

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

By Angela Huyue Zhang*

In recent years, China has emerged as a pioneer in formulating some of the world's earliest and most comprehensive regulations concerning artificial intelligence (AI) services. Thus far, much attention has focused on the restrictive nature of these rules, raising concerns that they might constrain Chinese AI development. This article is the first to draw attention to the expressive powers of Chinese AI legislations, particularly its information and coordination functions, to enable the AI industry. Recent legislative measures, such as the interim measures to regulate generative AI and various local AI legislations, 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 strategic lenient approach to regulation may therefore offer its AI 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 AI-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 country to tackle the safety challenges in AI governance.

* Angela Huyue Zhang is a professor at the University of Hong Kong and the Director of the Philip K. H. Wong Center for Chinese Law. She will join the University of Southern California as a Professor of Law in fall 2024. Angela thanks Anu Bradford, Curtis Milhaupt, S. Alex Yang, Jamie Horsley, Elizabeth Donkervoort and the workshop participants at Columbia and NYU for insightful comments on an earlier draft. Angela also thanks Jingxian Zeng for her excellent research assistance. She welcomes any comments and criticisms on this draft. Email: angelaz@hku.hk. For more information about Angela, please visit her website at www.angelazhang.net and follow her on Twitter @AngelaZhangHK.

I. Introduction.....	3
II. The Salience of Law’s Expressive Powers in China.....	8
A. Policy Above the Law.....	10
B. Law as a Credible Policy Signal.....	12
C. Law as a Mobilization Device.....	13
III. Applying the Expressive Theory to Chinese AI Legislations	15
1. A Strong Pro-Growth Policy Signal	16
2. The “Whole of Society” Mobilization.....	19
a) Central Bureaucracy.....	21
b) Industry Participants.....	24
c) Data and Computing Power	25
d) Global Standards	29
e) Local Governments	30
IV. Law as a Competitive Strategy	31
V. Risk and Cooperation.....	34
VI. Conclusion	37

I. Introduction

In recent years, China has emerged as a pioneer in formulating some of the earliest and most comprehensive legislations regulating artificial intelligence (AI) services.¹ In late 2021, the country unveiled the world's first comprehensive regulation specifically designed to regulate recommendation systems powered by algorithms.² Subsequently, the Cyber Space 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 AI advancement.³ When ChatGPT emerged in November 2022, Chinese regulators reacted quickly with a spate of enforcement and legislative actions.⁴ The CAC released draft measures on generative AI in April 2023, making China the first country to propose comprehensive rules to regulate this transformative technology.⁵ Within three months, China finalized the rules and introduced a comprehensive range of obligations for providers of generative AI services.⁶ Similar to recommendation algorithms and deep fakes, those generative AI services that can shape public opinion must undergo a security assessment and register their algorithms with the CAC before market launch.⁷ This requirement for ex ante

¹ Matt Sheehan, *China's AI Regulations and How They Get Made*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Jul. 10, 2023), <https://carnegieendowment.org/2023/07/10/china-s-ai-regulations-and-how-they-get-made-pub-90117>.

² Hulianwang Xinxi Fuwu Suanfa Tuijian Guanli Guiding (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 CAC, the MIIT, the MPS, and the SAMR, Dec. 31, 2021, effective Mar. 1, 2022) [hereinafter *Algorithmic Regulation*], http://www.cac.gov.cn/2022-01/04/c_1642894606364259.htm.

³ Hulianwang Xinxi Fuwu Shendu Hecheng Guanli Guiding (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 CAC, the MIIT, and the MPS, Nov. 25, 2022, effective Jan. 10, 2023) [hereinafter *Deep Synthesis Regulation*], https://www.gov.cn/zhengce/zhengceku/2022-12/12/content_5731431.htm.

⁴ By February 2023, Chinese authorities had prohibited Tencent and Ant Group from integrating ChatGPT into their platforms, instructing them to ensure that ChatGPT could not be accessed either directly or via third-party apps within their ecosystem. See Cissy Zhou, *China Tells Big Tech Companies Not to Offer ChatGPT Services*, NIKKEI ASIA (Feb. 22, 2023), <https://asia.nikkei.com/Business/China-tech/China-tells-big-tech-companies-not-to-offer-ChatGPT-services>. Subsequently, Apple was ordered to remove a hundred generative AI chatbot apps from the Chinese app store. Xinmei Shen, *Apple Removes over a Hundred ChatGPT-like Apps in China As Tighter Regulations Set to Take Effect*, SOUTH CHINA MORNING POST (Aug. 1, 2023), <https://www.scmp.com/tech/policy/article/3229628/apple-removes-over-hundred-chatgpt-apps-china-tighter-regulations-set-take-effect>.

