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China Alert

China Publishes Interim Measures for the Management of Generative Artificial Intelligence Services

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China has become one of the very first countries in the world to regulate the technology that powers popular services such as ChatGPT. On July 10, 2023, the Cyberspace Administration of China (the “**CAC**”), joined by six other government regulators¹, published the *Interim Measures for the Management of Generative Artificial Intelligence Services* (《生成式人工智能服务管理暂行办法》) (the “**AI Measures**”), effective August 15, 2023.

Previously in April, the CAC released a draft of these measures² to solicit comments from the public (the “**Draft Measures**”). In comparison, this final version of the AI Measures has a more supportive tone on the new technology, with authorities pledging to take effective measures to encourage innovative development of generative AI.

The key points that the AI Measures cover include:

1. What technologies are to be regulated?

Per Article 2, the AI Measures apply when generative AI technology is used to provide services that generate any “text, images, audios, videos or other content to the public” within China. There is an exception and the AI Measures do not cover industry organizations, enterprises, educational and scientific research institutions, public cultural institutions, relevant professional institutions, etc. when they research, develop, or apply generative AI technology but do not provide generative AI services to the public within China.

A “generative AI service provider” (the “**Providers**”) refers to any organization or individual that utilizes generative AI technology to provide generative AI services (including providing such services through the provision of a programmable interface or other means).

2. What are the compliance principles when providing and using generative AI services?

Article 4 sets out five principles that need to be followed when providing as well as using generative AI services:

- a. **Uphold core socialist values**³. Providers are prohibited from generating any content prohibited by laws or administrative regulations, such as content inciting subversion of national sovereignty or the

¹ Namely, the National Development and Reform Commission (NDRC), Ministry of Education, Ministry of Science and Technology, Ministry of Industry and Information Technology, Ministry of Public Security and National Radio and Television Administration.

² *The Measures for the Management of Generative Artificial Intelligence Services* (Draft for Comment).

³ The Core Socialist Values is a set of values first introduced at the 18th National Congress of the Chinese Communist Party in 2012, including: “prosperity”, “democracy”, “civility”, “harmony”, “freedom”, “equality”, “justice”, “rule of law”, “patriotism”, “dedication”, “integrity” and “friendship”.

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overturn of the socialist system, threatening national security and interests, harming the nation's image, inciting separatism, undermining national unity and social stability, propagating terrorism or extremism, propagating ethnic hatred or ethnic discrimination, or any violent or obscene content, as well as content containing false or harmful information;

- b. **No discrimination.** During processes such as algorithm designs, the selection of training data, model generation and optimization, or the provision of services, effective measures shall be employed to prevent discrimination based on race, ethnicity, beliefs, nationality, region, gender, age, occupation, health, etc.;
- c. **Protect intellectual properties.** Providers are prohibited from exploiting advantages in terms of algorithms, data, platforms, etc., to carry out a monopoly or unfair competition;
- d. **Protect individual rights.** The lawful rights and interests of others shall be respected, and the physical and mental health of others must not be harmed, and the rights to likeness, reputation, honor, personal privacy, and personal information rights and interests of others must not be infringed; and
- e. **Improve transparency, accuracy, and reliability.** Based on service types and characteristics, effective measures shall be employed to increase the transparency in generative AI services and improve the accuracy and reliability of AI generated content.

3. What are the responsibilities of AI service providers?

Under Chapter 3 of the AI Measures, Providers are required to follow certain rules in providing services, including:

- a. **Undertake the responsibilities as an online information content generator.** Specifically, according to the *Provisions on the Governance of Online Information Content Ecology (2019)* (《网络信息内容生态治理规定》) published by the CAC, online information content generators are encouraged to produce or distribute information that promotes core socialist values, are prohibited to produce or distribute illegal information, are required to defend against and resist bad information, and to establish an ecological governance mechanism for online information content. That is, Providers should be responsible for the legal compliance of AI-generated content and fulfill online information security obligations.
- b. **Fulfill obligations as personal information processor when applicable.** Providers should protect users' input information and usage records, and must not collect unnecessary personal information, or illegally retain input information or usage records which can identify a user, or illegally provide users' input information or usage records to others. In addition, Providers shall timely accept and handle requests from individuals, such as those for accessing, making copies of, amending, supplementing, or deleting their personal information.
- c. **Enter into agreement with its users.** Providers shall execute service agreements with users who register for their generative AI services (the "**Users**") to establish the respective rights and obligations of the parties.

- d. **Correct labeling.** Provider should label images, videos, and other generated content in accordance with the *Administrative Provisions on Deep Synthesis in Internet-based Information Services (2022)* (《互联网信息服务深度合成管理规定》(2022)), which requires that for artificial intelligent dialogue, synthetic voice, face generation, immersive simulated scene and other services with the function of generating or significantly changing the contents, Providers should mark and label in prominent locations of the generated or edited contents so that the public is aware that the contents are synthesized. For deep synthesis services other than the above, Providers should include a prominent identification function in the services, so that the Users are notified that they can conduct such marking or labeling.
- e. **Ensure User's normal use.** Providers shall provide secure, stable, and continuous services in the course of their services to ensure Users' normal usage.
- f. **Implement censorship of contents when necessary.** Where Providers discover illegal content, they shall promptly employ disposition measures, including stopping its generation or transmission and removal, as well as employ measures such as model optimization training to conduct rectification, and report the case to the relevant authorities. If they discover that a User is using their generative AI services to engage in illegal activities, they shall employ disposition measures including warnings, restricting functions, and suspending or terminating services, keep the related records, and report the case to the relevant authorities.

4. Who are the regulatory authorities of AI in China?

According to Article 16, AI will be regulated by different agencies based on their respective functions and mandates, including the CAC, the NDRC, and the departments of education, science and technology, industry and information technology, public security, radio and television, press and publication, and other relevant authorities.

Regulators are tasked with setting classification and grading mechanism in light of the characteristics of generative AI its service applications. We expect that each of these authorities will issue their respective rules of AI regulation in details.

5. What are the potential penalties?

The Draft Measures had included a penalty ranging from RMB10,000 to 100,000 per violation, but the final published version deleted such monetary penalty. The final AI Measures only generally provides that violation of the measures would be punishable in accordance with relevant laws and regulations such as the Cybersecurity Law, Data Security Law, and Personal Information Protection Law, etc. Given the lack of specific penalties provided under the AI Measures, we expect that relevant authorities can deal with violations of the AI Measures with their typical tool-kit – i.e., issue warning and demand corrections within certain period of time, or even demand suspending services. The AI Measures also provides that violators can be subject to administrative or even criminal penalties if they are found in breach of relevant laws and regulations.

6. Impact on foreign providers of generative AI services in China?

The AI Measures only generally provides that foreign investors providing generative AI services should follow relevant market entry requirements. While given the nature of generative AI services are often integrated with various sectors of services, certain Providers that are offering services such as value-add telecommunications

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services, online news service, online publishing service, online audio-visual program service, cyberculture operations, etc. may be subject to restrictions or prohibitions according to *China's current Foreign Investment Negative List (2021 Edition)*.

The official rollout of the AI Measures is undoubtedly just a starting point of China's legislative efforts while achieving its ambition to become the world leader of AI. China's emerging AI governance framework is expected to reshape how the technology is built and deployed within China and internationally, impacting both Chinese technology exports and global AI research networks.

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