LATHAM & WATKINS

Client Alert
Commentary

China's New AI Regulations

China's regulations aim to address risks related to artificial intelligence and introduce compliance obligations on entities engaged in AI-related business.

Key Points:

- The People's Republic of China (PRC) is moving ahead of other jurisdictions in regulating AI by proposing and implementing a set of regulations:

  - the Administrative Provisions on Algorithm Recommendation for Internet Information Services which came into force on March 1, 2022 (Algorithm Recommendation Regulation);

  - the Provisions on Management of Deep Synthesis in Internet Information Service (Deep Synthesis Regulation), which came into force on January 10, 2023;

  - the Provisional Provisions on Management of Generative Artificial Intelligence Services (Generative AI Regulation), published on July 13, 2023, which came into force on August 15, 2023; and

  - the Trial Measures for Ethical Review of Science and Technology Activities (Draft Ethical Review Measure), published on April 14, 2023, for public consultation which closed on May 3, 2023.

- The Algorithm Recommendation Regulation focuses on the use of algorithm recommendation technologies (including, among others, generative and synthetic algorithms) to provide internet information services in the PRC. The Deep Synthesis Regulation focuses on the use of deep synthesis technologies (a subset of generative AI technologies) to provide internet information services in the PRC. The Draft Ethical Review Measure, on the other hand, focuses on the ethical review of, among others, the research and development of AI technologies in the PRC. The Generative AI Regulation more broadly regulates the development and use of all generative AI technologies to provide services in the PRC.

- These regulations impose obligations on service providers, technical supporters, and users, as well as certain other entities, including online platforms. They ultimately aim to address the risks related to AI-generated content and to protect national and social security in the PRC.

This Client Alert discusses what technologies and entities are covered under these regulations, what obligations are imposed, and what penalties are specified for non-compliance. It also compares the regulations with their counterpart in the EU, and discusses the potential implications for entities engaged in AI-related business.

Background

The Organisation for Economic Co-operation and Development (OECD) defines an AI system as a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. Generative AI is a subset of artificial intelligence that involves using deep learning techniques to generate output (such as images, music or text) based on input data. ChatGPT, an interactive AI language model in the spotlight since its public release in November 2022, is a prime example of this technology. In the PRC, Baidu has released its own generative AI-powered "Ernie Bot," and other similar tools have been or are expected to be released by competitors. The risks related to this technology (e.g., personal data leakage, dissemination of illegal information, and fake news/content) also challenge the current legal system and have drawn widespread public attention. Several jurisdictions have introduced or are in the process of introducing new laws and regulations to address these challenges.

In the PRC, existing laws such as data protection, cybersecurity, unfair competition, and e-commerce laws may apply to the use of AI, like in other jurisdictions. However, the Cyberspace Administration of China (CAC) has been world-first in introducing new specific laws to regulate AI:

- **Algorithm Recommendation Regulation:** The first PRC-wide AI specific regulation to be introduced was the Algorithm Recommendation Regulation which came into force on March 1, 2022 (see here (only available in Chinese). It regulates the use of algorithm recommendation technologies to provide online services in the PRC.

- **Deep Synthesis Regulation:** The second key specific AI regulation introduced was the Deep Synthesis Regulation. The CAC, the Ministry of Industry and Information Technology (MIIT), and the Ministry of Public Security (MPS) jointly adopted the Deep Synthesis Regulation on November 25, 2022, which came into force on January 10, 2023 (see here (only available in Chinese). There is also an accompanying announcement on the regulation and FAQs (which are also only available in Chinese). One of the requirements under the Deep Synthesis Regulation is to file applicable algorithms with the CAC. On June 23, 2023, CAC published the first batch of filed deep synthesis algorithms in the PRC (AI Algorithm Filing List), further clarifying the ambiguity on algorithm filing obligations.

- **Generative AI Regulation:** On July 13, 2023, CAC, the National Development and Reform Commission, the Ministry of Education (MOE), the Ministry of Science and Technology (MST), the MIIT, and the MPS jointly published the Generative AI Regulation (see here (only available in Chinese) which came into force on August 15, 2023, targeting a broader scope of generative AI technologies. There is also an accompanying announcement on the regulation and FAQs (which are also only available in Chinese).

- **Draft Ethical Review Measure:** On April 14, 2023, the MST published the Draft Ethical Review Measure for public consultation until May 3, 2023, focusing on the ethical review of science and technology activities that have ethical risks, such as the research and development (R&D) of AI technologies.

Separately and notably, per the Legislative Work Plan for 2023 released by the State Council of the PRC on May 31, 2023, a draft AI Law would be submitted to the Standing Committee of the National People's Congress of the PRC (the legislative body of the PRC) for deliberation during 2023. However, uncertainties still remain on the estimated timeline when the AI Law would be formulated and enter into force.

Going forward, the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, the Draft Ethical Review Measure, once effective, and the Generative AI Regulation (collectively, AI Regulations), while awaiting for the formulation of the comprehensive AI Law, will be the main laws governing AI-related services and products in the PRC, including generative AI and AI-generated content (AIGC).

Scope

In terms of material scope:

- the **Algorithm Recommendation Regulation** applies to any use of algorithm recommendation technologies to provide internet information services in the PRC;

- the **Deep Synthesis Regulation** applies to any use of deep synthesis technologies to provide internet information services in the PRC;

- the **Generative AI Regulation** applies to the use of all generative AI technologies to provide services to the public in the PRC, specifically excluding development and application of generative AI technologies that have not been used to provide services to the public in the PRC; and

- the **Draft Ethical Review Measure**, once implemented, would apply to any science and technology activities involving human beings, lab animals, or otherwise involve ethical risks.

In terms of territorial scope, the AI Regulations do not limit their application to PRC individuals and entities. Foreign individuals or entities may also be captured if they are involved in the use of AI technologies to provide services or the R&D of AI technologies in the PRC. However, the Generative AI Regulation specifically excludes its application to R&D of AI technologies in the PRC if the relevant services have not been provided to the public within the territory of the PRC.

