the Global Data Security Initiative as the basis, actively participate in the formulation of international rules and digital technology standards for data flows, data security, certification and assessment, digital currencies, etc. Adhering to open development, promote the orderly flow of data in both directions across borders, encourage domestic and foreign enterprises and organizations to carry out business cooperation in cross-border data flows in accordance with law, support entry into open (开放) fields by foreign investors in accordance with law, and promote the formation of a fair and competitive international market. Explore secure and standardized modes of cross-border data flow for cross-border e-commerce, cross-border payment, supply chain management, service outsourcing, and other typical application scenarios. Coordinate data development and utilization with data security protection, and explore establishment of a mechanism for the categorization and grading-based management of cross-border data. In accordance with laws and regulations, conduct national security reviews of activities such as data processing, cross-border data transmission, and mergers and acquisitions by foreign investors, where such activities affect or may affect national security. In accordance with the principle of reciprocity, implement export controls in accordance with laws and regulations on data that involve controlled items related to the maintenance of national security and interests and the fulfillment of international obligations, so as to ensure that data is used for legitimate purposes and to prevent data export security risks. Explore the construction of a multi-channel and facilitative supervision mechanism for cross-border data flows, and improve the multi-sectoral coordination and cooperation-based system for cross-border data flow supervision. Oppose data hegemony and data protectionism, and respond effectively to "long-arm jurisdiction" in data fields.

#### **IV. Establish a system for data factor of production income allocation that embodies efficiency and promotes fairness**

In line with the digital industrialization and industry digitalization trends, give full play to the decisive role of the market in resource allocation and make better use of the role of government. Refine the market allocation mechanism for data factors of production, and expand the scope of market allocation for data factors of production and participation in distribution channels according to value contributions. Refine mechanisms for the redistribution and adjustment of data factor of production income, so that all people better share in the fruits of digital economy development.

(xii) Improve mechanisms for evaluating the contributions of data factors of production by the market and determining remuneration according to contributions. Taking into account the characteristics of data factors of production, optimize the distribution structure, and build a fair, efficient, incentivized, and standardized mechanism for data value distribution. Adhering to the "Two Unswervinglys,"<sup>2</sup> and in accordance with the principle of "those who invest and contribute are the ones who benefit" ("谁投入、谁贡献、谁受益"), focus on protecting the investments and output income of data factor of production participants, protect data resource asset rights and interests according to laws and regulations, explore the sharing of value and income from personal, enterprise, and public data, and establish and improve a more rational market evaluation mechanism, thereby promoting the matching of labor contributions with labor compensation. Promote reasonable tilting of data factor of production income towards the creators of data value and use value, ensure that investments in all areas of developing and mining data value have corresponding returns, and strengthen the orientation of incentives based on data value creation and value realization. Through dividends, commissions, and other income sharing methods, balance the distribution of benefits among the relevant parties in different areas such as data content collection, processing, circulation, and application.

(xiii) Better utilize the government's role in guiding and regulating the distribution of income from data factors of production. Gradually establish an institutional mechanism to ensure fair distribution of data factor of production income, and pay more attention to the public interest and relatively disadvantaged groups. Intensify government guidance and regulation, explore the establishment of a mechanism for reasonably sharing income from the opening up of public data resources, and allow

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<sup>2</sup> Translator's note: The "Two Unswervinglys" ( “两个毫不动摇” ) are guidelines for how the Chinese Communist Party should balance state and private ownership in China's "basic economic system" (基本经济制度). They are: (1) unswervingly consolidate and develop the publicly owned sector (毫不动摇地巩固和发展公有制经济), and (2) unswervingly encourage, support, and channel the development of the non-state-owned sector (毫不动摇地鼓励、支持和引导非公有制经济发展).

and encourage all kinds of enterprises to provide public data-based public welfare services in accordance with laws and regulations. Push large data enterprises to actively assume social responsibility, strengthen safeguards and assistance for disadvantaged groups, and effectively respond to various risks and challenges in the process of digital transformation. Continuously improve the market system and institutional rules for data factors of production, prevent and, in accordance with laws and regulations, regulate problems such as the disorderly expansion of capital in data fields to form market monopolies. Coordinate the use of multi-channel funding resources to carry out data knowledge popularization and education and training, so as to improve the overall digital literacy of society, focusing on eliminating the digital divide between different regions and populations, promoting social equity, safeguarding people's well-being, and promoting common prosperity.

## **V. Establish a secure, controllable, flexible, and inclusive data factor of production governance system**

Incorporate security throughout the whole data governance process, build a multi-party collaborative governance model encompassing government, enterprises, and the society at large, innovate government governance methods, clarify the responsibilities and obligations of the main parties, improve industry self-discipline mechanisms, and regulate market development order, forming a pattern of data factor of production governance that combines efficient markets and effective government.

(xiv) Innovate government data governance mechanisms. Give full play to the role of the government in the orderly guidance and regulation of development, maintain the bottom line on security, and clarify supervisory red lines, in order to create a data factor of production market environment that is secure and trustworthy, inclusive, innovative, fair, and open, with effective supervision. Strengthen industry-specific supervision and coordinated cross-industry supervision, establish a joint data management and governance mechanism, and establish a sound mechanism for tolerating and correcting mistakes while encouraging and accommodating innovation. Establish systems for compliance notarization, security reviews, and algorithm reviews, and for monitoring and early warning throughout the process of data factor of production creation and circulation, and guide all parties to fulfill their responsibilities and obligations with regard to data factor of production circulation security. Establish and improve the data circulation supervision system, formulate a negative checklist (负面清单) for data circulation and trading, and clarify the data items that cannot be traded or for which trading is strictly limited. Bolster anti-monopoly and anti-unfair competition efforts, strengthen law enforcement and justice in key areas, and strengthen the review of business operator concentration in accordance with law; and investigate and punish, in accordance with law, monopolistic agreements, abuse of dominant market position,

and illegal implementation of business operator concentration behavior, in order to create a regulated and orderly market environment with fair competition. Based on implementation of a graded cybersecurity protection system (网络安全等级保护制度), strengthen data security protection work across the board, improve the cybersecurity and data security protection system, and enhance layered in-depth protection and integrated defense capabilities.