⁵ Guojia Hulianwang Xinxi Bangongshi Guanyu “Shengchengshi Rengong Zhineng Fuwu Guanli Banfa (Zhengqiu Yijian Gao)” Gongkai Zhengqiu Yijian de Tongzhi (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 AI Services (Draft for Comment)] [hereinafter *Draft Measures for Generative AI*], CYBERSPACE ADMINISTRATION OF CHINA (Apr. 11, 2023), http://www.cac.gov.cn/2023-04/11/c_1682854275475410.htm.

⁶ Shengchengshi Rengong Zhineng Fuwu Guanli Zanxing Banfa (生成式人工智能服务管理暂行办法) [Interim Measures for the Management of Generative AI Services] (promulgated by the CAC, the NDRC, the Ministry of Education, the MOST, the MIIT, the Ministry of Public Security, and the National Radio and Television Administration, Jul. 10, 2023, effective Aug. 15, 2023) [hereinafter *Interim Measures for Generative AI*], http://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm.

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. Lizhi Yuan & Lei Zhu, *Comments on China's Interim Measures on Generative AI Services*, JINGTIAN & GONGCHENG (Oct. 26, 2023), <https://www.linkedin.com/pulse/quick-comments-chinas-interim-measures-generative-ai-b0j3e/>.

security assessment makes China the first and only country that has mandated a licensing requirement for the launch of such services.

China's recent AI legislative developments, as detailed above, are frequently regarded as indicative of the country's ambition and capacity to become a global leader in AI regulation and governance.⁸ Matt Sheehan, a highly-regarded expert in Chinese AI policy, suggests that the United States can actually gain many valuable insights from China's targeted and iterative approach to AI governance.⁹ Meanwhile, industry experts caution that Beijing's regulatory approach could become a potential obstacle to Chinese innovation, highlighting the extensive range of obligations imposed on tech firms, encompassing content moderation, data protection, intellectual property and ethical issues.¹⁰ 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.¹¹ The velocity of China's tech crackdown dwarfed the more measured pace of the US and European regulators, who are often constrained by lengthy legislative processes and judicial oversight.¹² 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.¹³

In contrast to the common 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, reducing the cost of collective mobilization against authoritarian rule.¹⁴ The Facebook Cambridge Analytica scandal has heightened Chinese authorities' vigilance about the influence of content recommendation algorithms on political discourse and their potential to exacerbate political polarization.¹⁵ An early example

⁸ *Id.* See also Gilad Abiri & Yue Huang, *A Red Flag? China's Generative AI Dilemma*, 37 HAR. J. L. & TECH 1 (2023).

⁹ Matt Sheehan, *What the U.S. Can Learn From China About Regulating AI*, FOREIGN POLICY (Sep. 12, 2023), <https://foreignpolicy.com/2023/09/12/ai-artificial-intelligence-regulation-law-china-us-schumer-congress/>.

¹⁰ Meaghan Tobin, *Will China Overtake the U.S. on AI? Probably Not. Here's Why.*, THE WASHINGTON POST (Jul. 9, 2023), <https://www.washingtonpost.com/world/2023/07/03/china-us-ai-technology-chatgpt/>; Helen Toner et al., *The Illusion of China's AI Prowess*, FOREIGN AFFAIRS (Jun. 2, 2023), <https://www.foreignaffairs.com/china/illusion-chinas-ai-prowess-regulation-helen-toner>.

¹¹ Angela Huyue Zhang, *Agility Over Stability: China's Great Reversal in Regulating the Platform Economy*, 63 HARV. INT. LAW J. 301, 302 (2022).

¹² See ANGELA HUYUE ZHANG, *HIGH WIRE: HOW CHINA REGULATES BIG TECH AND GOVERNS ITS ECONOMY* 3 (2024).

¹³ *Id.* at 262.

