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# The AI Revolution: the International Legal Perspective

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## Regulating AI in China

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## » Introduction

This article examines how the People's Republic of China ("China", which for the purpose of this article, does not include Taiwan, Hong Kong and Macau) is currently tackling AI regulation in a fast-evolving technological landscape.

There is not as yet a first-tier comprehensive national law in China tailored to govern AI activities. Instead there are a variety of lower-tier measures, guidelines, rules, provisions and regulatory documents in place regulating various aspects of AI. These lower-tier regulations have created a dual-track filing system for AI services, which includes (1) a general filing obligation for the use of certain algorithmic techniques ("Algorithm Filing"), and (2) a specific filing obligation targeting generative AI services ("Generative AI Model Filing"). The intent is to enable regulators to see which AI services are being deployed in the market and provide oversight as necessary.

Courts in China have also adjudicated on whether AI-generated content can be protected by copyright. Current case law is not entirely conclusive but suggests that the courts tend to see "sufficient" human input as a necessary requirement in granting copyright protections to AI-generated content.

To provide for a unified approach in regulating AI, the State Council proposed the drafting of an Artificial Intelligence Law ("AI Law") in June 2023. In response, two different groups of

policy-oriented academics released competing proposed drafts for such an AI Law. These drafts draw on existing regulatory trends, and provide insights into likely priorities for future first-tier AI regulation. The recent draft proposals, along with parallel innovation-minded AI regulations and pro-AI policies, suggest that China may implement laws favourable to the development of AI, while also incorporating restrictions driven by evergreen Chinese security and content concerns.



## » The Regulatory Landscape for AI Activities

Laws in China have hierarchies which are generally determined by the hierarchy of their enacting authorities. Setting aside international treaties and constitutional laws, they can broadly be placed into four tiers:

(1) top-tier authorities: "national laws (法律)" enacted by the National People's Congress;
(2) second-tier authorities: "administrative regulations (行政法规)", which are promulgated by the State Council;
(3) third-tier authorities: "departmental rules (部门规章)", which are promulgated by various departments under the State Council; and
(4) fourth-tier authorities: "departmental regulatory documents (部门规范性文件)", such as "public announcements (公告)" or "notices (通知)".

There are also national standards (国家标准) and technical standards (技术文件). which are referenced by authorities when making investigation and enforcement decisions. Four regulations that are of particular relevance to AI are:

(1) Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services (互联网信息服务算法推荐管理规定) ("Predictive Algorithm Regulation");
(2) Provisions on the Administration of Deep Synthesis of Internet-Based Information Services (互联网信息服务深度合成管理规定) ("Deep Synthesis Regulation");

(3) Interim Measures for the Administration of Generative Artificial Intelligence Service (生成式人工智能服务管理暂行办法) ("Interim AI Measures"); and
(4) Measures for Scientific and Technological Ethics Review (for Trial Implementation) (科技伦理审查办法(试行)) ("Ethics Review Measures").

(1) to (3) are third-tier "departmental rules". (4) is a fourth-tier departmental regulatory document. For context, departmental rules can be jointly prepared by, and be applicable to, multiple departments and this is not uncommon in recent Chinese regulation over emerging issues, including generative AI. In such cases, one department will typically take precedence in asserting administrative authority.



Where a joint department rule is developed and takes effect without concluding the regulatory responsibility amongst the departments, the regulation may be called an "interim" regulation. However, as regards the Interim AI Measures, it appears that the Cyberspace Administration of China ("CAC") is in practice assuming a leading role in regulating generative AI. This aligns with the trend of the CAC taking charge of many emerging issues with a digital connection, including e.g. data and privacy.

It is worth noting that non-compliance with lower-tier laws does not directly attract criminal liabilities. Instead, non-compliance may be caught under the civil or administrative penalty regime in China. It should also be noted that the wording of these types of regulations tends to be broad and general. One key reason is to cater for a "regulation first, legislation second" approach, in which these regulations are aimed at setting out initial guidelines for AI activities to address the most pressing issues, while leaving space for further evolution and learning which may inform a higher tier law, such as an eventual "Artificial Intelligence Law".

Notwithstanding the generality in wording, these regulations tend to point out future legislative directions and may also be incorporated in the pending "Artificial Intelligence Law" in China, particularly in the following areas:

(1) the applicable activities and issues to be regulated;
(2) the primary regulating entities involved; and
(3) any policy remarks expressed regarding AI activities.

