

# The Promise and Perils of China's Regulation of Artificial Intelligence

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*In recent years, China has emerged as a pioneer in formulating some of the world's earliest and most comprehensive regulations concerning artificial intelligence (A.I.) services. Thus far, much attention has focused on the restrictive nature of these rules, raising concerns that they might constrain Chinese A.I. development. This Article is the first to draw attention to the expressive powers of Chinese A.I. legislation, particularly its information and coordination functions, to enable the A.I. industry. Recent legislative measures, such as the interim measures to regulate generative A.I. and various local A.I. legislation, offer little protective value to the Chinese public. Instead, these laws have sent a strong pro-growth signal to the industry while attempting to coordinate various stakeholders to accelerate technological progress. China's strategically lenient approach to regulation may therefore offer its A.I. firms a short-term competitive advantage over their European and U.S. counterparts. However, such leniency risks creating potential regulatory lags that could escalate into A.I.-induced accidents and even disasters. The dynamic complexity of China's regulatory tactics thus underscores the urgent need for increased international dialogue and collaboration with the*

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*country to tackle the safety challenges in A.I. governance.*

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## INTRODUCTION

In recent years, China has emerged as a pioneer in formulating some of the earliest and most comprehensive legislation regulating artificial intelligence (A.I.) services.<sup>1</sup> In late 2021, the country unveiled its comprehensive regulation specifically designed to regulate recommendation systems powered by algorithms.<sup>2</sup>

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1. MATT SHEEHAN, CARNEGIE ENDOWMENT FOR INT’L PEACE, CHINA’S AI REGULATIONS AND HOW THEY GET MADE, (2023), <https://carnegieendowment.org/2023/07/10/china-s-ai-regulations-and-how-they-get-made-pub-90117> [<https://perma.cc/J2KU-VEC8>].

2. Hùliánwǎng Xīnxī Fúwù Suànfǎ Tuījìàn Guǎnlǐ Guīdìng (互联网信息服务算法推荐管理规定) [Internet Information Service Algorithmic Recommendation Management Provisions] (promulgated by the Cyberspace Admin. of China, the Ministry of Indus. & Info. Tech., the Ministry of Pub. Sec., and the State Admin. for Mkt. Regul., Dec. 31, 2021, effective Mar. 1, 2022) ST. COUNCIL GAZ., Mar. 30, 2022, at 71 [hereinafter Algorithmic Regulation],

Subsequently, the Cyberspace Administration of China (CAC) introduced a set of measures aimed at restraining the production of deepfakes in early 2023, making China the first country to curb the explosive growth of this area of A.I. advancement.<sup>3</sup> When ChatGPT emerged in November 2022, Chinese regulators reacted quickly with a spate of legislative and enforcement actions.<sup>4</sup> The CAC released draft measures on generative A.I. in April 2023, making China the first country to propose comprehensive rules to regulate this transformative technology.<sup>5</sup> Within three months, China finalized the rules and introduced a comprehensive range of obligations for providers of generative A.I. services.<sup>6</sup> Similar to recommendation algorithms and

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<https://www.gov.cn/gbgl/871c57921d7641b2b38de1aee4bd758f/files/4736567052e04be4a798cc47dc98d171.pdf> [https://perma.cc/H9CS-68NX].

3. Hùliánwǎng Xīnxī Fúwù Shēndù Héchéng Guǎnlǐ Guīdìng (互联网信息服务深度合成管理规定) [Internet Information Service Deep Synthesis Management Provisions] (promulgated by the Cyberspace Admin. of China, the Ministry of Indus. & Info. Tech., and the Ministry of Pub. Sec., Nov. 25, 2022, effective Jan. 10, 2023) [hereinafter Deep Synthesis Regulation], [https://www.gov.cn/zhengce/zhengceku/2022-12/12/content\\_5731431.htm](https://www.gov.cn/zhengce/zhengceku/2022-12/12/content_5731431.htm) [https://perma.cc/LN3Y-QS3T].

4. By February 2023, Chinese authorities had prohibited Tencent and Ant Group from integrating ChatGPT into their platforms and had instructed them to ensure that ChatGPT could not be accessed either directly or via third-party apps within their ecosystems. See Cissy Zhou, *China Tells Big Tech Companies Not to Offer ChatGPT Services*, NIKKEI ASIA (Feb. 22, 2023, 8:34 PM), <https://asia.nikkei.com/Business/China-tech/China-tells-big-tech-companies-not-to-offer-ChatGPT-services> [https://perma.cc/C5H6-6N6T]. Subsequently, Apple was ordered to remove more than a hundred generative A.I. chatbot apps from its Chinese app store. Xinmei Shen, *Apple Removes over a Hundred ChatGPT-Like Apps in China as Tighter Regulations Set to Take Effect*, S. CHINA MORNING POST (Aug. 2, 2023, 4:22 PM), <https://www.scmp.com/tech/policy/article/3229628/apple-removes-over-hundred-chatgpt-apps-china-tighter-regulations-set-take-effect> [https://perma.cc/2LX8-T2W9].

5. Guójiā Hùliánwǎng Xīnxī Bàngōngshì Guānyú “Shēngchéng Shì Réngōng Zhìnéng Fúwù Guǎnlǐ Bǎnfǎ (Zhēngqiú Yìjiàn Gǎo)” Gōngkāi Zhēngqiú Yìjiàn de Tōngzhī (国家互联网信息办公室关于《生成式人工智能服务管理办法(征求意见稿)》公开征求意见的通知) [Notice by the CAC of Soliciting Public Opinions on the Measures for the Management of Generative A.I. Services (Draft for Comment)] (issued by the Cyberspace Admin. of China, Apr. 11, 2023) [hereinafter Draft Measures for Generative A.I.], [http://www.cac.gov.cn/2023-04/11/c\\_1682854275475410.htm](http://www.cac.gov.cn/2023-04/11/c_1682854275475410.htm) [https://perma.cc/K6Y5-T6LC].

6. Shēngchéng Shì Réngōng Zhìnéng Gúwù Guǎnlǐ Zhànxíng Bǎnfǎ (生成式人工智能服务管理暂行办法) [Interim Measures for the Management of Generative A.I. Services] (promulgated by the Cyberspace Admin. of China, the Nat'l Dev. & Reform Comm'n, the Ministry of Educ., the Ministry of Science & Tech., the Ministry of Indus. & Info. Tech., the Ministry of Pub. Sec., and the Nat'l Radio & Television Admin., July 10, 2023, effective Aug. 15, 2023) ST. COUNCIL GAZ., Aug. 30, 2023, at 39 [hereinafter Interim Measures for Generative A.I.], [https://www.gov.cn/gongbao/2023/issue\\_10666/material/gwygb202324.pdf](https://www.gov.cn/gongbao/2023/issue_10666/material/gwygb202324.pdf) [https://perma.cc/M7FJ-XBWX].

deep fakes, generative A.I. services that can shape public opinion must undergo a security assessment and register their algorithms with the CAC before market launch.<sup>7</sup> This requirement for *ex ante* security assessment makes China the first and only country that has mandated a licensing requirement for the launch of such services.

China's recent A.I. legislative developments, as detailed above, are frequently regarded as indicative of the country's ambition and capacity to become a global leader in A.I. regulation and governance.<sup>8</sup> Matt Sheehan, a highly-regarded expert in Chinese A.I. policy, suggests that the United States can actually gain many valuable insights from China's "targeted and iterative approach to A.I. governance."<sup>9</sup> Meanwhile, industry experts and legal experts, highlighting the extensive range of obligations imposed on tech firms—ranging from content moderation to data protection, intellectual property (IP), and ethical issues—caution that Beijing's regulatory approach could become a potential obstacle to Chinese innovation.<sup>10</sup> John Naughton, for instance, points out that the Chinese Communist Party's (CCP) prioritization of information control over innovation could potentially leave China "behind the West in the A.I.

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7. *Id.*, art. 17. Legal experts noted that this security assessment is notably more stringent than traditional assessments for online services, demanding detailed information and considerable time. Yuan Lizhi & Zhu Lei, *Comments on China's Interim Measures on Generative AI Services*, LINKEDIN (Oct. 26, 2023), <https://www.linkedin.com/pulse/quick-comments-chinas-interim-measures-generative-ai-b0j3e/> [<https://perma.cc/E2NF-GT4S>].

8. Matt Sheehan, *What the U.S. Can Learn From China About Regulating AI*, FOREIGN POL'Y (Sept. 12, 2023, 3:04 PM), <https://foreignpolicy.com/2023/09/12/ai-artificial-intelligence-regulation-law-china-us-schumer-congress/> [<https://perma.cc/KGB4-22ZJ>]. See also Gilad Abiri & Yue Huang, *A Red Flag? China's Generative AI Dilemma*, 37 HARV. J.L. & TECH 1 (2023).

9. Sheehan, *supra* note 8.

10. Meaghan Tobin, *Will China Overtake the U.S. on AI? Probably Not. Here's Why.*, WASH. POST (July 9, 2023), <https://www.washingtonpost.com/world/2023/07/03/china-us-ai-technology-chatgpt/> [<https://perma.cc/QKD7-2J3R>]; Helen Toner et al., *How Will China's Generative AI Regulations Shape the Future? A DigiChina Forum*, DIGICHINA (Apr. 19, 2023), <https://digichina.stanford.edu/work/how-will-chinas-generative-ai-regulations-shape-the-future-a-digichina-forum/> [<https://perma.cc/MP97-ZV7U>]; Abiri & Huang, *supra* note 8, at 9–15; Helen Toner, Jenny Xiao & Jeffrey Ding, *The Illusion of China's AI Prowess*, FOREIGN AFFS. (June 2, 2023), <https://www.foreignaffairs.com/china/illusion-chinas-ai-prowess-regulation-helen-toner> [<https://perma.cc/D7LQ-TRRM>]; Will Henshall, *How China's New AI Rules Could Affect U.S. Companies*, TIME (Sept. 19, 2023, 10:22 AM), <https://time.com/6314790/china-ai-regulation-us/> [<https://perma.cc/R6LJ-JPV5>]; Li Yuan, *Why China Didn't Invent ChatGPT*, N.Y. TIMES (Feb. 17, 2023), <https://www.nytimes.com/2023/02/17/business/china-chatgpt-microsoft-openai.html> [<https://perma.cc/NN6U-3XX9>].

race.”<sup>11</sup> Helen Toner and others have similarly warned that the CCP’s heavy-handed regulation of generative A.I. technologies “could prove a real impediment to Chinese firms and researchers.”<sup>12</sup> Abiri and Huang went even further, arguing that China’s cautious approach to large language models (LLMs) was a deliberate attempt to slow down the development and application of generative A.I. in the country.<sup>13</sup> Such concerns are not unwarranted. Between 2020 and 2022, China undertook a sweeping crackdown on its tech firms, launching high-profile cases and imposing sanctions with unprecedented speed.<sup>14</sup> The velocity of China’s tech crackdown dwarfed the more measured pace of American and European regulators, who are often constrained by lengthy legislative processes and judicial oversight.<sup>15</sup> “Yet the erratic nature of Chinese tech policy has unnerved investors, precipitating severe and unintended consequences of deterring investment and entry into the consumer tech business.”<sup>16</sup>

In contrast to the above perception that Chinese regulation is constraining its development, this Article reveals a more intricate and strategic regulatory landscape in China. Indeed, authoritarian states face a dual challenge with emerging technologies. On the one hand, technological advances can empower civil society by reducing the cost of collective mobilization against authoritarian rule.<sup>17</sup> Facebook’s Cambridge Analytica scandal has heightened Chinese authorities’ vigilance about the influence of content-recommendation algorithms on political discourse and their potential to exacerbate political

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11. John Naughton, *Can China Keep Generative AI Under Its Control? Well, It Contained the Internet*, THE OBSERVER (Apr. 22, 2023, 11:00 AM), <https://www.theguardian.com/commentisfree/2023/apr/22/can-china-keep-generative-ai-under-its-control-well-it-contained-the-internet> [https://perma.cc/K3XL-MPXV].

12. Toner, Xiao & Ding, *supra* note 10.

13. Abiri & Huang, *supra* note 8, at 5.

14. Angela Huyue Zhang, *Agility over Stability: China’s Great Reversal in Regulating the Platform Economy*, 63 HARV. INT’L. L.J. 457, 491 (2022).

15. See ANGELA HUYUE ZHANG, *HIGH WIRE: HOW CHINA REGULATES BIG TECH AND GOVERNS ITS ECONOMY* 92 (2024).

16. *Id.* at 260.

17. Larry Diamond, *Liberation Technology*, in *LIBERATION TECHNOLOGY: SOCIAL MEDIA AND THE STRUGGLE FOR DEMOCRACY* 4 (Larry Diamond & Marc Plattner eds., 2012). For instance, during the Middle East’s Jasmine Revolution between 2010 and 2011, social media functioned as an important coordination tool to mobilize and orchestrate protests that led to regime collapse. See generally ZEYNEP TUFECKI, *TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST* (2017).

polarization.<sup>18</sup> An early example of the government's concern occurred in April 2018 when Toutiao, a news aggregation site owned by ByteDance, was temporarily removed from Chinese app stores,<sup>19</sup> possibly for circulating inappropriate content. Subsequently, the CAC called on major social media platforms to eliminate accounts spreading misinformation, pornography, or illegal advertisements.<sup>20</sup> Such fear that A.I. will undermine its control over public discourse has been the major driver behind the Chinese government's proactive stance in regulating A.I. technology and its applications.

On the other hand, technology can enhance governmental surveillance capabilities and bolster pre-emptive repression, thereby strengthening social stability.<sup>21</sup> Moreover, technological advancements are crucial for economic growth and national competitiveness, which in turn bolster the regime's legitimacy. In fact, law has emerged as an integral part of China's innovation strategy. In addition to acting as a regulator, the Chinese government assumes multiple roles in the A.I. ecosystem, acting as a policymaker,<sup>22</sup>

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18. Tracy Qu & Xinmei Shen, *Controlling Hearts and Minds: China Cracks Down on Content Algorithms to Make Sure the Communist Party Is Still Boss*, S. CHINA MORNING POST (Sept. 11, 2021, 3:00 PM), <https://www.scmp.com/tech/policy/article/3148321/controlling-hearts-and-minds-china-cracks-down-content-algorithms-make> [https://perma.cc/6XR3-HHF3].

19. Frank Hersey, *Toutiao and 3 Other News Apps Taken Down from Chinese App Stores*, TECHNODE (Apr. 9, 2018), <https://technode.com/2018/04/09/news-apps-takedown/> [https://perma.cc/M9ZJ-8JAE].

20. Xinhua, *Internet Regulator Strengthens Crackdown on Illicit Social Media Activity*, STATE COUNCIL OF THE PEOPLE'S REP. OF CHINA (Nov. 17, 2018, 7:52 AM), [http://english.www.gov.cn/state\\_council/ministries/2018/11/17/content\\_281476393842708.htm](http://english.www.gov.cn/state_council/ministries/2018/11/17/content_281476393842708.htm) [https://perma.cc/68XW-BTRF].

21. See generally Tiberiu Dragu & Yonatan Lupu, *Digital Authoritarianism and the Future of Human Rights*, 75 INT'L. ORG. 991 (2021); Martin Beraja et al., *AI-tocracy*, 138 Q. J. ECON. 1349 (2023).

22. Between 2015 and 2018, the central government introduced at least ten A.I.-related initiatives, each aiming to elevate the entire A.I. value chain. Alberto Arenal et al., *Innovation Ecosystems Theory Revisited: The Case of Artificial Intelligence in China*, 44 TELECOMMS. POL'Y 1, 8–10 (2020). The most significant of these is the New Generation Artificial Intelligence Development Plan initiated by the State Council in 2017. See Fei Wu et al., *Towards a New Generation of Artificial Intelligence in China*, 2 NATURE MACH. INTEL. 312, 312 (2020).

investor,<sup>23</sup> supplier,<sup>24</sup> and customer.<sup>25</sup> Given its extensive and deep involvement in the A.I. ecosystem, the Chinese government lacks a strong commitment to impose strict regulation on the technology.<sup>26</sup> The tightening of U.S. export restrictions, which hinder Chinese A.I. firms' access to advanced A.I. chips, have only intensified the Sino-American tech rivalry, thereby further diminishing the government's incentive for strict regulation.<sup>27</sup> Moreover, although A.I. can pose a variety of social harms—including income inequality, job losses, discrimination, misinformation, and breaches of privacy—these issues have not yet evolved into immediate or significant threats to social and political stability.<sup>28</sup> Meanwhile, the Chinese government also faces significant constraints in imposing tough regulation on A.I. Since early 2023, the Chinese economy has entered a slump, with increased unemployment and a noticeable downturn in consumption and

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23. The Chinese government plays a crucial role as a major financier in the A.I. sector, investing billions of yuan to support the forefront of technological innovation. A key strategy involves direct investment in A.I. enterprises, predominantly executed through guidance funds. NGOR LUONG ET AL., UNDERSTANDING CHINESE GOVERNMENT GUIDANCE FUNDS 4 (2021), <https://cset.georgetown.edu/wp-content/uploads/CSET-Understanding-Chinese-Government-Guidance-Funds.pdf> [<https://perma.cc/6SH2-7JXW>].

24. Recent empirical studies have found that government procurement has been pivotal in the rise of Chinese A.I. firms in facial recognition technology, largely due to their access to these vast governmental data resources. See Beraja et al., *supra* note 21, at 1353; Martin Beraja et al., *Data-Intensive Innovation and the State: Evidence from AI Firms in China*, 90 REV. ECON. STUD. 1701, 1702 (2023).

25. The government's role also extends to being a major consumer of facial recognition technologies, deploying them in various public services including security, transportation, and finance. See generally KATHERINE ATHA ET AL., CHINA'S SMART CITIES DEVELOPMENT (2020), [https://www.uscc.gov/sites/default/files/China\\_Smart\\_Cities\\_Development.pdf](https://www.uscc.gov/sites/default/files/China_Smart_Cities_Development.pdf) [<https://perma.cc/2UH9-KDHW>]. Chinese courts have also embraced A.I. technology to monitor judges and standardize decision-making. See generally Rachel E. Stern et al., *Automating Fairness? Artificial Intelligence in the Chinese Courts*, 59 COLUM. J. TRANSNAT'L L. 515 (2021).

26. Angela Huyue Zhang, *China Has Too Much Invested in AI to Smother Its Development*, NIKKEI ASIA (May 18, 2023, 5:00 AM), <https://asia.nikkei.com/Opinion/China-has-too-much-invested-in-AI-to-smother-its-development> [<https://perma.cc/RL6H-4PEK>].

27. Jane Zhang & Jesse Levine, *Why AI Is Next Flashpoint in US-China Tech Rivalry*, BLOOMBERG (Oct. 20, 2023, 8:31 AM), <https://www.bloomberg.com/news/articles/2023-06-29/what-is-the-state-of-us-china-competition-in-ai> [<https://perma.cc/9465-B6W6>].