¹⁴ Larry Diamond, *Liberation Technology*, in *LIBERATION TECHNOLOGY: SOCIAL MEDIA AND THE STRUGGLE FOR DEMOCRACY* (Larry Diamond & Marc Plattner eds., 2012). For instance, during the Jasmine Revolution in the Middle East between 2010 and 2011, the social media functioned as an important coordination tool to mobilize and orchestrate protests that led to the collapse of the regimes. See also ZEYNEP TUFEKCI, *TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST* (2017).

¹⁵ Tracy Qu & Xinmei Shen, *Controlling Hearts and Minds: China Cracks Down on Content Algorithms to Make Sure the Communist Party Is Still Boss*, SOUTH CHINA MORNING POST (Sep. 11, 2021), <https://www.scmp.com/tech/policy/article/3148321/controlling-hearts-and-minds-china-cracks-down-content-algorithms-make>.

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 for circulating inappropriate content.¹⁶ ByteDance attributed this to its AI algorithms, which recommended videos based on user preferences and popularity without making value judgements on the content's quality or truthfulness.¹⁷ In response, Chinese authorities mandated corrective measures, including the integration of AI and human oversight to align content with socialist values.¹⁸ Subsequently, the CAC called on major social media platforms to eliminate accounts spreading misinformation, pornography, or illegal advertisements.¹⁹ Such fear that AI will undermine its control over public discourse has been the major driver behind the Chinese government's proactive stance in regulating AI technology and its applications.

On the other hand, technology can enhance governmental surveillance capabilities and bolster pre-emptive repression, thereby strengthening social stability.²⁰ 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 simultaneously assumes multiple roles in the AI ecosystem as a policymaker,²¹ an investor,²² a supplier²³ and a customer.²⁴ Given its extensive and deep involvement in the AI ecosystem, the Chinese government lacks a strong commitment to impose strict regulation on the technology.²⁵ The

¹⁶ 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/>.

¹⁷ *Id.*

¹⁸ Mengfan Chen et al., *Four News Apps Removed Amid Tightening Content Crackdown*, CAIXIN GLOBAL (Apr. 10, 2018), <https://www.caixinglobal.com/2018-04-10/four-news-apps-removed-amid-tightening-content-crackdown-101232219.html>.

¹⁹ *Internet Regulator Strengthens Crackdown on Illicit Social Media Activity*, XINHUA (Nov. 17, 2018), http://english.www.gov.cn/state_council/ministries/2018/11/17/content_281476393842708.htm.

²⁰ Tiberiu Dragu & Yonatan Lupu, *Digital Authoritarianism and the Future of Human Rights*, 75 INT. ORGAN. 991 (2021); see also Martin Beraja et al., *AI-Tocracy*, 138 Q. J. ECON. 1349 (2023).

²¹ Between 2015 and 2018, the central government introduced at least ten AI-related initiatives, each aiming to elevate the entire AI value chain. Alberto Arenal et al., *Innovation Ecosystems Theory Revisited: The Case of Artificial Intelligence in China*, 44 TELECOMMUN. POLICY. 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 NAT. MACH. INTELL. 312 (2020).

²² The Chinese government plays a crucial role as a major financier in the AI sector, investing billions of yuan to support the forefront of technological innovation. A key strategy involves direct investment in AI enterprises, predominantly executed through guidance funds. Ngor Luong et al., *Understanding Chinese Government Guidance Funds*, CENTER FOR SECURITY AND EMERGING TECHNOLOGY (Mar. 2021), <https://cset.georgetown.edu/publication/understanding-chinese-government-guidance-funds/>.

²³ Recent empirical studies have found that government procurement has been pivotal in the rise of Chinese AI firms in facial recognition technology, largely due to their access to these vast governmental data resources. See Beraja et al., *supra* note 20. See also Martin Beraja et al., *Data-Intensive Innovation and the State: Evidence from AI Firms in China*, 90 REV. ECON. STUD. 1701 (2023).

²⁴ 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. Katherine Atha et al., *China's Smart Cities Development*, U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION (Apr. 29, 2020), <https://www.uscc.gov/research/chinas-smart-cities-development>.

