



# The Regulation of Artificial Intelligence in China

Qingle Hu<sup>1 a</sup>, Wei Liu<sup>2b</sup>

<sup>1</sup>School of Law and Social Work, Dongguan University of Technology, Dongguan, China

<sup>2</sup>School of Law, Changsha University, Changsha, China

<sup>a</sup> Email: [matteoqlhu@163.com](mailto:matteoqlhu@163.com); <sup>b</sup> Email: [649150031@qq.com](mailto:649150031@qq.com)

**Abstract.** The regulation of artificial intelligence in China is implemented in a separated way according to difference technology areas of artificial intelligence by different related functional departments. The technology of algorithmic recommendation, deepfakes and generative artificial intelligence are the three areas subjected to the regulation under legislations. Although there is no specialized department implemented the regulations but several related functional departments according to their own related regulative powers, China seems to rapidly react to this new technology and put it into a situation of state security. Based on the legislations, the core of the regulation is conducted in a self-regulation model, while the regulatory departments carry out their supervise function. The technology of algorithmic recommendation, deepfakes and generative artificial intelligence are subjected to self-safety-assessment and need to submit its report to the regulatory department for examination. As China is encouraging the development of artificial intelligence technology and related industry, the best way for the regulation is establishing an specialize department through a comprehensive legislation.

**Keywords:** artificial intelligence; regulation of artificial intelligence; self-regulation; safety assessment

## 1 Introduction

The developing of artificial intelligence (AI hereafter) is now on its fast lane. It brings huge benefit for the society, industry and people's living, as well as the foreseeing risk, especially the discrimination from algorithmic recommendation service and public information safety. As a result, the regulation of AI is imperative. As an excellent AI research and development company, Google published a "recommendation for regulating AI" [1]. The Geneva Association on September 2023 published its research on regulation of artificial intelligence in insurance [2]. Tencent, one of the leading internet companies, established a research institute paying lots of attention on the AI regulation research<sup>1</sup>.

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<sup>1</sup> See the research programme in the website: <https://www.tisi.org>.

entered into effect. If we trace back for the purpose of the AI regulation such as personal information safety, data security and cybersecurity, we could see the Cybersecurity Law of People's Republic of China (Cybersecurity Law hereafter) enacted in 2016, Data Security Law of People's Republic of China (Data Security Law hereafter) in 2021 and Personal Information Protection Law of People's Republic of China (Personal Information Protection Law hereafter) also in 2021 are just the legislative basis for Rule on Algorithmic Recommendation of Internet Information Services. If we believed that AI regulation is set for cybersecurity, data security and information safety, then the regulation of AI by legislation in China has emerged long before 2022. And then the Rule on Deepfake of Internet Information Services was enacted on October 25th, 2022. The Interim Rule on Generative Artificial Intelligence Services was enacted on July 7th, 2023. From then on, no new legislation has been published. However, the AI Regulation Bill was set on the Legislation Agenda 2023 of the State Council and would be submitted to be reviewed by the Standing Committee of National People's Congress. In August 2023, the Research Group on China's Artificial Intelligence Ethical Review and Regulatory System of the Chinese Academy of Social Sciences, released an expert draft proposal for Artificial Intelligence Law, claiming to establish a specialized competent agency named China Administration of Artificial Intelligence for regulation of AI research and development, provision, use, setting up several principals for AI related activities such as human-centric principle, safety principle, principle of openness, transparency, explainability, accountability and so on, which are also provided in the three above-said regulative Rules[3]. It is uncertain what kind of alternation for the regulation of AI in China would be in the coming year, since the AI Regulation Bill has not yet been published for public opinion. Before the enactment of AI Regulation Act, China would still regulate AI though a fragmented approach according to the regulative Rules. The article below will make a detailed discussion of the regulative Rules and the regulatory system.