28. See generally Daron Acemoglu, *Harms of AI*, in THE OXFORD HANDBOOK OF AI GOVERNANCE 660 (Justin B. Bullock et al. eds., 2024); Valeri Capraro et al., *The Impact of Generative Artificial Intelligence on Socioeconomic Inequalities and Policy Making*, 3 PNAS NEXUS 191 (2024).

production.<sup>29</sup> The government's focus has therefore shifted towards revitalizing the economy and boosting market confidence via stimulus packages and regulatory easing.<sup>30</sup>

In a departure from existing literature which tends to focus on the restrictive nature of Chinese A.I. legislations,<sup>31</sup> this Article represents the first attempt to draw attention to the enabling aspects of these rules. The concept that law can be strategically used to enable industrial growth is not entirely new: Anupam Chander has forcefully argued that law has enabled the rise of Silicon Valley,<sup>32</sup> and, similarly, Julie Cohen, in her influential book *Between Truth and Power*, contends that law has played a crucial role in the development of digital platforms in the United States.<sup>33</sup> What distinguishes China from the above examples, however, is not its use of law to bolster its A.I. industry but rather its heavy reliance on the “expressive power of law,” a term coined by Richard McAdams,<sup>34</sup> to enable A.I. development. In contrast with the prevailing legal theory which focuses on how sanctions and legitimacy influence people's behavior, McAdams focuses on its information and coordination functions.<sup>35</sup> He finds that law can send important signals about societal norms and expectations while coordinating people's behavior within the

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29. Yiping Huang, *Has the Chinese Economy Hit the Wall?*, E. ASIA F. (Oct. 8, 2023), <https://eastasiaforum.org/2023/10/08/has-the-chinese-economy-hit-the-wall/> [https://perma.cc/NP4U-HEWJ].

30. Evelyn Cheng, *China Is Ramping Up Stimulus to Boost Market Confidence—But Is It Enough?*, CNBC (Jan. 25, 2024, 12:44 AM), <https://www.cnbc.com/2024/01/25/china-is-ramping-up-stimulus-to-boost-market-confidence-is-it-enough.html> [https://perma.cc/2ECW-BBLJ]; Nathaniel Taplin, *China's Crisis of Confidence in Six Charts*, WALL ST. J. (Aug. 25, 2023, 10:42 AM), <https://www.wsj.com/world/china/chinas-crisis-of-confidence-in-six-charts-8fd36f9f> [https://perma.cc/6GTN-QLFV]; Ken D. Kumayama et al., *China Intends to Ease Controls over Cross-Border Data Transfers*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP & AFFILIATES (Nov. 7, 2023), <https://www.skadden.com/insights/publications/2023/11/china-intends-to-ease-controls> [https://perma.cc/AF6P-3D46].

31. See *supra* note 10.

32. Anupam Chander, *How Law Made Silicon Valley*, 63 EMORY L.J. 639, 642 (2014) (explaining how legal innovations since the 1990s, particularly those reducing liabilities for internet companies and offering minimal data privacy protections for consumers, created a regulatory environment that fueled the growth of startups in Silicon Valley).

33. JULIE E. COHEN, *BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATION CAPITALISM* 45 (2019) (noting that firms can assert rights over data flows due to their technical control over networks and the interplay of contractual and trade secrecy claims).

34. RICHARD H. MCADAMS, *THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS* 16 (2015).

35. *Id.* at 1–8.



society.<sup>36</sup> To be clear, McAdam does not articulate a theory on how state actors signal their beliefs or coordinate their actions. Nevertheless, his framework, which emphasizes the informational and coordination functions of the law, offers a valuable lens through which to examine China's strategic use of legal mechanisms to advance A.I. development. In particular, the information and coordination functions of the laws are particularly salient in the Interim Measures for the Management of Generative A.I. Services (Interim Measures) and several local A.I. laws.<sup>37</sup> These laws sent strong pro-growth signals to the investment and business community while attempting to facilitate stakeholder coordination to advance A.I. development.<sup>38</sup> Consequently, the Chinese government has adopted a bifurcated approach to A.I. regulation by maintaining strict information control juxtaposed with industry-friendly regulation.<sup>39</sup> China's dual approach in A.I. regulation keenly reflects the complex utility function of the CCP, which seeks legitimacy through multiple sources, including economic growth, social stability, and nationalism.<sup>40</sup>

Understanding the nuances of China's A.I. regulatory strategy is not just crucial for predicting the trajectory of its technological development—it also has important implications on the global tech rivalry.<sup>41</sup> At the moment, major jurisdictions including the United States and the European Union are actively exploring the establishment of a comprehensive A.I. regulatory framework. In August 2024, the E.U.'s A.I. Act entered into force across all twenty-seven Member States.<sup>42</sup> In the United States, the Biden Administration introduced a sweeping executive order in October 2023.<sup>43</sup> In May 2024, Colorado became the first state to enact comprehensive A.I. legislation in the United States, followed by

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36. *Id.* at 5–6.

37. *See infra* Part II.

38. *Id.*

39. *Id.*

40. *See generally* Andre Laliberté & Marc Lanteigne, *The Issue of Challenges to the Legitimacy of CCP Rule*, in *THE CHINESE PARTY-STATE IN THE 21ST CENTURY: ADAPTATION AND THE REINVENTION OF LEGITIMACY 1* (Andre Laliberté & Marc Lanteigne eds., 2008).

41. *See generally* ANU BRADFORD, *DIGITAL EMPIRES: THE GLOBAL BATTLE TO REGULATE TECHNOLOGY* (2023).

42. Tim Hickman et al., *Long Awaited EU AI Act Becomes Law After Publication in the EU's Official Journal*, WHITE & CASE LLP (July 16, 2024), <https://www.whitecase.com/insight-alert/long-awaited-eu-ai-act-becomes-law-after-publication-eus-official-journal> [<https://perma.cc/LT38-ZUE3>].

43. Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023).

California, which approved a controversial bill imposing sweeping restrictions on A.I. in August 2024.<sup>44</sup> Concurrently, leading U.S. A.I. firms are involved in various litigation and face mounting pressure to negotiate licenses with media and other content outlets for the use of their content as training data.<sup>45</sup> In contrast, China's relatively relaxed regulatory environment may offer its A.I. firms a short-term competitive advantage over their counterparts in the E.U. and the United States.<sup>46</sup>

At the same time, China's approach could give rise to serious regulatory lag, potentially more acute than that of its Western counterparts.<sup>47</sup> This situation is aggravated by China's weak market conditions, poor legal institutions, and the tightly coupled political system, potentially leading to latent risks and long information lags that could escalate into A.I.-related crises.<sup>48</sup> It is important to clarify that the increased A.I. risks emanating from China are not a result of the government's blatant disregard for such hazards: In fact, the Chinese government is likely to respond decisively when A.I. risks become clear and present, as the failure to do so will also affect the regime's legitimacy. The real challenge stems from the inherent uncertainty surrounding many A.I. safety risks.<sup>49</sup> Despite warnings

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44. Hope Anderson, *Newly Passed Colorado AI Act Will Impose Obligations on Developers and Deployers of High-Risk AI Systems*, WHITE & CASE LLP (June 20, 2024), <https://www.whitecase.com/insight-alert/newly-passed-colorado-ai-act-will-impose-obligations-developers-and-deployers-high> [https://perma.cc/6BFB-LM5L]; Cecelia Kang, *California Legislature Approves Bill Proposing Sweeping A.I. Restrictions*, N.Y. TIMES (Aug. 28, 2024), <https://www.nytimes.com/2024/08/28/technology/california-ai-safety-bill.html> [https://perma.cc/HBU2-U6J3].

45. Charlotte Tobitt, *Who's Suing AI and Who's Signing: Publisher Deals vs. Lawsuits with Generative AI Companies*, PRESS GAZETTE (Aug. 21, 2024), <https://pressgazette.co.uk/platforms/news-publisher-ai-deals-lawsuits-openai-google/> [https://perma.cc/3SRC-SY3R].

46. Angela Huyue Zhang, *Chinese Regulators Give AI Firms a Helping Hand*, PROJECT SYNDICATE (Oct. 3, 2023), <https://www.project-syndicate.org/commentary/china-generative-ai-regulation-support-growth-by-angela-huyue-zhang-2023-10> [https://perma.cc/9YFS-RM49].

47. *See infra* Part IV.

48. *Id.*

49. Angela Huyue Zhang, *China-U.S. Tech Rivalry Is Making It Harder to Contain AI Risks*, NIKKEI ASIA (Oct. 31, 2023, 5:00 PM), <https://asia.nikkei.com/Opinion/China-U.S.-tech-rivalry-is-making-it-harder-to-contain-ai-risks> [https://perma.cc/UW29-LAH7]; Henrik S. Sætra & John Danaher, *Resolving the Battle of Short- vs. Long-Term AI Risks*, AI & ETHICS, Sept. 4, 2023, <https://doi.org/10.1007/s43681-023-00336-y> [https://perma.cc/7BM3-XK8J]; see also Daron Acemoglu, *The AI Safety Debate Is All Wrong*, PROJECT SYNDICATE (Aug. 5, 2024), <https://www.project-syndicate.org/commentary/ai-safety-human-misuse-more->

from prominent computer scientists and industry experts, the potential risks associated with A.I. safety remain highly speculative.<sup>50</sup> Consequently, by the time the full impact of A.I. harms become apparent to top policymakers, it could be too late for effective reversal or mitigation.<sup>51</sup> This dynamic complexity of China's A.I. regulation therefore underscores the urgent need for increased international dialogue and collaboration with the country to tackle the safety challenges in A.I. regulation.<sup>52</sup>

This Article is structured as follows. Part I delves into the literature on the expressive powers of law and explains why such powers are particularly salient in an authoritarian context like China. Part II examines China's Interim Measures and local A.I. legislation, showcasing how China seeks to bolster the A.I. industry by sending strong policy signals and coordinating stakeholders involved in the A.I. ecosystem. Part III discusses how China's strategically lenient regulatory approach may afford Chinese firms a competitive advantage over its European and American counterparts. Part IV addresses the potential risks associated with China's lax regulation and urges the international community to engage more with China to better understand these risks and bolster international cooperation.

## I. THE EXPRESSIVE POWERS OF CHINESE LAWS

Prior literature on legal compliance generally revolves around two theories: *deterrence*, which posits that legal compliance is motivated by the desire to avoid sanctions, and *legitimate moral authority*, which suggests that people obey the law out of a sense of duty, irrespective of the likelihood of enforcement.<sup>53</sup> Frederick Schauer, a notable proponent of deterrence theory, has argued that

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immediate-risk-than-superintelligence-by-daron-acemoglu-2024-08  
[<https://perma.cc/CW7B-GHTU>]; Tim Wu, *In Regulating A.I., We May Be Doing Too Much. And Too Little.*, N.Y. TIMES (Nov. 7, 2023), <https://www.nytimes.com/2023/11/07/opinion/biden-ai-regulation.html> [https://perma.cc/YZ8C-YXQ6].

50. James Vincent, *Top AI Researchers and CEOs Warn Against 'Risk of Extinction' in 22-Word Statement*, VERGE (May 30, 2023, 6:41 AM), <https://www.theverge.com/2023/5/30/23742005/ai-risk-warning-22-word-statement-google-deepmind-openai> [https://perma.cc/V8S5-HQB6].

51. See *infra* Part IV.

52. *Id.*

53. See MCADAMS, *supra* note 34, at 2–3.

legal order rests on the exercise of coercion by a state with a monopoly on legitimate force, thereby deterring people to disobey the law.<sup>54</sup> Conversely, Tom Tyler has empirically demonstrated that people choose to obey the law because they trust the procedures and processes employed by authorities.<sup>55</sup> In a departure from the above theories, Richard McAdams has proposed a third account of legal compliance. Drawing upon Thomas Schelling's work in game theory, McAdams argues that laws can act as focal points, guiding individuals to coordinate their behavior within society.<sup>56</sup> He further highlights the information function of law, which shapes the beliefs and behaviors of individuals by signaling societal norms and expectations.

In addition to McAdams, Cass Sunstein has similarly discussed the "expressive function of law," underscoring its role in "making statements" to shift social norms rather than directly controlling behavior.<sup>57</sup> Curtis Milhaupt and Katharina Pistor have also delved into the "expressive power" of the law in corporate governance.<sup>58</sup> Contrary to the prevailing emphasis on law's protective role in safeguarding property rights for economic development, Milhaupt and Pistor argued for a broader view.<sup>59</sup> They observed that laws are instrumental in coordinating and managing relationships between market participants, coordination which is essential for streamlined market activities.<sup>60</sup> In addition, they highlighted that law can be used to send a signal to market participants about the enforcement priorities and the government's future policy directions.<sup>61</sup>

Thus far, most of the study on Chinese law has focused on its coercive power, with relatively little attention given to its expressive powers. Scholars on Chinese law have explored how law can serve as

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54. See generally FREDERICK SCHAUER, *THE FORCE OF LAW* (2015).

55. Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 3 CRIME & JUST. 283, 283 (2003); see generally TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

56. See MCADAMS, *supra* note 34, at 22.

57. See generally Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024–25 (1996).

58. CURTIS J. MILHAUPT & KATHARINA PISTOR, *LAW & CAPITALISM: WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD* (2008).

59. *Id.* at 4.

60. *Id.* at 32–33.

61. *Id.* at 34.

an instrument for political and social control,<sup>62</sup> provide legal legitimacy for the regime,<sup>63</sup> and strengthen agency supervision for bureaucratic control.<sup>64</sup> They have also examined the intriguing phenomenon of Chinese courts pioneering efforts to deploy A.I. technologies to manage the judiciary better and to improve the decision-making process.<sup>65</sup> But there are a few notable exceptions: Milhaupt and Pistor have argued that the signaling value of Chinese corporate law has often surpassed its protective value over the course of China's legal developments since the early 1980s,<sup>66</sup> and Alex Wang has examined how China has employed symbolic environmental reforms to signal the government's commitment to regulation to both the bureaucracy and civil society.<sup>67</sup> Building upon these existing studies, this Article argues that the expressive powers of the law are particularly salient in China for three reasons. First, policy often trumps law, especially when law is uncertain or ambiguous. Second, law sends a more credible signal when there exist conflicting policy signals. Third, law is often used as a coordination device, particularly during law enforcement campaigns. Each of these factors is explored in detail below.

#### A. Policy Above the Law

Scholars studying China's legal system have identified a dichotomy therein: authoritarian rulers act according to a partial rule of law in which they tend to respect judicial fairness in the commercial

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62. SHUCHENG WANG, LAW AS AN INSTRUMENT: SOURCES OF CHINESE LAW FOR AUTHORITARIAN LEGALITY 172 (2022); Tom Ginsburg & Tamir Moustafa, *Introduction: The Functions of Courts in Authoritarian Politics*, in RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES 1, 2–5 (Tom Ginsburg & Tamir Moustafa eds., 2008).

63. WANG, *supra* note 62, at 172; Ginsburg & Moustafa, *supra* note 62, at 5–7; Peter H. Solomon, Jr., *Courts and Judges in Authoritarian Regimes*, 60 WORLD POLS. 122, 132 (2007); Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 306, 313 (2019).

64. WANG, *supra* note 62, at 172; Ginsburg & Moustafa, *supra* note 62, at 7–8.

65. See generally Stern, *supra* note 25; Benjamin M. Chen & Zhiyu Li, *How Will Technology Change the Face of Chinese Justice?*, 34 COLUM. J. ASIAN L. 1 (2020).

66. MILHAUPT & PISTOR, *supra* note 58, 144. Similarly, Guanghua Yu has highlighted the role of Chinese law in signaling and coordinating within the corporate and commercial spheres. See Guanghua Yu, *The Other Roles of Law: Signaling, Self-Commitment and Coordination*, 12 AUSTL. J. ASIAN L. 106, 114–26 (2010).

67. Alex L. Wang, *Symbolic Legitimacy and Chinese Environmental Reform*, 48 ENV'T L. 699, 731–36 (2018).

realm but not in the political realm.<sup>68</sup> Echoing this view, Hualing Fu and Michael Dowdle have introduced a concept of authoritarian legality characterized by a dual system—one being a *normative* state, in which legal principles are significant, and, the other, a *prerogative* state, in which political considerations override legal norms.<sup>69</sup> Shucheng Wang further elaborates on this distinction by differentiating between two forms of authoritarian politics: “normal” and “exceptional.”<sup>70</sup> In the realm of normal politics, laws are stable and predictable, and governance tends to be rules-based.<sup>71</sup> Conversely, in exceptional politics, laws are temporarily redefined to align with specific socio-political objectives.<sup>72</sup> This nuanced understanding of China’s legal operations is encapsulated in a saying among Chinese lawyers: Small cases are adjudicated by law, while major cases are decided by politics.<sup>73</sup>

Because law is never completely determinative, agencies and courts always possess a degree of discretion that allows them to take into account policy considerations. Notably, Chinese administrative authorities at all levels are nested within China’s vast bureaucratic system and derive their legitimacy “from the delegation of power by the central authority.”<sup>74</sup> Because officials are evaluated through a top-down *nomenklatura* process, the whole bureaucracy is organized based on an upward accountability system.<sup>75</sup> Chinese regulators thus need to carefully tread the lines laid down by the top when carrying out their enforcement duties. Similarly, the Chinese judiciary lacks independence and continues to be subject to the CCP’s close oversight.<sup>76</sup> As observed by Kai Hang Ng and Xin He, the judiciary is embedded in a complex network of external and internal actors, all of

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68. See, e.g., YUHUA WANG, TYING THE AUTOCRAT’S HANDS: THE RISE OF THE RULE OF LAW IN CHINA 3 (2015).

69. Hualing Fu & Michael Dowdle, *The Concept of Authoritarian Legality*, in *AUTHORITARIAN LEGALITY IN ASIA: FORMATION, DEVELOPMENT AND TRANSITION* 63, 67 (Weitseng Chen & Hualing Fu eds., 2020).

70. WANG, *supra* note 64, at 174.

71. *Id.*

72. *Id.* at 175–76.

73. See, e.g.,

74. Xueguang Zhou, *Organizational Response to Covid-19 Crisis: Reflections on the Chinese Bureaucracy and Its Resilience*, 16 *MANAG. ORGAN. REV.* 473, 479 (2020).

75. *Id.* at 479–480.

76. Benjamin Liebman, *China’s Courts: Restricted Reforms*, 191 *CHINA Q.* 620, 627–28 (2007).

which exert various degrees of influence on both judges and cases.<sup>77</sup> Similar to administrative agencies, Chinese courts are expected to conform to the central government's policy directives when deciding cases.<sup>78</sup>

This upward accountability system makes Chinese agencies and courts particularly sensitive and responsive to policy shifts, ensuring that their enforcement is aligned with the preferences from the top leadership. When the law is ambiguous or silent on an issue, any variation carries significant information value about policy shifts. Here, the expressive powers of the law lie not just in what the law says but also in what it does not say. In fact, leaving a matter strategically ambiguous in itself carries significant information value. In such circumstances, this policy signal becomes a source of law. Consider the example of the variable interest entity (VIE) structure in China. Over the past two decades, most Chinese tech firms had adopted the VIE structure to raise capital overseas and circumvent the Chinese government's restrictions on foreign investment.<sup>79</sup> From the start, the legal status of such VIE structures has been highly controversial.<sup>80</sup> While not outrightly contravening any specific law, the use of VIEs arguably contravenes the spirit of Chinese law, which clearly forbids foreign investments in the Chinese internet sector.<sup>81</sup> Nevertheless, the employment of VIEs has been crucial in propelling the growth of China's internet sector by facilitating access to foreign capital. Despite their controversial nature, the Chinese government has neither expressly allowed them nor prohibited them. Over the years, various Chinese regulatory authorities have expressed conflicting views regarding their legitimacy.<sup>82</sup> For instance, a draft Foreign Investment Law proposed by the Ministry of Commerce in 2015 suggested

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77. KWAI HANG NG & XIN HE, EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA 6 (2017).

