



China takes the first step to regulate generative AI

Generative AI tools, such as ChatGPT, have taken the world by storm and revolutionised various industries and aspects of daily life. While many authorities around the world are still exploring how to regulate generative AI services, China has taken the lead. Earlier this month, the Cyberspace Administration of China (the **CAC**) published the draft Measures on Managing Generative AI Services (the **Measures**) for public consultation. The consultation period will end on 10 May 2023.

The Measures aim to establish a comprehensive regulatory framework for generative AI services in China. Generative AI is defined as technology that generates texts, images, sounds, videos and code based on algorithms, models and rules.

It is apparent that the draft Measures reflect the Chinese government's long-standing dual approach of fostering innovation while safeguarding national security and social order. In particular, the Measures are intended to complement and extend the existing PRC laws that apply to the provision of generative AI services in China, covering aspects such as content regulation, cybersecurity regulation, and algorithm regulation, as follows:

1. **Content regulation.** The Measures require that AI-generated content should not contain any content relating to the subversion of state power, the overthrowing of the socialist system, incitement to split the country, or the promotion of terror, extremism, ethnic hatred or violence.
2. **Cybersecurity regulation.** Generative AI service providers must comply with various laws, including the PRC Cybersecurity Law. Before launching any services, they must submit a security assessment report to the CAC. The report should provide information on the purpose, scope, data sources, algorithm design, content generation process and security management measures of their services.
3. **Algorithm regulation.** The Measures mandate that generative AI service providers must adopt measures to prevent algorithmic discrimination and bias when designing and training their generative AI models and to respect the core socialist values of China.

Furthermore, the draft Measures address a number of interesting technical and operational aspects of generative AI, such as:

1. **Training data is not a free land.** Data used to train generative AI models must comply with PRC data laws, be accurate and truthful, and not infringe on the rights and interests of others, including IP rights. If the training data involves personal information, consent from data subjects is required.
2. **User protection is paramount.** A generative AI provider is prohibited from profiling users based on user inputs and service outputs. The provider must also implement measures to prevent addictive use of the service.

3. AI service providers are internet intermediaries.

A generative AI provider will be considered an internet intermediary subject to the notice-and-takedown obligation in relation to a wide range of infringements. A takedown notice may be issued to an AI service provider based on IP infringement, violation of privacy, or other personal rights. The service provider is required to “stop generating the infringing content and prevent the harm from continuing” upon receiving the notice.

4. There should be no ‘hallucination’.

The Measures require that AI outputs must be accurate and truthful, which may not be fully technically feasible. There seems to be a technological gap between the requirement envisaged by the regulation and the current deployment of AI technology.

Finally, the CAC may impose administrative penalties, such as fines ranging from RMB10,000 to RMB100,000 (approximately, USD1,500 to USD15,000), suspension or termination of services or revocation of licences, on providers who violate the Measures. In serious cases, criminal liability may also be pursued.

Our thoughts

The draft Measures are the first of their kind in China, and possibly in the world, to specifically regulate generative AI services. As is the case with PRC law in many other areas, the Measures use a broad brush approach and seem experimental in many respects. We anticipate further amendments and clarifications from the authorities as the Measures are further consulted on and finalised in the coming months.

Notably, the Measures embody significant Chinese characteristics and mark another step to regulate the use of data and emerging technology through a top-down approach. The release of the draft Measures has raised questions and debates as to what extent the Measures will incentivise or hinder the development of AI in China. Ultimately, it will be a matter of striking a balance between innovation and regulation. As China continues to lead on AI governance from a sovereign perspective, it will be interesting to see how the Measures will be finalised and implemented, and how emerging issues will be addressed in practice.

We will keep track of any further developments, including other AI-related regulations in China, and provide updates in due course. Please feel free to contact us if you have any questions or comments on the draft Measures or other developments relating to AI.

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Appendix:

Measures for the Administration of Generative Artificial Intelligence Services (Draft for Comments)

The following is translated by A&O, this is for reference only.

Article 1 In order to promote the healthy development and standardised application of generative artificial intelligence (“**Generative AI**”), these Measures are formulated in accordance with the *Cybersecurity Law of the People’s Republic of China* (“**PRC**”), the *PRC Data Security Law*, and the *PRC Personal Information Protection Law*, amongst others laws and administrative regulations.

Article 2 These Measures are applicable to the research and development and the use of Generative AI products, and the provision of Generative AI services to the public within the territory of the PRC.

Article 3 The State supports independent innovation, promotion, application and international cooperation of basic technologies, such as artificial intelligence (“**AI**”) algorithms and frameworks, and encourages the preferential use of secure and trustworthy software, tools, computing and data resources.

Article 4 The provision of Generative AI products or services shall comply with the requirements of laws and regulations, respect social morality, public order and good customs, and meet the following requirements:

1. The contents generated by Generative AI shall reflect the core values of socialism, and shall not contain any content that subverts the power of the State, overthrows the socialist system, incites the division of the State, undermines the national unity, advocates terrorism and extremism, advocates ethnic hatred, ethnic discrimination, violence, obscenity, pornography, false information, or that may disrupt the economic and social order.
2. In the process of algorithm design, training data selection, model generation and optimisation and services provision, measures shall be taken to prevent discrimination based on race, ethnicity, belief, nationality, region, gender, age, occupation, etc.
3. Intellectual property (“**IP**”) rights and business ethics shall be respected and the advantages of algorithms, data, platforms, etc. to engage in unfair competition shall not be practiced.
4. The contents generated by using Generative AI shall be true and accurate, and measures shall be taken to prevent the generation of false information.
5. The legitimate interests of others shall be respected to prevent harm to others’ physical and mental health, damage to others’ rights to portrait, reputation and personal privacy, and infringement of others’ IP rights. The illegal acquisition, disclosure and use of personal information, privacy and trade secrets shall be prohibited.

