China's Approach to Regulating Artificial Intelligence

[**CHINA REGULATION WATCH**](#)[1]

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On July 10, 2023, the Cyberspace Administration of China, also known as the State Internet Information Office (国家互联网信息办公室) (the "CAC"),[2] released the Interim Administrative Measures of Generative Artificial Intelligence Services (生成式人工智能服务管理暂行办法) (the "Generative AI Measures"). The Generative AI Measures, which will become effective on August 15, 2023, signal China's tentative support of its booming artificial intelligence ("AI") industry while emphasizing security as a priority. Prior to these Generative AI Measures, China had issued two national-level rules regulating AI: the Administration Provisions on Recommendation Algorithms in Internet-Based Information Service (互联网信息服务算法推荐管理规定), which primarily target regulating the application of recommendation algorithms technologies and came into effect on March 1, 2022 (the "Recommendation Algorithms Rules"), and the Administration Provisions on Deep Synthesis in Internet-Based Information Service (互联网信息服务深度合成管理规定), which primarily target regulating "Deepfake" styled software and came into effect on January 10, 2023 (the "Deep Synthesis Rules," together with the Generative AI Measures and the Recommendation Algorithms Rules, "China's AI Rules").

As China's AI Rules reflect, regulators in China have taken a "vertical" approach to AI, meaning each iteration of China's AI regulation targets a specific type of AI application. Although they share some technical overlap, each set of China's AI Rules addresses a specific regulatory concern, meeting the meteoric growth of the AI industry at its ever-expanding edges. For example, related to the Generative AI Measures, after OpenAI released its language model ChatGPT in late 2022, an increasing number of China-based internet companies released their own AI tools, culminating in the more than 30 AI models that were displayed at the annual World Artificial Intelligence Conference held in Shanghai on July 8, 2023,[3] including Baidu's chatbot "Wen Yan Yi Xin (文言一心)," Alibaba's large language model ("LLM") "Tong Yi Qian Wen (通义千问)," and Huawei's LLM "Pangu (盘古)." The Generative AI Measures, the latest iteration of China's vertical rulemaking, are thus an apparent response to the rapid rise of ChatGPT-style generative AI tools in China.

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[2] Since its establishment in May 2011, the CAC has exercised widespread censorship control over the internet and China's mobile phone networks to ensure cybersecurity and data privacy. For more information about the types of content censored by the CAC, please see Section III (Censorship and Content-Based Restrictions in China) of this article.

[3] See "World Artificial Intelligence Conference kicks off in Shanghai", CGTN published on July 6, 2023.

In this legal update, we survey comparative AI regulatory regimes and summarize the substance of existing AI regulation in China, capturing key regulatory areas and principles forming China's current and future legislation related to AI.

I.   The Global Regulatory Landscape

Although China's vertical approach to AI regulation helps regulators quickly address specific problems as they arise, the downside is that regulators must issue new regulations for each new AI application, forcing regulators to match the breakneck pace of an evolving industry. By contrast, lawmakers in the European Union ("EU") have taken a "horizontal" approach to AI regulation. On June 14, 2023, the European Parliament voted to adopt its position on the draft EU Artificial Intelligence Act (the "EU AI Act"), a comprehensive set of rules regulating all AI services and applications.[4] The regulatory framework of the EU AI Act addresses the potential harms and benefits of AI by dividing AI applications into four categories: unacceptable, high-risk, limited-risk, and minimal-risk.

Meanwhile, in the United States ("US"), there is no comprehensive federal legislation dedicated to AI regulation, although existing rules impact certain aspects of AI, such as US laws and regulations pertaining to privacy, security, anti-discrimination, and copyright ownership.[5] However, there are efforts towards developing a risk-based framework for AI: on June 20, 2023, Representatives Ted Lieu (D-California), Ken Buck (R-Colorado) and Anna Eshoo (D-California) introduced the National AI Commission Act, a bipartisan bill that would create a commission tasked with considering how AI regulation might (1) mitigate the risks and harms of AI and (2) protect the United States' "leadership in artificial intelligence innovation and the opportunities such innovation may bring."[6] Additionally, absent federal regulatory action, state and municipal lawmakers are introducing a growing number of measures to regulate and study the impact of AI and algorithms, such as New York City's regulations on the use of AI in hiring and promotion decisions that came into effect on July 5, 2023.[7]