What Technologies Are Captured?

Algorithm Recommendation Technologies

The term "algorithm recommendation technologies" as defined under the Algorithm Recommendation Regulation includes the following algorithms:

- generation and synthesis (e.g., AIGC-related products and services);

- personalized push (e.g., recommendation of products according to consumption habits in online shopping apps);

- sorting and selection (e.g., hot topic searches or selections in social media apps);

- retrieval and filtering (e.g., automatic identification and exclusion of illegal words in search engine apps); and

- scheduling related decision-making (e.g., ride-hailing platforms and food-ordering apps).

Deep Synthesis

The term "synthesis technologies" as defined under the Deep Synthesis Regulation refers to "technologies that utilize generative and synthetic algorithms, such as deep learning and virtual reality, to generate text, image, audio, video, virtual scenes, and other internet information." More specifically, the use cases of this technology capture:

- generating or editing **text content**, such as writing generation, writing style conversion, and chat bots (e.g., apps similar to ChatGPT);

- generating or editing **voice content**, such as text-to-speech, voice conversion, and voice attribute editing;

- generating or editing **non-speech content**, such as music generation and scene sound editing;

- generating or editing **biometric features in images and video content**, such as face generation, face replacement, character attribute editing, or face/posture manipulation (e.g., "deepfakes");

- generating or editing **non-biometric features in images and video content**, such as image generation, image enhancement, or image restoration (e.g., apps similar to DALL-E 2); and

- **3D reconstruction, digital simulation**, and other technologies which generate or edit digital characters.

Generative AI

The term "generative AI technologies" defined under the Generative AI Regulation refers to "models and related technologies that have the ability to generate texts, pictures, sounds, videos, and other content." The regulation does not specify any use case or example of such technologies, but the term on its face is wider than "synthesis technologies", since essentially any content-generating technology will be captured, and the content can be texts, pictures, sounds, videos, and other information that is not on the internet).

Science and Technology Activities Having Ethical Risks

The Draft Ethical Measure applies broadly to "science and technology activities having ethical risks" and it specifically lists, among others, the R&D of algorithm models, applications, and systems with public opinion attributes or social mobilization capabilities as science and technology activities that have high ethical risks.

Which Entities Are Captured?

The **Algorithm Recommendation Regulation** mainly imposes obligations on service providers.

The **Deep Synthesis Regulation** imposes comprehensive obligations on service providers, technical supporters, users, and any other entities involved in the use of deep synthesis technologies, including online app distribution platforms.

The **Generative AI Regulation** imposes obligations mainly on service providers, referring to organizations or individuals that provide generative AI services through generative AI technologies (including technical supporters providing direct service providers with access to generative AI technologies through APIs).

The **Draft Ethical Review Measure** imposes ethical review obligations on any universities, scientific research institutions, medical and health institutions, and enterprises engaged in the relevant science and technology activities.

The following definitions are helpful in understanding the relevant entities involved:

- "Technical supporters" may refer to the companies that develop the underlying deep synthesis or other generative AI technologies and which provide technical support, such as OpenAI and Baidu. The AI Algorithm Filing List further clarifies that "technical supporters" mainly refers to any entity that provides generative or synthetic algorithm services to enterprise customers (i.e., B2B) through the Application Programming Interface (API) (please see below for further details).

- "Service providers" refers to companies that provide deep synthesis or other generative AI services, e.g., by integrating such services into their B2C internet information services.

- "Users" of deep synthesis service users include any organizations and individuals that use deep synthesis services to produce, copy, publish, and disseminate information.

- "Online app distribution platforms" refers to internet app distribution stores, such as App Store, Google Play store, Oppo app store, and Huawei AppGallery, etc.

What Obligations Are Imposed?

The entities captured by the AI Regulations will generally need to ensure that they have fulfilled the following obligations, as applicable:

No.	Obligors	Obligations
A. On or prior to the launch of a new AI-powered product, service, or application		
Filing of algorithms (both generative and non-generative AI)		
1.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Filing of algorithms** The obligors shall file the relevant algorithms (in AIGC context, mainly generative or synthetic algorithms) with the CAC or its local counterparts within 10 working days from the date of service provision, as required by Article 24 of the Algorithm Recommendation Regulation. Notably, each of the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation provides that such filing obligation will only arise if the product, service, or application has "public opinion attributes or social mobilization capabilities." In our view, this requirement aims to clarify the ambiguity on whether a filing will be triggered, but given the wide scope of such a condition as discussed below, an algorithm filing will likely become a mandatory pre-requisite for launching any AI-powered products, services, or applications.

No.	Obligors	Obligations
		Public Opinion Attributes or Social Mobilization Capabilities The AI Regulations do not provide a clear definition or criteria of what constitutes "public opinion attributes or social mobilization capabilities." The Provisions on Security Assessment of Internet Information Services with Public Opinion Attributes or Social Mobilization (Security Assessment Regulation), which was jointly published by CAC and the MPS in 2018, is the only applicable guidance in this regard. According to the Security Assessment Regulation, the following internet information services shall be deemed to have public opinion attributes or social mobilization capabilities: • launching of forums, blogs, microblogs, chat rooms, communication groups, public accounts, short videos, webcasts, information sharing, small programs, and other information services, or adding corresponding functions; and • launching of other internet information services that provide channels for the public to express their opinions or have the ability to mobilize the public to engage in specific activities. This very wide scope could capture almost all internet information services. In practice, internet companies would normally file their algorithms voluntarily, but regulatory authorities may also request for filings of their own motion. *Filing* The algorithm filing shall include the names of the service providers or technical supporters (as applicable), the form of services or technical support provided, the types of algorithms used, the types of areas/products using such algorithms (e.g., apps, websites, and small programs), and the algorithm self-assessment report. After the filing, the filing number and link to the public notification of the filing shall be promptly displayed on the relevant websites or apps. The following ambiguities on algorithm filing were further clarified in the AI Algorithm Filing List: • *Who should make the filing as a technical supporter:* any entity providing generative or synthetic algorithm services to enterprise customers (i.e., B2B) through an API, rather than directly servicing the general public. • *What kind of services will be captured:* any form of services using algorithm recommendation technologies, including apps, websites, and small programs. • *Whether Large Language Models (LLM) algorithms will be captured:* Yes, LLM has been filed by Baidu (as service provider) and iFlytek (as technical supporter), respectively. Technical supporters should refer to the service providers to perform filing procedures. However, the Generative AI Regulation is unclear on whether the