## » The Lower-Tier Laws – Predictive Algorithm and Deep Synthesis Regulations

**Predictive Algorithm Regulation**
The Predictive Algorithm Regulation, promulgated by the CAC, came into effect on

1 March 2022. It applies when an entity provides Internet information services using predictive algorithm recommendation technologies ("predictive algorithm services"). Under Article 2 of the Predictive Algorithm Regulation, "predictive algorithm technologies" mean, *inter alia*, applying algorithm to 1) content generation and synthesis; 2) personalised recommendation; 3) selection and sorting; 4) content filtering and 5) scheduling and decision making. This regulation targets algorithms such as those behind targeted advertisements. The key concern of the regulation is "algorithm security" and primary responsibility for complying with the related obligations is placed on service providers. The Predictive Algorithm Regulation imposes several positive obligations on service providers, including to: -

(1) establish and improve management systems and technical measures for examination of algorithm mechanisms and mechanics;
(2) review scientific and technological ethics;
(3) establish user registration systems;
(4) examine information releases;
(5) enact data security and personal information protection; and
(6) assess and monitor security.



In the event that a predictive algorithm service could be considered to have *"public opinion attributes or social mobilization capabilities"*, the regulation obliges service providers to register said predictive algorithm service with the "Internet Information Service Algorithm Filing System" (namely, to make an Algorithm Filing). The regulation does not define "public opinion attributes or social mobilization capability", but its meaning is potentially so broad that in practice most service providers would voluntarily register their services. The regulation also contains provisions stipulating protection of users' rights and interests. Foreign companies that operate services in China using predictive algorithms are also required to adhere to the regulations.

**Deep Synthesis Regulation**

The Deep Synthesis Regulation came into effect on 1 January 2023. It applies to entities that use "deep synthesis technology to provide Internet-based information services" ("deep synthesis services") in China. While it follows a similar regulatory structure to the Predictive Algorithm Regulation, it takes a tougher approach to regulation. Again, the service providers themselves are primarily responsible for compliance with the Deep Synthesis Regulation. Similar positive obligations as with the aforementioned Predictive Algorithm Regulation are imposed.

The Deep Synthesis Regulation is more targeted than the Predictive Algorithm Regulation, addressing "*technology that uses deep learning, virtual reality, and other*

*synthetic algorithms to produce network information such as text, image, audio, video, and virtual scene*". In simpler terms, it targets so-called "deep fake" technologies. One particular provision of note is Article 6, which indicates a particular issue troubling Chinese authorities, namely "fake news". It prescribes that,

> *"Deep synthesis service providers and users shall not use deep synthesis services to produce, reproduce, publish, or disseminate false news information."*

To tackle the primary concern of "fakeness", the regulation extends its supervision to include not just service providers, but also products and users of deep synthesis services/products. The core purpose of the Deep Synthesis Regulation is to make the entire deep synthesis process "transparent": Information as to the identities of the service providers and the particulars of the algorithms must be disclosed to, and be fully traceable, by the authorities. Under Article 17, content generated by deep synthesis and displayed to the general public must be clearly labelled as such and service providers must notify users who are purportedly being "deep faked".



To regulate users, Article 9 mandates service providers to authenticate their users' real identity information before providing any deep synthesis service to those users. Service providers are also required to submit users' personal identity information to the authorities in case of user violation.

Mirroring the Predictive Algorithm Regulation, Article 19 obliges service providers with "*public opinion attributes or social mobilization capabilities*" to make an Algorithm Filing with the authorities. As with the Predictive Algorithm Regulation, this regulation represents a continuation of the proven tool of using registration requirements to track and supervise emerging technologies and their operators.

Arguably, the Predictive Algorithm Regulation and the Deep Synthesis Regulation represent the most "stringent" measures imposed by the Chinese government in relation to AI activities, with "security" being the primary policy concern. In contrast, as detailed below, the government's attitude towards generative AI is somewhat different, though similar regulatory tools have initially been deployed.