China considers AI industry development a strategic priority and must navigate a delicate balance between preserving its existing control over the flow of information in mainland China and competing globally for technological leadership in a burgeoning industry. On the one hand, China must incorporate generative AI within its existing internet control framework. On the other hand, China is keen on promoting its domestic AI industry, and therefore aims to avoid overly burdensome regulations that could impede industry development. Considering this balancing act, China's government holds an inclusive and cautious stance towards generative AI and looks to the EU's

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[4] *See Amendments adopted by the European Parliament on 14 June 2023 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts* (June 14, 2023).
[5] For more information about US laws impacting generative AI in video games, please see our *US Tech Law Update: Legal Considerations for Generative AI in Games*, published March 2, 2023.
[6] *See* the *National AI Commission Act*, introduced June 20, 2023.
[7] See "Artificial Intelligence 2023 Legislation", NCSL published on April 18, 2023; *see also* Steve Lohr, A Hiring Law Blazes a Path for A.I. Regulation, NEW YORK TIMES published on May 25, 2023.

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hierarchical classification system as a model for regulating generative AI.[8] Thus, China regulators will eventually build a comprehensive and more widely applicable AI regulatory regime, evidenced by the inclusion of the Artificial Intelligence Law (人工智能法) in the 2023 Legislative Plan of State Council (国务院 2023 年度立法工作计划) released on May 31, 2023.

II.   Regulatory Overlap in China's Existing AI Rules

Due to China's vertical AI regulation, overlaps exist in the regulatory scope of each set of China's AI Rules. The table below lists each of China's AI Rules and the AI applications they address.

Recommendation Algorithms Rules (March 2022)	Deep Synthesis Rules (January 2023)	Generative AI Measures (August 2023)
- Applied to the application of recommendation algorithm technologies **in the provision of internet-based information services**[9] within the territory of the People's Republic of China ("PRC") (Article 2). - The term "application of recommendation algorithm technologies" refers to **using algorithm technologies, such as generative and synthesis technology**, personalized pushing technology, ranking and selection technology, retrieval and filtering technology, and dispatching and decision-making technology **to provide users with information** (Article 2).	- Applied to the provision of **internet-based information services** using deep synthesis technology within the territory of the PRC (Article 2). - The term "deep synthesis technology" refers to any technology that employs deep learning, virtual reality **or any other generative or synthetic algorithm to produce text, images, audio, video, virtual scenes or other network information**… (Article 23).	- Applied to the use of any **generative artificial intelligence technology to provide services that generate any text, images, audio, video or other content** ("Generative AI") to the public within the territory of the PRC (Article 2). - Does not apply to the research, development, or use of any generative artificial intelligence technology that does not provide Generative AI services to the public within the territory of the PRC (Article 2).

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[8] Article 3 of Generative AI Measures.

[9] The term "internet-based information services" is defined broadly under the Administrative Measures for Internet-Based Information Services (Revised in 2011) (互联网信息服务管理办法（2011 年修订）) issued by the State Council on January 8, 2011 (the "Internet Information Service Measures"), and refers to services that provide information through the internet to internet users. The broad definition practically covers all products and services provided to end users via the internet.

As illustrated in the table above, unlike the Recommendation Algorithms Rules and the Deep Synthesis Rules, which take a "catch all" approach and try to cover AI as broadly as possible, the regulatory scope of the Generative AI Measures is very specific and limited to only Generative AI services or products that serve the public. Generative AI tools used for internal research or use, such as by companies using Generative AI for game development, are not subject to these new Generative AI Measures.