78. Xin He, *Pressures on Chinese Judges Under Xi*, 85 CHINA J. 49, 51 (2021).

79. In a typical VIE structure, foreign investors acquire stakes in an offshore holding company, usually based in tax havens such as the Cayman Islands. The holding company then sets up a Chinese subsidiary, which signs contracts with a third-party company in charge of running the business. The third-party company then pledges to send profits to the Chinese subsidiary. See Li Guo, *Chinese Style VIEs: Continuing to Sneak Under Smog*, 47 CORNELL INT'L L.J. 569, 573–77 (2014).

80. Thomas Y. Man, *Policy Above Law: VIE and Foreign Investment Regulation in China*, 3 PEKING U. TRANSNAT'L L. REV. 215, 217 (2015).

81. *Id.* at 217–18.

82. Marcia Ellis et al., *The VIE Structure: Past, Present and Future—Part II*, H.K. LAW. (July 2020), <https://www.hk-lawyer.org/content/vie-structure-past-present-and-future---part-ii> [<https://perma.cc/L57W-NKKY>].

imposing stricter controls on VIEs, casting a bleak outlook for such structures.<sup>83</sup> Yet, when the Foreign Investment Law was finalized in 2019, it removed the provisions concerning VIEs, thereby allowing them to continue to operate in a grey area.<sup>84</sup> For many investors and practitioners, this deliberate omission sent a strong positive policy signal that the Chinese government intends to tolerate the VIE structure.<sup>85</sup>

### *B. Law as a Credible Policy Signal*

Second, the legislative process serves as a more costly signaling mechanism than policymaking. Power fragmentation is a defining feature of Chinese politics, with each government department pursuing its own unique mission and objective.<sup>86</sup> This often leads to departments holding conflicting views on certain issues and sending mixed policy signals.<sup>87</sup> The legislative process thus serves as a crucial institutional mechanism to forge consensus among different agencies and to test the political wills of senior policymakers. In China, legislation typically involves a broad array of stakeholders, including legislators, relevant government departments, the judiciary, academics, and industry experts.<sup>88</sup> This inclusive approach ensures that the finalized law incorporates perspectives from various interest groups. Richard McAdams highlights that law can convey information about people's opinions, a phenomenon he terms "attitudinal signaling."<sup>89</sup> The successful passage of a law is an indication that there is strong political support behind its adoption.<sup>90</sup> Per Eric Rasmusen,

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83. *Id.*

84. *Id.*

85. *Id.*

86. See KENNETH LIEBERTHAL & MICHEL OKSENBURG, POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES 137 (1988); SUSAN L. SHIRK, THE POLITICAL LOGIC OF ECONOMIC REFORM IN CHINA 348–49 (1993); Angela Huyue Zhang, *Bureaucratic Politics and China's Anti-Monopoly Law*, 47 CORNELL INT'L L.J. 671, 689 (2014).

87. Rachel E. Stern & Kevin J. O'Brien, *Politics at the Boundary: Mixed Signals and the Chinese State*, 38 MOD. CHINA 174, 186–88 (2012) (explaining how the Chinese state sends mixed signals to society).

88. See Jingting Deng & Pinxin Liu, *Consultative Authoritarianism: The Drafting of China's Internet Security Law and E-Commerce Law*, 26 J. CONTEMP. CHINA 679, 686 (2017).

89. Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 340, 369 (2000).

90. *Id.* at 365.



“victory communicates political power.”<sup>91</sup> As a result, the final law often represents a compromise that delivers a more credible signal of the prevailing policy preference.

Indeed, the higher the level of the law, the more powerful the stakeholders who are involved in the legislative process, thus sending a stronger policy signal. During the U.S.-China trade war between 2018 and 2020, the United States exerted tremendous pressures on China to amend its national law to address its concern about forced technology transfers and IP theft.<sup>92</sup> From the perspective of U.S. trade negotiators, Chinese national laws offered more credible commitments to Sino-American trade agreements than other legal mechanisms.<sup>93</sup> Because national laws are implemented by many actors, including the various administrative agencies and the judiciary at both the local and central levels, it would be more difficult for China to renege on such commitments.<sup>94</sup>

Notably, policy signals can be conveyed not just through the enactment of laws but also via the legislative process and any ensuing amendments. Take the example of China's drafting of the E-Commerce Law. Its first draft, released in 2016, dedicated eight detailed provisions to the protection of e-commerce data.<sup>95</sup> But after intensive lobbying from the tech firms, most of these provisions were

91. Eric Rasmusen, *Law, Coercion, and Expression: A Review Essay on Frederick Schauer's The Force of Law and Richard McAdams's The Expressive Powers of Law*, 55 J. ECON. LIT. 1098, 1110 (2017).

92. Angela Huyue Zhang, *The U.S.-China Trade Negotiation: A Contract Theory Perspective*, 51 GEO. J. INT'L L. 809, 826-27.

93. *Id.* at 827.

94. *Id.*; see also James D. Morrow, *The Strategic Setting of Choices: Signaling, Commitment, and Negotiation in International Politics*, in STRATEGIC CHOICE AND INTERNATIONAL RELATIONS 77, 93 (David A. Lake & Robert Powell eds., 1999).

[illegible]

scrapped in subsequent versions.<sup>96</sup> The final law, which seems quite lenient, sends a strong pro-growth signal to the industry and the investment community. This light-touch regulatory environment helped fuel the growth of China's e-commerce market, which became the world's largest in 2013.<sup>97</sup> A more recent example is China's easing of cross-border data transfers. In response to the mounting complaints from businesses and investors in China, the CAC released new rules rolling back some of the more onerous restrictions on cross-border data transfers in March 2024.<sup>98</sup> According to the new guidelines, the vast bulk of business and personal activity involving cross-border data transfers will no longer need to go through a security assessment.<sup>99</sup> Instead, in many situations, businesses only need to conduct self-assessments, significantly easing their regulatory burden.<sup>100</sup> This proposed amendment sends a strong policy signal that the Chinese government is trying to ease regulation in order to shore up investor confidence amid an economic slowdown.<sup>101</sup>

### C. Law as a Mobilization Device

Milhaupt and Pistor have long observed that “[c]entralized systems tend to be coordinating, whereas decentralized systems tend to engender a protective function of law.”<sup>102</sup> Indeed, law plays a crucial role in mobilizing bureaucratic entities and societal resources toward achieving specific policy goals in China. This becomes especially evident during policy crises when the Chinese government resorts to mobilization campaigns to disrupt the bureaucratic routine

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96. Lavender Au, *Why China Crushed Its Tech Giants*, WIRED (Sept. 27, 2021, 1:00 AM), <https://www.wired.co.uk/article/china-tech-giants-policy> [https://perma.cc/9HNP-UZFE]. Compare Draft E-Commerce Law, *supra* note 95, with Dianzi Shangwu Fa (电子商务法) [E-Commerce Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 2018, effective Jan. 1, 2019) 2018 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 580.

97. ZHANG, *supra* note 15, at 99.

98. Bob Li & Xue Feng, *China Released New Regulations to Ease Requirements for Outbound Cross-Border Data Transfer*, WHITE & CASE LLP (April 2, 2024), <https://www.whitecase.com/insight-alert/china-released-new-regulations-ease-requirements-outbound-cross-border-data-transfers> [https://perma.cc/TK5G-LZJ4].

99. *Id.*

100. ZHANG, *supra* note 15, at 153.

101. *Id.*

102. MILHAUPT & PISTOR, *supra* note 58, at 7.

and overcome bureaucratic resistance and rigidity.<sup>103</sup> In fact, this strategy traces its origins back to the revolutionary period, when mass mobilization or *yundong* (运动) was a cornerstone of Mao Zedong's governance approach. Although mass campaigns have largely vanished after Mao, the Chinese government continues to employ these techniques, for instance by mobilizing grassroots party networks along with propaganda blitzes intended to enlist mass support.<sup>104</sup> In the context of law enforcement, the Chinese government has initiated enforcement campaigns across various sectors, including crime, anti-corruption measures, environmental conservation, financial regulation, and tech regulation.<sup>105</sup> This approach underscores the government's reliance not only on law's coerciveness but also its ability to galvanize actions and align the country's vast bureaucratic machinery and societal forces with its policy ambitions.

At the beginning of such law enforcement campaigns, governmental bodies will typically enact new laws or regulations to support the law enforcement initiative.<sup>106</sup> These legal measures are designed to address gaps in existing laws and procedural issues, thereby enhancing the effectiveness of the campaign.<sup>107</sup> The introduction of new legislation not only raises awareness of government policies but also fosters a higher degree of compliance and

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103. See, e.g., Nicole Ning Liu et al., *Campaign-Style Enforcement and Regulatory Compliance*, 75 PUB. ADMIN. REV. 85, 85 (2015); Benjamin van Rooij, *The Campaign Enforcement Style: Chinese Practice in Context and Comparison*, in COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS 217, 217 (Francesca Bignami & David Zaring eds., 2016).

104. Elizabeth J. Perry, *Mass Campaigns to Managed Campaigns: "Constructing A New Socialist Countryside"*, in MAO'S INVISIBLE HAND 30, 50 (Elizabeth J. Perry & Sebastian Heilmann eds., 2011) (quoting Zhao Ziyang, the former general secretary of the CCP, as stating that "[t]he Third Plenum resolved that there would be no more mass campaigns[, but, since] people are accustomed to the old ways, . . . whenever we attack anything, these methods are still used").

105. Xin Frank He, *Sporadic Law Enforcement Campaigns as a Means of Social Control: A Case Study From A Rural-Urban Migrant Enclave in Beijing*, 17 COLUM. J. ASIAN L. 121, 134 (2003) ("[D]uring the revolutionary period, the CCP had to rely on mass movements and campaigns to implement its policies because it had no state institutions."); see SHIPING ZHENG, PARTY V. STATE IN POST-1949 CHINA: THE INSTITUTIONAL DILEMMA 154 (1997); Benjamin Van Rooij, *Implementation of Chinese Environmental Law: Regular Enforcement and Political Campaign*, 37 DEV. & CHANGE 57 (2006); Xu Duoqi et al., *China's Campaign-Style Internet Finance Governance: Causes, Effects and Lessons Learned for New Information-Based Approaches to Governance*, 35 COMPUT. L & SEC. REV. 3 (2019).

106. Sarah Biddulph et al., *Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking*, 34 L. & POL'Y 373, 378 (2012).

107. *Id.* at 389.

responsiveness.<sup>108</sup> As law becomes a source of authority, government intervention also gains more legitimacy among the Chinese public. The information and coordination functions of Chinese law therefore become particularly salient during such campaigns as the whole of society gravitates toward compliance. As mentioned earlier, Chinese courts and administrative authorities tend to enact proactive measures in response to policy signals from the top leadership in order to demonstrate their loyalty. Likewise, businesses and other stakeholders are motivated to reorient their strategies to align with governmental priorities. Such alignment not only secures policy support for businesses but also shields them from potential regulatory challenges.

China's tech crackdown exemplifies the importance of the expressive powers of law during enforcement campaigns. On November 2, 2020, four financial regulators jointly released draft rules on microlending, mandating that lenders must contribute at least thirty percent of the loans they fund jointly with their partner bank.<sup>109</sup> The next day, the initial public offering of Ant Group, the world's largest fintech firm, was suspended.<sup>110</sup> About a week later, the antitrust authority of the State Administration for Market Regulation (SAMR) unveiled draft antitrust guidelines which aimed to tighten the antitrust regulation of online platforms.<sup>111</sup> The spate of enforcement and legislative developments within such a short period sent a strong signal of policy tightening. It also served an important coordination role, creating a focal point for the entire bureaucracy to address the urgent need to curb monopolistic behavior in the tech sector. In response, a wide array of regulators overseeing banking, finance, antitrust, unfair competition, data security, and education introduced harsh regulatory actions against Big Tech firms.<sup>112</sup> What began as a campaign focused on fintech quickly spread across various sectors dominated by large online platforms, including e-commerce, ride-hailing, and tutoring.

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108. *Id.* at 388.

109. *China Issues Draft Rules to Regulate Online Micro-Lending Business*, REUTERS (Nov. 3, 2020, 12:22 AM), <https://www.reuters.com/article/china-lending-idUSL1N2HP035> [<https://perma.cc/RLU7-MWPA>].

110. Jasper Jolly, *Ant Group Forced to Suspend Biggest Share Offering in History*, GUARDIAN (Nov. 3, 2020, 10:33 AM), <https://www.theguardian.com/business/2020/nov/03/biggest-share-offering-in-history-on-hold-as-ant-group-suspends-launch> [<https://perma.cc/WQ5Z-B97K>].

111. Liu Cheng (刘成) et al., *10 Highlights of the Antitrust Guidelines for Platform Economy*, CHINA L. INSIGHT (Nov. 18, 2020), <https://www.chinalawinsight.com/2020/11/articles/compliance/10-highlights-of-the-antitrust-guidelines-for-platform-economy/> [<https://perma.cc/XNE8-W6LF>].

112. Zhang, *supra* note 14.

The campaign, which only began to subside in early 2022, dealt a significant blow to Chinese tech giants.<sup>113</sup>

## II. APPLYING THE EXPRESSIVE THEORY TO CHINESE A.I. LAW

Drawing on the insights from the previous Part I, we find that many Chinese A.I. laws rely heavily on the expressive powers of the law to enable A.I. development. Notably, the information function is intricately linked to the coordination function. The former sends a pro-growth signal to the bureaucracy and the industry, while the latter tries to implement such a signal at the operational level. Furthermore, these information and coordination functions of law also influence each other. A strong pro-growth signal will further enhance stakeholder coordination, which in turn reinforces this signal to market participants. At the same time, the expressive powers of these laws are diluting their protective function. That said, because many of these measures are only interim in nature, their commitment value is not very strong. As such, the signaling and coordination value of the law is also discounted, particularly in the long term.

Notably, A.I. legislation in China covers a broad spectrum. In addition to A.I.-specific laws governing recommendation algorithms, deepfakes, and generative A.I., a wide range of existing laws related to data protection, privacy, IP, ethics, and competition may also apply to the provision and use of A.I. services in China.<sup>114</sup> Furthermore, China has implemented sector-specific regulations, particularly in areas like autonomous driving, facial recognition, and genomic research.<sup>115</sup> Alongside these formal laws and regulations, a growing

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113. Stephanie Yang, *China's Tech Clampdown Is Spreading Like Wildfire*, WALL ST. J. (June 6, 2021, 11:51 AM), <https://www.wsj.com/articles/chinas-tech-clampdown-is-spreading-like-wildfire-11622971802>.

114. See Algorithmic Regulation, *supra* note 2 (referencing existing laws); Deep Synthesis Regulation, *supra* note 3 (same); Interim Measures for Generative A.I., *supra* note 6 (same).

115. Liu Xulong (刘旭龙), *Wànzì Cháng Wén Shuō Qīng Zìdòng Jiàoshì Xiāngguān Fǎlǜ Fǎguī Tǐxì* (万字长文说清自动驾驶相关法律法规体系) [*Ten Thousand Words to Clarify the Legal and Regulatory System Related to Autonomous Driving*], WECHAT (Sept. 1, 2023, 11:19 PM), <https://mp.weixin.qq.com/s/NTpuSI06FEejE-C3D2w2TA> [<https://perma.cc/3CBM-R5TL>]; Guānyú Shěnlǐ Shǐyòng Rén Liǎn Shibíe Jìshù Chǔlǐ Gèrén Xīnxī Xiāngguān Mínhì Ànjiàn Shìyòng Fǎlǜ Ruògān Wèntí de Guīdìng (关于审理使用人脸识别技术处理个人信息相关民事案件适用法律若干问题的规定) [Provisions on Several Issues Concerning the Application of Law in the Trial of Civil Cases Relating to the Use of Facial Recognition Technologies to Process Personal Information, Judicial

body of soft laws, such as industry standards, are proliferating in China.<sup>116</sup> In the following discussion, I will use China's Interim Measures for regulating generative A.I. and several recent local legislations as detailed examples to illustrate the information and coordination functions of Chinese A.I. laws. The focus on the Interim Measures and recent local legislation is twofold. First, these rules were introduced after the conclusion of China's crackdown on the consumer tech businesses, a period marked by intense law enforcement. As regulatory agencies return to their routine practices, the enforcement of the Interim Measures and local legislation offers insight into the government's latest approach to A.I. governance. Second, generative A.I. is widely recognized as a revolutionary technology,<sup>117</sup> and China's stance on it is indicative of its broader approach to A.I. regulation and governance.

#### A. A Strong Pro-Growth Policy Signal

At first glance, the Interim Measures seem to cast a very wide net.<sup>118</sup> This law imposes a broad range of obligations on generative A.I. service providers, spanning IP, data security, privacy, ethics, and competition law. However, it largely reiterates pre-existing laws without clearly defining the rights and obligations of the interested parties. For instance, the law provides that the service providers of generative A.I. services shall not infringe IP rights when processing

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Interpretation No. 15 (2021)] (promulgated by the Judicial Comm. Sup. People's Ct., June 8, 2021, effective Aug. 1, 2021) SUP. PEOPLE'S CT. GAZ., July 27, 2021, <http://gongbao.court.gov.cn/Details/118ff4e615bc74154664ceaf3bf39.html> [https://perma.cc/WW7K-CQSY]; Zhangyu Wang et al., *Regulatory Barriers to US-China Collaboration for Generative AI Development in Genomic Research*, 4 CELL GENOMICS 1, 2–4 (2024), <https://www.sciencedirect.com/science/article/pii/S2666979X24001307> [https://perma.cc/R7VX-3BUG].

116. See, e.g., DÀ SHÙJÙ ĀNQUÁN BIǎOZHǔN TÈBIÉ GŌNGZUÒ Zǔ (大数据安全标准特别工作组) [SPECIAL WORKING GROUP ON BIG DATA SECURITY], RÉNGŌNG ZHǐNÉNG ĀNQUÁN BIǎOZHǔNHUÀ BǎIPÍSHǔ (2023 BǎN) (人工智能安全标准化白皮书 (2023 版)) [A.I. SAFETY STANDARDIZATION WHITE PAPER 2023] (2023), <https://www.tc260.org.cn/upload/2023-05-31/1685501487351066337.pdf> [https://perma.cc/G6VL-H5N6]; TC260, SHÉNGCHÉNG SHǐ RÉNGŌNG ZHǐNÉNG FÚWÙ ĀNQUÁN JĪBĒN YǎOQIÚ (生成式人工智能服务安全基本要求) [BASIC SECURITY REQUIREMENTS FOR GENERATIVE ARTIFICIAL INTELLIGENCE SERVICE] [hereinafter TC260 STANDARD] (2024), <https://www.tc260.org.cn/upload/2024-03-01/1709282398070082466.pdf> [https://perma.cc/M4MU-DBXB].

117. See, e.g., David Leslie & Xiao-Li Meng, *Future Shock: Grappling with the Generative AI Revolution*, HARV. DATA SCI. REV., May 31, 2024, <https://hdr.mitpress.mit.edu/pub/fblrvqes/release/1> [https://perma.cc/2TD5-MZ5F].

118. See Interim Measures for Generative A.I., *supra* note 6.

training data. Yet it falls short in defining what constitutes an IP infringement, a contentious issue across various jurisdictions. As a result, the law shies away from specifying IP compliance obligations, leaving these details to future judicial or legislative interpretation.