## » The Lower-Tier Laws – Interim Measures re Generative AI

**General**

The Interim AI Measures apply to "*the utilization of generative AI technology to provide services that generate texts, images, audio and video, and other content that face to the*

*public*" ("generative AI services"). Again, service providers themselves are primarily responsible for self-regulation. Generative AI is now being widely used in many industries for various business functions, but the focus of the Interim AI Measures is narrower, targeting public-facing uses of generative AI with the presumptive potential to have a wide-spread social/political impact. The development and application of generative AI technology without public-facing features is explicitly excluded. Under the regulation, generative AI service providers are deemed to assume responsibility for content created using their generative AI services (see Article 9).

**Noticeable Differences from the other two regulations – Innovation Oriented**
Unlike the Predictive Algorithm Regulation and Deep Synthesis Regulation, which provide regulatory frameworks on data and information security, the Interim AI Measures offer an express policy forecast favouring innovation in the context of generative AI services (as is clear from Articles 3, 5, 6 and 7). The wording used in this regulation is markedly pro-AI development and innovation-oriented, which suggests that the government is adopting a lighter-handed approach to generative AI, likely due to competitive concerns.



The Interim AI Measures have a section calling for an "inclusive and prudent" and "classified and graded" regulatory approach for AI regulation in China (Article 3). Competent authorities are called to develop industry-specific rules or guidelines to implement this "classified and graded" approach, in light of the specific attributes of generative AI technology and its application in their relevant fields (Article 16).

**The Dual Filing Requirement**
Providers of generative AI services with "*public opinion attributes or social mobilization capabilities*" must complete a generative AI model registration procedure, as well as making an Algorithm Filing. This particularly applies to B2C providers, and providers that are using their own models. In practice, regulators have been treating these filing procedures more like a licensing regime than a simple registration, by withholding official acceptance of registrations until they are satisfied with the safety and security of the models. And as with other filing and registration systems in China, private market intermediaries are often tasked with first-line enforcement (e.g., via app stores). Completing a Generative AI Model Filing procedure is more highly involved, extensive and lengthy than the Algorithm Filing procedure and requires substantial work and disclosure from the service provider.

"The development and application of generative AI technology without public-facing features is explicitly excluded."

To date, the CAC has released a list identifying 117 generative AI models/products that have completed the filing/registration for generative AI services. Many Chinese tech giants (for example, ByteDance, Baidu and Alibaba) have completed one or more such filings for their consumer-facing models/products. We are not aware that foreign-origin companies, such as AWS and Microsoft, have completed registrations for their AI products that are globally offered and potentially available in China.

**Engaging the issue of intellectual property rights**
The Interim AI Measures is the only regulation among the four that expressly engages the issue of intellectual property rights as regards 1) the general provision and use of generative AI; and 2) training for generative AI. Two provisions are of particular relevance: Article 4(3) and Article 7(2). Article 4(3) states that "*intellectual property shall be respected*" in the provision and use of generative AI, offering a very broad and general protection. This article indicates that the government believes that existing intellectual property laws in China fully cover and directly apply to AI activities and disputes on intellectual property issues should be resolved according to existing intellectual property laws. Article 7(2) provides that an "*AI service provider … shall not infringe the intellectual property rights…*" suggesting that AI service providers could be held directly liable for intellectual property rights infringement under the regulation. Article 4(3) and Article 7(2) echo the current approach to the protection of intellectual property rights adopted in common law jurisdictions.



## » The Lower-Tier Laws – Ethics Review Measures

"Measures for Scientific and Technological Ethics Review (for Trial Implementation)" ("Ethics Review Measures"), released by the Ministry of Science and Technology ("MOST"), took effect on 1 December 2023. The measures are applicable to nearly all AI activities as it will be engaged whenever any of the following conditions are involved:-

(1) when personal information is utilized;
(2) when either of the aforementioned Predictive Algorithm Regulation or Deep Synthesis Regulation applies; or
(3) for generative AI if it has "*public opinion attributes or social mobilization capabilities*".

In essence, the regulation imposes a positive duty on entities that engage with AI activities to establish at an early development stage an internal "ethics (review) committee" whose general duty is to consult, review, and adjudicate the associated ethical risks. As supervision by public authorities appears to be limited, it appears that entities must self-regulate when it comes to their ethical duties.

The implementation of the Ethics Review Measures helped shape the role of the MOST. As part of its mission to promote the development of AI in China, the MOST has established the National Governance Committee for the New Generation Artificial Intelligence, the MOST's affiliated advisory institution, which is mandated to formulate policies that guide the development of responsible, legal, and ethical generative AI technology.