No.	Obligors	Obligations
		direct service providers will still be required to file the algorithms if the technical supporters which are deemed as service providers for offering APIs have completed the filing. In the AI Algorithm Filing List, there is no overlap between filings made by service providers and technical supporters, and only eight algorithms out of the 41 filed algorithms thus far have been filed by technical supporters. This indicates that the direct service providers have taken a more proactive role in the algorithm filing process since the Algorithm Recommendation Regulation came into force. *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*
	Security assessment of products, services, applications, etc. (both generative and non-generative AI)	
2.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Security assessment** The obligors shall carry out a security assessment in accordance with the Security Assessment Regulation and submit a security assessment report to the local city level cyberspace administration and public security authority before launching the product, service, applications, functions, or tools. The Algorithm Recommendation Regulation, the Deep Synthesis Regulation, the Generative AI Regulation, and the Security Assessment Regulation provide that such security assessment will only be triggered upon certain conditions, including: • the new product, service, application, or function to be launched online has or causes any material change in "public opinion attributes or social mobilization capabilities" (see analysis above); • the significant increase of user base causes any material change in "public opinion attributes or social mobilization capabilities"; • the dissemination of illegal or harmful information indicates that the existing security measures are not able to effectively prevent cybersecurity risks; • in case of deep synthesis technologies, the tools (models or templates) are used for generating or editing biometric features such as faces and voices, or non-biometric features of special objects and scenes that may involve national security, national image, national interests, and public interests; or • otherwise requested by the cyberspace administrations at or above the local city level or public security authorities in writing. However, given the wide scope of the condition "public opinion attributes or social mobilization capabilities," a security assessment in accordance with the Security Assessment Regulation will likely become a mandatory pre-requisite for launching any AI-powered products, services, or applications.

No.	Obligors	Obligations
		Security Assessment This security assessment is separate and independent from the CAC security assessment required under the Personal Information Protection Law (PIPL) for the export of personal data, as well as to the algorithm self-assessment report (as part of the algorithm filing). According to the Security Assessment Regulation, the service providers may conduct a self-assessment or engage a third-party security assessment agent to conduct the security assessment. The security assessment shall focus on the following aspects: • identity of the persons in charge of security management and information reviewing, and establishment of a security management taskforce appropriate to the services provided; • user real identity verification and registration information retention measures; • record-keeping measures for users' network log information, such as account numbers, operation time, operation types, network source and destination addresses, network source ports and client hardware characteristics, and users' released information; • prevention and handling of illegal and harmful information in user account numbers and group names, nicknames, introductions, notes, logos, information release, forwarding, comments and other service functions, and relevant recordkeeping measures; • technical measures for personal information protection and prevention of dissemination of illegal and harmful information or the risk of loss of control of social mobilization functions; and • whether the service provider has established (i) a complaint and reporting system to publish methods of and other information related to complaints and reports, and to promptly accept and handle relevant complaints and reports; and (ii) a working mechanism to provide technical or data support and assistance to the relevant internet information services and national security or public security authorities to implement their supervision and management responsibilities. A security assessment report shall be formulated based on the security assessment and submitted by the service providers to the CAC at or above the local city level and public security authority through the [National Internet Security Management Service Platform](). The report shall include, among others, (i) basic information related to the service, such as its functions, scope, hardware and software facilities, deployment locations, and grant of relevant licenses; (ii) the implementation of security management systems and technical measures, and the

No.	Obligors	Obligations
		effect of risk prevention and control; (iii) results of the security assessment; and (iv) other relevant situations that should be demonstrated. *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*
*Procedural review by app distribution platforms (mainly generative AI)*	
3.	Online app distribution platforms (AIGC context)	**Verification by app stores** Completion of the security assessment and filings as required under the applicable laws and regulations must be verified before launching the applications on online app distribution platforms. This is not a substantive review by the app store but seems to add another layer of procedural review that only applies in the context of apps. Although websites are not required to complete such third-party verification, they are still subject to the algorithm filing and security assessment requirements. *This obligation is only imposed under the Deep Synthesis Regulation.*
*Ethical review of AI related R&D (both generative and non-generative AI)*	
4.	AI service providers and technical supporters engaged in R&D activities	**Ethical review** According to Article 5 of the Draft Ethical Review Measure, any universities, scientific research institutions, medical and health institutions, and enterprises engaged in "ethically sensitive" science and technology activities in certain areas, including AI, must establish a science and technology ethical review committee. The Appendix of the Draft Ethical Review Measure sets out a list of high-risk science and technology activities, which among others, includes the R&D of algorithm models, applications, and systems with the ability to mobilize public opinion and guide social awareness. These high-risk activities shall be subject to (i) the preliminary review by the ethical review committee; and (ii) the additional expert review by the local or relevant industry-competent department, in accordance with Article 32 of the Draft Ethical Review Measure. Although the meaning of "ethically sensitive" is unclear, the establishment of ethical review committee and ethical review of AI-related R&D will likely become a mandatory (rather than conditional) pre-requisite for AI service providers and technical supporters, given the AI-related R&D has been specifically listed out as a high-risk science and technology activity as aforementioned. <u>Registration</u> The obligor shall register (i) its ethical review committee within 30 days after establishment (Article 44 of the Draft Ethical Review Measure); and (ii) its high-risk science and technology activities within 30 days after clearance of ethical review (including both the preliminary review by the ethical review committee, and the

