

Links Client Alert — April 2025

Embracing AI: Are you ready compliance-wise?

With the rapid development of AI technology over the past few years, AI products and tools have significantly increased their importance in business operations and become productivity tools that can genuinely enhance corporate efficiency. However, when evaluating and deploying AI products, most companies often hesitate when faced with the complex web of AI laws and regulatory requirements, fearing that the unknown legal risks of using AI will backfire in the future.

Therefore, in this month's Client Alert, we try to outline the compliance boundaries for using AI for you, based on recent frequently asked questions from our AI-pioneering clients.

1. What "AI" falls within China's regulatory scope?

"AI" (Artificial Intelligence) is a very broad concept, referring to technologies and methods that simulate or implement human intelligence through computer programs or machines. However, not all AI meeting this definition falls under the regulation of Chinese law.

Currently, the main laws and regulations related to AI in China include:

- **Provisions on the Management of Algorithmic Recommendations in Internet Information Services ("Algorithm Recommendation Provisions"):** regulate algorithm recommendation technologies, including generative synthesis, personalized push, sorting and selection, retrieval filtering, scheduling decisions, etc. Therefore, AI products using these algorithms need to comply with the requirements of the Algorithm Recommendation Provisions.
- **Provisions on the Management of Deep Synthesis Internet Information Services ("Deep Synthesis Provisions"):** regulate technologies using generative synthesis algorithms to create text, images, audio, video, and virtual scenes. Read together with the Algorithm Recommendation Provisions, it can be seen that deep synthesis technology is a subset of algorithm recommendation technology. Therefore, the use of generative synthesis algorithms like deep learning and virtual reality requires compliance not only with the Deep Synthesis Provisions but also with the Algorithm Recommendation Provisions. AI products using deep synthesis technology are regulated by both sets of provisions.

It is clear that the above two regulations mainly regulate specific algorithms (such as recommendation algorithms, generative synthesis algorithms) rather than directly targeting AI products. Only AI products using the corresponding algorithms fall within the scope of these regulations. Based on our experience, **the relationship between algorithms and AI is that algorithms are the foundation for building AI products;**

the realization of AI products usually relies on one or more algorithms. Therefore, laws regulating specific algorithms do not apply to AI that does not use that algorithm, while laws regulating AI inevitably involve the regulation of the algorithms it applies.

The following regulations, however, regulate AI itself:

- **Interim Measures for the Management of Generative Artificial Intelligence Services ("Generative AI Measures"):** regulate models and related technologies with content generation capabilities. AI products using generative artificial intelligence technology to generate text, images, audio, video, etc., are all regulated by the Generative AI Measures.
- **Measures for Labeling AI-Generated Synthetic Content:** require adding explicit (text, voice prompts) or implicit (metadata, digital watermarks) labels to AI-generated content to facilitate traceability and prevent the spread of false information.
- **Measures for the Ethical Review of Science and Technology (Trial) ("Ethics Review Measures"):** require science and technology ethics reviews for scientific activities involving human participants (e.g., AI products analyzing or processing personal information).

In summary, it is evident that under China's current regulatory framework for AI, the main focus is generative AI services targeting the general public, with compliance obligations primarily placed on the developers and providers of AI products. Since the vast majority of companies are merely users of AI products, does this mean AI product users can "do as they please" under Chinese law? The answer is certainly NO. In the following sections, we will primarily analyze relevant compliance risks and obligations from the perspective of AI product users.

2. Can companies in mainland China use overseas AI products?

Many Chinese subsidiaries of multinational corporations choose to use overseas AI products, such as ChatGPT, CoPilot, etc., often following instructions from their global headquarters. The problem is that these overseas AI products, much like other overseas services such as Google and LinkedIn, are either unavailable to users within mainland China or are blocked by China's firewall. Therefore, technical means like VPNs are required to access them within China. Many companies are concerned whether using overseas AI products in this manner within China is compliant.

- **Using overseas AI products itself is not illegal:** we must first clarify that using AI products, including overseas AI products, does not in itself violate any Chinese laws. Companies in China can legally use overseas AI products provided they fulfill other compliance obligations required by Chinese law.
- **Compliance of cross-border networking:** most overseas AI products require a VPN for access, and cross-border networking activities, including the use of VPNs, are regulated by Chinese law. According to Chinese law, international network traffic must go through international communication gateways approved by the Chinese government. Any act of circumventing these gateways for international networking is illegal. Therefore, when selecting service providers for VPNs and other cross-border

networking services, companies must verify whether these providers' cross-border links comply with Chinese legal provisions. Otherwise, at best, they might face service unavailability if the provider is shut down for violations; at worst, they could bear legal responsibility for illegal cross-border networking. Generally, choosing cross-border networking services provided by China's three major telecom operators (China Mobile, China Telecom, China Unicom) and their authorized service providers or partners complies with Chinese legal requirements.

- **Content compliance:** Chinese law prohibits using international networking activities to engage in acts endangering national security or state secrets, and prohibits the production, viewing, copying, and dissemination of information disturbing social order or obscene/pornographic content. When using overseas AI products, there is no guarantee that the relevant AI product will not generate content violating Chinese law. Therefore, it is recommended that companies in China using overseas AI products establish internal systems to regulate employees' use of such products. This can, to some extent, prevent the company from being held liable for employees' illegal use of overseas AI products. Additionally, consider using technical means, selecting domestic suppliers to provide filtering services for the contents generated by overseas AI products.

