# A Practitioner's Guide To China's New Generative AI Reg

By **Yan Luo and Xuezi Dan** (August 18, 2023, 4:01 PM EDT)

In July, the Cyberspace Administration of China, in conjunction with six other agencies, jointly issued the Interim Administrative Measures for Generative Artificial Intelligence Services.[1]

The measures are China's first regulation specific to generative artificial intelligence services. They went into effect Aug. 15.

With the new regulation now in full force, several questions come to mind.

How will it affect a company's plans to develop or deploy generative AI services in China? What regulatory issues should a company take into account when developing its China strategy?

This article answers 10 frequently asked questions to help practitioners understand the most relevant regulatory issues and to provide a risk assessment framework specific to generative AI products or services.

**What should be the conceptual frameworks for analyzing generative AI regulatory issues in China?**

Given the complexity and scope of the legal issues presented by the widespread adoption of generative AI technologies, and the speed at which regulatory changes are taking place in China and other jurisdictions, it is helpful to build a conceptual framework of the principle development and deployment models industry is pursuing.

Generally speaking, there are three development and deployment models that companies are considering with respect to generative AI in China.

The first is the "in China, for China" model, where generative AI products and services are developed in China to meet China's particular regulatory requirements and offered predominately to customers in China.

The second is the "outside China, for China" model, where products and services are developed outside of China, but are offered — or are under consideration to be offered — to Chinese customers through onshore or offshore entities.


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The third model is the "in China for the world," model, where products and services are developed in China and offered to customers worldwide. There could be also many variations to these models as the generative AI landscape continues to evolve.

Regulatory risk will vary significantly depending on which of the three development and deployment models a company adopts.

Irrespective of which model is adopted, however, there are many potential gray areas because some provisions in the measures remain vague — potentially by design — and leave room to future regulatory guidance.

**Who must comply with the measures?**

If a company opts for the "in China, for China" strategy and is planning to provide services to the Chinese public, it will be subject to requirements under the measures because the measures apply to the generative AI services "provided to the public within China."

The term "to the public" is not defined, so it is not quite clear whether only services directly offered to consumers will be covered, and it is likely to be interpreted on a case-by-case basis.

"Generative AI service provider" is also defined broadly, meaning the developers of foundation models and entities actually offering services to Chinese consumers could both be subject to the measures, so long as the services are used by the public within China. How compliance burdens should be allocated between different types of providers are not specified in the measures.

Note that although the measures may exclude internal enterprise use of generative AI services from the scope of its application, the lines around this exception could be blurred.

**Will offshore generative AI service providers be affected by the measures?**

The measures do not explicitly prohibit Chinese enterprises or even consumers from using generative AI services offered by offshore providers.

The measures, however, state that regulators may take "technical measures and other necessary measures" to "deal with" offshore generative AI services if such services fail to "comply with the Chinese laws, regulations and the Generative AI Measures."

In practice, uncertainties surrounding the use of models and services developed outside of China are likely to remain for a while.

For example, multiple generative AI mobile applications have been removed from Chinese app stores, including many powered by offshore services at the backend, due to regulatory concerns.

At the same time, leading Chinese cloud providers are making open-source models developed outside of China available to Chinese developers to build their own generative AI applications.

**Will the measures impose more compliance burden on high-risk AI services?**

The measures do not define high-risk AI systems.

However, providers of generative AI service with "the attributes of public opinion or the capacity for social mobilization," broadly defined, must carry out a security assessment and undergo a regulatory filing before launching such services, in addition to complying with generally applicable requirements like content moderation and tagging as discussed below.

**What requirements related to training data are introduced by the measures?**

The measures impose several requirements related to training data.

For instance, data and foundation models used for training and optimization must be obtained from "legitimate sources."

Providers are prohibited from infringing on the intellectual property rights of others and must process personal information with consent or another legal basis under Chinese laws.

Outside the measures, there could be additional considerations based on recently adopted cross-border data transfer requirements, indicating that transfers of Chinese data out of the country for training AI models will likely become more burdensome in the future.

**What are the regulatory powers of Chinese regulators?**

Under Article 19 of the measures, Chinese regulators may conduct inspections of generative AI services.

Providers must cooperate "by explaining the source, scale, type of training data, labeling rules, and algorithm mechanism, and providing technical support, data, and other necessary assistance." Companies that adopt "in China for China" model clearly be subject to these inspections, but it remains to be seen how this requirement might apply to offshore entities that offer services in China.

**What are the requirements related to content moderation under the measures?**

Under the measures, generative AI service providers bear the same general responsibilities of "content producers."

This means that if a provider identifies that a user of its service is engaged in "illegal content," not clearly defined by the measures or other Chinese regulations, it must promptly take measures to, for example, suspend the content generation and transmission, and take down the content.

In addition, the provider must rectify the issue, including through model optimization, and must report the issue to regulators.

For offshore providers, Chinese regulators may not be able to enforce content moderation standards directly, but providers may be forced to comply with the measures if they wish to remain in the market. Otherwise, access to the provider's generative AI services in China could be blocked.

**Do the measures include tagging requirements?**

The measures also include tagging requirements.

More specifically, a draft national standard, Requirements for Content Identification of Generative Artificial Intelligence Services, which was issued Aug. 7, provides specific technical requirements detailing how AI-generated content should be tagged through prompt text and watermarks.

It is possible that the Chinese regulators will issue more technical standards so any consumer facing AI model to be deployed in China would need to meet these requirements.

**Are there existing export or import restrictions on AI models?**

On the China side, there have been no specific export or import controls of AI models under the Export Control Law so far.

China's Technology Import and Export Regulations restricted "artificial intelligence interactive interface technologies," and "personalized information recommendation service technologies based on data analysis" from being exported, but there are no controls on generative AI technologies specifically.

Regulatory issues in other jurisdictions could potentially present more issues relating to import or export of AI models.

**What are the penalties for noncompliance under the measures?**

Providers violating the measures can be subject to penalties imposed under existing Chinese laws, including the Cybersecurity Law, the Data Security Law, the Personal Information Protection Law, and the Law on the Progress of Science and Technology.

In cases where there are no applicable penalties under these laws and regulations, penalties such as a warning or an order to rectify can still be imposed.

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[1] http://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm