

# China Legal Report\*

## August 2023



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# Interpretation of New Rules — Interim Measures for the Administration of Generative Artificial Intelligence Services

## I. Introduction

On April 11, 2023, the “*Interim Measures for Generative Artificial Intelligence Services (Draft for Soliciting Opinions)*” (“**Draft**”) was issued by the Cyberspace Administration of China (**CAC**). Following the release of the Draft, on July 13, 2023, the CAC together with the National Development and Reform Commission, the Ministry of Education, the Ministry of Science and Technology, the Ministry of Industry and Information Technology, the Ministry of Public Security, and the National Radio and Television Administration, issued the Interim Measures for Generative Artificial Intelligence Services (the “**Interim Measures**”), which will come into effect on August 15, 2023. This article will briefly explain the key aspects of the Interim Measures, while making comparisons with the Draft.

## II. The Scope of the Application is specified

The Interim Measures target the provision of generative artificial intelligence (**GAI**) services to the general public in China. Internal research, development, or use of the GAI technologies without providing external services is therefore excluded and largely considered legally safe, if compliance with relevant laws and regulations regarding network security, data privacy and personal information protection are respectively ensured.

Compared to the Draft, the Interim Measures no longer apply to “*Industry organisations, enterprises, educational and research institutions, public cultural institutions, relevant professional institutions, and others involved in the research and application of generative artificial intelligence technology, but not providing generative artificial intelligence services to the domestic public.*” This newly established “safety net”, to an extent, alleviates the compliance burden for model developers and enterprises as well as cultural and research institutions using GAI services, aligning with the Interim Measures' prudent yet lenient regulatory approach, aiming to foster innovation. (**Interim Measures, Article 2**)

### III. Obligations for GAI Service Providers are systematically stipulated

The Interim Measures have taken into account industry feedback on the Draft. Greater consideration has been given to the technical challenges and limitations related to the quality of training data, as well as the reliability and accuracy of generated content. Consequently, previous strict compliance requirements on data training, model application and optimisation of GAI have been moderately relaxed. The key areas of legal obligation of GAI Service Providers are highlighted below.

#### 1. Content Management Obligations

In response to the potential issue of false information arising from GAI, the Interim Measures have implemented a series of regulatory requirements. It is stated that generated content must not infringe upon intellectual property rights, violate commercial ethics, or disclose trade secrets. Additionally, during the processes of algorithm design, training data selection, model generation and optimisation, and service provision, effective measures must be taken to prevent the generation of content that discriminates against ethnicity, beliefs, nationality, regions, gender, age, occupation, health, and other factors.

The original provision in Article 4 of the Draft requiring “*generated content to be true and accurate, and measures taken to prevent the generation of false information*” has been replaced with “*effective measures taken to improve the accuracy and reliability of generated content.*” This change has somewhat alleviated the responsibility and compliance burden of GAI service providers concerning the content generated. **(Interim Measures, Article 4)**

#### 2. Training Data Obligations

The Interim Measures have effectively relaxed the requirements concerning the quality of training data. The original provision in the Draft, which mandated the “*guarantee of data truthfulness, accuracy, objectivity, and diversity*” has been revised to “*take effective measures to improve the quality of training data and enhance its truthfulness, accuracy, objectivity, and diversity*”. Again, this modification has reduced the responsibility and compliance burden of GAI

service providers regarding the quality of training data. (**Interim Measures, Article 7**)

### **3. Introducing Specific Legal Liabilities and Penalties**

Article 9 of the Interim Measures distinguishes the responsibilities of GAI product and service providers as “*Internet information content producers*” and “*personal information processors*”. Their respective obligations are outlined vaguely as “*network information security obligation*” and “*personal information protection obligation*.” Furthermore, Article 21 of the Interim Measures specifies legal liabilities to be assumed by these providers in a more detailed fashion. (**Interim Measures, Article 9, 21**)

### **4. Protection of User's Personal Information (including Input Information)**

The Interim Measures require service providers to fulfil their obligation to protect users' input information and usage records. They are prohibited from collecting unnecessary personal information, illegally retaining input information and usage records that can identify users' identities, and unlawfully disclosing such information to others.