No.	Obligors	Obligations
		additional expert review by the local or relevant industry-competent department) (Article 45 of the Draft Ethical Review Measure), in each case on the National Science and Technology Ethics Management Information Registration Platform to be established by MST. The registration contents should include (i) for ethical review committee, its composition, articles of association, working system, and other relevant information; and (ii) the implementation plan of scientific and technological activities, the results of the preliminary review and expert review, and other relevant information. The registration should be updated in time when the relevant contents change. *This obligation is not yet legally binding as it stems from the Draft Ethical Review Measure.*
B. During the daily operation of AI-powered products, services, or applications		
General obligations		
1.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Compliance with laws, social morality and ethics** Under Article 4 of the Algorithm Recommendation Regulation, the provision of algorithm recommendation services shall abide by laws and regulations, respect social morality and ethics, abide by business and professional ethics, and follow the principles of impartiality, fairness, openness and transparency, scientific rationality, and honesty. Similarly, under Article 4 of the Deep Synthesis Regulation, the provision of deep synthesis services shall comply with laws and regulations, respect social morality and ethics, adhere to the correct political direction, public opinion and value orientation, and promote positive and upright deep synthesis services. Although there are more specific obligations reflecting these values (such as specific obligations on inputs and outputs as set out below), these are the overarching values and requirements for the respective services. It remains to be seen how these will be applied in practice over and above the more specific requirements. *This obligation is imposed under the Algorithm Recommendation Regulation and Deep Synthesis Regulation.*
2.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**No manipulation using algorithm recommendation services** Under Article 14 of the Algorithm Recommendation Regulation, algorithm recommendation service providers shall not use algorithms to falsely register accounts, illegally trade accounts, manipulate user accounts or falsify likes, comments or forwards, or use algorithms to block information, over-recommend information, manipulate lists or search results rankings, control what is searched

No.	Obligors	Obligations
		most or selected in the presentation of information, or influence network public opinions or avoid supervision and administrative actions. *This obligation is imposed under the Algorithm Recommendation Regulation.*
3.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**No unfair competition using algorithm services** Under Article 15 of the Algorithm Recommendation Regulation, algorithm recommendation service providers shall not use algorithms to impose unreasonable restrictions on other internet information service providers or hinder or disrupt the normal operation of the internet information services legally provided by them and conduct any monopoly or unfair competition behaviors. Similarly, under Article 4(3) of the Generative AI Regulation, obligors shall refrain from monopoly and unfair competition using the advantages of algorithms, data, and platforms.
*Training data and data labelling (mainly generative AI)*
4.	All generative AI service providers and technical supporters (through APIs)	**Training data rules** Article 7 of the Generative AI Regulation provides that the obligors shall carry out pre-training, optimizing training, and other data processing activities in accordance with the law. More specifically, the obligors shall comply with the following requirements: • ensure that the data and basic models are from lawful sources; • ensure no infringement of the third-party intellectual property rights in accordance with the law; • if personal information is involved, the obligors shall obtain the subject's consent or satisfy other conditions under applicable laws; • the obligors shall take effective measures to improve the quality of the training data, and enhance the authenticity, accuracy, objectivity, and diversity of the training data; and • the data complies with the Cybersecurity Law (CSL), Data Security Law (DSL), PIPL, and other administrative regulations. Similarly, Article 14 of the Deep Synthesis Regulation provides that deep synthesis service providers and technical supporters shall implement necessary technical measures for training data security and to comply with personal information protection regulations if the training data contains personal information. We note the requirement in the final Generative AI Regulation to "take effective measures to enhance" the authenticity, accuracy, objectivity, and diversity of the

No.	Obligors	Obligations
		training data appears to have been relaxed compared to the previous draft Generative AI Regulation, which required the obligors to "ensure" the authenticity, accuracy, objectivity, and diversity of the training data. *This obligation is imposed under the Deep Synthesis Regulation and the Generative AI Regulation.*
5.	All generative AI service providers and technical supporters (through APIs)	**Training data labelling rules** According to Article 8 of the Generative AI Regulation, if data labeling is used in developing generative AI technologies, the obligors shall formulate clear, specific, and operable labeling rules that comply with the Generative AI Regulation, conduct quality assessment of data labeling, verify the accuracy of the labeling content by sampling, conduct necessary training for labeling personnel, and supervise and train the labeling personnel to perform standardized labeling operation. The term "data labeling" is different from content labelling as required under the AI Regulations (see below). Data labeling is the process of adding tags or labels to raw data such as photographs, videos, text, and audio by humans when training the models. These tags describe the data's entity type, referring to various attributes and characteristics of the data. This allows a machine learning model to learn to recognize data without a label and is important for building accurate models, provided that the labelling personnel have necessary experience and are well trained. *This obligation is only imposed under the Generative AI Regulation.*
6.	All generative AI service providers and technical supporters (through APIs)	**Cooperation with regulators to explain training data** According to Article 19 of the Generative AI Regulation, the obligors shall cooperate with the supervision or inspection conducted by the relevant regulators, including to explain the description of the source of training data, scale, type, labeling rules, algorithmic mechanism, etc. for the training data as required, and also to provide necessary technical, data, and other support and assistance. *This obligation is only imposed under the Generative AI Regulation.*
Verification of users' real identities (mainly generative AI)		
7.	Deep synthesis service providers	**Verification of users' real identities** According to Article 9 of the Deep Synthesis Regulation, users' real identities must be verified against their mobile numbers, identity card numbers, unified social credit codes, etc., and information dissemination services must not be provided to unverified users. *This obligation is only imposed under the Deep Synthesis Regulation.*