²⁵ Angela Huyue Zhang, *China Has Too Much Invested in AI to Smother Its Development*, NIKKEI ASIA (May 18, 2023), <https://asia.nikkei.com/Opinion/China-has-too-much-invested-in-AI-to-smother-its-development>.

tightening of US export restrictions, which hinder Chinese AI firms' access to advanced AI chips, have only intensified the Sino-US tech rivalry, thereby further diminishing the government's incentive for strict regulation.²⁶ Moreover, although AI can pose a variety of social harms, such as income inequality, job loss, discrimination, misinformation and breaches of privacy, these issues have not yet evolved into immediate or significant threats to social and political stability.²⁷ Meanwhile, the Chinese government also faces significant constraints in imposing tough regulation on AI. Since early 2023, the Chinese economy has entered into a slump, with a noticeable downturn in consumption and production and increased unemployment.²⁸ The government's focus has therefore shifted towards revitalizing the economy and boosting market confidence via stimulus packages and regulatory easing.²⁹

In a departure from existing literature which tends to focus on the restrictive nature of Chinese AI legislations, this article represents the first attempt to draw attention to the enabling aspects of these rules. To be sure, the concept that law can be used to strategically enable industrial growth is not entirely new. Anupam Chander has forcefully argued that law has enabled the rise of Silicon Valley.³⁰ 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.³¹ What distinguishes China from the above examples, however, is not its use of law to bolster its AI industry, but rather its heavy reliance on the "expressive power of laws", a term coined by Richard McAdams, to enable AI development.³² In contrast with the prevailing legal theory which focuses on how sanctions and legitimacy influence people's behaviour, McAdams focused on its information function and coordination functions.³³ He finds that law can send important signals about societal norms and expectations, while

²⁶ Jane Zhang & Jesse Levine, *Why AI Is Next Flashpoint in US-China Tech Rivalry*, BLOOMBERG (Jun. 29, 2023), <https://www.bloomberg.com/news/articles/2023-06-29/what-is-the-state-of-us-china-competition-in-ai?embedded-checkout=true>.

²⁷ Daron Acemoglu, *Harms of AI*, in THE OXFORD HANDBOOK OF AI GOVERNANCE (Justin B. Bullock et al. eds., 2022); see also Valeri Capraro et al., *The Impact of Generative Artificial Intelligence on Socioeconomic Inequalities and Policy Making*, SSRN (Jan. 18, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4666103.

²⁸ Yiping Huang, *Has the Chinese Economy Hit the Wall*, EAST ASIA FORUM (Oct. 8, 2023), <https://eastasiaforum.org/2023/10/08/has-the-chinese-economy-hit-the-wall/#:~:text=After%20robust%20economic%20activity%20in.and%20production%2C%20and%20increased%20unemployment>.

²⁹ Evelyn Cheng, *China Is Ramping Up Stimulus to Boost Market Confidence—But Is It Enough?*, CNBC (Jan. 25, 2024), <https://www.cnbc.com/2024/01/25/china-is-ramping-up-stimulus-to-boost-market-confidence-is-it-enough.html>; Nathaniel Taplin, *China's Crisis of Confidence in Six Charts*, WALL ST. J. (Aug. 25, 2023), <https://www.wsj.com/world/china/chinas-crisis-of-confidence-in-six-charts-8fd36f9f>; Ken D. Kumayama et al., *China Intends to Ease Controls over Cross-Border Data Transfer*, SKADDEN (Nov. 7, 2023), <https://www.skadden.com/insights/publications/2023/11/china-intends-to-ease-controls>.

³⁰ 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 fuelled the growth of startups in Silicon Valley.)

³¹ JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATION CAPITALISM 45 (2019) (noting that the interplay of contractual and trade secrecy claims, along with the technical control over networks enjoyed by firms, has enabled them to assert rights over data flows.)

³² RICHARD H. MCADAMS, THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS (2015).