3. What are the key considerations when choosing AI products?

From the perspective of an AI product user, when considering integrating AI large models or using third-party AI, the most important thing is to ensure the compliance of the AI model or product, i.e., ensuring that the AI product provider and the AI product meet the compliance requirements under Chinese law. Specifically, the following are key points:

- **Completion of large model filing/registration:** the Generative AI Measures require entities providing generative AI services to the public within China with public opinion attributes or social mobilization capabilities to complete a security assessment for generative AI services, known as "large model filing." Entities that provide generative AI services by calling third-party large models can launch their services after completing registration, provided the third-party large model they call has already completed its filing.
- **Completion of algorithm filing:** both the Algorithm Recommendation Provisions and the Deep Synthesis Provisions stipulate that service providers offering algorithm recommendation services or deep synthesis services to the public within China with public opinion attributes or social mobilization capabilities must undergo algorithm filing.
- **Possession of value-added telecommunications licenses:** based on the specific AI service and its business model, the relevant AI service may constitute a value-added telecommunications service, thus requiring a value-added telecommunications operating license according to law. For example, using generative AI to provide internet information services may require an ICP license. Other potentially involved telecom business licenses include, but are not limited to, EDI, IDC, ISP, and SP licenses.
- **Completion of science and technology ethics review:** for generative AI services involving sensitive areas of science and technology ethics, attention should be paid to whether the AI product has

completed the science and technology ethics review according to the Ethics Review Measures, Algorithm Recommendation Provisions, and Deep Synthesis Provisions.

4. What are the key considerations when using AI?

- **Scope of personnel that can access AI and scope of AI products:** using AI products (especially overseas ones) can bring additional legal risks to a company. Therefore, some multinational corporations are cautious about the scope of personnel who are authorized to use AI products within the company. For example, only granting access to senior management or employees whose job responsibilities genuinely require AI use. Regarding the scope of AI products, companies need to consider whether to establish an AI product "whitelist" to restrict the range of AI products employees can use, and restrict employees from using unapproved AI products for work purposes, installing or using unapproved AI products on work devices, or using the company's network and IT environment to access unapproved AI.
- **Intellectual Property (IP) compliance:** content such as text, video, and images generated using AI products may infringe the "right of reproduction" and "right of communication through information networks" of the original work if there is substantial similarity with the original content used for generation. If the AI product forms a new, original expression while retaining the fundamental expression of the original work, it may infringe the "right of adaptation." Currently, Chinese judicial practice does not have a clear conclusion on whether the provider of the AI product, the user, or both should bear responsibility for infringement by AI-generated works. Therefore, companies should use works generated by AI products cautiously, especially if they need to provide or publish AI works externally. It is recommended to establish an internal pre-review mechanism for AI copyright infringement to prevent liability.
- **Content compliance:** Generally, domestic AI large model providers have set up review mechanisms for the content generated by their AI products to avoid generating sensitive content under Chinese law or political environment. However, overseas AI products generally lack such mechanisms. It is recommended to refer to the content compliance considerations listed in Section 2 and adopt institutional or technical measures to prevent content compliance risks. In addition to legal content compliance risks, companies also need to prevent enterprise-level content compliance risks, for example, AI products might generate content that infringes on the company's trade secrets or damages its reputation.
- **Personal Information Protection:** if employees use AI products to arbitrarily process and analyze personal information collected or formed by the company (e.g., cross-border transfer of consumer personal information collected by the company, or inputting customer personal information into AI products for analysis), even if the company's initial collection of the relevant personal information was compliant, such processing by employees is likely to exceed the scope of consent previously obtained from the personal information subjects, thereby constituting illegal processing of personal information and potentially leading to legal liability for the company. Therefore, corresponding internal policies need to be formulated to regulate employees' behavior when using AI products to process personal information. Additionally, it is recommended to incorporate the potential personal information

processing involved in AI products into the company's personal information protection impact assessment (PIPIA) process to ensure that the use of AI products does not adversely affect personal information rights.

If the company uses SaaS-type (i.e., non-on-premise deployment) AI products, the following compliance issues also need to be considered:

- **Trade Secret Protection:** for non-on-premise AI products, a potential risk when employees use them for daily work is that they need to provide data and information related to their daily work, including the company's own and third-party data, to the AI product. This will cause the company's data to be transmitted to the servers of the AI product provider (and possibly suppliers engaged by the AI product service provider), potentially leading to the leakage of the company's sensitive data and trade secrets as third parties might gain access. Therefore, based on the company's data classification and grading work, it is recommended to clearly define what data and information constitute the company's trade secrets and impose restrictions or set up approval processes for employees using this data and information in AI tools.

Furthermore, if the company makes relevant AI products available to external personnel/the public, the company's role shifts from a mere "user" to an "AI service provider." In addition to ensuring the compliance of the AI product itself, the company also needs to assess whether it needs to fulfill the obligations listed in Section 3 of this Alert, such as filing/registration, obtaining telecommunications business licenses, and conducting science and technology ethics reviews.

We hope this compliance review helps you better understand the compliance requirements for using AI under Chinese law. If you would like to learn more about AI compliance or our other legal services in the cybersecurity and data field, please feel free to contact us:



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