No.	Obligors	Obligations
Obtaining separate consents to alteration of biometric information (mainly generative AI)		
8.	Deep synthesis service providers and technical supporters	**Notification and consent of the subjects of deep synthesis services** According to Article 14 of the Deep Synthesis Regulation, providers of deep synthesis services and technical supporters that edit biometric information, such as faces and voices, must notify the individuals whose biometric information is edited, and obtain their separate consent. For example, if individual/company A inputs a picture of individual B's face into the deep synthesis service to alter individual B's face, individual/company A must obtain individual B's separate consent. *This obligation is only imposed under the Deep Synthesis Regulation.*
Input data (mainly generative AI)		
9.	All generative AI service providers and technical supporters (through APIs)	**Protecting the privacy of users' input** The obligors shall be responsible for protecting users' input data and usage record in the course of providing services, pursuant to Article 11 of the Generative AI Regulation. They shall not collect unnecessary personal information, or illegally retain any input data and usage records that can infer the identity of a user, or provide the input data and usage record to others unless otherwise provided under applicable laws. *This obligation is only imposed under the Generative AI Regulation.*
Output content moderation (both generative and non-generative AI)		
10.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters) and users	**Present information in line with "mainstream value orientation," promote socialist core values and restrictions on content** Article 11 of the Algorithm Recommendation Regulation requires obligors to design the layout and pages for algorithm recommendation services to actively present information in line with the "mainstream value orientation" on the first screen of the homepage, the trending topics, selections, rankings, pop-up windows, and other key links. Article 6 of the Algorithm Recommendation Regulation also generally provides that obligors shall adhere to "mainstream values" and design the algorithm recommendation service to "actively spread positive energy." Similarly, Article 4 of the Deep Synthesis Regulation provides that the provision of deep synthesis services shall adhere to the correct political direction, public opinion guidance and value orientation, and promote positive and upright deep synthesis services.

No.	Obligors	Obligations
		Both the Algorithm Recommendation Regulation and the Deep Synthesis Regulation generally provide that the obligors shall not use the services to: • engage in activities prohibited by laws and regulations that endanger the national security and public interests, disturb the economic order and social order, damage the national image, infringe the legitimate rights and interests of other individuals; or • reproduce, produce, release, or disseminate information prohibited by laws and administrative regulations. Article 4 of the Generative AI Regulation further states that obligors, among others: • shall ensure that the AIGC reflect socialist core values; • shall not generate content that may harm national security and interests and hurt national image; or propagate terrorism, extremism, ethnic hatred and discrimination, violence, pornography, false and harmful information, and other content prohibited by the laws and regulations; • shall take effective measures to prevent discriminatory content in terms of nationality, religion, country, region, gender, occupation, health, etc.; • shall respect intellectual property rights and business ethics, keep confidential of trade secrets, with the advantages of algorithms, data, and platforms; and • shall respect the legitimate rights and interests of other individuals, and shall not harm their physical and mental health, or infringe their rights to portrait, reputation, honor, privacy, and personal information. *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*
11.	All generative AI service providers and technical supporters (through APIs)	**Take effective measures to enhance accuracy and reliability of AIGC** Under Article 4(5) of the Generative AI Regulation, obligors shall take effective measures in light of the characteristics of different types of services to improve the accuracy and reliability of content generated. We note that this requirement in the final Generative AI Regulation appears to have been relaxed from the draft version of the Generative AI Regulation, as the obligation was changed from an obligation to "ensure" AIGC is authentic and accurate and does not include any discriminatory content to an obligation, to "take effective measures to improve" the accuracy and reliability of AIGC and to prevent discriminatory content. *This obligation is imposed only under the Generative AI Regulation.*

No.	Obligors	Obligations
12.	All algorithm recommendation service providers (including all deep synthesis service providers and users)	**Specific prohibition on use for fake news** According to Article 13 of the Algorithm Recommendation Regulation, algorithm recommendation service providers providing internet news information services shall obtain relevant internet news and information services licences, shall duly provide internet news information services (including information gathering, publishing, reprinting and dissemination), shall not generate and synthesize false news and information, and shall not disseminate news and information released by units that are not within the scope of state regulations. Deep synthesis services must not be used to produce, reproduce, publish, or disseminate fake news information, according to Article 6 of the Deep Synthesis Regulation. These are specific prohibitions on disseminating fake news or news that is not from entities authorized by the state but the obligation could also be required under the Generative AI Regulation of authenticity and accuracy described above. *This obligation is imposed under the Algorithm Recommendation Regulation and Deep Synthesis Regulation.*
13.	All algorithm recommendation service providers (including all deep synthesis service providers)	**Screening illegal or harmful information** Under Article 9 of the Algorithm Recommendation Regulation, obligors shall establish a "features library" to screen any illegal or harmful information and implement screening criteria, rules, and procedures. Article 10 of the Deep Synthesis Regulation further provides that service providers and technical supporters must strengthen content moderation and review users' input data and synthesis results manually or through automated methods. Article 12 of the Algorithm Recommendation Regulation encourages algorithm recommendation service providers to also apply content management strategies such as content duplication removal or fragmentation (to avoid overconcentration of a specific recommended result set). *This obligation is imposed under both the Algorithm Recommendation Regulation and the Deep Synthesis Regulation.*
14.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Measures to prevent false, illegal, or harmful information** In general, the obligors shall take measures to prevent and stop dissemination of false, illegal, or harmful information. Under the Algorithm Recommendation Regulation, if any illegal information is identified, the obligor shall immediately stop the transmission of such information, delete such information, keep relevant records, and report to the local CAC counterparts and other relevant government authorities. In addition, if adverse