³³ *Id.* at 1-8.

coordinating people's behaviour within the society.³⁴ In the context of China's AI strategy, the expressive powers of the laws are particularly salient in the Interim Measures for the Management of Generative AI Services (Interim Measures) and several local AI legislations.³⁵ These legislations sent strong pro-growth signals to the investment and business community, while attempting to facilitate stakeholder coordination to advance AI development.³⁶ Consequently, the Chinese government has adopted a bifurcated approach to AI regulation by maintaining strict information control juxtaposed with industry-friendly regulation.³⁷ China's dual approach in AI regulation keenly reflects the complex utility function of the Chinese Communist Party (CCP), who seeks legitimacy through multiple sources including economic growth, social stability, and nationalism.³⁸

Understanding the nuances of China's AI regulatory strategy is not only crucial for predicting the trajectory of its technological development, it also has important implications on the global tech rivalry.³⁹ At the moment, major jurisdictions including both the United States and the EU are actively exploring the establishment of a comprehensive AI regulatory framework. The European Parliament has approved the landmark AI Act, which is expected to come into force in 2024.⁴⁰ Similarly, AI regulation has become a focal point of debate in the United States, culminating in the Biden Administration's introduction of a sweeping executive order in October 2023.⁴¹ Concurrently, leading US AI firms are involved in various litigations and face mounting pressure to negotiate licenses with media and other content outlets for the use of their content as training data.⁴² In contrast, China's relatively more relaxed regulatory environment may offer its AI firms a short-term competitive advantage over their counterparts in the EU and the US.⁴³

At the same time, China's approach could give rise to serious regulatory lag, potentially more acute than that of its Western counterparts.⁴⁴ This situation is aggravated by China's weak market conditions, poor legal institutions, and the tightly coupled political system, potentially

³⁴ *Id.* at 5-6.

³⁵ *See infra* Part III.

³⁶ *Id.*

³⁷ *See infra* Part III.

³⁸ *See* Andre Lalibert'e & 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* (Andre Lalibert'e & Marc Lanteigne eds., 2008).

³⁹ *See generally* ANU BRADFORD, *DIGITAL EMPIRES: THE GLOBAL BATTLE TO REGULATE TECHNOLOGY* (2023).

⁴⁰ European Parliament, Artificial Intelligence Act: MEPs Adopt Landmark Law (March 13, 2024), [Artificial Intelligence Act: MEPs adopt landmark law | News | European Parliament \(europa.eu\)](https://www.europa.eu/press-room/en/infographic-artificial-intelligence-act)

⁴¹ *FACT SHEET: President Biden Issues Executive Order on Safe, Secure, and Trustworthy Artificial Intelligence*, WHITE HOUSE (Oct. 30, 2023) [hereinafter *Biden's AI Executive Order*], <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/>.

⁴² *Id.*

⁴³ 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>.

⁴⁴ *See infra* Part V.

leading to latent risks that could escalate into AI-related crises.⁴⁵ It is important to clarify that the increased AI 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 AI 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 AI safety risks.⁴⁶ Despite warnings from prominent computer scientists and industry experts, the potential risks associated with AI safety remain highly speculative.⁴⁷ Consequently, by the time the full impact of AI harms become apparent to top policymakers, it could be too late for effective reversal or mitigation.⁴⁸ This dynamic complexity of China's AI regulation therefore underscores the urgent need for increased international dialogue and collaboration with the country to tackle the safety challenges in AI regulation.⁴⁹

This article is structured as follows. Part II 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 III examines China's Interim Measures and local AI legislations, showcasing how China seeks to bolster the AI industry by sending strong policy signals and coordinating stakeholders involved in the AI ecosystem. Part IV discusses how China's strategic lenient regulatory approach may afford Chinese firms a competitive advantage over its European and US counterparts. Part V 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. The article concludes in Part VI.

II. The Salience of Law's Expressive Powers in China

Prior literature on legal compliance generally revolves around two theories: deterrence theory, which posits that legal compliance is motivated by the desire to avoid sanctions, and the theory of "legitimate moral authority," which suggests that people obey the law out of a sense of duty, irrespective of the likelihood of enforcement.⁵⁰ Frederick Schauer, a notable proponent of deterrence theory, has argued that legal order rests on the exercise of coercion by a state with a monopoly on legitimate force, thereby deterring people to disobey the law.⁵¹ Conversely, Tom Tyler has empirically demonstrated that people choose to obey the law because they trust the

⁴⁵ See *infra* Part V.