Indeed, the final version of the Interim Measures significantly watered down many stringent measures the CAC proposed in an earlier draft.<sup>119</sup> Importantly, the Interim Measures explicitly confines its scope to “public-facing” A.I. services, thereby exempting a wide array of generative A.I. applications intended for enterprises, institutions, and universities.<sup>120</sup> This large carve-out is extremely important as it implies that entities engaged in research, development, and application of generative A.I. technology are not subject to the new law if their services are not publicly available in China. Furthermore, within the scope of public-facing A.I. services, the law mandates security assessment only for those services that have the potential to influence public opinion.<sup>121</sup> This requirement does not extend to other types of A.I. services, which can be launched in the market without obtaining approval. Such a targeted approach significantly alleviates the compliance burden, particularly for smaller start-ups and firms that have limited legal resources.

Since the CAC’s primary regulatory function focuses on cybersecurity and information control, it is not surprising that it makes its emphasis on content regulation. In fact, there is a clear path dependence in the CAC’s content moderation requirements. The genesis of this trend in information control can be traced back to the Internet Information Services Management Measures promulgated by the State Council in 2011.<sup>122</sup> Since then, more than thirty pieces of regulation have been promulgated to control online content.<sup>123</sup> Since 2017, the CAC has incorporated security assessment requirements in various internet legislations, including the 2017 Regulations on the Administration of Security Assessment of New Technologies and New

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119. Compare *id.*, with Draft Measures for Generative A.I., *supra* note 5.

120. Interim Measures for Generative A.I., *supra* note 6, art. 2.

121. *Id.* art. 17.

122. Hùliánwǎng Xīnxi fúwù Guǎnlǐ Bànfǎ (互联网信息服务管理办法) [Internet Information Services Management Measures] (promulgated by the St. Council, effective Sept. 25, 2000, amended Jan. 8, 2011) ST. COUNCIL GAZ., 2011, [https://www.gov.cn/gongbao/content/2011/content\\_1860864.htm](https://www.gov.cn/gongbao/content/2011/content_1860864.htm) [<https://perma.cc/MV79-FLRR>].

123. See *China’s Internet and Media Content Regulation in China*, CHINA JUST. OBSERVER, <https://www.chinajusticeobserver.com/law/topics/content-regulation/law?page=1> [<https://perma.cc/GHF5-YCSE>].

Applications for News and Information Services,<sup>124</sup> the 2018 Regulations for the Security Assessment of Internet Information Services Having Public Opinion Properties or Social Mobilization Capacity,<sup>125</sup> the 2021 Algorithmic Regulation,<sup>126</sup> and the 2023 Deep Synthesis Regulation.<sup>127</sup> Notably, the obligation to register algorithms for A.I. services influencing public opinion first appeared in the 2021 Algorithmic Recommendation Rules.<sup>128</sup> These rules mandated self-assessments and filings through the internet information service algorithm system, a requirement also found in the Deep Synthesis Regulation and the Interim Measures.<sup>129</sup>

Compared with the earlier draft, the finalized measures also significantly relax the responsibilities of service providers. Initially, providers were required to ensure the truthfulness and accuracy of A.I.-generated content, and training data were subject to stringent criteria such as veracity, accuracy, and objectivity.<sup>130</sup> However, the final version of the law merely obliges service providers to take appropriate measures and exercise due diligence for compliance.<sup>131</sup> Moreover, the earlier draft imposed a deadline that service providers need to fine-tune their foundation models within three months to prevent the generation of illegal content.<sup>132</sup> The removal of this three-month deadline alleviates a potentially immense burden on service providers, considering the exorbitant costs of training foundational A.I. models. The final measure further reduces the obligations previously

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124. Hùliánwǎng Xīnwén Xīnxī Fúwù Xīn Jìshù Xīn Yīngyòng Ānquán Pínggū Guǎnlǐ Guīdìng (互联网新闻信息服务新技术新应用安全评估管理规定) [Regulations on the Administration of Security Assessment of News and Information Services] (promulgated by the Cyberspace Admin. of China, Oct. 30, 2017, effective Dec. 1, 2017), [http://www.cac.gov.cn/2017-10/30/c\\_1121878049.htm](http://www.cac.gov.cn/2017-10/30/c_1121878049.htm) [https://perma.cc/6YZ4-RCQ8].

125. Jùyǒu Yúlùn Shǔxìng Huò Shèhuì Dòngyuán Nénglì de Hùliánwǎng Xīnxī Fúwù Ānquán Pínggū Guīdìng (具有舆论属性或社会动员能力的互联网信息服务安全评估规定) [Regulations for the Security Assessment of Internet Information Services Having Public Opinion Properties or Social Mobilization Capacity] (promulgated by the Cyberspace Admin. of China, Nov. 30, 2018, effective Nov. 30, 2018), [https://www.gov.cn/zhengce/zhengceku/2018-11/30/content\\_5457763.htm](https://www.gov.cn/zhengce/zhengceku/2018-11/30/content_5457763.htm) [https://perma.cc/3MAA-HYDR].

126. Algorithmic Regulation, *supra* note 2.

127. Deep Synthesis Regulation, *supra* note 3.

128. Algorithmic Regulation, *supra* note 2, art. 24.

129. Deep Synthesis Regulation, *supra* note 3, art. 19.

130. Draft Measures for Generative A.I., *supra* note 5, arts. 4(4), 7(4).

131. Interim Measures for Generative A.I., *supra* note 6, arts. 4(5), 7(4).

132. Draft Measures for Generative A.I., *supra* note 5, art. 15.



assigned to service providers<sup>133</sup> while offering more flexibility in addressing user violations.<sup>134</sup> Under the new law, violations are specifically limited to illegal activities, as opposed to the broader category of actions that breach commercial and social ethics in the earlier draft.<sup>135</sup> Importantly, the final law also incorporated several business-friendly provisions, as will be further elaborated below.<sup>136</sup>

Taken together, the changes that were incorporated in the final measures sent a strong pro-growth signal to investors and entrepreneurs, allaying their concerns about the regulatory risks. This reassurance was very much needed at the time. Before the promulgation of the Interim Measures, there were many conflicting policy signals regarding China's trajectory of A.I. governance.<sup>137</sup> Even if the Chinese government has been very supportive of the A.I. industry, the CAC's proactive regulatory intervention in A.I. has made investors extremely wary about investment in the Chinese A.I. industry. One notable provision in the draft of the Interim Measures required A.I. firms to uphold core socialist values in their offerings.<sup>138</sup> This led to a popular joke in China's tech circles: "We need to teach machines not only how to speak, but also how not to speak."<sup>139</sup> The final version of the Interim Measures, which appears to be a compromised product after intense negotiations between the CAC and other government authorities, sent a credible policy signal that the factions within the government advocating for A.I. development had gained the upper hand over those pushing for stringent controls. As a

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133. Interim Measures for Generative A.I., *supra* note 6, art. 11. For instance, the ban on profiling users has been removed in the Interim Measures. *Compare* Draft Measures for Generative A.I., *supra* note 6, *with* Interim Measures for Generative A.I., *supra* note 5. Moreover, the Interim Measures only prohibit providers from illegally preserving user input that could identify users and from sharing user input with others in an unlawful way. Interim Measures for Generative A.I., *supra* note 6, art. 11.

134. *Compare* Interim Measures for Generative A.I., *supra* note 6, art. 14, *with* Draft Measures for Generative A.I., *supra* note 5, art. 19. For instance, instead of the mandatory suspension or termination of services as stipulated in the earlier draft, service providers can now opt to issue warnings or limit certain functionalities.

135. *Compare* Interim Measures for Generative A.I., *supra* note 6, art. 14, *with* Draft Measures for Generative A.I., *supra* note 5, art. 19.

136. Interim Measures for Generative A.I., *supra* note 6, art. 3.

137. Yuan, *supra* note 10.

138. *See* Draft Measures for Generative A.I., *supra* note 5, art. 4(1).

139. Yuan, *supra* note 10.

Chinese legal scholar astutely put it, “[f]ailing to develop A.I. is the biggest threat to our national security.”<sup>140</sup>

The Interim Measures not only sent a pro-growth signal for the A.I. sector, but it also sent a signal of the government’s efforts to reinvigorate confidence in the Chinese economy. Between 2020 and 2022, the Chinese government’s massive tech crackdown on major Chinese tech firms wiped out over one trillion U.S. dollars of their market capitalization.<sup>141</sup> The Chinese economy also experienced a precipitous decline in 2023.<sup>142</sup> A series of regulatory measures that were introduced in the preceding years—including the government’s mishandling of the Covid-19 pandemic, the intense tech crackdown, and the disruptive intervention in the real estate market—have significantly undermined investor confidence and thwarted entrepreneurial spirits.<sup>143</sup> Youth unemployment has soared, more than doubling over the last four years and reaching over twenty percent in June 2023.<sup>144</sup> Amidst this backdrop of decreasing faith in the Chinese economy, venture capitalists have become increasingly hesitant to invest, while entrepreneurs are holding back on launching new ventures.<sup>145</sup> Consequently, the Chinese top leadership faced an urgent

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140. Linghang Zhang (张凌寒), *Yīwén Dú Dǒng Shēngchéng Shì A.I. Xīn Guī Liù Dà Liàngdiǎn—Bù Fāzhǎn Shì Zuìdà de Bù Ānquán* (文读懂生成式 AI 新规六大亮点—不发展是最大的不安全) [*Six Highlights of the New Generative A.I. Regulations—Failing to Develop Is the Greatest Insecurity*], CAIJING (July 14, 2023, 9:54 PM), <https://www.mycailing.com/article/detail/496986> [<https://perma.cc/NDL5-UP4L>].

141. Donny Kwok & Scott Murdoch, *Beijing’s Regulatory Crackdown Wipes \$1.1 Trillion Off Chinese Big Tech*, REUTERS (July 12, 2023, 4:31 AM), <https://www.reuters.com/technology/beijings-regulatory-crackdown-wipes-11-trln-off-chinese-big-tech-2023-07-12/> [<https://perma.cc/46GX-JT5D>].

142. See Laura He, *China’s Economy Had a Miserable Year. 2024 Might Be Even Worse*, CABLE NEWS NETWORK (Dec. 29, 2023, 4:56 AM), <https://www.cnn.com/2023/12/27/economy/china-economy-challenges-2024-intl-hnk/index.html> [<https://perma.cc/7FZW-FZU8>].

143. See Edward White, *China’s Business Confidence Problem*, FIN. TIMES (Sept. 12, 2023), <https://www.ft.com/content/fb73774a-a130-4769-80a5-6115555b22a1>; Scott Kennedy et al., *Experts React: China’s Economic Slowdown: Causes and Implications*, CTR. FOR STRATEGIC & INT’L STUD. (Aug. 30, 2023), <https://www.csis.org/analysis/experts-react-chinas-economic-slowdown-causes-and-implications> [<https://perma.cc/W8CV-3ZJU>]; Daisuke Wakabayashi & Claire Fu, *A Crisis of Confidence Is Gripping China’s Economy*, N.Y. TIMES (Aug. 25, 2023), <https://www.nytimes.com/2023/08/25/business/china-economy-confidence.html> [<https://perma.cc/3J9J-YNA6>].

144. Claire Fu, *China Suspends Report on Youth Unemployment, Which Was at a Record High*, N.Y. TIMES (Aug. 15, 2023), <https://www.nytimes.com/2023/08/15/business/china-youth-unemployment.html> [<https://perma.cc/3MBB-BJ4F>].

145. Wakabayashi & Fu, *supra* note 143.

need to restore confidence and revitalize the rapidly deteriorating economy.<sup>146</sup>

Importantly, the Interim Measures sent a pro-growth signal not only to the business community but also to the regulators, including the various administrative agencies overseeing the A.I. industry and the different levels of Chinese courts that will adjudicate A.I.-related lawsuits in the coming years. Indeed, the emphasis the measures placed on a cautious and tolerant approach to A.I. regulation will dissuade both agencies and courts from adopting stringent regulatory measures, creating a favorable regulatory environment that is conducive to the growth of the A.I. industry.<sup>147</sup>

### B. The “Whole of Society” Mobilization

While much attention has been paid to the restrictive aspects of the Interim Measures, the final version contains several business-friendly provisions that merit close examination.<sup>148</sup> These provisions underscore the importance of coordination among various stakeholders involved in A.I. governance and development, positioning the law as a form of industrial policy. As will be explored below, the law facilitates coordination across five key areas: within the bureaucracy, among industry participants, in managing critical inputs such as data and computing power, in shaping global rules and standards, and in ensuring that local legislation aligns with central directives. This multi-faceted approach to coordination not only outlines China's strategic vision for A.I. development but also establishes a blueprint for its regulatory governance. This strategy embodies China's “whole-of-society” (jǔguó 举国) approach, one historically used to drive progress in key technological areas. Rooted in the command-and-control methods of China's planned-economy era, this approach initially subsided with China's transition into the market economy in the early 1980s.<sup>149</sup> However, it has experienced a resurgence since 2019 as a core strategy to drive breakthroughs in critical technologies, particularly amid the escalating tech rivalry with

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146. *Id.*

147. Angela Huyue Zhang, *China's Short-Sighted AI Regulation*, PROJECT SYNDICATE (Dec. 8, 2023), <https://www.project-syndicate.org/commentary/risks-of-beijing-internet-court-ruling-allowing-copyright-of-ai-generated-content-by-angela-huyue-zhang-2023-12> [https://perma.cc/5UYY-HMEN].

148. Interim Measures for Generative A.I., *supra* note 6, arts. 5, 6, 16.

149. Lin Zhang & Tu Lan, *The New Whole State System: Reinventing the Chinese State to Promote Innovation*, 55 ENV'T & PLAN. A: ECON. & SPACE 201, 205 (2023).

the United States.<sup>150</sup> This new form of techno-economic statecraft is being leveraged by the Chinese government to accelerate the development and application of A.I. technology.<sup>151</sup>

Two important caveats must also be drawn here. First, while the Interim Measures aim to coordinate the various stakeholders and resources in the development of generative A.I., this top-down approach in driving A.I. innovation does not guarantee success. Recent research has indicated that many of China's A.I. advancements have largely been propelled by bottom-up dynamics, especially through competition among domestic entities such as local governments and businesses.<sup>152</sup> These studies highlight issues of excessive competition among regional governments and lack of cohesive national coordination in China's A.I. development.<sup>153</sup> These insights underscore the necessity for the central government to utilize law as a tool to reinforce the imperative of collaboration among diverse stakeholders.

Second, it is not my intention to suggest that China's coordinated approach will inherently confer an advantage over other countries, such as the United States, which predominantly rely on market forces and consumer demand.<sup>154</sup> While some scholars argue that there are market failures in producing innovations, others take the position that state interventions to rectify these failures can also lead to policy failures.<sup>155</sup> My primary aim here is to highlight how the Chinese government is leveraging law as a focal point to invigorate its "whole of society" approach to develop A.I.

## 1. Central Bureaucracy

At its core, the Interim Measures represent an effort to orchestrate the various central bureaucratic entities involved in regulating generative A.I. services. Given A.I.'s extensive

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150. Xiao Tan & Yao Song, *China Whole Nation Efforts to Advance the Tech Economy*, DIPLOMAT (Apr. 21, 2022), <https://thediplomat.com/2022/04/chinas-whole-nation-effort-to-advance-the-tech-industry/> [<https://perma.cc/6RA3-9SQU>].

151. See generally Tian He & You Ji, *China's Techno-Economic Statecraft Amid US-China Strategic Rivalry: AI and the "New Whole-State System,"* 67 ORBIS 605 (2023).

152. Jinghan Zeng, *China's Artificial Intelligence Innovation: A Top-Down National Command Approach?*, 12 GLOB. POL'Y 399, 400 (2021).

153. *Id.*

154. Cf. Nils Karlson et al., *Bureaucrats or Markets in Innovation Policy?—A Critique of the Entrepreneurial State*, 34 REV. AUSTRIAN ECON. 81 (2021).

155. *Id.*; Yuan, *supra* note 10.

applicability in numerous facets of life, it is more akin to a utility like electricity than a technology limited to specific sectors.<sup>156</sup> This attribute of A.I. makes it “refractory to conventional regulatory solutions.”<sup>157</sup> In fact, a single A.I. application might intersect with multiple industries, fall under the purview of various agencies, and involve a diverse group of stakeholder groups, complicating the task of crafting a cohesive regulatory response.<sup>158</sup> The evolution of the Interim Measures from its initial to its final draft illustrates this collaborative approach. While the initial draft was the product of the CAC, the final version is the result of joint efforts by seven different agencies, each with regulatory oversight over generative A.I. services.<sup>159</sup>

Let's start with the CAC, China's powerful internet watchdog. The CAC derives its authority from the Central Cybersecurity and Information Commission chaired by President Xi Jinping.<sup>160</sup> Its predecessor, the State Internet Information Office, was part of the CCP propaganda department.<sup>161</sup> The CAC's historical roots, its dual role as a CCP organ and an administrative organ, and its direct link with the top leadership combine to afford this agency a very unusual bureaucratic status.<sup>162</sup> Initially charged with ensuring cybersecurity and information control, the agency has become a formidable data regulator in recent years.<sup>163</sup> Given that data is the lifeblood of the platform economy, the CAC has significant scope to expand its bureaucratic bailiwick. In the past two years, this ambitious agency

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156. HAROON SHEIKH ET AL., *MISSION AI: THE NEW SYSTEM TECHNOLOGY* 5 (2023).

157. GARY MARCHANT, *PROGRAM ON UNDERSTANDING L., SCI., & EVIDENCE*, “SOFT LAW” GOVERNANCE OF ARTIFICIAL INTELLIGENCE (2019), <https://escholarship.org/uc/item/0jq252ks> [perma.cc/69L6-NHY4].

158. *Id.*

159. The first draft of the law was released by the CAC, while the final version was jointly promulgated by six government departments including 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. *Compare* Draft Measures for Generative A.I., *supra* note 5, *with* Interim Measures for Generative A.I., *supra* note 6.

160. For a detailed history of CAC's control of Chinese internet, see Rogier Creemers, *The Pivot in Chinese Cybergovernance: Integrating Internet Control in Xi Jinping's China*, *CHINA PERSPS.*, no. 4, 2015, at 5, 6–7.

161. *Id.*

162. Jamie P. Horsley, *Behind the Facade of China's Cyber Super-Regulator*, *DIGICHINA* (Aug. 8, 2022), <https://digichina.stanford.edu/work/behind-the-facade-of-chinas-cyber-super-regulator/> [https://perma.cc/73PE-HNQY].

163. *Id.*

has extended its tentacles to the regulation of securities offerings, price discrimination, algorithmic recommendations, and many other areas.<sup>164</sup> Yet despite its powerful status, the agency does not hold exclusive regulatory power over A.I.

As mentioned earlier, power is fragmented within the Chinese bureaucracy, with each agency maintaining distinct missions and goals.<sup>165</sup> The division of responsibilities among these entities is sometimes unclear, leading to overlapping duties and, consequently, tensions, conflict, and compromise among agencies during the course of legislative and enforcement processes.<sup>166</sup> Indeed, A.I. can raise issues that transcend regulatory bodies' traditional areas of focus, such as health, data privacy, safety, and environmental risks.<sup>167</sup> The Interim Measures try to delineate the scope of their responsibilities by explicitly calling for each of the seven ministries to enhance their management of generative A.I. services within their respective domains.<sup>168</sup> Although the CAC led the legislative efforts, the fact that six other central ministries co-signed the legislation signifies the importance that the Chinese government has placed on a collaborative approach to regulation.