Furthermore, a responsive feedback mechanism is established for users' rights regarding their personal information. Accordingly, “*service providers must promptly accept and process individual requests for accessing, copying, correcting, supplementing, and deleting their personal information.*” In addition to the original provisions of “*correcting,*” “*deleting,*” and “*blocking*” in the Draft, the Interim Measures have added “*accessing,*” “*copying,*” and “*supplementing*”, effectively aligning with the *PRC Personal Information Protection Law*. (**Interim Measures, Article 11**)

### **5. Obligations of GAI Service Providers upon Discovering Illegal Content**

The Interim Measures have removed the requirement from the Draft which mandated service providers to strictly prevent the generation of inappropriate content through model optimisation training within a short and strict period of three months. The removal of this somewhat unrealistic provision took into consideration the relatively slow pace of improvement and development of the

GAI technology. The Interim Measures now specify the obligations of providers upon discovering illegal content as explained below.

These obligations include taking timely measures to cease the generation and transmission, as well as the deletion of such illegal content, implementing self-improvements such as model optimisation training, and reporting the incident to the relevant regulatory authorities. Additionally, if providers become aware that their users are employing GAI services for illegal activities, they must take appropriate measures such as warnings, restricting functionalities, and temporarily or permanently suspending the users' services, while also keeping relevant records and promptly notifying the relevant regulatory authorities. **(Interim Measures, Article 14)**

## **6. Obligations of Algorithm Security Assessment and Filing**

Compared to the Draft, which required a universal fulfilment of algorithm security assessment and filing obligations for all GAI services providers, the Interim Measures now explicitly limit the object of these obligations to providers offering *"GAI services with characteristics of (influencing) public opinion or social mobilisation capability"*. While this narrows down the scope of application, the Interim Measures do not further specify the criteria for determining what qualifies as *"GAI services with characteristics of public opinion or social mobilisation."*

To make a reasonable assessment, one could refer to a related regulation - *Security Assessment Rules for Internet Information Services with Characteristics of Public Opinion or Social Mobilisation*. We concluded therefrom that it is likely that GAI technologies related to news releases, social media, live streaming, education, content writing, and chatting services would fall into this category. **(Interim Measures, Article 17)**

## **IV. Overseas Services and Foreign Investment Access**

### **1. Overseas Services Liability**

The Interim Measures stipulate that if GAI services originating from outside the territory of China do not comply with laws, administrative regulations, and

provisions of these Interim Measures, the CAC shall notify the relevant agencies to take technical measures and other measures on such breaches. Considering the scope of application defined in Article 2 of the Interim Measures, we tend to believe that this article primarily aims to restrict overseas GAI services that do not meet Chinese laws and the requirements of the Interim Measures when providing services to the Chinese public. In such cases, the competent authorities may implement technical measures such as blocking access to relevant overseas GAI service websites and applications.

Additionally, if domestic service providers embed overseas GAI services into their own products to provide services to the Chinese public, they may also fall into these relevant provisions. Failure to comply may result in penalties imposed on domestic and overseas service providers in accordance with Article 21 of the Interim Measures. **(Interim Measures, Article 20)**

## **2. Foreign Investment Access**

The Interim Measures introduces a new provision stating, *“If providing GAI services requires obtaining relevant administrative permits according to laws and administrative regulations, the providers shall obtain such permits in accordance with the law. Foreign investors engaging in GAI services shall comply with the relevant laws and administrative regulations governing foreign investment.”*

Currently, laws and regulations do not set administrative licensing or foreign investment access restrictions on the provision of GAI services. However, if GAI services are applied in fields that require licensing or permits, or where foreign investment access is restricted, such as providing value-added telecommunications services, or internet audio-visual program services, etc., then relevant permitting, licensing or market access regulations must be adhered to. **(Interim Measures, Article 23)**

## **V. Conclusion**

Overall, the provisions in the Interim Measures are aiming to demonstrate a balanced approach to regulating GAI. They address concerns related to ethics, security, privacy, intellectual property, and discrimination that may arise

during the application of GAI technology. At the same time, the Interim Measures also tried to leave room for an open and accommodating environment for the development of new cutting-edge technologies.

Apart from introducing various encouraging measures, the specific requirements for service providers have been adjusted and modified based on the market discussions that followed the release of the Draft. Notably, the commitments regarding the accuracy of training data and the obligation to avoid using discriminatory content have been modified for leniency. These adjustments purport to demonstrate more consideration for the practical challenges that arise in the implementation of these regulations.

Looking forward, the Interim Measures strives to provide a general framework for the responsible development and use of GAI in China. As GAI technology continues to evolve rapidly, regular updates and adaptations to the regulations would be necessary to address emerging challenges and developments in the field. The ongoing dialogue between regulators, industry players, users, customers, and other stakeholders will play a crucial role in achieving the desired balance between fostering innovation and safeguarding legal and societal values and interests.

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