## 2 The Regulation of AI through administrative rules

The Rule on Algorithmic Recommendation of Internet Information Services (hereafter RARIIS), Rule on Deepfake of Internet Information Services (hereafter RDIIS) and Interim Rule on Generative Artificial Intelligence Services (hereafter IRGAIS) constructed the legal basis of China's regulation of AI, although this is not a horizontal approach as what the EU is going to do. EU chooses a horizontal regulatory approach for AI regulation and intends to shape global rules and standards as regards rulemaking [4]. Publishing administrative rules for AI regulation is undoubtedly a quick react to the rapid development and huge impact of AI, and constructs its legal basis, since the competent departments of the State Council own the power for making administrative rules on a non-complex legislative process. However, we should aware that these administrative rules are legislated under the provision of Cybersecurity Law, Data Security Law and Personal Information Protection Law since administrative rules have lower legal effect in China, which means the regulation of AI also should obey the related provisions stipulated in the saying Laws. Actually, from a technical perspective, the core of

the regulation of AI is for data and personal information security. Another legislation should be emphasized is the Regulation on Internet Information Services (hereafter RIIS), which is also the legal basis of the three administrative rules. Under the RIIS, some AI related activities should be subjected to administrative license or administrative record. From a technical perspective of China's AI regulation, one could infer that the regulation mostly is found on the regulation of internet since the risk of AI mostly emerges by internet. The coming text will discuss the regulation of AI thought the Rules one by one.

## **2.1 Regulation of algorithmic recommendation services through RARIIS**

The regulation of algorithmic recommendation services regulates the service provider misusing algorithmic recommendation services, preventing the users from algorithmic discrimination and induction. All the internet information services based on algorithmic recommendation technology should obey this administrative rule.[5]

The services provider should protect the data and personal information safety, and make a regular assessment of information security, respect and safeguard the users' rights especially their right for recommendation option. Algorithmic discrimination for customers is also forbidden. For those services concerning public opinion and social mobilization, the provider should make a record to the administrative regulators in ten days after the services start, with the name of the service provider, service form, application field, algorithm type, algorithm self-assessment report, content to be published, and other information on the Internet Information Service Algorithm Filing System, and conduct security assessment according to the related documents. However, if the provider serves of internet news information, it should apply for the license of internet news information services.

The regulators such as the Cyberspace Administration and the Telecommunication Department are obliged to establish classification of algorithmic security management system. As the monitors, they are also obliged to check the self-regulation activities of the providers and conduct security assessment.

In the regulatory framework, the users' right of options, right to know should be guaranteed. Besides, the users' right to access to complain should be convenient and effective.

## **2.2 Regulation of Deepfake Service through RDIIS**

The regulation of deepfake aim at regulating the internet information services based on deepfake technology. The technology of deepfake certainly extend the users experiences, but at the same time fake news and information, and even cheating are easily conducted by using deepfake technology. Thus, the notification of employment of deepfake technology is too important.

Firstly, the deepfake service provider is obliged to prominently mark the generated or edited information at reasonable location and area, to remind the public of the circumstances for deepfake if the deepfake service may lead to confusion or

misunderstanding by the public. Secondly, services providers and the technical supporters shall explicitly inform the users to mark the deepfake content and get the consent from the individuals whose biometric information being used. Besides, they shall authenticate the users' real identity information through their mobile phone numbers, ID numbers or unified social credit codes or the national network identification public services, and shall not provide information publishing services to users who have not had their real identity information authenticated.[6]

The services providers and the technical supporters shall independently conduct security assessment or authorize professional institutions to do so according to the law, if the tools they provide with the function of generating or editing biometric information on face and human voice, or generating, editing non-biometric information on special objects and scenes that may involve national security, national image, national interests, and public interests. However, security assessment should be conduct according to the related official documents if the service providers develop and launch new products, apps, and functions with public opinion attributes or social mobilization ability.

As the recording requirement stipulated in RARIIS, the service providers and the technical supporters shall also conduct the recording to competent authorities, if those deepfake services concerning public opinion and social mobilization, interestingly according to the provision of RARIIS, which means they should also make the recording in ten days after the services start.

Actually, RDIIS focuses on the legal obligation for the services providers and the technical supporters. The legal obligation for the user is that they shall not produce, copy, publish, or disseminate false news information and get the deepfake service with real identity information, and keep their own information true.

### **2.3 Regulation of Generative AI through IRGAIS**

As ChatGPT was on its fever and popularity last year, China's government was in its quick move to published the departmental rules for generative AI regulations just in two months after its consultation deadline, although the regulatory legislation's title was "interim rule" instead of "rule" in its working draft.

