

UNVEILING CHINA'S GENERATIVE AI REGULATION

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The following is a guest post to the FPF blog by Yirong Sun, research fellow at the New York University School of Law Guarini Institute for Global Legal Studies at NYU School of Law: Global Law & Tech and Jingxian Zeng, research fellow at the University of Hong Kong Philip K. H. Wong Centre for Chinese Law. The guest blog reflects the opinion of the authors only. Guest blog posts do not necessarily reflect the views of FPF.

The Draft Measures for the Management of Generative AI Services (the “[Draft Measures](#)”) were released on April 11, 2023, with their comment period closed on May 10. [Public statements](#) by industry participants and legal experts provided insight into the likely content of their comments. It is now the turn of China’s cyber [super-regulator](#) – the Cyberspace Administration of China (“CAC”) – to consider these comments and likely produce a revised text.

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disclosure of information that may impact users' trust and the provision of guidance for using the service rationally.

Meanwhile, [concerns](#) have arisen that the Draft Measures may slow down the development of [generative AI-based products and services](#) by Chinese tech giants. Companies providing services based on generative AI, including those provided through application programming interfaces ("APIs"), are all subject to stringent requirements in the Draft Measures. The Draft Measures thus concern not only those who have the means to train their own models, but also smaller businesses who want to leverage on open-source pre-trained [models](#) to deliver services. In this regard, the Draft Measures are likely to present compliance challenges within the open-source context.

While this blog focuses on the Draft Measures, it is important to note that industrial policies from both [central](#) and [local](#) governments in China also exert substantial influence over the sector. Critically, the task to promote AI advancement amid escalating concerns is overseen by authorities *other than* the CAC, such as the Ministry of Science and Technology ("[MST](#)") and the Ministry of Industry and Information Technology ("[MIIT](#)"). Recently, the China Academy of Information and Communications Technology ("[CAICT](#)"), a research institute affiliated with the MIIT, introduced China's first-ever [industry standards](#)¹ for assessing generative AI products. These agencies, along with their competition and coordination, can and will co-play a significant role with the CAC in the realm of generative AI regulation.

1. Notable aspects of the Draft Measures' scope of application: Definition of "public" and extraterritorial application

Ambiguity in the definition of "public"

The Draft Measures regulate all generative AI-based services offered to "the public within the PRC territory."² This scope of application diverges from existing Chinese laws and regulations where intended service recipients are not usually considered. For instance, regulations targeting [deep synthesis](#) and [recommendation algorithms](#) both apply to the provision of service using these technologies regardless of service recipients being individuals, businesses or "the public." Looking at its context, Article 6 of the Draft Measures suggests that generative AI-based services have the potential to shape public opinion or stimulate social mobilization, essentially highlighting their impact on "the public." This new development thus likely signifies the CAC's goal to prioritize the protection of wider societal interests over individual ones such as privacy or intellectual property

registration), or by the Chinese government through enforcement measures. At the same time, the scale of China's user market and its involvement in AI development render it a "vital" jurisdiction in terms of AI regulation. OpenAI CEO has recently called for [collaboration](#) with China to counter AI risks, a trend we might see more in the future.

2. The Draft Measures adopt a compliance approach based on the lifecycle of generative AI systems

The Draft Measures are targeted at "providers" of generative AI-based services

The Draft Measures take the approach of regulating generative AI-based service providers. As per Article 5, "providers (提供者)" are those "using generative AI to offer services such as chat, text, image, audio generation; including providing programmable interface and other means which support others to themselves generate text, images, audio, etc." The obligations are as follows:

- *Model Training*
 - *Pretraining and optimization:*³ Providers must ensure the legality of the sources of data used for pretraining and optimization of generative AI products (Article 7). Existing laws and regulations, such as the Intellectual Property Law and the Personal Information Protection Law (PIPL), are thus extended to cover this new field.
 - *Human annotation (if any):* Providers must establish necessary annotation rules, provide training for annotation personnel, and conduct spot checks to verify the validity of annotation content (Article 8).
- *Pre-Launch*
 - *Security assessment and filing:* Providers must submit a security assessment to the CAC and register the algorithms they use (Article 6). The CAC has been developing [similar](#) filing systems for recommendation algorithms and is likely to draw upon established practices for generative AI.
 - *Disclosure requirement:* Providers shall provide essential information that may impact user trust or decision-making, including descriptions of pre-training and optimization training data, human annotation, as well as foundational algorithms and technological systems (Article 17).
- *Service Delivery*
 - *Traceability:* Providers must [label](#) generated images, videos, and other content in accordance with regulations on deep synthesis (Article 16).
 - *User guidance:* Providers shall guide users to scientifically understand generative AI services and to use generated content rationally and legally (Article 18).
 - *User accountability:* Providers shall take necessary measures against users who misuse generative AI