Notably, the final version of the Interim Measures added the Law on Scientific and Technological Progress (LSTP) and data and personal information protection laws as legal authorities.<sup>169</sup> The LSTP, a national law established in 1993 and revised in 2021, supports innovation and development in China's tech industry and is primarily overseen by the Ministry of Science and Technology (MOST).<sup>170</sup> This inclusion thus underscores the MOST's critical role in A.I. regulation, particularly in fostering technological advancement and addressing ethical issues in A.I. Notably, the MOST is the key industry regulator responsible for implementing the State Council's A.I. Development

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164. Angela Huyue Zhang, *China's Tech Regulators Strike Again*, PROJECT SYNDICATE (Nov. 24, 2021), <https://www.project-syndicate.org/commentary/china-regulator-new-draft-guidelines-data-collection-use-and-transfer-by-angela-huyue-zhang-2021-11> (last visited Nov. 24, 2024).

165. *See supra* note 86 and accompanying text.

166. *Id.*

167. Marchant, *supra* note 157.

168. Interim Measures for Generative A.I., *supra* note 6, art. 16.

169. *Compare id.*, art. 1, with Draft Measures for Generative A.I., *supra* note 5.

170. Kēxué Jìshù Jìnbù Fǎ (科学技术进步法) [Law on Scientific and Technological Progress] (promulgated by the Standing Comm. Nat'l People's Cong., July 2, 1993, effective Oct. 1, 1993, amended Dec. 29, 2007, Dec. 24, 2021) 2022 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 36.

Plan of 2017.<sup>171</sup> It houses the A.I. promotion offices involving fifteen different government departments and ministries, all of which are involved in supporting the national A.I. plan.<sup>172</sup> In early 2023, the MOST underwent substantial restructuring aimed at repositioning the ministry more as a policymaker and less as a direct participant.<sup>173</sup> Some of its divisions and fund-management authority were transferred to other departments, reducing its direct control over funding.<sup>174</sup> Additionally, a Central Science and Technology Commission was established within the MOST to amplify the CCP's influence in scientific and technological innovation.<sup>175</sup> Importantly, the operational responsibilities of this new Commission fall under the purview of the MOST, which further enhances the MOST's bureaucratic status in formulating and implementing policies in science-related initiatives.<sup>176</sup>

In addition to the MOST, the Ministry of Industry and Information Technology (MIIT) and the National Development and Reform Commission (NDRC) are key players in championing A.I. developments in China.<sup>177</sup> Distinct from the MOST's focus on research, the MIIT primarily concentrates on industry development and has been instrumental in executing the State Council's A.I.

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171. ANDERS JOHANSSON, STOCKHOLM SCH. ECON. CTR. FOR ASIAN STUD., CHINA'S AI ECOSYSTEM 14 (2022), <https://www.hhs.se/contentassets/bc962221471a415ba8ac01fbbf160277/chinas-ai-ecosystem-nov-2022.pdf> [<https://perma.cc/9CX2-BW7Q>].

172. More specifically, the A.I.-promotion offices involve the MOST, the National Development and Reform Commission, the Ministries of Industry and Information Technology, Finance, Education, Transport, and Agriculture, the Chinese Academy of Sciences, the Natural Science Foundation, the Academy of Engineering, the Health and Family Planning Commission, the China Association for Science and Technology, the Central Military-Civil Integration Development Committee Office, and the Equipment Development Department and the Science and Technology Committee of the Military Commission. *Id.* at 39–40.

173. Yanhao Huang & Wei Han, *The Remaking of China's Science and Technology Ministry*, NIKKEI ASIA (Mar. 15, 2023, 2:33 PM), <https://asia.nikkei.com/Spotlight/Caixin/The-remaking-of-China-s-Science-and-Technology-Ministry> [<https://perma.cc/VXQ3-Y68Z>].

174. *Id.*

175. Jane Cai et al., *Mystery Around China's New Science and Tech Body a Sign of Secrecy to Come, Analysts Say*, S. CHINA MORNING POST (Sept. 4, 2023, 6:00 AM), <https://www.scmp.com/news/china/politics/article/3233245/mystery-around-chinas-new-science-and-tech-body-sign-secrecy-come-analysts-say> [<https://perma.cc/JSV7-3VAG>].

176. *Id.*

177. Johansson, *supra* note 171, at 39.

Development Plan.<sup>178</sup> In 2017, the MIIT unveiled a “Three-Year Action Plan for Promoting Development of a New Generation Artificial Intelligence Industry (2018–2020).”<sup>179</sup> In October 2023, the MIIT announced a plan to integrate A.I. technology into the real economy sector, with an aim to “develop the country’s intelligent industry and promote new industrialization.”<sup>180</sup> In January 2024, the MIIT, in collaboration with six other central departments (but not including the CAC), jointly promulgated an opinion aimed at fostering future industrial innovation and development.<sup>181</sup> This strategic directive outlines China’s ambition to achieve breakthroughs in one hundred critical technologies, with many of them being powered by A.I.<sup>182</sup> The NDRC, successor to the National Planning Commission and often referred to as the mini-State Council, plays a pivotal role in coordinating the country’s industrial strategies.<sup>183</sup> Alongside the MOST and the MIIT, the NDRC is also deeply invested in promoting A.I. advancement in China.<sup>184</sup> These three agencies thus represent

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178. *Id.*

179. Cùjìn Xīn Yīdài Réngōng Zhìnéng Chǎnyè Fāzhǎn Sān Nián Xíngdòng Jìhuà (促进新一代人工智能产业发展三年行动计划) [Three-Year Action Plan to Develop a New Generation of the Artificial Intelligence Industry] (promulgated by the MIIT, Dec. 14, 2017), [http://www.cac.gov.cn/2017-12/15/c\\_1122114520.htm](http://www.cac.gov.cn/2017-12/15/c_1122114520.htm) [<https://perma.cc/6U9P-BT5M>].

180. *MIIT to Cultivate AI to Boost Real Economy, New Industrialization*, GLOB. TIMES (Oct. 20, 2023, 10:13 PM), <https://www.globaltimes.cn/page/202310/1300262.shtml> [<https://perma.cc/AH2U-6ML7>].

181. Guānyú Tuīdòng Wèilái Chǎnyè Chuàngxīn Fāzhǎn de Shíshī Yìjiàn (关于推动未来产业创新发展的实施意见) [Implementation Opinions on Promoting Future Industrial Innovation and Development] (promulgated by the MIIT, the MOST, the Ministries of Education, Transport, and Culture and Tourism, the State-Owned Assets Supervision and Administration Commission of the State Council, and the Chinese Academy of Sciences, Jan. 29, 2024), [https://www.gov.cn/zhengce/zhengceku/202401/content\\_6929021.htm](https://www.gov.cn/zhengce/zhengceku/202401/content_6929021.htm). [<https://perma.cc/H2HN-3K9B>].

182. *Id.*

183. Johansson, *supra* note 171, at 39.

184. *Id.* See, e.g., Guójiā Fāgǎiwěi: Zhīchí Kāizhǎn Tōngyòng Réngōng Zhìnéng Dà Mú Xíng Hé Chuízhi Lǐngyù Réngōng Zhìnéng Dà Mú Xíng Xùnliàn (国家发改委: 支持开展通用人工智能大模型和垂直领域人工智能大模型训练) [NDRC: Support the Training of General-Purpose and Vertically Integrated Large A.I. Models], WALLSTREETCN (Dec. 15, 2023), <https://wallstreetcn.com/articles/3704364> [<https://perma.cc/8PD5-S6XF>]; Guānyú Xiàng Shèhuì Gōngkāi Zhēngqiú “Shùjù Yàosù X” Sān Mián Xíngdòng Jìhuà (2024–2026) (Zhēngqiú Yìjiàn Gǎo)” Yìjiàn De Gōnggào (关于向社会公开征求《“数据要素X”三年行动计划（2024—2026年）（征求意见稿）》意见的公告) [Notice of Soliciting Public Opinions on the Three-Year Action Plan (2024-2026) for “Data Elements X” (Draft for Comment)] (issued by the Nat’l Data Admin. and sixteen other agencies, Dec. 4, 2024), [https://www.ndrc.gov.cn/hdjl/yjqz/202312/t20231215\\_1362671.html](https://www.ndrc.gov.cn/hdjl/yjqz/202312/t20231215_1362671.html) [<https://perma.cc/MGV7-U674>].



important countervailing forces against the CAC's proposal for strict regulation of the technology. Their active involvement in the legislative process of the Interim Measures underscores the government's commitment to balancing innovation with regulation.

## 2. Industry Participants

Beyond facilitating inter-departmental cooperation, the Interim Measures also explicitly encourage coordination among various stakeholders in the generative-A.I. supply chain, including industry associations, firms, academic institutions, public cultural organizations, and relevant professional bodies.<sup>185</sup> Such engagement reveals the government's ambition to cultivate an innovation ecosystem favorable for A.I. technology development. A key concept in innovation studies is the triple helix model, which emphasizes the interplay among universities, industry, and government in the innovation process.<sup>186</sup> In the context of A.I., some Chinese scholars have adapted this model to demonstrate how collaboration between government, businesses, and universities creates conditions conducive to A.I. advancement.<sup>187</sup>

Indeed, many of the major generative A.I. labs in China have been formed following the triple helix model.<sup>188</sup> Research by Jeffery

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185. Interim Measures for Generative A.I., *supra* note 6, art. 5.

186. James Dzisah & Henry Etzkowitz, Triple Helix Circulation: The Heart of Innovation and Development 3 (Sept. 2008) (unpublished manuscript), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=35ae05bdf522630abfc600eead98c1be5dfc3ffc> [<https://perma.cc/8UVN-6ARR>].

The triple helix model comprises three basic elements[:] (1) a more prominent role for the university in innovation, on . . . par with industry and government in a [knowledge-based] society; (2) a movement toward collaborative relationships among the three major institutional spheres in which innovation policy is increasingly an outcome of interaction rather than a prescription from government; (3) in addition to fulfilling their traditional functions, each institutional sphere "takes the role of the other" in some regards.

*Id.*

187. *Id.*

188. To be sure, this model of collaborative A.I. development isn't exclusive to China. The United States has also seen a triangular alliance among government agencies, universities, and private firms driving its technological research and development. Since at least the Cold War, such collaborations have resulted in ground-breaking technologies like the internet and advanced microchips, which in turn fueled the rise of the U.S. tech sector. Post-Cold War, this model has evolved, with the commercial sector now significantly influencing A.I. research and a notable decline in the government funding for research. See NAT'L SEC. COMM'N ON A.I., INTERIM REPORT 24 (2019).

Ding and Jenny Xiao on twenty-six prominent large-scale pre-trained models released between 2020 and 2022 reveals that more than half of them have benefited from partnerships with top Chinese universities and research institutions.<sup>189</sup> Local governments have also played a crucial role in nurturing A.I. labs.<sup>190</sup> The Beijing Academy of Artificial Intelligence, which is credited with developing China's first large language model, is a notable example.<sup>191</sup> Established in 2019, this non-profit organization was launched under the joint sponsorship of the Beijing government, the MOST, and the Municipal Party Committee.<sup>192</sup> It brings together experts from prestigious institutions like Tsinghua and Peking Universities and the Chinese Academy of Science, as well as leading technology companies such as Baidu, Xiaomi, and ByteDance.<sup>193</sup>

The Interim Measures further underscore the significance of industry associations as key channels for the government's influence over the private sector to ensure its alignment with governmental objectives.<sup>194</sup> Over 190 A.I. industry alliances were established by central and local governments by the end of 2019.<sup>195</sup> The leading industry association is the Artificial Intelligence Industry Alliance (AIIA), which was established in conjunction with the State Council's release of its 2017 A.I. Plan.<sup>196</sup> The AIIA enjoys a very close relationship with the government and is led by key agencies such as

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189. JEFFREY DING & JENNY XIAO, CTR. FOR THE GOVERNANCE OF AI, RECENT TRENDS IN CHINA'S LARGE LANGUAGE MODEL LANDSCAPE 5–6 (2023), [https://cdn.governance.ai/Trends\\_in\\_Chinas\\_LLMs.pdf](https://cdn.governance.ai/Trends_in_Chinas_LLMs.pdf) [<https://perma.cc/T99L-PRGF>]. These include Tsinghua University, Peking University, Beijing University of Posts and Telecommunications, the Chinese Academy of Sciences, Renming University, and others. *Id.*

190. *Id.* at 8–9.

191. *Id.* Other notable state-sponsored initiatives include Zhejiang Lab, formed in 2017 by the Zhejiang Provincial Government, Zhejiang University and Alibaba Group, and the Peng Cheng Lab, established in 2019 as part of the “Greater Bay Area” development plan. The latter lab has benefited from the collaboration of top universities across China, Hong Kong, Macau, and Singapore. *Id.*

192. *Id.* at 8.

193. *Id.*

194. Johansson, *supra* note 171, at 41.

195. There were eighty-three A.I. industry alliances in 2017, 117 in 2018, and 190 in 2019. GANG LIU (刘刚), CHINESE INST. OF NEW GENERATION A.I. DEV. STRATEGIES, XIN TIÀOZHÀN HÉ JIYÙ XIÀ DE ZHŌNGGUÓ RÉNGŌNG ZHINÉNG KĒJì CHǎNYÈ FĀZHǎN (新挑战和机遇下的中国人工智能科技产业发展) [CHINA'S A.I. TECH INDUSTRY DEVELOPMENT UNDER NEW CHALLENGES AND OPPORTUNITIES] (2020), [http://www.nkear.com/UploadedFiles/file/2020\\_中国新一代人工智能科技产业发展报告\\_.pdf](http://www.nkear.com/UploadedFiles/file/2020_中国新一代人工智能科技产业发展报告_.pdf) [<https://perma.cc/GZ5V-6SWG>].

196. Johansson, *supra* note 171, at 41–42.

the NDRC, the MOST, the MIIT, and the CAC.<sup>197</sup> It comprises over five hundred members, including major tech firms, state-owned enterprises, and top Chinese universities.<sup>198</sup> The alliance plays a pivotal role in organizing events and conferences which foster collaboration between government, businesses, and academia.<sup>199</sup> Effectively, these industry associations act as brokers of relationships and influence.<sup>200</sup> In some cases, the government has even leveraged them to “‘pick winners,’ choosing among favored companies to receive government subsidies.”<sup>201</sup>

### 3. Data and Computing Power

Data and computing power are crucial for A.I., particularly machine learning, which requires extensive data. Not surprisingly, the Interim Measures also underscore the need for China to develop high-quality public training datasets and to utilize computing power more efficiently.<sup>202</sup> Historically, China's access to large data sets was seen as an advantage in A.I. development, particularly in surveillance tasks such as facial or object recognition.<sup>203</sup> However, this edge has diminished significantly with the rise of LLMs, which require vast amounts of textual data. There is a notable scarcity of high-quality Chinese-language text on the internet, with even less open-source data, and what is available is often limited in scale.<sup>204</sup> Further complicating

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197. *Id.*

198. *Id.* at 41.

199. *Id.* at 42.

200. NGOR LUONG & ZACHARY ARNOLD, CTR. FOR SEC. & EMERGING TECH., CHINA'S ARTIFICIAL INTELLIGENCE INDUSTRY ALLIANCE 3 (2021).

201. *Id.* at 8–9.

202. Interim Measures for Generative A.I., *supra* note 6, art. 6.

203. Jessica Dawson & Tarah Wheeler, *How to Tackle the Data Collection Behind China's AI Ambitions*, BROOKINGS (Apr. 29, 2022), <https://www.brookings.edu/articles/how-to-tackle-the-data-collection-behind-chinas-ai-ambitions/> [<https://perma.cc/NWT3-JWXX>].

204. *A.I. Dà Mú Xíng Xūyào Shénme Yàng De Shùjù?* (AI 大模型需要什么样的数据?) [*What Data Do A.I. Large Models Need?*], HUATAI SECS. 1 (May 11, 2023), <https://online-file.oss-cn-shenzhen.aliyuncs.com/file/pdf/2024-09-02/86515fd0a01e402fbd266dff655cea0d.pdf> [<https://perma.cc/VBK5-7JC5>] (noting that creating high-quality datasets is financially intensive while there is a general lack of enthusiasm for open-sourcing among Chinese firms, and that Chinese academia also places a lower priority on dataset creation); *see also Just How Good Can China Get at Generative AI?*, ECONOMIST (May 9, 2023), <https://www.economist.com/business/2023/05/09/just-how-good->

the situation, the walled-gardens created by Chinese tech giants like Alibaba and Tencent restrict access to social media content, hindering A.I.'s ability to scrape this information.<sup>205</sup> As a result, training of LLMs often involves the use of multiple foreign open-source datasets. For example, Baidu's Ernie Bot uses primarily Chinese-language data and English databases like Wikipedia and Reddit.<sup>206</sup> Additionally, the government's strict censorship policies add complexity to this situation. A.I. platforms offering chatbots must employ reinforcement learning from human feedback (RLHF) to train models in avoiding sensitive topics, bias, and violent language.<sup>207</sup> For Chinese A.I. firms, using uncensored data complicates the RLHF process, as it increases the risk of generating politically misaligned content.<sup>208</sup>

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can-china-get-at-generative-ai [<https://perma.cc/R2CC-WWEJ>] (noting that fifty-six percent of all websites are in English while less than two percent are written in Chinese).

205. *ECONOMIST*, *supra* note 204.

206. *HUATAI SECS.*, *supra* note 204.

207. Long Ouyang et al., *Training Language Models to Follow Instructions with Human Feedback*, ARXIV (Mar. 4, 2022), <https://arxiv.org/pdf/2203.02155> [<https://perma.cc/VL2L-EG6M>].

208. Paul Triolo, *ChatGPT and China: How to Think About Large Language Models and the Generative AI Race*, CHINA PROJECT (Apr. 12, 2023), <https://thechinaproject.com/2023/04/12/chatgpt-and-china-how-to-think-about-large-language-models-and-the-generative-ai-race/> [<https://perma.cc/3EPC-SASP>].

In response to this challenge, regional governments in Beijing,<sup>209</sup> Shanghai,<sup>210</sup> Shenzhen,<sup>211</sup> Chengdu,<sup>212</sup> and Ningxia<sup>213</sup> have unveiled rules to bolster the supply of high-quality training databases. In May 2023, the Beijing government announced measures to enhance generative A.I. services, emphasizing the need for collaboration to integrate and refine pre-training datasets.<sup>214</sup> By late August 2023, Beijing had released fifty-nine high-quality training datasets from twenty-six organizations.<sup>215</sup> In July 2023, the Shanghai

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209. Běijīng Shì Cùjìn Tōngyòng Rénɡōng Zhínéng Chuàngxīn Fāzhǎn De Ruògān Cuòshī (北京市促进通用人工智能创新发展的若干措施) [Measures to Promote the Innovative Development of General-Purpose A.I. in Beijing] (published by the People's Gov't of Beijing Mun., May 23, 2023) [hereinafter Beijing's A.I. Measures], [https://www.beijing.gov.cn/zhengce/zhengcefagui/202305/t20230530\\_3116869.html](https://www.beijing.gov.cn/zhengce/zhengcefagui/202305/t20230530_3116869.html) [https://perma.cc/39M5-CGD2].

210. Shànghǎi Shì Cùjìn Rénɡōng Zhínéng Chǎnyè Fāzhǎn Tiáoli (上海市促进人工智能产业发展条例) [Regulations for Promoting the Development of the A.I. Industry in Shanghai] (promulgated by the Standing Comm. People's Cong. Shanghai Mun., Sept. 22, 2022, effective Oct. 1, 2022) [hereinafter Shanghai's A.I. Regulations], <https://www.shanghai.gov.cn/hqcyfz2/20230627/3a1fcfeff9234e8e9e6623eb12b49522.html> [https://perma.cc/QU69-M2C9].