No.	Obligors	Obligations
		information is found, it shall be handled in accordance with relevant regulations on the ecological governance of network information contents. Under Article 11 of the Deep Synthesis Regulation, if the obligors identify that any false information is produced, copied, published, or disseminated through deep synthesis services, they must take actions promptly (e.g., dispel rumors, keep relevant records, and report to the local CAC counterparts and other relevant government authorities). Similarly, the Generative AI Regulation provides that if the obligors identify any illegal information, the obligors shall suspend the generation and dissemination of such content, take down the content, and take measures such as model optimization training for rectification purposes, and report the incident to the relevant competent authorities. If the obligors discover that any user is engaging in illegal activities by using generative AI services, the obligors shall take measures e.g., give a warning, restrict functions, suspend or terminate the services, keep relevant records, and report to the relevant competent authorities. Also, Article 9 of the Generative AI Regulation provides that obligors shall assume the obligations as "network information content producers" in accordance with the relevant law. While there is no clear definition of "network information content producers" and their obligations under the Generative AI Regulation, the same concept can be found in the Provisions on the Ecological Governance of Network Information Contents (Ecological Governance Provisions) published by the CAC, which took effect on March 1, 2020. According to Ecological Governance Provisions, the network information content producers are required to refrain from producing, copying, and publishing illegal information; and shall take measures to prevent the production, copying, and publication of adverse information. *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*
Synthetic content labelling (mainly generative AI)		
15.	All generative AI service providers and technical supporters (through APIs)	**Labelling content** According to Article 16 of the Deep Synthesis Regulation and Article 12 of the Generative AI Regulation, information generated or edited by using deep synthesis services must be labelled in a way that does not interfere with the use of such services. Relevant service providers and technical supporters must keep a record of the relevant network log information. The AI Regulations do not specify any detailed requirements on how the content labelling should be done and refer to the labelling requirements under the Deep Synthesis Regulation.

No.	Obligors	Obligations
		This obligation is imposed under the Deep Synthesis Regulation and the Generative AI Regulation.
16.	Deep synthesis service providers	**Labelling content as synthetic** According to Article 17 of the Deep Synthesis Regulation, for deep synthetic content that may confuse or mislead the public, the obligors must explicitly label such information as deep synthetic content in a reasonable position and area. Such content includes intelligent conversation or writing that simulates the style of a real person (e.g., ChatGPT), voice simulations, face image synthesis and face manipulation, generation or editing services such as immersive simulation scenes, and services that can produce deepfakes. For other deep synthetic content, the obligors must enable and remind the users to explicitly label the relevant information as synthetic content. Individuals and organizations may not use technical tools to delete, edit, or hide the above labels, pursuant to Article 18 of the Deep Synthesis Regulation. *This obligation is mainly imposed under the Deep Synthesis Regulation. The Algorithm Recommendation Regulation also provides that any synthetic content generated by algorithms shall bear a noticeable mark.*
Protection of Users' Rights (both generative and non-generative AI)		
17.	All algorithm recommendation service providers	**User labelling and choice** Under Article 11 of the Algorithm Recommendation Regulation, the obligor shall enhance the management of user models and user labels, improve the rules on logging interests in user models and user label management, and refrain from recording illegal and harmful information as keywords for user interests, or make them into user tags to use as a basis for recommendation information content. Furthermore, under Article 12 of the same regulation, algorithmic recommendation service providers should also strengthen ecosystem management by establishing robust mechanisms for manual intervention and allow users to independently choose content. *This obligation is imposed under the Algorithm Recommendation Regulation.*
18.	All algorithm recommendation service providers	**User rights** Under Article 17 of the Algorithm Recommendation Regulation, the obligor shall protect the following rights of the users:

No.	Obligors	Obligations
		• **right to not be targeted via their personal characteristics:** the obligor shall provide users with the option to not be targeted on the basis of their personal characteristics; • **right to opt-out:** the obligor shall provide users with a convenient option to switch off the algorithmic recommendation services; and • **right to delete personal characteristics:** the obligor shall provide users with the ability to select or delete user tags for algorithm recommendation services. Furthermore, as per Article 21 of the Algorithm Recommendation Regulation, users have the following right: • **right to not be subject to "differentiated treatment":** obligors that sell goods or services to consumers may not use algorithms to impose unreasonable differential treatment in prices and other transaction terms based on consumer preferences, trading habits, and other characteristics. Under Article 11 of the Generative AI Regulation, obligors shall promptly accept and respond to individuals' requests to access, copy, correct, supplement, and delete their personal information in accordance with the law. *This obligation is imposed under the Algorithm Recommendation Regulation and Generative AI Regulation.*
19.	All generative AI service providers and technical supporters (through APIs)	**Terms of use** According to Article 9 of the Generative AI Regulation, the obligors shall sign a service agreement with the user of the generative AI service, to specify the rights and obligations of both parties. *This obligation is only imposed under the Generative AI Regulation.*
20.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Disclosure Requirements** Under Article 16 of the Algorithm Recommendation Regulation, the obligor shall clearly notify users about the use of algorithmic recommendation and publicize the basic principles, purposes, and main operational mechanisms of the algorithmic recommendation services in an appropriate manner. Where the application of algorithms has a significant impact on the rights and interest of users, the provider shall provide explanations and bear corresponding responsibilities. According to Article 7 and 12 of the Algorithm Recommendation Regulation, the obligers shall formulate and disclose the relevant rules for algorithm recommendation services and are also encouraged to optimize the transparency

No.	Obligors	Obligations
		and explainability of rules on retrieval, sorting, selection, pushing, and display, so as to avoid adverse impacts on users and prevent and reduce disputes. Under Articles 10 and 18 of the Generative AI Regulation, the obligor must provide the applicable scope of users and uses for its services, as well as guidance on how to scientifically and reasonably understand and how to legally use generative AI services. *This obligation is imposed under both the Algorithm Recommendation Regulation and the Generative AI Regulation.*
21.	All algorithm recommendation service providers	**Must not induce addiction or over-consumption** According to Article 8 of the Algorithm Recommendation Regulation, obligors shall not set up any algorithm models that violate any laws and regulations or ethics, such as to induce user addiction or over-consumption. This obligation is also specifically required in respect to minors (see below). *This obligation is imposed under the Algorithm Recommendation Regulation.*
22.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Protection of minors, elderly, and workers** Under Article 18 of the Algorithm Recommendation Regulation, obligors should protect minors online in accordance with law, and facilitate minors' access to information that is beneficial to their physical and mental health through developing modes and providing services suitable for minors. The obligors shall not: • push to minors any information that may affect their physical and mental health, such as those that may cause minors to imitate unsafe behaviors and violate social morality, or induce bad habits in minors; or • use algorithm recommendation services to induce minors to become addicted to the internet. Under Article 10 of the Generative AI Regulations, the obligors shall take effective measures to prevent minors from over-relying on or becoming addicted to generative AI services. According to Article 19 of the Algorithm Recommendation Regulation, when providing services to the elderly, the obligors shall protect the rights and interests of the elderly in accordance with the law, take into full account the needs of the elderly for travel, medical treatment, consumption and affairs handling, provide intelligent services suitable for the elderly in accordance with the relevant regulations, and monitor, identify, and deal with telecommunications and Internet fraud information in accordance with the law to facilitate the elderly in safely using algorithm recommendation services.