## » Court Cases in China involving Artificial Intelligence and Copyright

Like many other jurisdictions, at least since 2018, courts in China have been called upon to adjudicate on the tricky question of whether AI-generated content can be protected by copyright, even where the black letter law is silent on the issue. Most of the cases here focus on the issue of whether content generated by AI can be considered a "Work" under Article 3 of Chinese Copyright Law so as to receive protection. Under Article 3 of the Copyright Law, "*Works*" refer to "*ingenious intellectual achievements expressed in the form of written works, works of fine arts, etc.*". "*Ingenious intellectual achievements*" can be further interpreted as "*original creation*" under Articles 10(14) and 15 of the Copyright Law.



Before proceeding further, it should be noted that China is a civil law country where court cases generally do not have probative effect, except where designated as either "Guiding Cases (指导性案例)" (which give them binding effect) or "Typical Cases (典型案例)" (which make them persuasive).

In the realm of generative AI, there are four cases that are of particular relevance: two are "Typical Cases"[1]. No AI cases have been designated as "Guiding Cases," which means there are no binding precedents regarding AI in China.

**Cases Rejecting Copyright Protection**

北京某律所 訴 北京某科技公司 is a 2018 case considered by the Beijing Internet Court. It has been designated as a "Typical Case". The Beijing Internet Court ruled that an article automatically generated by AI computer software did not constitute a "work", holding that:

> *"works should be created by natural persons. In generating computer-generated content, the software developers (owners) and users were not engaged in acts of creation, and the generated content does not convey their original expression."*

Interestingly, the Court also held that the fact that a computer-generated work does not constitute a copyrightable work does not mean that it has entered the public domain. Its

creator is entitled to a "certain interest" and "a reasonable share in its monetization". It is unclear what that said interest might be.

杭州某互娛科技公司 訴 四川某科技公司 (2022) is a 2022 "Typical Case" designated by the Hangzhou Internet Court. The Hangzhou Internet Court ruled that content automatically generated by a chatbot and sent to viewers as part of a video streaming service was "standard, common and ordinary" and lacking in originality and therefore were not protected by copyright. The fact that the content was AI generated was not relevant to the determination.

**Cases Accepting Copyright Protection**



In the 2018 case of 騰訊 訴上海盈訊科技 (the "Tencent Case"), Shenzhen Nanshan Primary People's court held that an article generated by the AI software "Dreamwriter" was protected by copyright, stating:

> *"the specific form of expression (of the article generated by the Plaintiff's AI software) and its mode of creation reflects the choice and arrangement of its author" and that the article "was created by the intellectual creation of multiple teams and personnel employed the Plaintiff".*

The latest, and perhaps the case that has received the most attention both inside and outside China, is the case of 李某v刘某, a 2023 case before the Beijing Internet Court ("AI Picture Case"). The court held that an AI generated picture was protected by copyright and that the person who had used the Stable Diffusion software to generate the image was the author and owner of copyright in the picture. The fact that the person in question had put in tens of lines of prompts (which that person had designed) and that the generative process involved several rounds of adjustment was highly relevant to the finding. Two observations can be gleaned from these cases:

> (1) Even in the absence of specific AI provisions, Chinese courts do not shy away from addressing the issue of copyright in AI-generated content, simply applying the existing Copyright Law as-is. The courts also place strong emphasis on the volume of work and/or investment the human "authors" had expended in creating the AI algorithm and/or the AI-generated work in question. In general, it seems that the more effort is expended by human authors, the more likely it is that the works generated will attract AI protection.
> (2) Only cases that have denied copyright protection were selected by courts as "Typical Cases". However, given the small sample size, it may be premature to try reading in any trend.

## » Unanswered Questions

Case law leaves many questions regarding copyright and AI-generated content unanswered. In particular, no reported cases in China to date have addressed the issue of whether developers can legally train AI software with unlicensed copyright material. Whilst Article 7(2) of the Interim AI Measures expressly covers the situation of training AI software using copyrighted materials (stating that copyright must be "respected"), how this requirement would apply in practice is yet unknown.