can distribute their rights and obligations fairly and efficiently depends on various factors, such as the resources available to them and the presence of asymmetric information among them. To better direct this “[private ordering](#)” with significant social implications, the [EU](#) has planned to create non-binding standard contractual clauses based on each party’s level of control in the AI value chain. The CAC’s stance in this new and fast-moving area remains to be seen.

The Draft Measures pose potential challenges for deploying open-source generative AI systems

Open-source models raise a related but distinct issue. Open-source communities are currently developing highly [capable](#) large language models (“LLMs”), and businesses have compelling commercial incentives to adopt them, as training a model from scratch is relatively hard. However, many open-source models are released without a full disclosure of their training datasets, due to reasons such as the extensive effort required for data cleaning and privacy issues, especially when user data is involved. Adding to this complexity is the fact that open-source LLMs are not typically trained in isolation. Rather, they form a modification chain where the models build on top of each other with modifications made by different contributors. Consequently, for those using open-source models, several obligations in the Draft Measures become difficult or even impossible to fulfill, including pre-launch assessment, post-launch retraining, and information disclosure.

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3. The Draft Measures target the “hallucination” of generative AI systems

The Draft Measures describe generative AI as “technologies generating text, image, audio, video, code, or other such content based on algorithms, models, or rules.” In contrast to the EU’s new [compromise text on rules for](#)

concerns about the baseline and technical feasibility of ensuring data authenticity, given the use of open internet information and [synthetic data](#) in the development of generative AI.

4. Looking Ahead

The CAC is expected to refine the Draft Measures after gathering public feedback. The final version and subsequent promulgation may be influenced by a broader set of contextual factors. We believe the following aspects also warrant consideration:

- ***Risk-specific digital regulation framework*** The Draft Measures cannot be fully understood on its own and by its text. It takes its shape from existing laws and regulations with risk-specific concerns in the context of mainland China. As mentioned, the CAC has already targeted recommendation algorithms and deep synthesis, which too owe their existence to high-profile societal events involving [algorithmic abuses](#), [adolescent Internet addiction](#), as well as deepfake-related [fraud](#), [fake news](#), and [data misuse](#) that sparked widespread [consternation](#). The Draft Measures also rest on [upper-level](#) Cybersecurity Law, Data Security Law, PIPL and the measures that directly implement them.
- ***Dynamic interplay of political, economic, and social factors*** The implementation and enforcement of the Draft Measures will be deeply [influenced](#) by strategies, plans, and policies in a broader context. [Most](#) are dedicated to promoting the AI industry. Even though China has an 18-month [crackdown](#) on its Big Tech, we shouldn't forget that these very same "national champions" were encouraged to grow and flourish in the first place. A supportive and nurturing regulatory environment was provided domestically to boost their global competitiveness. Besides, it might be more accurate to view the crackdown as [resteeering](#), rather than barring, China's technology sector growth. It redirects the industry towards a path that the country's policy makers view as healthier, more sustainable – emphasizing independent and secure supply chains, fostering startups, and encouraging significant breakthroughs in areas such as foundational AI frameworks and models.
- ***Multifaceted interaction between different jurisdictions*** The regulation of generative AI is a global issue, with many shared concerns and demands across various countries. China interacts with other major jurisdictions, and China's policy discussions on AI regulation often draw comparisons with regulations in jurisdictions like the EU and the US. However, the degree to which *learning* occurs remains unclear, as China's approach is also molded by contextual elements and considerations, as well as the dual forces of competition and coordination between nations. For these reasons, relationships among AI regulations in different jurisdictions defy simplistic categorization.

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