Article 5 The organisations and individuals that use Generative AI products to provide services such as chats and the generation of texts, images and sounds, etc., including supporting others to initiate the generation of texts, images and sounds, etc. by providing programmable interfaces or other means

(hereinafter referred to as “**Providers**”), shall be liable for the contents generated by such [Generative AI] products as the producer [of the contents]; if personal information is involved, [the Providers] shall bear the legal responsibility of the personal information processor to fulfil the obligations of the protection of personal information.

Article 6 Before using Generative AI products to provide services to the public, a security assessment declaration shall be made to the State internet and information department [Note: can be the Cyberspace Administration of China] in accordance with the *Provisions on Security Assessment of Internet-based Information Services having the Properties of Public Opinions or the Capacity for Social Mobilisation*, and the procedures for filing the algorithms and for the modification or cancellation of such filings in accordance with the *Provisions on Administration of Algorithmic Recommendations in Internet-based Information Services*.

Article 7 The Providers shall be responsible for the legality of the sources of the pre-training data and the training data for optimisation of the Generative AI products.

The pre-training data and the training data for optimisation of Generative AI products shall meet the following requirements [in that they shall]:

1. comply with the requirements of the *PRC Cybersecurity Law* and other laws and regulations;
2. not contain any content that infringes IP rights;
3. obtain the consent of the personal information subject, or conform with other circumstances stipulated by laws and administrative regulations, if the data contain personal information;
4. be capable of ensuring the authenticity, accuracy, objectivity and diversity of the data; and
5. [comply with] other regulatory requirements of the State internet and information department [Note: can be the Cyberspace Administration of China] on Generative AI services.

Article 8 When using manual annotation in the development of Generative AI products, the Providers shall formulate clear, specific and operable annotation rules that comply with the requirements of these Measures, conduct necessary training for the annotators, and conduct sample checks on the correctness of the annotated contents.

Article 9 In the provisions of Generative AI services, the users shall be required to provide their true identity information in accordance with the *PRC Cybersecurity Law*.

Article 10 The Providers shall clearly and publicly specify the target groups, occasions and applications of their services, and take appropriate measures to prevent users from excessively relying on or becoming addicted to the generated contents.

Article 11 The Providers shall have the obligation to protect the information input by, and the usage records of, users during the provisions of services. They shall not illegally retain input information from which a user’s identity can be inferred. They shall not profile users based on the situations of the users’ information input and usage. They shall not provide information input by users to others. The provisions in this Article are applicable unless there are other [contrary] provisions in laws and regulations.

Article 12 The Providers shall not generate discriminatory contents based on the user’s race, nationality, gender, etc.

Article 13 The Providers shall establish a mechanism for receiving and handling user complaints, and shall promptly deal with requests from individuals to correct, remove or redact their personal information; when [the Providers] discover or become aware that the generated texts, images, sounds, videos, etc. infringe others’ rights to portrait, reputation, personal privacy or trade secrets, or do not comply with the requirements of these Measures, they shall take measures to stop generating and prevent continued harm.

Article 14 The Providers shall provide safe, robust and sustainable services throughout the lifecycle [of the Generative AI products or services] to ensure users' normal usage.

Article 15 In addition to taking measures such as content filtering, generated contents that are found or reported by users to be non-compliant with the requirements of these Measures shall be prevented from re-generation by model optimisation and training or other means within three (3) months.

Article 16 The Providers shall undertake the identification of generated images, videos and other contents in accordance with the *Provisions on the Administration of Deep Synthesis of Internet-based Information Services*.

Article 17 The Providers shall provide necessary information that can affect the trust and choice of users in accordance with the requirements of the State internet and information department [Note: can be the Cyberspace Administration of China] and the relevant competent authorities, including the descriptions of sources, scale, types, quality, etc. of pre-training data and training data for optimisation, the rules for manual annotation, the scale and types of manually annotated data, the basic algorithms and technical systems, etc.

Article 18 The Providers shall guide users to scientifically understand and rationally use the contents generated by Generative AI, and not use the generated contents to damage the image, reputation and other legitimate rights and interests of others, or engage in commercial speculation or improper marketing.

Users have the right to report to the State internet and information department [Note: can be the Cyberspace Administration of China] or the relevant competent authorities when they recognise that the generated contents do not comply with the requirements of these Measures.

Article 19 The Providers shall suspend or terminate the services [for a user] if they discover that the user violates laws and regulations, or contravenes business ethics or social mobility, in the process of using Generative AI products, including engaging in online hype, malicious posting and commenting, creating spam mails, compiling malicious software, conducting unfair commercial marketing, etc.

Article 20 If the Providers violate the provisions of these Measures, the State internet and information department [Note: can be the Cyberspace Administration of China] and the relevant competent authorities shall impose penalties in accordance with the provisions of the *PRC Cybersecurity Law*, the *PRC Data Security Law* and the *PRC Personal Information Protection Law* and other laws and administrative regulations.

Where there are no provisions under laws and administrative regulations, the State internet and information department [Note: can be the Cyberspace Administration of China] and the relevant competent authorities shall, according to their powers, issue warnings or public criticisms, and order rectifications within a time limit; if the Provider refuses to comply with the rectification order or the circumstances are serious, the authorities shall order a suspension or termination of services provided by the Generative AI of the Provider, and impose a fine between RMB10,000 and RMB100,000 (i.e. approximately USD1,500 to USD15,000). If the violation constitutes a contravention of the administration of public security, penalties under the administration of public security shall be imposed in accordance with laws; if the violation constitutes a crime, criminal liability shall be imposed in accordance with laws.

Article 21 These Measures shall come into force on [DATE] 2023.