Generative AI technology to be regulated are those models and related technologies with the ability to generate text, images, audio, video, and other content according to Article 22. All the relevant activities should be subjected to the legal obligation of non-discrimination, ethical principal, respecting IP and commercial moral. [7]

As a service provider, security duty of network information, data processing training activities are required. For the data safety of users and avoiding misuse by users, a service contact should be signed by both parties. The service provider is simultaneously burdened with the duty to monitor the user's activities preventing the user from illegality.

The regulators such as the Cyberspace Administration should establish a scientific regulatory approach for generative AI, including recommendation and classification supervision. Exactly as the aforementioned regulatory approach for the regulation of algorithmic recommendation services and deepfake services, the providers should make a record for the competent departments if their services concerning public opinion

and social mobilization according to RARIIS, and mark the generative content such as photos and videos according to RDIIS.

While the regulators carry out their duty for supervising and inspecting generative AI services, the providers shall provide cooperation to explain the sources, scales, and types of training data, annotation rules, and algorithm mechanisms as required, and provide necessary technical and data support and assistance.

As a matter of fact, the IRGAIS tries to balance the development and security of generative AI, thus the regulation is obliged to abide by the principle of innovation promotion and law-based governance, taking effective measures to encourage the innovative development of generative AI as Article 3 stipulates, which could not be seen in the working draft. Furtherly, Law on the Progress of Science and Technology of the People's Republic of China is also the legislation basis of IRGAIS while not in the working draft. Meanwhile, a special chapter for Technology Development and Governance is written which is not in the working draft too. Thus, we believed that China's regulator is implementing an inclusive and prudent approach for generative AI regulation as what it enshrines in the provisions.

## 2.4 Conclusion

The crucial point for AI technology is algorithm [8]. Therefore, the regulation of AI in China keeps to this technical logic. The regulation for algorithm recommendation services stands in the front row. Thereof it could be said that, China set up a basis regulation framework for AI regulation at the beginning of algorithm regulation, such as risk-assessment and classification management, with the principal of non-discrimination, respecting individual rights, all of which could be seen in the regulation of deepfake and generative AI. However, it's a pity that the classification system built for regulation in the three regulatory fields has not been set up yet, comparing to the risk classification of minimal risk, limited risk, high risk and unacceptable risk enshrined in the EU AI Bill from which perspective was proposed to address the challenge of regulating AI[9]. The absence of concrete provision on risk classification would be probably inevitable lead to uncontrollable discretionary power for the regulatory institutions.

Another feature of China's AI regulation located at another crucial technology of internet. Nowadays, AI makes a difference to the society and the daily live are mostly through internet, for which reason we could see the application scope of the first two rules lies in the algorithm recommendation technology and deepfake technology for internet information services. Although it's not mentioned in the third rule, we all know that generative AI is vivid on the internet. As a results, all the related activities of algorithm recommendation technology, deepfake technology and generative AI concerning public opinion and social mobilization should make a record to the competent departments in the Recording System for Internet Information Service of Algorithm<sup>2</sup>.

Social harmony and security are important value for the purpose of AI regulation. As the above saying, all the related activities concerning public opinion and social mobilization should make recording, their risk-assessment should be conduct according to

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<sup>2</sup> See the website on <https://beian.cac.gov.cn/#/index>.

a special document named Measures on Risk Assessment of Internet Information Service Concerning Public Opinion and Social Mobilization, enacted by the Cyberspace Administration of China. According to this document, the risk assessment should be conducted by itself or third-party agency, assessing the information of the providers, users and recording files, the approach for information protection and risk addressing system, complain addressing system, the system for assisting the competent authorities to fight for crime.

And of course, data security, cybersecurity and personal information protection are all the purposes of AI regulation, and the legal liability for violating the above regulatory legislation are almost founded on the laws related to data security, internet security and personal information protection which would be discussed in the next section.

### 3 Legal source of the administrative regulation

The Cybersecurity Law, Data Security Law and Personal Information Protection Law constructed the legislation basis of the aforementioned rules for AI legislation.

Cybersecurity, as parts of state security, concerns the information safety of every personal individuals since their data flow through the devices of network operators, that's why the operator of critical information infrastructure is required to a state security check by the competent department if the internet product and services may have an effect on state security, and the personal information and other important data they collect shall be stored within the border, a risk-assessment conducted by the competent department is needed if the operator intended to provide the data out of border for the business purpose. Actually, foreign AI companies haven't received any approval to release their products in China, it is believed that this help to stifle competition between Chinese companies and western AI companies and reinforce Chinese online control of online speech [10], which is one of the essences of cybersecurity.