211. Shēnzhèn Jīngjì Tèqū Rénɡōng Zhínéng Chǎnyè Cùjìn Tiáoli (深圳经济特区人工智能产业促进条例) [Regulations for the Promotion of the A.I. Industry in Shenzhen Special Economic Zone] (promulgated by the Standing Comm. People's Cong. Shenzhen Mun., Aug. 30, 2022, effective Nov. 1, 2022) [hereinafter Shenzhen's A.I. Regulations], [https://www.sz.gov.cn/zfgb/2022/gb1258/content/post\\_10166373.html](https://www.sz.gov.cn/zfgb/2022/gb1258/content/post_10166373.html) [https://baike.baidu.com/reference/61959051/533aYdO6cr3\_z3kATP2lyfn1YyrEN9qouObQVuRzzqIP0XOpX5nyFJsortAw6LlkGkTRtp9gL4RFxLrIXRIE7PIYbr5qHPF3wzLgE2yBjdHn\_9g3nNJDoJQbHPBL].

212. Guānyú Dui “Chéngdū Shì Guānyú Jīnyībù Cùjìn Rénɡōng Zhínéng Chǎnyè Gāo Zhiliàng Fāzhǎn De Ruògān Zhèngcè Cuòshī (Zhēngqiú Yìjiàn Gāo)” Gōngkāi Zhēngqiú Yìjiàn De Tōngzhī (关于对《成都市关于进一步促进人工智能产业高质量发展的若干政策措施(征求意见稿)》公开征求意见的通知) [Notice of Soliciting Public Opinions on Measures to Further Promote the High-Quality Development of the A.I. Industry in Chengdu], CHENGDU MUN. BUREAU ECON. & INFO. SOC'Y (June 1, 2023), <http://policy.ruichuangshe.com/Policy/Info/17128> [https://perma.cc/JSQ3-8PMS].

213. Cùjìn Rénɡōng Zhínéng Chuàngxīn Fāzhǎn Zhèngcè Cuòshī (促进人工智能创新发展政策措施) [Measures to Promote the Innovative Development of A.I.] (published by the People's Gov't Ningxia Hui Autonomous Region, Aug. 18, 2023), [https://www.nx.gov.cn/zwgk/gfxwj/202308/t20230818\\_4227239.html](https://www.nx.gov.cn/zwgk/gfxwj/202308/t20230818_4227239.html) [https://perma.cc/H2BU-WXLL].

214. Beijing's A.I. Measures, *supra* note 209.

215. Zhōu Chūn Mèi (周春媚), *Dà Mú Xíng Jiāsù Luòdì Gè Háng Gè Yè, Cùjìn Zhōngwén Yǔliào Shùjùkù Jiànsè Dàdà Tísù* (大模型加速落地各行各业, 促进中文语料数据库建设大大提速) [*Large Models Accelerate Industrial Implementation, Greatly*

Data Exchange Center developed its own training datasets<sup>216</sup> while Guangdong established a trial base for a high-quality public Chinese-language database and data annotation platforms in September 2023.<sup>217</sup> Data alliances are also proliferating in China. In July 2023, ten Chinese organizations formed the Chinese Large Language Model Data Alliance, releasing the open-source multimodal pre-training dataset “shusheng.wanjuan.”<sup>218</sup> Within two months, the alliance expanded, introducing the “michao.huafen 1.0” dataset, which features filtered and legally compliant Chinese internet media data, contributing over seventy million Chinese data entries.<sup>219</sup>

The Interim Measures also emphasize the importance of coordinating computing power, a crucial input for training LLMs.<sup>220</sup> Although China boasts a strong position in general computing power, it relies heavily on international companies for intelligent computing power, particularly graphics processing units (GPUs).<sup>221</sup> Currently, Nvidia dominates with an over ninety percent share of the GPU market

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*Promoting the Construction of Chinese Corpus Database*], STCN (Sept. 22, 2023), <http://www.stcn.com/article/detail/988774.html> [https://perma.cc/7JKW-VLYC].

216. *Shànghǎi Shùjù Jiāoyì Suǒ Jiànshè Gāo Zhìliàng Yǔliàokù, Tuīdòng Rénɡōng Zhìnéng Dà Mú Xíng Chǎnyè Fāzhǎn* (上海数据交易所建设高质量语料库, 推动人工智能大模型产业发展) [*Shanghai Data Exchange Builds a High-Quality Corpus Database to Promote the Development of the A.I. Large Model Industry*], SHANGHAI DATA EXCH. (July 7, 2023, 11:50 PM), <https://mp.weixin.qq.com/s/8PXt3KGUu50P349XbPpLSw> [https://perma.cc/HK5B-UUL8].

217. *Guǎngdōng Shěng Qǐdòng Gōnggòng Shùjù Biāozhù Xùnliàn Shìdiǎn, Jiāng Xiàng Rénɡōng Zhìnéng Chǎnyè Yǒu Xù Dìngxiàng Kāifàng Gōnggòng Shùjù* (广东省启动公共数据标注训练试点, 将向人工智能产业有序定向开放公共数据) [*Guangdong Launches a Pilot Public Data Labeling Training, Will Gradually Open Public Data to the A.I. Industry*], WECHAT (Sept. 27, 2023, 7:30 PM), <https://mp.weixin.qq.com/s/VrzePQR-fOFzXTbj8LmPg> [https://perma.cc/59BF-UKNM].

218. Li Yè (李晔), *Guóchǎn Dà Mú Xíng Zuì Quē Gāo Zhì Yǔliào, Zhège Liánméng Kāiyuán Liǎng Zhōu Huò 18 Wàn Xiàzài, “Tóu Wèi” Huìbào Shì . . .* (国产大模型最缺高质量语料, 这个联盟开源两周获 18 万下载, “投喂”回报是 . . .) [*As Foundation Models in China Lack High-Quality Corpus, an Industry Alliance’s Open-Source Database Was Downloaded 180,000 Times in Two Weeks—What Do Contributors Get in Return?*], SHANGHAI OBSERVER (Sept. 9, 2023, 11:46 AM), <https://web.shobserver.com/wx/detail.do?id=652551> [https://perma.cc/MNH7-R97R].

219. *Id.*

220. Interim Measures for Generative A.I., *supra* note 6, art. 6.

221. Wú Jùnyǔ (吴俊宇), *Zhōngguó Suàn Lì, Xióngxīn Yǔ Ruǎnlèi* (中国算力, 雄心与软肋) [*China’s Computing Power, Ambitions, and Weaknesses*], CAIJING (May 5, 2023, 7:21 PM), [https://www.mycailing.com/article/detail/491878?source\\_id=40](https://www.mycailing.com/article/detail/491878?source_id=40) [https://perma.cc/LA2L-KJ4E].

while Chinese firms have only a negligible presence.<sup>222</sup> Recent rounds of U.S. restrictions on China's access to advanced chips and cloud services have posed additional challenges to Chinese tech companies.<sup>223</sup> In response, China has intensified its efforts in hardware development, though it has achieved limited progress thus far.<sup>224</sup> The Interim Measures advocate for indigenous innovation in basic technologies like chips and for the efficient use of computing resources.<sup>225</sup> In October 2023, China unveiled a plan to boost its computing power by fifty percent by 2025 to narrow the gap with the United States.<sup>226</sup> China is also expediting the construction of national computing hubs and data centers. In 2022, the Chinese government initiated a national project called "Eastern Data Western Calculation" to build a centralized data center system across eight Chinese regions.<sup>227</sup> This initiative focuses on building more data and computing centers in China's western regions where utility and land costs are comparatively lower.<sup>228</sup> In 2023 alone, the MOST approved twenty-five national A.I. computing platforms, which serve as public computing centers dedicated to A.I. training.<sup>229</sup> In 2024, at least

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222. Agam Shah, *Nvidia Shipped 3.76 Million Data-Center GPUs in 2023, According to Study*, HPCWIRE (June 10, 2024), <https://www.hpcwire.com/2024/06/10/nvidia-shipped-3-76-million-data-center-gpus-in-2023-according-to-study/> [https://perma.cc/YJ9E-9SU3].

223. Wú Jùnyǔ, *supra* note 221; *see also* CHINA ACAD. INFO. & COMM'NS TECH., ZHONGGUO SUAN LI FAZHAN ZHISHU BAIPISHU (中国算力发展指数白皮书) [WHITE PAPER ON CHINA'S COMPUTING POWER DEVELOPMENT INDICATORS] 13–14 (2023), <http://www.caict.ac.cn/english/research/whitepapers/202311/P020231103309012315580.pdf> [https://perma.cc/H8DD-M3MN].

224. *Id.*

225. Interim Measures for Generative A.I., *supra* note 6, art. 6.

226. Arjun Kharpal, *China Targets 50% Boost in Computing Power as AI Race with U.S. Ramps Up*, CNBC (Oct. 9, 2023, 7:22 AM), <https://www.cnbc.com/2023/10/09/china-targets-boost-in-computing-power-as-ai-race-with-us-ramps-up.html> [https://perma.cc/6VNZ-ZEA8].

227. Zijing Fu, *Understanding China's "Eastern Data Western Calculation" Project*, PINGWEST (Mar. 16, 2022), <https://en.pingwest.com/a/9940> [https://perma.cc/SUV5-RZZ5]; Seaton Huang, *China's Latest National Infrastructure Project Spotlights Computing Capabilities*, COUNCIL ON FOREIGN RELS. (Nov. 1, 2022, 3:43 PM), <https://www.cfr.org/blog/chinas-latest-national-infrastructure-project-spotlights-computing-capabilities> [https://perma.cc/G7US-Z9DZ].

228. Fu, *supra* note 227.

229. Huang Kai (黄锴), *25 Jiā GuójiāXīn Yīdài Rénɡōng Zhìnéng Gōnggòng Suàn Lì Kāifàng Chuàngxīn Píngtái Quán Míngdān* (25 家国家新一代人工智能公共算力开放创新平台全名单) [List of Twenty-Five of China's New Generation of A.I. Public Computing Power Open Innovation Platforms], WECHAT (Aug. 8, 2023, 8:08 PM), <https://mp.weixin.qq.com/s/q-Zwc3JvAiaNwvVG5iJsQ> [https://perma.cc/H5EL-WWSW].

seventeen city governments, including Shanghai, have reportedly pledged to provide vouchers to subsidize A.I. start-ups by granting them the use of A.I. data centers for training their LLMs.<sup>230</sup>

#### 4. Global Standards

China's aspirations extend beyond merely excelling in A.I. technology; it aims to actively shape the evolving global A.I. regulatory landscape. The Interim Measures emphasize the importance of international collaboration and endorse China's active role in global A.I. rulemaking.<sup>231</sup> In April 2023, China integrated A.I. governance into its flagship foreign policy, the Global Security Initiative, highlighting A.I. among twenty priorities for international cooperation.<sup>232</sup> President Xi Jinping also announced the Global Artificial Intelligence Governance Initiative (the Global Initiative) at the third Belt and Road Forum for International Cooperation held in Beijing in October 2023.<sup>233</sup> The Global Initiative articulates China's stance on A.I. values and areas for international cooperation, advocating for the increased inclusion of developing countries in global A.I. discourse and promoting equitable rights and opportunities in A.I. development and governance for all nations.<sup>234</sup> Interestingly, the Global Initiative was announced the day after the United States imposed new semiconductor sale restrictions on Chinese firms, suggesting an attempt by China to rally international support against U.S. restrictions.<sup>235</sup> By launching the Global Initiative at the Belt and

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230. *China Offers AI Computing 'Vouchers' to Its Underpowered Start-Ups*, FIN. TIMES (Mar. 5, 2024), <https://www.ft.com/content/9d67cda3-b157-47a0-98cb-e8e9842b2c90> [https://perma.cc/K3YE-KT5M].

231. Interim Measures for Generative A.I., *supra* note 6, art. 6.

232. CONCORDIA AI, STATE OF AI SAFETY IN CHINA 25 (2023), <https://concordia-ai.com/wp-content/uploads/2023/10/State-of-AI-Safety-in-China.pdf> [https://perma.cc/NF3Z-UQJZ].

233. Cong Wang & Yeping Yin, *China Launches Global AI Governance Initiative, Offering an Open Approach in Contrast to US Blockade*, GLOB. TIMES (Oct. 18, 2023, 5:33 PM), <https://www.globaltimes.cn/page/202310/1300092.shtml> [https://perma.cc/C3BX-XM7R].

234. *Quánqiú Rénɡōng Zhìnéng Zhìlǐ Chànɡyì* (全球人工智能治理倡议) [*Global A.I. Governance Initiative*], CYBERSPACE ADMIN. OF CHINA (Oct. 18, 2023), [http://www.cac.gov.cn/2023-10/18/c\\_1699291032884978.htm](http://www.cac.gov.cn/2023-10/18/c_1699291032884978.htm) [https://perma.cc/C6UF-DQTP].

235. Ana Swanson, *U.S. Tightens China's Access to Advanced Chips for Artificial Intelligence*, N.Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/business/economy/ai-chips-china-restrictions.html> [https://perma.cc/B6NM-8LAF].



Road Forum, attended by leaders from over 130 developing countries this year, China sought to establish itself as a leader in A.I. governance for developing countries in the Global South.<sup>236</sup>

Notably, China's ambition in global A.I. governance aligns with its broader objective to influence the international order, echoing its initiatives in areas like the global economy, climate change, and cyberspace.<sup>237</sup> With global A.I. governance being a relatively new field with yet-to-be-established norms, Chinese scholars perceived an opportunity for China to lead in setting global A.I. standards.<sup>238</sup> Since 2016, China has actively engaged in international A.I. governance through the United Nations, the U.N. Educational, Scientific and Cultural Organization, and the International Telecommunication Union (ITU).<sup>239</sup> Chinese A.I. experts are directly contributing to global standard-setting, engaging in negotiations and standard formulation through the International Organization for Standardization (ISO) and the ITU.<sup>240</sup> Despite these efforts, China faces substantial challenges in its endeavor to shape global A.I. governance. Most A.I. global initiatives are embedded in the existing global governance institutions that emphasize democratic values such as the Group of Seven, the European Commission, the Council of Europe, and the Organisation for Economic Cooperation and Development, from all of which China is excluded, not to mention those newly created initiatives that are designed to counter Chinese influence in global A.I.

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236. Dewey Sim, *Belt and Road Forum: China Launches AI Framework, Urging Equal Rights and Opportunities for All Nations*, S. CHINA MORNING POST (Oct. 18, 2023, 6:08 PM), <https://www.scmp.com/news/china/diplomacy/article/3238360/belt-and-road-forum-china-launches-ai-framework-urging-equal-rights-and-opportunities-all-nations> [https://perma.cc/4AFF-EAVG]; Kat Duffy & Kyle Fendorf, *China Unveils Global AI Governance Initiative*, COUNCIL ON FOREIGN RELS. (Oct. 20, 2023, 11:00 AM), <https://www.cfr.org/blog/cyber-week-review-october-20-2023> [https://perma.cc/8XH4-KAJ2].

237. Jing Cheng & Jinghan Zeng, *Shaping AI's Future? China in Global AI Governance*, 32 J. CONTEMP. CHINA 794, 797 (2023).

238. *Id.* at 798.

239. CONCORDIA AI, *supra* note 232, at 24–27.

240. *Id.* at 24. In 2020, the China Electronic Standardization Institute, with other experts, proposed a standard that was adopted by an international standards body. *Wǒguó Tíchū De ISO/IEC Zhīshì Gōngchéng Guójì Biāozhǔn Xiàngmù Zhèngshì Huò Pī Lìxiàng* (我国提出的 ISO/IEC 知识工程国际标准项目正式获批立项) [*The Project of ISO/IEC Knowledge Engineering International Standard Proposed by China Was Officially Approved*], TENCENT CLOUD (Aug. 25, 2020), <https://cloud.tencent.com/developer/news/682326> [https://perma.cc/P7XQ-MXT2].

governance.<sup>241</sup> As a result, China's influence remains limited, relying heavily on institutions like the U.N. and standard-setting organizations to exert its influence in global A.I. governance.<sup>242</sup>

## 5. Local Governments

China is a vast country with thirty-four province-level administrative divisions, each possessing some level of legislative power to enact local laws.<sup>243</sup> Although the Interim Measures are only a set of departmental guidelines jointly promulgated by seven central ministries, they sent a strong policy signal from the top leadership in Beijing. Consequently, these measures also play an important role in coordinating the local governments in A.I. legislation.

Notably, before the Interim Measures took effect, several Chinese cities like Shanghai and Shenzhen had already initiated local A.I. legislation. In August 2022, Shenzhen introduced the first local law specifically designed to encourage A.I. development within the region.<sup>244</sup> The Shanghai city government followed by enacting provisions aimed at transforming the city into a leading hub for A.I. innovation in China the same year.<sup>245</sup> Similar to the Interim Measures, both the Shenzhen and Shanghai regulations reflect the local regions' ambition in developing A.I. technology and attempt to coordinate various stakeholders to propel its development.<sup>246</sup> These local laws have employed a risk-based regulatory approach: mandating that high-risk A.I. applications undergo pre-emptive assessment and risk warning while low- and medium-risk applications are subjected to *ex ante* disclosure and subsequent tracking.<sup>247</sup> However, neither

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241. Cheng & Zeng, *supra* note 237, at 806.

242. *Id.* at 809.

243. Lifǎ fǎ (立法法) [Law on Legislation] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 15, 2000, effective July 1, 2000, amended Mar. 15, 2015, Mar. 13, 2023), art. 80, [https://www.gov.cn/xinwen/2023-03/14/content\\_5746569.htm](https://www.gov.cn/xinwen/2023-03/14/content_5746569.htm) [<https://perma.cc/CF8C-3CML>].

244. Shenzhen's A.I. Regulations, *supra* note 211.

245. Shanghai's A.I. Regulations, *supra* note 210.

246. Iris Deng, *Shenzhen Aims to Be China's Artificial Intelligence Hub with Special Guideline to Boost Development and Secure Privacy*, S. CHINA MORNING POST (Sept. 7, 2022, 3:00 PM), <https://www.scmp.com/tech/policy/article/3191630/shenzhen-aims-be-chinas-artificial-intelligence-hub-special-guideline> [<https://perma.cc/Q7SS-J6HX>]; Anas Baig, *Understanding the Shanghai AI Regulations*, SECURITI (Sept. 26, 2023), <https://securiti.ai/shanghai-ai-regulation/> [<https://perma.cc/8PGP-TDQD>].

247. Shenzhen's A.I. Regulations, *supra* note 211, art. 66; Shanghai's A.I. Regulations, *supra* note 210, art. 65.

regulation describes how to classify different A.I. technologies, leaving this task to future legislation. This wait-and-see approach appears intended to avoid imposing overtly restrictive measures that might stifle the sector's growth. Notably, China is in the process of formulating a comprehensive national A.I. law, although drafting and public consultation could still be years away.<sup>248</sup> In light of this, local governments may not want to impose any restrictive measures which could be found to conflict with the national law.

In May 2023, Beijing introduced a ground-breaking policy to promote the development of generative A.I., marking the first provincial-level initiative of its kind.<sup>249</sup> Beijing has a strong incentive to push forward the development of generative A.I. as it was home to the majority of LLMs in China.<sup>250</sup> A common feature of these local laws is their strong emphasis on fostering development by seamlessly integrating them with existing industrial policies. Although these laws do introduce certain restrictive measures like risk-based assessments and ethics reviews, they lack specifics on implementation. Consequently, in practice, these provisions often seem to function more as superficial formalities rather than effective regulatory mechanisms. The pro-growth policy signals that the Interim Measures sent will further discourage local governments from enacting restrictive measures that might hinder A.I. development in China.