(xv) Firm up the data governance responsibility of enterprises. Adhering to the principle of "being lenient in allowing entry into the market but strict in managing market entities" ("宽进严管"), firmly establish enterprises' sense of responsibility and self-discipline. Encourage enterprises to actively participate in the construction of data factor of production markets, implement the declaration and commitment system for data flows and transactions of data vendors and third-party professional service institutions, centered around data sources, data property rights, data quality, data use, etc. Strictly implement relevant legal provisions, and push enterprises to assume corresponding responsibilities in accordance with law in areas such as data collection and aggregation, processing, circulation and trading, sharing and utilization, etc. Enterprises should strictly comply with the "Anti-Monopoly Law" and other relevant legal provisions, and should not use advantages in data, algorithms, etc., or technical means to exclude or restrict competition or engage in unfair competition. Regulate the government affairs-related data security management of enterprises participating in government informatization (信息化) construction to ensure that there are rules to follow, development is orderly, and all is secure and controllable. Establish and improve data factor of production registration and disclosure mechanisms, enhance corporate social responsibility, break up "data monopolies," and promote fair competition.

(xvi) Give full play to the collaborative governance role of multi-party participation by social forces. Encourage industry associations and other social forces to actively participate in the construction of data factor of production markets, and support them in carrying out data circulation-related security technology research and development (R&D) and services, so as to promote the secure and reliable circulation of data factors of production in different scenarios. Establish a credit system for data factor of production markets, and gradually refine the mechanisms for identifying data trading breaches of trust, incentivizing trustworthiness, punishing breaches of trust, repairing credit, and handling objections. Smooth the channels for reporting complaints and arbitrating disputes, and maintain good order in data factor of production markets. Accelerate execution of work to promote implementation of data factor of production management norms and national standards for data management maturity, and

encourage all departments and industries to refine standards systems for metadata management, data desensitization, data quality, value assessment etc.

## VI. Assurance measures

Increase overall planning and promotion efforts, strengthen the implementation of tasks, innovate policy support, encourage eligible places and industries to lead the way in piloting system construction, technical paths, development models, and other aspects; encourage enterprises to innovate internal data compliance management systems; and constantly explore the refinement of the basic system for data.

(xvii) Effectively strengthen organizational leadership. Strengthen the Party's overall leadership of work to build a basic system for data, under the centralized and unified leadership of the Party, give full play to the role of the Inter-Ministerial Joint Conference for the Development of the Digital Economy (数字经济发展部际联席会议), and strengthen the overall coordination of work, promoting cross-regional, cross-departmental, and cross-level coordination and joint action, and strengthening supervision and guidance. All regions and departments should attach great importance to construction of the basic system for data, unify their thinking and understanding, increase reform efforts, develop work initiatives, and refine the division of tasks, taking into account their own actual situations, and properly grasp the promotion of implementation.

(xviii) Intensify policy support. Accelerate the development of data factor of production markets, and strengthen and expand data factor of production-based enterprises. Improve the level of financial services, guide venture capital enterprises to increase investment in data factor of production-based enterprises, encourage credit agencies to provide diversified credit services based on a variety of data factors of production such as enterprise operation data, and support real economy enterprises, especially micro-, small, and medium-size enterprises, in carrying out credit financing for digital transformation and empowerment. Explore new modes for on-balance-sheet recognition (入表) of data assets.

(xix) Actively encourage experimental exploration. Adhere to combining top-level design and grass-roots exploration, support piloting by Zhejiang and other regions, and by qualified industries and enterprises, give full play to the role of free trade ports, pilot free trade zones, and other high-level open platforms, and guide enterprises and research institutions in promoting innovation in data factor of production-related technology and industrial applications. Adopting the "winner-takes-all open

competition"<sup>3</sup> approach, support qualified sectors and industries in accelerating breakthroughs in trustworthy data circulation, security governance, and other key technologies, establish innovative fault tolerance mechanisms, and explore and refine policy standards and institutional mechanisms for the property rights, pricing, circulation, trading, use, distribution, governance, and security of data factors of production, thereby better utilizing the positive role of data factors of production.

(xx) Steadily promote system construction. Focusing on the construction of a basic system for data, gradually refine policies and standards in key areas such as the definition of data property rights, data circulation and trading, data factor of production income distribution, authorized use of public data, data trading venue construction, and data governance. Strengthen theoretical and legislative research on data property rights protection, data factor of production market system construction, data factor of production price formation mechanisms, data factor of production income distribution, cross-border data transmission, dispute resolution, etc., and thereby promote the improvement of relevant legal systems. In a timely fashion, summarize and refine replicable and extendable experiences and practices, and use the spread of experience from individual places to entire areas as a way to achieve new breakthroughs in promoting the construction of a basic system for data. The Inter-Ministerial Joint Conference for the Development of the Digital Economy should regularly evaluate construction of the data foundation system, make dynamic adjustments at the appropriate times, and promote the continuous enrichment and refinement of the basic system for data.

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<sup>3</sup> Translator's note: The idea behind "winner-takes-all open competition" (揭榜挂帅), in the context of PRC science and technology projects, is that the government openly lists the technological breakthrough(s) it desires. Any individual or group in society, not just a select few, are then eligible to win a cash award if they succeed in making the breakthrough. This concept is also known as the "bounty system" (悬赏制).