Based on the regulatory scopes, China's AI Rules technically apply to foreign companies developing AI services that are accessible to the general public in China, but due to the "Great Fire Wall" most of the famous foreign Generative AI products, such as ChatGPT, cannot be used in China without using a virtual private network (VPN). Even though the Generative AI Measures specifically allow foreign investment in China's Generative AI industry (provided that such investment complies with applicable foreign investment laws and regulations), the mandatory obligations of Generative AI service providers, together with other general restrictions on foreign investment in China's internet space, create difficult hurdles that may exclude foreign companies from directly providing Generative AI services to the general public in China. However, China's AI Rules are not clear on whether a China company can use foreign company-developed AI services or incorporate foreign company-developed AI models into their products.

III.   Censorship and Content-Based Restrictions in China

While freedom of speech is a reality in many countries of the world, China has a long history of censoring online content and has promulgated a variety of measures relating thereto. These regulations are drafted in broad general terms and prohibit activities or content that:[10]

(1)   Opposes the fundamental principles determined in the constitution;
(2)   Endangers the unity, sovereignty, or territorial integrity of the nation;
(3)   Divulges state secrets, endangers national security, or damages the dignity or interests of the nation;
(4)   Incites ethnic hatred or racial discrimination or undermines national solidarity, or infringes upon national customs and habits;
(5)   Propagates evil cults or superstition;
(6)   Disseminates rumors, disrupts social order, or undermines social stability;
(7)   Propagates obscenity, pornography, gambling, violence, or instigates crimes;
(8)   Insults or slanders others, or otherwise infringes upon the legitimate rights of others;
(9)   Endangers social morality or national splendid cultural traditions; or
(10)   Is otherwise prohibited by the laws or administrative regulations of the PRC.

Content restrictions and censorship are default principles related to the internet industry in China, and various clauses in the Generative AI Measures imply regulators are trying to apply restrictions to the content created by Generative AI tools. For example, restrictions in the Generative AI Measures include that:

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[10] Article 15 of Internet Information Service Measures.

(i)   The content generated by Generative AI tools shall reflect core socialist values and must not contain any content that is subversive to state power or the socialist regime, threatens national security and interests, harms the nation's image, incites secession, undermines national unity and social stability, propagates terrorism or extremism, or propagates ethnic hatred or ethnic discrimination, any violent, obscene or pornographic information, or any false information.[11]

(ii)   Generative AI tools shall take necessary measures to prevent generating discriminatory content based on the users' race, religion, nationality, region, gender, age, occupation and health condition.[12]

(iii)   Generative AI tools shall take necessary measures to increase the transparency of the services and enhance the accuracy and reliability of the generated content.[13]

Similar restrictions are also included in the Recommendation Algorithms Rules and the Deep Synthesis Rules, both of which also stipulate that recommendation algorithm services and deep synthesis services shall not be used to produce, copy, publish, and distribute fake news.[14] In addition, the Recommendation Algorithms Rules require service providers to adhere to mainstream values, actively promote positive energy, and encourage the application of algorithms towards positivity and goodness; and prohibit service providers from using recommendation algorithm-based services to engage in activities or spread information prohibited by laws.[15] The Deep Synthesis Rules impose similar requirements.[16]

IV.   Key Service Provider Obligations

In addition to restrictions on the content created by AI tools, China's AI Rules impose the following obligations and responsibilities on providers of AI-related services:

(i)   <u>Content Censorship System</u>. Both the Recommendation Algorithms Rules and the Deep Synthesis Rules require providers of applicable AI services to establish mechanisms to censor the information and content recommended or created by the AI tools.[17] The Generative AI Measures do not specifically require service providers to establish a censorship system, but service providers are responsible for the content generated by their services.[18] Further, given the significant overlap in the regulatory scope of China's AI Rules, the censorship obligations for service providers introduced in the Recommendation Algorithms Rules and Deep Synthesis Rules are likely apply to Generative AI tools as well.

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[11] Article 4.1 of the Generative AI Measures.
[12] Article 4.2 of the Draft Generative AI Measures.
[13] Article 4.5 of the Generative AI Measures.
[14] Article 13 of Recommendation Algorithms Rules and Article 6 of Deep Synthesis Rules.
[15] See Article 6 of Recommendation Algorithms Rules.
[16] Article 4 of Deep Synthesis Rules.
[17] Article 7 and 11 of Recommendation Algorithms Rules, and Article 10 of the Deep Synthesis Rules.
[18] Article 9 of the Generative AI Measures.