### III. LAW AS A COMPETITIVE STRATEGY

China's introduction of A.I. legislation has undoubtedly increased compliance burdens for Chinese tech firms. However, their impact on the actual delivery of A.I. services within China appears

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248. In 2023, a team of experts at the Chinese Academy of Social Science Legal Research Institute's Cyber and Information Law Research Office proposed a draft model A.I. law, which offers some expert viewpoints on Chinese A.I. law legislation. See Kwan Yee Ng et al., *Translation: Artificial Intelligence Law, Model Law v. 1.0 (Expert Suggestion Draft)*—Aug. 2023, DIGICHINA (Aug. 23, 2023), <https://digichina.stanford.edu/work/translation-artificial-intelligence-law-model-law-v-1-0-expert-suggestion-draft-aug-2023/> [<https://perma.cc/XH4V-PPPN>].

249. Beijing's A.I. Measures, *supra* note 209.

250. Liu Jia (刘佳), *Zhōngguó Yǐ Yǒu 79 Gè 10 Yì Cānshù Dà Mú Xíng, Yèjiè Hūyù Jīnkùài Jiànlì Zìzhù Chuàngxīn "Hùchéng Hé"* (中国已有 79 个 10 亿参数大模型, 业界呼吁尽快建立自主创新“护城河”) [*China Already Has Seventy-Nine Large Models with One Billion Parameters, and Industry Is Calling for Establishing a "Moat" for Independent Innovation as Quickly as Possible*], YICAI (May 29, 2023, 7:21 PM), <https://m.yicai.com/news/101769137.html> [<https://perma.cc/85BL-78K5>].

limited in practice. A common feature shared by recent Chinese A.I. legislation is its emphasis on content moderation, aimed at ensuring that A.I.-generated content does not challenge the CCP's control over public discourse. Thus far, none of these laws have been applied to hold Chinese A.I. firms accountable for A.I.-related infringements. Nor has the security assessment requirement introduced by the Interim Measures significantly impeded major A.I. companies from offering public-facing services. This was evident on August 31, 2023, when, just two weeks after the implementation of these measures, eleven A.I. firms—including SenseTime, Baidu, and Baichuan—were granted approval by the CAC to launch their services.<sup>251</sup> By August 2024, the CAC and its local agencies have greenlit over two hundred LLMs and related applications to offer services to the public.<sup>252</sup>

In addition to lenient administrative enforcement, the Chinese judiciary also adheres to Beijing's pro-growth directive by recognizing IP rights in content created by generative A.I. technology. A notable example occurred in late November 2023 when the Beijing Internet Court issued a landmark ruling holding that an image generated using Stable Diffusion is eligible for copyright protection.<sup>253</sup> The court

251. Jing Zhang (张静), *Shǒu Pī Guóchǎn Dà Mú Xíng Huò Pī Miànxàng Yònghù Kāifàng, Hǎn Shāng Tāng, Bǎidù, Zhì Pǔ A.I. Děng* (首批国产大模型获批面向用户开放, 含商汤, 百度, 智谱 A.I. 等) [*The First Batch of Chinese Large Models Approved for Opening to the Public, Including SenseTime, Baidu, Zhipu A.I., Etc.*], PAPER (Aug. 31, 2023, 10:26 AM), [https://m.thepaper.cn/newsDetail\\_forward\\_24432246](https://m.thepaper.cn/newsDetail_forward_24432246) [<https://perma.cc/GP78-5XP4>].

252. *Guójiā Hùliánwǎng Xīnxi Bàngōngshì Guānyú Fābù Shēngchéng Shì Rénɡōng Zhìnéng Fúwù Yǐ Bèi'àn Xīnxi De Gōnggào* (国家互联网信息办公室关于发布生成式人工智能服务已备案信息的公告) [*Announcement from CAC Regarding the Registration Information of Generative A.I. Services*], CYBERSPACE ADMIN. CHINA (Nov. 2024), [https://www.cac.gov.cn/2024-04/02/c\\_1713729983803145.htm](https://www.cac.gov.cn/2024-04/02/c_1713729983803145.htm) [<https://perma.cc/3AXG-X2UV>].

253. *Lǐ Mǒu Sù Liú Mǒu Qīnhài Zuòpǐn Shǔmíng Quán, Xīnxi Wǎngluò Chuánbò Quán Jiūfēn Àn* (李某诉刘某侵害作品署名权、信息网络传播权纠纷案) [*Li v. Liu, A Disp. over Authorship & Info. Network Dissemination Rts.*], Jing 0491 Min Chu 11279 (Beijing Internet Ct. Nov. 27, 2023). Notably, in 2020, the Shenzhen court ruled in favor of Tencent in a case where the company sued another platform for infringing the copyright of its A.I.-generated articles. *See Shēnzhèn Shì Téngxùn Jisùanjī Xitǒng Yǒuxiàn Gōngsī Sù Shànghǎi Yíng Xùn Kējì Yǒuxiàn Gōngsī Qīnhài Zhùzuòquán Jí Bù Zhèngdàng Jìngzhēng Jiūfēn Àn* (深圳市腾讯计算机系统有限公司诉上海盈讯科技有限公司侵害著作权及不正当竞争纠纷案) [*Shenzhen Tencent Comput. Sys. Co., Ltd. v. Shanghai Yingxun Tech. Co., Ltd., A Disp. over Copyright Infringement & Unfair Competition*], Yue 0305 Min Chu 14010 (Shenzhen Nanshan Dist. People's Ct. Dec. 24, 2019). Interestingly, this decision diverges from an earlier ruling by the Beijing Internet Court, which held that A.I.-generated reports should not enjoy copyright protection. *See Běijīng Fēilín Lǚshī Shìwù Suǒ Sù Běijīng Bǎidù Wǎng Kējì Yǒuxiàn Gōngsī Zhùzuòquán Qīnquán Jiūfēn àn* (北京菲林律师事务所诉北京百度网讯科技有限公司著作权侵权纠纷案) [*Beijing Film L. Firm v. Beijing Baidu Netcom Sci. &*

emphasized that the plaintiff had made a certain degree of investment in selecting and arranging a series of creative prompts and parameters fed into the A.I. system.<sup>254</sup> The court deemed these inputs to be sufficiently original, seeing the generative A.I. system as a mere tool, akin to a camera, for creating expressive works.<sup>255</sup> It therefore concluded that A.I.-generated images reflecting the original intellectual investment of a human being should be considered works eligible for copyright protection.<sup>256</sup> This decision marks a departure from the stance of the U.S. Copyright Office and of U.S. district courts, which have typically refrained from granting copyright to A.I.-generated images, even when substantial human efforts were involved.<sup>257</sup> In an interview, the presiding judge, Ge Zhu, highlighted the strategic importance of recognizing copyright for A.I.-generated content, noting that such recognition would incentivize the use of A.I. for creative purposes, thereby furthering the development of A.I. technology in China.<sup>258</sup>

In contrast to China's permissive regulatory environment, the E.U. is implementing a series of tough laws to regulate A.I. services. A number of existing laws—including the Digital Services Act, the Digital Markets Act, and the General Data Protection Regulation (GDPR)—are expected to pose significant challenges for A.I. firms.<sup>259</sup> In particular, the GDPR, widely considered the world's most stringent data privacy and security law, poses significant challenges for A.I.

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Tech. Co., Ltd., A Disp. over Copyright Infringement], Jing 73 Min Zhong 2023 (Beijing Internet Ct. May 18, 2020).

254. *Li*, Jing 0491 Min Chu 11279.

255. *Id.*

256. *Id.*

257. CHRISTOPHER T. ZIRPOLI, CONG. RSCH. SERV., LSB10922, GENERATIVE ARTIFICIAL INTELLIGENCE AND COPYRIGHT LAW 1 (2023).

258. Liu Yang (杨柳) & Rui Fan (樊瑞), *Zhuānfāng “A.I. Wénshēng Tú” Àn Zhǔ Shěn Fǎguān: Tōngguò Cǎipàn Gěi Xīnxīng Chǎnyè Wéndìng Yùqī* (专访“A.I.文生图”案主审法官：通过裁判给新兴产业稳定预期) [Interview with the Presiding Judge of the “A.I. Text-to-Image Generation” Case: Stabilizing Expectations for Emerging Industries Through Court Rulings], CAIJING ELAW (Jan. 3, 2024, 4:35 AM), [https://mp.weixin.qq.com/s/gBlpitcixZeUO\\_spsMdJHA](https://mp.weixin.qq.com/s/gBlpitcixZeUO_spsMdJHA) [<https://perma.cc/Q927-A6B4>].

259. Alex Engler, *The EU and U.S. Diverge on AI Regulation: A Transatlantic Comparison and Steps to Alignment*, BROOKINGS (Apr. 25, 2023), <https://www.brookings.edu/articles/the-eu-and-us-diverge-on-ai-regulation-a-transatlantic-comparison-and-steps-to-alignment/> [<https://perma.cc/F55F-6NNE>].

firms.<sup>260</sup> The law covers all data processing activities regardless of the technology used, making it a pivotal component in regulating generative A.I.<sup>261</sup> Already, OpenAI—the company behind ChatGPT—has faced scrutiny in a slew of E.U. member states for alleged breaches of GDPR provisions.<sup>262</sup> In March 2023, Italy’s Garante even temporarily banned ChatGPT, citing non-compliance with transparency obligations and an absence of legal bases for data collection and processing.<sup>263</sup> Meanwhile, the E.U. A.I. Act lays down comprehensive obligations for providers of foundational A.I. models.<sup>264</sup> What’s more, it empowers regulators to impose hefty sanctions, with a maximum fine of up to seven percent of worldwide

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260. Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1 [hereinafter GDPR].

261. AI WORKING GRP., CONFEDERATION OF EUR. DATA PROT. ORGS., *AI AND PERSONAL DATA: A GUIDE FOR DPOs: “FREQUENTLY ASKED QUESTIONS”* 4 (2023), <https://cedpo.eu/wp-content/uploads/CEDPO-AI-and-Data-FAQ-12-June-2023.pdf> [<https://perma.cc/VR7Y-DUM2>]. A key requirement under the GDPR is the need for a legal basis to use personal data in training A.I. models. Since consent is often not obtained for using personal data in model training, developers must rely on other legal grounds, such as legitimate interests or processing necessity, potentially in conjunction with specific research exceptions. *See* GDPR, *supra* note 260, arts. 6, 89. Additionally, the GDPR’s transparency requirements could be problematic for chat interfaces if users are not adequately informed about their data being collected and processed. *See id.* arts. 12–14. Furthermore, the hallucination issues of the generative A.I. could breach the GDPR’s accuracy requirement, while discriminatory output could violate the fairness principle. *See id.* art. 5. Notably, data subjects have rights to request correction or deletion of their data in cases of hallucinations. *See id.* arts. 16–17. Furthermore, if an A.I. service fails to verify the ages of its users, it could violate child protection obligations. *See id.* art. 8.

262. Scott Ikeda, *Another EU Investigation for ChatGPT Following Poland GDPR Complaint*, CHIEF PRIV. OFFICER MAG. (Oct. 3, 2023), <https://www.cpomagazine.com/data-protection/another-eu-investigation-for-chatgpt-following-poland-gdpr-complaint/> [<https://perma.cc/6ABB-HCX7>].

263. Andrea Tuninetti Ferrari, *The Italian Data Protection Authority Halts ChatGPT’s Data Processing Operations*, CLIFFORD CHANCE (Apr. 6, 2023), <https://www.cliffordchance.com/insights/resources/blogs/talking-tech/en/articles/2023/04/the-italian-data-protection-authority-halts-chatgpt-s-data-proce.html> [<https://perma.cc/BU8V-RNFF>]. The service was reinstated in Italy in late April following OpenAI’s compliance measures. *See* Supantha Mukherjee & Giselda Vagnoni, *Italy Restores ChatGPT after OpenAI Responds to Regulators*, REUTERS (Apr. 28, 2023, 5:01 PM), <https://www.reuters.com/technology/chatgpt-is-available-again-users-italy-spokesperson-says-2023-04-28/> [<https://perma.cc/N9WM-KBRA>].

264. Tim Hickman et al., *Long Awaited EU AI Act Becomes Law After Publication in the EU’s Official Journal*, WHITE & CASE LLP (July 16, 2024), <https://www.whitecase.com/insight-alert/long-awaited-eu-ai-act-becomes-law-after-publication-eus-official-journal> [<https://perma.cc/YU3U-88ZH>].

turnover or thirty-five million euros—whichever is higher.<sup>265</sup> As E.U. officials are often viewed as policy entrepreneurs deeply committed to regulatory innovations and law enforcement, the E.U. is expected to enforce its law rigorously.<sup>266</sup>

Compared with the E.U., the United States has embraced a more decentralized approach to A.I. regulation.<sup>267</sup> Thus far, there has been a lack of comprehensive A.I. law and scant enforcement actions against A.I. firms.<sup>268</sup> The most significant move came in October 2023, when the Biden Administration issued a sweeping executive order aimed at improving the safety and trustworthiness of A.I.<sup>269</sup> A key stipulation requires developers of powerful A.I. models to disclose their safety test results.<sup>270</sup> However, the executive order lacks clarity on the consequences for companies whose safety tests reveal potential dangers in their models.<sup>271</sup> While the executive order represents a major step forward for U.S. A.I. regulation, it has severe limitations typical of unilateral executive actions.<sup>272</sup> Although A.I. firms operate under a relatively lenient regulatory environment in the United States, they face a very strong and active plaintiffs' bar. Currently, leading A.I. firms are grappling with private litigation on various fronts, including copyright infringement, data privacy violations, defamation, and discrimination.<sup>273</sup> The looming threat of IP litigation is already

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265. *Id.*

266. GIANDOMENICO MAJONE, *REGULATING EUROPE* 74 (1996).

267. Engler, *supra* note 259.

268. *Id.*

269. Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023).

270. *Id.* § 4.2.

271. Will Henshall, *Why Biden's AI Executive Order Only Goes So Far*, TIME (Nov. 1, 2023, 5:55 PM), <https://time.com/6330652/biden-ai-order/> [<https://perma.cc/S9JK-G68T>]. In addition, the executive order mandates that cloud service providers to monitor and report foreign customers using large A.I. models for malicious cyber activities. Exec. Order No. 14,110, 88 Fed. Reg. 75191, § 4.2(c) (Oct. 30, 2023).

272. See Paul Stimers et al., *What to Know About the New Artificial Intelligence Executive Order*, HOLLAND & KNIGHT LLP (Oct. 31, 2023), <https://www.hklaw.com/en/insights/publications/2023/10/what-to-know-about-the-new-artificial-intelligence-executive-order> [<https://perma.cc/AGP4-69HF>].

273. For ongoing cases regarding copyright infringement, see *Master List of Lawsuits v. AI, ChatGPT, OpenAI, Microsoft, Meta, Midjourney & Other AI Cos.*, CHAT GPT IS EATING THE WORLD (Aug. 30, 2024), <https://chatgptiseatingtheworld.com/2023/12/27/master-list-of-lawsuits-v-ai-chatgpt-openai-microsoft-meta-midjourney-other-ai-cos/> [<https://perma.cc/J73N-UY2G>].

having an impact on business revenues as they have prompted U.S. A.I. firms to negotiate licenses with content creators.<sup>274</sup>

China is not unique in relying on the expressive powers of the law to govern A.I.; A.I.-related legislations in the United States and Europe can also serve information functions, but they carry less weight compared to the Chinese context. For example, the final version of the E.U. A.I. Act also diluted some strict requirements from an earlier draft proposed by the European Parliament.<sup>275</sup> While such political compromise can offer some relief to European businesses, the European Commission and E.U. member states are still expected to rigorously enforce the new law. In contrast, when China's finalized Interim Measures softened the stringent requirements from an earlier draft, it sent a clear policy signal to law enforcers, nudging them to take a more lenient approach in enforcing the new law.<sup>276</sup> Indeed, to date, Chinese administrative authorities have yet to take any significant action against A.I. firms under the Interim Measures. Even the CAC, which has emphasized strict information control, has relaxed its security assessment requirements. Since late 2023, many generative A.I. firms have only been required to register their filings with the CAC, rather than getting an approval before launching their services.<sup>277</sup> This shift marks a significant easing of the regulatory process, reflecting the government's clear emphasis on prioritizing growth and innovation over stringent regulation.

Similarly, while Western countries have also leveraged the coordination capabilities of their legal systems to govern A.I., the objectives and scope of their coordination fundamentally differ from those of China. For example, the Biden Administration's executive

274. Negotiations are ongoing between OpenAI, Google, Microsoft, Adobe, and major media outlets such as News Corp, Axel Springer, and the New York Times for similar licensing arrangements for news content in A.I. development. Cristina Criddle et al., *AI and Media Companies Negotiate Landmark Deals over News Content*, FIN. TIMES (June 17, 2023), <https://www.ft.com/content/79eb89ce-cea2-4f27-9d87-e8e312c8601d> [<https://perma.cc/V9GD-SV5L>].

275. See Anthony Faiola et. al, *E.U. Reaches Deal on Landmark AI Bill, Racing Ahead of U.S.*, WASH. POST (Dec. 8, 2023, 8:45 PM), <https://www.washingtonpost.com/technology/2023/12/08/ai-act-regulation-eu/> [<https://perma.cc/2NLZ-4M4X>]; *Partial Ban on 'Predictive' Policing and Crime Prediction Systems Included in the Final EU AI Act*, FAIR TRIALS (Dec. 11, 2023), <https://www.fairtrials.org/articles/news/partial-ban-on-predictive-policing-included-in-final-eu-ai-act/> [<https://perma.cc/PV6S-D8GD>].

276. See *supra* Part II.

277. Interview with lawyers and legal scholars in Hong Kong (Dec. 2023). (The interviewees wish to remain anonymous.) This change is also evident in the CAC's announcement regarding the registration of LLMs. See *supra* note 252.



order on A.I. safety, issued in late October 2023, called on various federal agencies to develop policies and take action on A.I.-related issues.<sup>278</sup> However, the Biden Administration's "whole-of-government" strategy is much narrower in scope compared to the "whole-of-society" approach adopted by China's Interim Measures. Moreover, the executive order addresses a broad range of concerns prevalent in American society, including A.I. safety, anti-discrimination efforts, and job displacement.<sup>279</sup> In contrast, the Interim Measures primarily target content moderation, while other aspects of A.I. infringement, particularly concerning large A.I. firms, are expected to be enforced leniently.<sup>280</sup> Thus, the executive order actually offers a more comprehensive scope of protection for citizens than the Interim Measures.

Consequently, compared with the cumbersome regulatory requirements in the E.U. and the mounting litigation challenges in the United States, China's more lax and business-friendly regulatory environment could offer Chinese firms a competitive advantage in the short term. This dynamic mirrors the early days of China's consumer tech industry, which enjoyed tremendous support from the central government. In the face of a national agenda of fostering innovation and high uncertainty about the consequences of regulating internet firms, agencies treaded carefully by taking lax actions against these firms.<sup>281</sup> There was minimal merger enforcement in the tech sector, which partly encouraged the frenetic expansion of Chinese tech giants and resulted in disorderly competition.<sup>282</sup> Even when actions were taken, they were often lenient, lacking in deterrent effect.<sup>283</sup> It wasn't until Ant Group's initial public offering and Jack Ma's controversial speech in late 2020—seen as a potential threat to the financial and political stability of the Chinese regime—that the regulatory pendulum

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278. See Exec. Order No. 14,110, 88 Fed. Reg. 75191 (Oct. 30, 2023).