## » Future Legislation of Artificial Intelligence Law; Two Proposed Drafts



The current development of AI laws in China consists of (i) a patchwork of lower-tier laws, and (ii) the Courts applying traditional copyright laws to tackle scenarios involving AI. The future and shape of AI development in China will greatly depend on when and what kinds of higher-tier AI laws China finally enacts.

So far, the last known official move occurred on 15 June 2023 when the State Council released its 2023 Legislative Work Plan, wherein the State Council stated that it was "*prepared to submit to the Standing Committee of the National People's Congress for consideration the draft Artificial Intelligence Law*". On 6 May 2024, the State Council re-stated that it was "*prepared to submit to the Standing Committee of the National People's Congress for consideration the draft Artificial Intelligence Law*" in the 2024 Legislative Work Plan. Though little to no public information is available regarding the actual draft AI law, the following observations can be made:

(1) the legislative procedure is still at a very preliminary stage; it is expected that the Standing Committee of the National People's Congress will issue a draft law for public comments, possibly within 2024 and 2025.
(2) It is likely that the eventual AI law will seek to address the areas of AI covered by existing lower-tier laws (such as "predictive algorithm," "deep synthesis," "generative AI," and "ethics review"), especially since the Chinese government is generally said to be following the legislative approach of "regulation first and legislation second", particularly for urgent regulation of new technology, such as the meteoric rise of generative AI technology.
(3) China is sending out a "*pro-growth signal for the AI sector*" (see, by way of example, academic observations regarding the Interim AI Measures[2] and comments made by Premier Li Qiang at the 2024 "two sessions (两会)"). It is perhaps safe to say that China expects to see laws favourable to the development of AI.

In this context, in early 2024, two different groups of policy-oriented academics released competing proposed drafts for a possible AI law:

(1) The PRC Artificial Intelligence Law (人工智能法 (学者建议稿)) ("Scholar Proposal").
(2) The Model Artificial Intelligence Law (v.2.0) (人工智能示范法2.0 (专家建议稿)) ("Expert Proposal").

Both draft proposals adhere to the principles outlined in 2017 in the Generative AI Development Plan (新一代人工智能发展规划), including: 1) "prudent supportiveness," 2) "issue-driven" (rather than general) approaches; and 3) a balance between development and security. These same principles are emphasized in other AI regulations, such as the Interim AI Measure. Additionally, the two proposals defer to existing regulations and technical standards already in force, including for example the labelling and annotating training data requirements under the Generative AI Data Annotation Security Specification. As a result, any future comprehensive AI Law will likely build on these established frameworks and standards.



Both drafts include a "General Provisions" chapter that underscores key principles such as prioritizing people's interests, ensuring transparency and fairness, fostering innovation, promoting environmental sustainability, and responsible technology use. Both drafts, while distinct, reflect a concerted effort to frame AI technology within a regulatory context that balances innovation with societal safeguards. Given the industry-specific applications of AI, a uniform regulatory approach across all AI products is likely impractical, and this has not been the trend for AI legislation in China so far. Both of the drafts contemplate that governance should be layered and risk-based, with different levels of regulation tailored to the varying risks associated with different AI applications. Although the drafts are intended more as conceptual models to aid discussion, it should be expected that both proposals will inform future AI legislation. Moreover, these proposals provide valuable insight into the concerns of the technical experts who will be consulted and involved in future AI legislation, and thus may offer insight on long-term AI regulatory trends in China.

## » Conclusion

China's approach to AI development and regulation can be seen as a middle road between the more proactive and precautionary EU model and the more relaxed US model. China seems to be showing responsiveness to social, consumer and political concerns relating to AI, while avoiding aggressive constraints for AI development. China is keen to play a leadership role in nascent global AI governance regimes. In October 2023, China launched the Global Artificial Intelligence Governance Initiative and in May 2024, China and France made joint statement, committing (among other things) to strengthen global governance and international cooperation on AI for the common good.

[1] *The other two have been identified as "noticeable cases" by non-judiciary entities, but such designation does not carry any legal significance.*

[2] *Zhang, Angela Huyue, The Promise and Perils of China's Regulation of Artificial Intelligence (January 28, 2024). University of Hong Kong Faculty of Law Research Paper No. 2024/02, Available at SSRN: https://ssrn.com/abstract=4708676 or http://dx.doi.org/10.2139/ssrn.4708676*