⁴⁶ Angela Huyue Zhang, *China-U.S. Tech Rivalry Is Making It Harder to Contain AI Risks*, NIKKEI ASIA (Oct. 31, 2023), <https://asia.nikkei.com/Opinion/China-U.S.-tech-rivalry-is-making-it-harder-to-contain-AI-risks>; Henrik Skaug Sætra & John Danaher, *Resolving the Battle of Short- vs. Long-Term AI Risks*, AI ETHICS (Sep. 4, 2023), <https://doi.org/10.1007/s43681-023-00336-y>.

⁴⁷ James Vincent, *Top AI Researchers and CEOs Warn Against "Risk of Extinction" in 22-Word Statement*, THE VERGE (May 30, 2023), <https://www.theverge.com/2023/5/30/23742005/ai-risk-warning-22-word-statement-google-deepmind-openai>.

⁴⁸ See *infra* Part V.

⁴⁹ *Id.*

⁵⁰ See MCADAMS, *supra* note 32, at 2-3.

⁵¹ See generally FRED SCHAUER, THE FORCE OF LAW (2015).

procedures and processes employed by authorities.⁵² In a departure from the above theories, Richard McAdams proposed a third account of legal compliance. Drawing upon Thomas Schelling's work on game theory, McAdams argues that laws can act as focal points, guiding individuals to coordinate their behavior within society.⁵³ He further highlighted the information function of law, which shapes the beliefs and behaviors of individuals by signalling 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.⁵⁴ Curtis Milhaupt and Katherina Pistor have also delved into the "expressive power" of the law within corporate governance.⁵⁵ 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.⁵⁶ They observed that laws are instrumental in coordinating and managing relationships between market participants which is essential for streamlined market activities.⁵⁷ 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.⁵⁸

Thus far, the vast majority of the study on Chinese law has focused on its coercive power, while there is little scholarship on its expressive powers. Scholars have explored how law can serve as an instrument for political and social control, cultivating legal legitimacy for the regime, as well as strengthening agency supervision for bureaucratic control.⁵⁹ Meanwhile, an influential strand of scholarship has examined how the Chinese economy has grown in the absence of formal law.⁶⁰ But there are a few notable exceptions. Milhaupt and Pistor have argued that the signalling value of the Chinese corporate law has often surpassed its protective value over the course of China's legal developments since the early 1980s.⁶¹ Guanghua Yu has similarly

⁵² Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 3 CRIME & JUST. 283 (2003); see also generally TOM R. TYLER, WHY PEOPLE OBEY THE LAW (2006).

⁵³ See MCADAMS, *supra* note 32, at 22.

⁵⁴ Cass R. Sunstein, *On the Expressive Functions of Law*, 5 EAST EUR. CONST. REV. 66 (1996).

⁵⁵ CURTIS J. MILHAUPT & KATHARINA PISTOR, LAW & CAPITALISM: WHAT CORPORATE CRISES REVEAL ABOUT LEGAL SYSTEMS AND ECONOMIC DEVELOPMENT AROUND THE WORLD (2008).

⁵⁶ *Id.* at 4.

⁵⁷ *Id.* at 32-33.

⁵⁸ *Id.* at 34.

⁵⁹ 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 1-22 (Tom Ginsburg & Tamir Moustafa eds., 2008); Peter Solomon, *Courts and Judges in Authoritarian Regimes*, 60 WORLD POLITICS 122 (2007); Taisu Zhang & Tom Ginsburg, *China's Turn toward Law*, 59 VA. J. INT'L L. 306 (2019).

⁶⁰ Franklin Allen et al., *Law, Finance, and Economic Growth in China*, 77 J. FINANC. ECON. 57 (2005); Frank Upham, *From Demsetz to Deng: Speculations on the Implications of Chinese Growth for Law and Development Theory*, 41 N.Y.U. J. INT'L L. & POL. 551 (2009); Donald Clarke et al., *The Role of Law in China's Economic Development in China's Great Economic Transformation*, in CHINA'S GREAT ECONOMIC TRANSFORMATION 375-428 (Loren Brandt & Thomas G Rawski eds., 2008).

⁶¹ MILHAUPT & PISTOR, *supra* note 55, 144.

highlighted the role of Chinese law in signaling and coordinating within the corporate and commercial spheres.⁶² Building upon existing works, this article argues that the expressive powers of the law are particularly salient in China for three reasons: first, policy often trumps the law, especially when law is uncertain or ambiguous; second, law sends a more credible signal when there exist conflicting policy signals; and third, law is often used as a coordination device during law enforcement campaigns. We will delve into each of these factors in detail below.