No.	Obligors	Obligations
		Furthermore, according to Article 20 of the Algorithm Recommendation Regulation, when providing workers with job scheduling services, the obligors shall protect the legitimate rights and interests of the workers such as labor remuneration, rest, and vacation, and establish and improve relevant algorithms for platform order distribution, composition, and payment of remuneration, working hours, rewards, and punishments, etc. *This obligation is imposed under both the Algorithm Recommendation Regulation and the Generative AI Regulation.*
Periodic review of algorithms (both generative and non-generative AI)		
23.	All algorithm recommendation service providers (including all deep synthesis service providers and technical supporters)	**Periodic review of algorithms** Periodic reviews, evaluations, and verifications of the algorithms' mechanism and principles, models, data, and application results must be conducted (Article 8 Algorithm Recommendation Regulation and Article 15 of the Deep Synthesis Regulation). *This obligation is imposed under both the Algorithm Recommendation Regulation and the Deep Synthesis Regulation.*
24.	AI service providers and technical supporters engaged in R&D activities	**Periodic ethical review** According to Article 46 of the Draft Ethical Review Measure, the obligor shall submit the work report of the ethical review committee for the previous year and the report on the implementation of its high-risk science and technology activities to the National Science and Technology Ethics Management Information Registration Platform before March 31 of each year. In addition, according to Article 39 of the Draft Ethical Review Measure, the obligor shall conduct follow-on review of its high-risk science and technology activities at least twice each year after such activities are approved. If there is any significant change to the science and technology ethical risk of such activities, the obligor shall not suspend such activities until they are cleared by preliminary ethical review and expert review. *This obligation is not yet legally binding as it stems from the Draft Ethical Review Measure.*
25.	All generative AI service providers and technical supporters (through APIs)	**Supervision and inspection by other regulators** According to Article 16 of the Generative AI Regulation, generative AI services shall be regulated by a number of relevant regulators, including the cyberspace, development and reform, education, science and technology, information and industry technology, public security, radio and television, press and publication departments.

No.	Obligors	Obligations
		The relevant regulators shall conduct "supervision and inspection" on generative AI services based on their respective functions. However, the Generative AI Regulation does not entail any further details in this regard, including how such "supervision and inspection" shall be conducted and what would be reviewed during the process. *This obligation is only imposed under the Generative AI Regulation.*
Data security management system and technical measures (both generative and non-generative AI)		
26.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Compliance with data security and personal information protection laws** AI related services and products shall be provided in compliance with laws and regulations (Article 4 of the Algorithm Recommendation Regulation; Deep Synthesis Regulation; and Generative AI Regulation). In the AIGC context, generative AI service providers and technical supporters must ensure compliance with applicable data security and personal information protection laws and regulations in the PRC, including the CSL, DSL, PIPL, and Science and Technology Progress Act (STPA). *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*
27.	All algorithm recommendation service providers (including deep synthesis service providers)	**Management system and technical measures** In general, the AI service providers and technical supporters must establish and maintain management systems and technical measures for user registration, principle review and ethical review of the underlying algorithms and technologies, information release review, content moderation, data security and personal information protection, anti-telecom network fraud, security assessment and monitoring, and security incident emergency handling and data breach (Article 7 of the Algorithm Recommendation Regulation; and the Deep Synthesis Regulation). *This obligation is imposed under the Algorithm Recommendation Regulation and the Deep Synthesis Regulation.*
28.	Online app distribution platforms (AIGC context)	**Management measures by online app distribution platforms** According to Article 13 of the Deep Synthesis Regulation, safeguard management measures must be implemented, including launch review, daily management, and emergency handling. Such platforms must disapprove of launching, warn, suspend, or take down applications that do not confirm with applicable laws and regulations. *This obligation is only imposed under the Deep Synthesis Regulation.*

No.	Obligors	Obligations
Mechanisms for dispelling rumors and handling complaints (both generative and non-generative AI)		
29.	Deep synthesis service providers	**Mechanisms for dispelling rumors** Article 11 of the Deep Synthesis Regulation provides that service providers must establish and improve mechanisms for dispelling rumors. If the service providers identify any false information, they must take prompt measures to dispel the rumors, store related records, and report to the CAC (or its local counterparts) and other relevant government authorities. *This obligation is only imposed under the Deep Synthesis Regulation.*
30.	All algorithm recommendation service providers (including all generative AI service providers and technical supporters)	**Establish user complaints handling mechanism** In general, the obligor shall establish a complaints handling mechanism. Under Article 22 of the Algorithm Recommendation Regulation, the obligor shall set up a convenient and effective portal for user complaints, public complaints and reports, clarify the processing process and time limit for feedback, and promptly accept, process, and feedback the processing results. Under Article 12 of the Deep Synthesis Regulation, the obligors shall establish convenient complaints channels for the public and users, disclose the complaints handling procedure and processing time, and accept, handle, and announce the outcome of complaints in a timely manner. Similarly, Article 15 of the Generative AI Regulation provides that the obligors shall establish and improve its complaint and reporting mechanism, set up convenient complaint and reporting channels, publicize the processing procedure and time limit for feedback, and promptly accept and process public complaints and reports and feedback the processing results. *This obligation is imposed under the Algorithm Recommendation Regulation, the Deep Synthesis Regulation, and the Generative AI Regulation.*

Penalties

Algorithm Recommendation Regulation

Article 31 of the Algorithm Recommendation Regulation provides that, if any service provider violates the regulation, the penalties in accordance with other applicable laws and regulations shall apply, and in the absence thereof, the cyberspace departments and relevant authorities may issue warnings or public denouncements, or order rectifications within a time limit. If the violation is not rectified in time or involves any aggravating circumstances, the relevant authorities may order suspension of information updates and impose a fine of CNY10,000 to CNY100,000.