(ii)   Algorithm Registration. Both the Recommendation Algorithms Rules and the Deep Synthesis Rules[19] require service providers of applicable AI services to register algorithms, which entails providing the service provider's name, form of services, service application type, algorithm type, algorithm self-assessment report, publication content, and other information to the internet information service algorithm filing system ("Algorithm Registration") within 10 business days after launch if such service providers have public opinion attributes or social mobilization capabilities. Similar requirements apply to Generative AI services that have public opinion attributes or social mobilization capabilities. [20]

Launching information services such as online forums, blogs, microblogs, chat rooms, communication groups, public accounts, short video platforms, webcasts, information sharing, mini apps or other services provides channels for the public to express their opinions or are capable of mobilizing the public to engage in specific activities, and, as such, may be considered as having public opinion attributes or social mobilization capacity. [21] It is widely believed that China's government considers the destabilization of public opinion and public mobilization facilitated through online services as a national security issue, and Algorithm Registration is one of many China policies regulating internet content. On June 20, 2023, the CAC issued a list of 41 deep synthesis services and service providers considered to have public opinion attributes or social mobilization capabilities, including services provided by Alibaba, Baidu, Meituan, ByteDance, NetEase, and Tencent.

(iii)   Security Assessment. In addition to Algorithm Registration, if Generative AI services have public opinion attributes or social mobilization capabilities, the Generative AI Measures require service providers to conduct a self-security assessment, or engage a third-party vendor to conduct such security assessment, to evaluate the legitimacy of the services and the technology; the company's compliance with applicable laws, regulations, and industry standards; and the effectiveness of the company's cybersecurity measures. The written report of such security assessment shall be submitted to local cyberspace administrations and police departments (the "Security Assessment").[22]

(iv)   Notice of AI-Generated Content. In order to ensure the transparency and accuracy of AI-generated content, the Deep Synthesis Rules introduced two labeling requirements for AI-generated content, both of which are expressly incorporated in the Generative AI Measures:[23] (1) AI-generated content must be labeled;[24] and (2) such labeling must be visible to users for specific content that is likely to mislead the public.[25] Listed examples of content requiring visible labeling

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[19] Article 24 of Recommendation Algorithms Rules, and Article 19 of Deep Synthesis Rules.

[20] Article 17 of Generative AI Measures, which includes that service providers shall complete the Algorithm Registration in accordance with the terms and conditions set forth in the Recommendation Algorithms Rules.

[21] Article 2 of Provisions on Internet Information Services with Public Opinion Attributes or Social Mobilization Capacity Security Assessment (具有舆论属性或社会动员能力的互联网信息服务安全评估规定) issued by the CAC on November 30, 2018.

[22] Article 17 of Generative AI Measures, and Article 5 and 7 of the Provisions on Internet Information Services with Public Opinion Attributes or Social Mobilization Capacity Security Assessment (具有舆论属性或社会动员能力的互联网信息服务安全评估规定) issued by the CAC on November 30, 2018;

[23] Article 12 of Generative AI Measures.

[24] Article 16 of Deep Synthesis Rules.

[25] Article 17 of Deep Synthesis Rules.

include artificial dialogue or writing that simulates a natural human; speech generation such as voice synthesis or imitation; face generation, face swapping or face alteration; and the creation of interactive realistic scenes and environments.[26] On May 9, 2023, Douyin, the Chinese version of TikTok, issued a platform policy requesting that users apply a specific digital watermark to any AI-generated content with the following specifications: [27]

TEXT	AI Generated
Style	AI生成
Watermark Size	4*20@1x * Instructions for use: @1x represents a mobile canvas based on 375*812. If you export a larger canvas, please enlarge the watermark proportionally.
Whether it can be customized	Not-customizable

V.   Intellectual Property Rights Protection

Generative AI tools produce content based on analyses of training data that is often scraped from the internet, which has led to concerns among artists that such tools may infringe on their intellectual property rights regarding works posted online that may have been scraped and used for training data without the rightsholders' consent. For example, as detailed in our US Tech Law Update, *Legal Considerations for Generative AI in Games,* in the US, a group of artists filed a class action lawsuit against certain US-based AI companies over such companies use of datasets that link to copyrighted works as training data for their AI image generators.