The Data Security law adopts the same kind of cisborder protection for data security, especially the managers of the important data shall conduct a risk assessment termly according to the law and submit the report to the supervisory department. For the regulation of data, the protection system of data classification, risk assessment system of data and supervisory system of data security have been established.

The Personal Information Protection Law also adopts the approach of information cisborder protection. For the perspective of legislation technology, the Personal Information Protection Law emphasizes the legal right of each individual, such as right to know, option, appeal and litigation, and so on, particularly, the individuals shall not be subjected to unreasonable discrimination and unfairness, they shall furtherly be granted the right to receive the explanation and reject the recommendation information when they using automated decision system. Actually, we can see that the regulation of AI for individual information protection is rooted in the scenario of civil rights protection. Although the three AI regulation rules enshrine nearly all obligation for the related AI providers, deployers and technical supporters, people and entities whose legal rights concerning information are tort can seek remedy according to Information Protection

Law, and of course Civil Code of China. Logically, the regulatory departments are required to take their effort to protect the personal information.

To be noticed, all the legal liabilities resulted of violating the three AI regulatory rules refers to the legal liabilities in these three laws. That's why we should bear in mind that the regulation of AI can't separate from the protection of cybersecurity, data security and personal information protection.

## 4 Regulators

Like what's happens in USA, the power to regulate AI in China is also dispersed in different competent authorities, which means that each competent authorities are charge of the AI regulation when it is fall in its jurisdiction. In China, the Cyberspace Administration, the Ministry of Industry and Information Technology, the Ministry of Public Security, and so on, are all the right bodies enacted the aforementioned AI regulatory rules jointly. The above list doesn't mean we have listed all the competent authorities. The saying "Each sweeps the snow in front of the door" could be best described the situation of AI regulation in China. The Cyberspace Administration is the most important one that we should discuss below.

Established at 2011, the Cyberspace Administration was authorized to implement internet information communication policies and promote the construction of legal system for internet information communication, guide, coordinate and urge relevant departments to strengthen the management of internet information content. In 2014, it was authorized the power to supervise, manage and execute the national internet information matters, which means the Cyberspace Administration was developed from a coordinating body to be a really administrative body with executing power. After the reform of the national institutions in 2018, the Cyberspace Administration was emerged with the Office of the Cyberspace Affairs Commission of the Central Committee of the Communist Party of China, thus the political status of Cyberspace Administration was promoted to be a much higher level. The reason is that China put the cyberspace and AI matter into a state security position. The regulatory subject being mentioned as national cyberspace authority in the provisions of the related legislations all refer to this emerged administration. Thus, the Cyberspace Administration has been became the most important regulator for AI regulation in China.

## 5 Conclusion

Undoubtedly, China reacts to AI promptly. The reason can be concluded that China values the state security and public security very much. And as an executive-led country, the administrative departments are empowered to making legislations so-called departmental rules, which we mentioned in the previous section. Thus, the regulation of AI is constructed on a rule of law base. However, questions remains that the legal effect of the legislations for AI regulation could be doubt under a rigorous legal theory, since the legislative power of department rule is only authorized to the departments of the State Council, but of which the Cyberspace Administration is not one, although the

other joint legislators are all satisfied to this requirement. Another question is that the departmental rule is not allowed to set up new legal liabilities, instead, it shall follow the concerning provisions enshrined in their legislation basis such as the three laws we mentioned, even though it's necessary for implementing the regulation. As a results, the regulatory framework could not lead to effective implementation since the lack of targeted legal liabilities. That why the legal liabilities provisions are not so clear in the saying rules and could only refer to the saying laws.

As the expert draft proposal of artificial intelligence law is public, a formal official artificial intelligence law is summoned. The expert draft proposes to established a solely independent competent agency responsible for regulating AI. Will it come to reality? It would still be in puzzle until the AI bill which is on its legislating processing was public for consultation.

The AI bill on legislating processing would also change the situation that the AI regulation focuses on internet information services of algorithm recommendation, internet information services of deepfake and generative AI. And the emphasis of AI regulation would transfer from internet information services related AI to the real AI activities. Above all, the regulation approach such as the classification regulation and risk assessment should be perfect in the AI act.

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