Deep Synthesis Regulation

The Deep Synthesis Regulation itself does not explicitly set out any penalties for non-compliance. Instead, Article 22 only provides that relevant penalties may be imposed pursuant to other applicable laws and regulations if any deep synthesis service provider or technical supporter violates the regulation's provisions. It also does not specify the consequence of non-compliance by users or online platforms.

Nevertheless, the regulation empowers the cyberspace, telecom, and public security departments to oversee compliance and perform inspection on deep synthesis operations. The cyberspace departments and other relevant authorities may order the deep synthesis service providers and technical supporters to suspend information updates, user account registration, or other related services, and compel them to rectify any non-compliance, if they determine that the deep synthesis service implicates significant information security risks.

Generative AI Regulation

According to Article 21 of the Generative AI Regulation:

- if any service provider (including technical supporters through APIs) violates the regulation, the relevant authorities shall impose penalties in accordance with applicable laws and regulations including the CSL, DSL, PIPL, and STPA; and

- unless otherwise provided under applicable laws and regulations, the relevant authorities may issue warnings or public denouncements, or order rectifications within a time limit. If the violation is not rectified in time or involves any aggravating circumstances, the relevant authorities may order suspension of the generative AI services.

Specifically, for generative AI services from outside the territory of the PRC but provided to individuals within the territory of the PRC, CAC may request the relevant authorities to take technical or other necessary measures as necessary if the relevant PRC laws and regulations have been violated.

Draft Ethical Review Measure

Similar to the Deep Synthesis Regulation, the Draft Ethical Review Measure itself does not explicitly set out any penalties for non-compliance. Instead, Article 48 only provides that relevant penalties may be imposed pursuant to other applicable laws and regulations if any entity engaged in the relevant science and technology activities violates the regulation's provisions.

In March 2022, CAC launched a special campaign in cooperation with other departments to inspect the compliance status of algorithm recommendation services and take enforcement actions against violations of the Algorithm Recommendation Regulation. As the Deep Synthesis Regulation came into force this year, the Generative AI Regulation only recently came into force, and the Draft Ethical Review Measure have not yet come into force, we are not aware of any enforcement action brought under these regulations.

Comparison With Progress in the EU

In 2021, the European Commission proposed a wide-ranging new regulation to harmonize the rules on AI systems applicable in the European internal market (EU AI Act Proposal). The EU AI Act Proposal is subject to intense, ongoing legislative debate.

Background

The European Council adopted its negotiation version of the EU AI Act on December 6, 2022. After months of negotiations, the European Parliament approved its negotiation version in June 2023, proposing substantial amendments to the EU AI Act Proposal. The European Parliament's proposed amendments include, among others, additional obligations for foundational models in general and specific obligations for foundation models used in generative AI systems (such as a requirement to publish summaries of copyrighted data used for AI training). The EU lawmakers are now entering the final stage of the legislative process, during which they will negotiate the final form of the EU AI Act; it is expected that the EU AI Act Proposal will be heavily amended before entering into final text. Once the text is finalized — expected by the end of 2023 or early 2024 — the EU AI Act will enter into force one month after its publication in the EU Official Journal, and the current proposed text foresees that the majority of the EU AI Act obligations will take effect two years later, i.e., in mid-2026 at the latest.

EU AI Act Proposal

The EU AI Act Proposal provides a framework to differentiate AI practices according to a risk-based approach. Certain defined AI practices that threaten people's safety, livelihoods, and rights are deemed to involve an unacceptable level of risk and are prohibited. Registration, risk assessment, human oversight, and other obligations are proposed for high-risk AIs, while limited-risk AIs would be subject to proposed transparency obligations. The EU AI Act Proposal provides for fines of up to the greater of €30 million or 6% of total worldwide annual turnover. In contrast, the AI Regulations in the PRC are a set of departmental regulations focusing on different aspects of AI systems. The PRC currently has no AI-specific law, but we note that drafting such a law has been included in the State Council's 2023 legislative work plan.

Strengthened Code of Practice on Disinformation

On June 16, 2022, the EU also unveiled the Strengthened Code of Practice on Disinformation (EU Code) to reduce the impact of disinformation online. In terms of scope, the Deep Synthesis Regulation imposes broader obligations on a wider range of entities than the EU Code. The EU Code requires the signatories (mainly large technology companies) to implement their agreed commitments and measures to counter deep fakes and false information. Meanwhile, the Deep Synthesis Regulation applies to all participants involved in deep synthesis services, including service providers, technical supporters, users, and online platforms. In addition, the EU Code primarily focuses on regulating mis- and disinformation, with other areas addressed or to be addressed in the General Data Protection Regulation (personal information protection), the amended Digital Services Act (transparency obligations and certain user protections applicable to online services and platforms), and the EU AI Act (comprehensive regulation of AI systems). Meanwhile, the Deep Synthesis Regulation provides a comprehensive framework of obligations from various perspectives, including cybersecurity, data management, personal information protection, algorithm audit and filing, real-name verification, and content moderation.

Implications

The AI Regulations mark a step forward in the PRC's efforts to regulate AI-related business with a focus on AIGC and, in particular, to address the risks related to deep fakes and other synthetic content. Given the broad coverage and expansive compliance obligations of these regulations, individuals and entities engaging in AI-related business, especially service providers and technical supporters, should perform necessary self-evaluations to assess compliance as early as possible. A comprehensive compliance checklist would also be helpful.

In addition, certain requirements under the Generative AI Regulation may pose challenges to service providers in practice. Service providers and technical supporters should closely monitor further legislative developments and regulatory guidance in this regard.

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