While the Recommendation Algorithms Rules and Deep Synthesis Rules do not address this matter, the Generative AI Measures require service providers to be responsible for ensuring that their

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[26] Article 17 of Deep Synthesis Rules.
[27] See English translation of "Douyin Specifications for Watermark and Metadata Labeling of Content Generated by Artificial Intelligence (抖音关于人工智能生成内容标识的水印与元数据规范)," China Law Translate published on May 9, 2023.

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training data do not include content that infringes on others' intellectual property rights.[28] However, the language used in the rules is vague and does not provide a clear answer to the question of whether the unauthorized use of materials as training data by a service provider is considered infringement or if such use could be considered "fair use" under China Copyright laws.

In practice, that the effectiveness and capabilities of Generative AI tools heavily depend on factors such as the quantity and diversity of available training data is already an important bottleneck on the size and sophistication of cutting-edge Generative AI models. Given the substantial amount of data required to train a Generative AI tool, it seems impractical for service providers to seek consent from each rightsholder whose works are included in training data. The vague language in the Generative AI Measures implies that China's regulators will likely allow (at least temporarily) China companies to assemble the enormous datasets required for training Generative AI tools capable of keeping pace with international competitors without obtaining consent from rightsholders.

VI. Other Service Provider Obligations

As there is significant overlap in the regulatory scopes of China's AI Rules, the obligations imposed on service providers by the Generative AI Measures, once effective, will extend to service providers of recommendation algorithm services and deep synthesis services, even if not explicitly stated in the Recommendation Algorithms Rules and the Deep Synthesis Rules. These include:

(i)   Standardized Data Tagging. During the development of any Generative AI tool or services, if any training requires data tagging by humans, the service provider shall have a clear and manageable standard for manual data tagging.[29]

(ii)   User Services. Similar to all other internet-based services in China, and as described above, service providers are responsible for the content generated by the services and any cyber security obligations and must enter into a service agreement with its users.[30]

(iii)   Data Protection. Service providers shall comply with any applicable existing data privacy protection laws and regulations in China. The Generative AI Measures specifically require that service providers shall protect users' personal information and privacy, including by (a) not collecting personal information not necessary for providing the service, (b) not illegally (i.e. without obtaining the necessary consent) retaining input information or usage records that can be used to infer the user's identity, (c) not providing the user's input information or usage records to others, and (d) timely responding to users' personal information right requests.[31]

(iv)   Model Improvement. If any illegal content is generated by any Generative AI service, the service provider shall take actions to stop its generation, stop transmission of the generated content, improve the training model, and report to the relevant government authority.[32]

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[28] Article 7.2 of the Generative AI Measures.
[29] Article 8 of the Generative AI Measures.
[30] Article 9 of the Generative AI Measures.
[31] Article 11 of the Generative AI Measures.
[32] Article 14 of the Generative AI Measures.

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(v)   <u>Government Audit</u>. Service providers shall, upon request from the CAC and other relevant authorities, provide information relevant to how the service may influence users' trust or choices, which includes foundational algorithms and technical systems.[33]

VII.   Conclusion

Despite China's issuance of three AI-related rules, the obligations placed on service providers within these rules remain general and broad. We believe China's regulators are still in the process of exploring how to effectively regulate AI and other emerging technologies. Compared to other internet-based services, such as video games, short video, and live streaming, the obligations imposed on Generative AI service providers under the newly issued Generative AI Measures are much less onerous, which implies that China's regulators aim to incorporate the newly emerging technologies into China's existing internet control framework, and do not want to implement any overly burdensome regulations that may hinder the development of the Generative AI industry.

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[33] Article 19 of the Generative AI Measures.