279. *Id.* That said, the effectiveness of the federal agencies in implementing the Executive Order remains uncertain, given their mixed track records in enforcing past Executive Orders. See Rishi Bommasani et al., *Decoding the White House AI Executive Order's Achievements*, STAN. INST. FOR HUM.-CENTERED A.I. (Nov. 2, 2023), <https://hai.stanford.edu/news/decoding-white-house-ai-executive-orders-achievements> [<https://perma.cc/T9J9-KYCM>]; CHRISTIE LAWRENCE ET AL., STAN. INST. FOR HUM.-CENTERED A.I. & STAN. REGUL. EVALUATION & GOVERNANCE LAB, IMPLEMENTATION CHALLENGES TO THREE PILLARS OF AMERICA'S AI STRATEGY 4–5 (2022), <https://hai.stanford.edu/white-paper-implementation-challenges-three-pillars-americas-ai-strategy> [<https://perma.cc/D7J8-CFLC>].

280. See *supra* Part II.

281. ZHANG, *supra* note 15, at 110–11.

282. *Id.*

283. *Id.* at 111.

swung in the opposite direction.<sup>284</sup> Thus, until an A.I.-induced disaster or crisis emerges, it seems unlikely that China will adopt a strict regulatory stance on A.I. in the near future.

At the same time, China's competitive advantage may diminish as Chinese firms expand internationally. Many Chinese start-ups, influenced by domestic licensing requirements and a challenging domestic economic environment, are increasingly looking to establish themselves in international markets;<sup>285</sup> these Chinese firms must adapt to foreign regulatory standards when they operate overseas. Moreover, China's industry-friendly approach could backfire. Take, for instance, the IP case decided by the Beijing Internet Court.<sup>286</sup> Although the verdict may help fuel China's A.I. ambitions in the short term, it also creates a host of legal and economic challenges. For instance, as creators of similar A.I. artworks dispute copyright infringement, Chinese courts could be burdened with a surge of litigation. This makes a revision of existing copyright laws and doctrines by Chinese courts and the legislature all but inevitable.<sup>287</sup> Additionally, this ruling could trigger an influx of A.I.-generated content in the Chinese market, potentially discouraging human creators and leading to a decline in the creation of high-quality human-generated data.<sup>288</sup> As highlighted in Part II, data is a crucial resource for training LLMs, and the Chinese A.I. industry is already facing a serious data scarcity issue. The Beijing court's decision could therefore further exacerbate this issue, ultimately hindering the progress of generative A.I. development in China.

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284. *Id.* at 49–53.

285. *See* Toner et al., *supra* note 10.

286. Lǐ Mǒu Sù Liú Mǒu Qīnhài Zuòpǐn Shǔmíng Quán, Xìnxī Wǎngluò Chuánbò Quán Jiūfēn Àn (李某诉刘某侵害作品署名权、信息网络传播权纠纷案) [Li v. Liu, A Disp. over Authorship & Info. Network Dissemination Rts.], Jing 0491 Min Chu 11279 (Beijing Internet Ct. Nov. 27, 2023).

287. Mark A. Lemley, *How Generative AI Turns Copyright Upside Down*, 25 COLUM. SCI. & TECH. L. REV. 190, 212 (2024); *see also* Zhang, *supra* note 147.

288. S. Alex Yang & Angela Huyue Zhang, *Generative AI and Copyright: A Dynamic Perspective* (last revised Mar. 19, 2024) (unpublished manuscript), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4716233](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4716233) [https://perma.cc/ZJH4-XBVF].

## IV. RISK AND COOPERATION

Thus far, public perception and the research community's stance on A.I. in China are predominantly optimistic. A 2021 Ipsos survey revealed that seventy-eight percent of Chinese respondents viewed A.I. products and services as more beneficial than harmful, the highest percentage among the twenty-eight surveyed countries and well above the global average of fifty-two percent.<sup>289</sup> In the same survey, Chinese respondents also demonstrated the highest level of trust in companies using A.I. and expressed a low level of nervousness about utilizing A.I. products.<sup>290</sup> Another survey conducted in 2023 indicated that eighty-six percent of those familiar with large A.I. models perceive their societal impact as positive.<sup>291</sup> Among computer science experts, seventy-two percent acknowledge the existential risks posed by strong A.I., yet a higher proportion—seventy-nine percent—supports its development.<sup>292</sup>

Despite these optimistic views, China's lax regulatory approach towards A.I. harbors significant hidden risks. As elaborated above, the government is pursuing a "whole of society" approach to push forward the development of A.I. without necessarily taking practical precautionary measures. This command-and-control strategy, though effective for mass mobilization, may compromise the professional judgement of regulators and undermine the effectiveness and authority of local governance.<sup>293</sup> Even though the Chinese government can take forceful measures in dealing with regulatory crises, the delayed response can make the situation extremely difficult or costly to reverse. This pattern of crisis management is evident in

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289. GLOBAL OPINIONS AND EXPECTATIONS ABOUT ARTIFICIAL INTELLIGENCE: A GLOBAL ADVISOR SURVEY, IPSOS (2022), <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-01/Global-opinions-and-expectations-about-AI-2022.pdf> [<https://perma.cc/8H36-R22Y>].

290. *Id.*

291. Yi Zeng et al., *Voices from China on "Pause Giant AI Experiments: An Open Letter"*, CTR. FOR LONG-TERM A.I. (Apr. 4, 2023), <https://long-term-ai.center/research/f/voices-from-china-on-pause-giant-ai-experiments-an-open-letter> [<https://perma.cc/5P4A-SPW8>].

292. Yi Zeng & Kang Sun, *Whether We Can and Should Develop Strong AI: A Survey in China*, CTR. FOR LONG-TERM A.I. (Mar. 12, 2023), <https://long-term-ai.center/research/f/whether-we-can-and-should-develop-strong-artificial-intelligence> [<https://perma.cc/G4H6-EPCG>]; see also CONCORDIA AI, *supra* note 232, at 72.

293. See Zhou, *supra* note 74, at 481; see also generally XUEGUANG ZHOU, THE LOGIC OF GOVERNANCE IN CHINA: AN ORGANIZATIONAL APPROACH (2022).

some of the most significant policy challenges faced by the Chinese government in recent years, including Covid-19 control, the 2021 energy crisis, the property crackdown, and China's demographic crisis.<sup>294</sup>

Meanwhile, the Interim Measures exclude both enterprise-facing A.I. applications and internal use from oversight. This leaves a vast array of A.I. activities—including industrial applications, experiments, and research—largely unregulated. According to Baidu founder Robin Li, as of January 2024, 238 LLMs had been introduced in China, but only about forty had received regulatory approvals.<sup>295</sup> This regulatory gap is particularly alarming given widespread fraud in the domestic market.<sup>296</sup> Indeed, China, known for its extensive underground economy proliferating counterfeit goods from footwear to online reviews, faces a serious risk of A.I. being exploited for similar fraudulent purposes. Furthermore, intense competition among Chinese firms has led to a concerning trend of deprioritizing A.I. safety, thereby increasing the likelihood of A.I.-related disasters.<sup>297</sup> Although the Interim Measures mandate security assessments for public-facing services, they predominantly focus on information control, thereby neglecting other crucial aspects of A.I. safety. For instance, the Standard from the National Information Security Standardization Technical Committee, despite offering detailed criteria on training data and model safety, primarily concentrates on content.<sup>298</sup> This narrow focus overlooks the broader applications of generative A.I., which extend far beyond content generation and encompass various industry sectors.

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294. See generally ZHANG, *supra* note 15.

295. Ben Jiang, *China Approves 14 Large Language Models and Enterprise Applications, As Beijing Favors Wider AI Adoption Across Industries*, S. CHINA MORNING POST (Jan. 29, 2024, 6:04 PM), <https://www.scmp.com/tech/tech-trends/article/3250177/china-approves-14-large-language-models-and-enterprise-applications-beijing-favours-wider-ai> [<https://perma.cc/FM6S-Q9MB>].

296. See 'Deepfake' Scam in China Fans Worries over AI-driven Fraud, REUTERS (May 22, 2023, 9:55 AM), <https://www.reuters.com/technology/deepfake-scam-china-fans-worries-over-ai-driven-fraud-2023-05-22/> [<https://perma.cc/8RNB-TDGY>]; ZHANG, *supra* note 15, at 122–24, 197–200.

297. CONCORDIA AI, *supra* note 232, at 66–67.

298. TC260 STANDARD, *supra* note 116; see also Samuel Yang et al., *China Proposes National Standards on Generative AI Security*, CHINA L. VISION (Nov. 10, 2023), <https://www.chinalawvision.com/2023/11/tmt/china-proposes-national-standards-on-generative-ai-security/> [<https://perma.cc/A2FB-7NWV>]; Zeyi Yang, *China Has a New Plan for Judging the Safety of Generative AI—and It's Packed with Details*, MIT TECH. REV. (Oct. 18, 2023), <https://www.technologyreview.com/2023/10/18/1081846/generative-ai-safety-censorship-china/> [<https://perma.cc/4RCV-FFR4>].

Meanwhile, China has endeavored to establish an ethics review system for A.I. in the past few years, but it remains in a nascent stage of development.<sup>299</sup> Enforcement is highly decentralized and relies heavily upon self-regulation by academic institutions, research institutes, health organizations, and firms.<sup>300</sup> Consequently, tracking and assessing the effectiveness of these reviews remain challenging, raising questions about their impact on changing developer behavior and mitigating potential A.I.-related risks.<sup>301</sup> Indeed, some leading Chinese LLMs, comparable to GPT-3.5 in capability, have not undergone rigorous testing for dangerous capabilities, nor have they been subjected to comprehensive alignment procedures beyond RLHF.<sup>302</sup> As Chinese A.I. capabilities advance, however, there is a growing need for more sophisticated alignment techniques, including tests for potentially hazardous capabilities such as deceptiveness, power-seeking behavior, and self-replication.<sup>303</sup> Although many Chinese labs have issued non-binding statements and some have even established A.I. ethics committees to guide firms in ethical decision-

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299. See Guānyú Gōngkāi Zhēngqiú Duì “Kējì Lúnlǐ Shēnchá Bǎnfǎ (Shíxíng)” Yìjiàn De Gōnggào (关于公开征求对《科技伦理审查办法（试行）》意见的公告) [Notice of Soliciting Public Opinions on the Trial Measures for Scientific and Technological Ethics Review] (published by the Ministry of Sci. & Tech., Apr. 4, 2023) [hereinafter Notice of Soliciting Public Opinions], [https://www.most.gov.cn/wscd/202304/t20230404\\_185388.html/](https://www.most.gov.cn/wscd/202304/t20230404_185388.html/) [<https://perma.cc/6LPW-PP2N>]; *China Rolls Out Pilot Ethical Review Measures on Scientific and Technological Activities*, GLOB. TIMES (Oct. 8, 2023, 9:20 PM), <https://www.globaltimes.cn/page/202310/1299448.shtml> [<https://perma.cc/3S99-6NYU>].

300. See Notice of Soliciting Public Opinions, *supra* note 299, art. 4. For example, leading academic institutions like Tsinghua University and Shanghai Jiao Tong University—as well as organizations such as the Chinese Academy of Science, BGI Tech Solutions, SenseTime, Alibaba, and Ant Group—have started implementing A.I. ethics reviews. See, e.g., *Qīnghuà Dàxué Kējì Lúnlǐ Wēiyuánhùi Chénglì* (清华大学科技伦理委员会成立) [*Tsinghua University Establishes a Science and Technology Ethics Committee*], TSINGHUA U. (Dec. 31, 2022), <https://www.tsinghua.edu.cn/info/1177/100966.htm> [<https://perma.cc/P9QA-V9C3>]; *Shànghǎi Jiāotōng Dàxué Chénglì Kējì Lúnlǐ Wēiyuánhùi* (上海交通大学成立科技伦理委员会) [*Shanghai Jiao Tong University Establishes a Science and Technology Ethics Committee*], SHANGHAI JIAO TONG U. (June 5, 2020), <https://plan.sjtu.edu.cn/info/1026/1651.htm> [<https://perma.cc/AYJ7-C95Q>].

301. CONCORDIA AI, *supra* note 232, at 17.

302. *Id.* at 63.

303. *Id.* In May 2024, Concordia AI published an updated report on A.I. safety in China, offering further insights into the current state of A.I. safety research in the country. CONCORDIA AI, THE STATE OF AI SAFETY IN CHINA: SPRING 2024 REPORT (2024), <https://concordia-ai.com/wp-content/uploads/2024/05/State-of-AI-Safety-in-China-Spring-2024-Report-public.pdf> [<https://perma.cc/F6Q3-2VHK>].

making, the practical implementation and adherence to these principles remains very opaque.<sup>304</sup>

Notably, although China trails the United States in developing cutting-edged A.I. models, its A.I. development and deployment still carry various risks, especially those related to unforeseen accidents.<sup>305</sup> Indeed, Bill Drexel and Hannah Kelley have sounded alarms over the risk of A.I. accidents in China, highlighting its relaxed approach towards technological hazards and its track record of mismanaging crises.<sup>306</sup> The escalating risks associated with China's A.I. development therefore merit serious attention from the global community. As Ian Bremmer and Mustafa Suleyman put it, "AI safety is determined by the lowest common denominator: . . . Because global AI governance is only as good as the worst-governed country, company, or technology, it must be watertight everywhere."<sup>307</sup> Yet many western politicians and policymakers have been reluctant to engage or cooperate with China on these issues. In 2023, the United Kingdom's decision to invite China to the A.I. Safety Summit sparked considerable controversy, with former Prime Minister Liz Truss labelling it a mistake.<sup>308</sup> Nonetheless, muddling ideology with A.I. safety is a serious mistake. When domestic laws and governance are lacking, international rules and cooperation can act as a substitute to fill in the void.<sup>309</sup>

Above all, the United States and China, the two most important A.I. superpowers, should work together to prevent the proliferation of advanced A.I. systems. Currently, the intense Sino-American tech

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304. CONCORDIA AI, *supra* note 232, at 66.

305. See, e.g., DAN HENDRYCKS ET AL., AN OVERVIEW OF CATASTROPHIC AI RISKS (Oct. 9, 2023), <https://arxiv.org/abs/2306.12001> [<https://perma.cc/S5MS-2X5Y>] (explaining that, in 2023, the Center for AI Safety identified four categories of catastrophic A.I. risks: malicious use, A.I. race dynamics, organizational risks, and the emergence of rogue A.I. systems).

306. Bill Drexel & Hannah Kelley, *China Is Flirting with Artificial Intelligence Catastrophe*, FOREIGN AFFS. (May 30, 2023), <https://www.foreignaffairs.com/china/china-flirting-ai-catastrophe> [<https://perma.cc/G653-29VQ>].

307. Ian Bremmer & Mustafa Suleyman, *The AI Power Paradox: Can States Learn to Govern Artificial Intelligence—Before It's Too Late?*, FOREIGN AFFS. (Aug. 16, 2023), <https://www.foreignaffairs.com/world/artificial-intelligence-power-paradox> [<https://perma.cc/BJ39-L3JP>].

308. Nicola Slawson, *Inviting China to UK AI Summit a Mistake, Truss Tells Sunak—As It Happened*, GUARDIAN (Oct. 26, 2023, 12:03 PM), <https://www.theguardian.com/politics/live/2023/oct/26/rishi-sunak-ai-summit-conservatives-labour-keir-starmer-latest-news> [<https://perma.cc/7B86-4A2Y>].

309. See, e.g., Nancy Boswell, *The Impact of International Law on Domestic Governance*, 97 AM. SOC'Y INT'L L. PROC. 133, 133 (2003).

rivalry is making it difficult to control A.I. risks.<sup>310</sup> Drexel and Kelley have urged the United States and the global community to intensify monitoring of potential safety issues in Chinese A.I. labs.<sup>311</sup> The problem, however, is that the United States is becoming less informed about China's A.I. developments over time. In fact, recent U.S. restrictions on technology exports to China are inadvertently encouraging China to pursue greater technological self-sufficiency, making it more difficult for the United States to gauge or mitigate risks emanating from China. A case in point is the United States tightening export restrictions on advanced A.I. chips in October 2023. This action has led Chinese companies such as Huawei to develop their own versions of Nvidia's best-selling chips in an attempt to fill the gap left by the export ban.<sup>312</sup> Industry analysts have even termed the U.S. export ban as "a huge gift" to Huawei's chip development efforts.<sup>313</sup> Thus, despite promising signs that the two countries are starting to collaborate on A.I. safety issues, the ongoing U.S. chip embargo on China continues to pose a formidable obstacle to meaningful cooperation.<sup>314</sup> To ensure that these collaborative efforts lead to significant and substantive progress, it is essential for the United States to reassess its approach to technology export controls: By prioritizing cooperation over competition and seeking common ground on A.I. safety, the two countries can jointly forge a future where A.I. technologies are developed and deployed responsibly with adequate safeguards against risks.

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310. See generally Zhang, *supra* note 49.

311. Drexel & Kelley, *supra* note 306.

312. Josh Ye, *US Chip Curbs Give Huawei a Chance to Fill the Nvidia Void in China*, REUTERS (Oct. 23, 2023, 7:59 PM), <https://www.reuters.com/technology/us-chip-curbs-give-huawei-chance-fill-nvidia-void-china-2023-10-20/> [<https://perma.cc/HN6X-EHJZ>].

313. *Id.*

314. See, e.g., Murgia Madhumita, *White House Science Chief Signals US-China Cooperation on AI Safety*, FIN. TIMES (Jan. 25, 2024), <https://www.ft.com/content/94b9878b-9412-4dbc-83ba-aac2baadaf9>; Michael Martina & Trevor Hunnicutt, *US, China Meet in Geneva to Discuss AI Risks*, REUTERS (May 14, 2024, 4:52 AM), <https://www.reuters.com/technology/us-china-meet-geneva-discuss-ai-risks-2024-05-13/> [<https://perma.cc/R2FN-52QX>]; Graham Webster & Ryan Hass, *A Roadmap for US-China AI Dialogue*, BROOKINGS (Jan. 10, 2024), <https://www.brookings.edu/articles/a-roadmap-for-a-us-china-ai-dialogue/> [<https://perma.cc/49UP-FF3Q>]; *US Needs to Abandon Hypocrisy in AI Cooperation with China*, GLOB. TIMES (May 15, 2024, 9:44 PM), <https://www.globaltimes.cn/page/202405/1312355.shtml> [<https://perma.cc/H233-9GBE>].

## CONCLUSION

Contrary to the common perception that Chinese regulation is constraining its A.I. development, this Article draws attention to the expressive powers of the laws in enabling industry growth. The Chinese government has employed a bifurcated approach in regulating A.I. technologies. On the one hand, it is actively implementing control over A.I.-generated content. On the other, it is signaling a lenient and cautious approach towards A.I. regulation to the market and to regulatory bodies while coordinating various stakeholders to forge ahead with A.I. development. In practice, the Chinese regulatory authorities have prioritized development rather than strict information control, adopting an industry-friendly stance that gives Chinese firms a competitive advantage against their American and European counterparts. However, this permissive regulatory approach is fraught with risks. Given China's weak market conditions, poor legal institutions, and a chronic information deficit in the hierarchical regulatory system, a lax regulatory environment is conducive to A.I.-enabled accidents and even disasters. Therefore, the issues surrounding A.I. safety in China warrant increased scrutiny from the global A.I. community, and there is a pressing need for international cooperation to address the deficiencies in domestic institutions.