A. Policy Above the Law

Scholars who study China's legal system have identified a dichotomy within China's legal system. For instance, Yuhua Wang has observed that authoritarian rulers respect a partial rule of law in which judicial fairness is usually respected in the commercial realm but not in the political realm.⁶³ Echoing this view, Hualing Fu and Michael Dowdle have introduced the concept of authoritarian legality as characterized by a dual system: one being a normative state, where legal principles are significant, and the other, a prerogative state, where political considerations override legal norms.⁶⁴ Shucheng Wang further elaborates on this distinction by differentiating between two forms of authoritarian politics: "normal" and "exceptional".⁶⁵ In the realm of normal politics, laws are stable and predictable, and governance tends to be rule-based.⁶⁶ Conversely, in exceptional politics, laws are temporarily redefined to align with specific socio-political objectives.⁶⁷ This nuanced understanding of China's legal operations is encapsulated in a popular saying among Chinese lawyers: "small cases are adjudicated by law, while major cases are decided by politics."

Because law is never complete, 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.⁶⁸ Because officials are evaluated through a top-down *nomenklatura* process, the whole bureaucracy is organized based on an upward accountability system.⁶⁹ 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.⁷⁰ As observed by Kai Hang Ng and Xin He, the judiciary is embedded in a complex network of

⁶² See Guanghua Yu, *The Other Roles of Law: Signaling, Self-Commitment and Coordination*, 12 AUST. J. ASIAN LAW 106, 114-126 (2010).

⁶³ YUHUA WANG, TYING THE AUTOCRAT'S HANDS: THE RISE OF THE RULE OF LAW IN CHINA 3 (2014).

⁶⁴ Hualing Fu & Michael Dowdle, *The Concept of Authoritarian Legality*, in *AUTHORITARIAN LEGALITY IN ASIA: FORMATION, DEVELOPMENT AND TRANSITION* 67 (Weitseng Chen & Hualing Fu eds., 2020).

⁶⁵ WANG, *supra* note 59, at 174.

⁶⁶ *Id.*

⁶⁷ *Id.* at 175-176.

⁶⁸ Xueguang Zhou, *Organizational Response to Covid-19 Crisis: Reflections on the Chinese Bureaucracy and Its Resilience*, 16 MANAG. ORGAN. REV. 473, 479 (2020).

⁶⁹ *Id.* at 480.

⁷⁰ Benjamin Liebman, *China's Courts: Restricted Reforms*, 191 CHINA Q. 620, 627-628.

external and internal actors, all of which exert various levels of influence on judges and cases.⁷¹ Similar to the administrative agencies, Chinese courts are expected to conform to the central government's policy directives when deciding cases.⁷²

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. Chinese regulation of the consumer tech industry offers a prime example. In the early days of development, this sector enjoyed tremendous support from the central government. In the face of an overall national agenda of fostering innovation and high uncertainty about the consequences of regulation, agencies tread carefully by taking lax actions against Chinese tech firms.⁷³ There was minimal merger enforcement in the tech sector, which partly encouraged the frenetic expansion of Chinese tech giants and resulted in disorderly competition.⁷⁴ Even when actions were taken, they were often lenient and thus lacked deterrent effects.⁷⁵

When the law is ambiguous or silent on an issue, any variation of the law carries significant information value about any shifts in policy. 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 itself becomes a source of law. Consider the example of the variable interest entity (VIE) structure in China. Over the past two decades, almost all Chinese tech firms had adopted VIEs to raise capital overseas and circumvent the Chinese government's restrictions on foreign investment.⁷⁶ From the start, the legal status of such VIE structures has been highly controversial.⁷⁷ While not outrightly contravening any specific law, the use of VIEs arguably contravenes the spirit of the Chinese law which clearly forbids foreign investments in the Chinese internet sector.⁷⁸ 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.⁷⁹ For instance, a draft Foreign Investment Law proposed by the Ministry of Commerce in 2015 suggested imposing stricter controls on VIEs,

⁷¹ KWAI HANG NG & XIN HE, *EMBEDDED COURTS: JUDICIAL DECISION-MAKING IN CHINA* (2017).

⁷² Xin He, *Pressures on Chinese Judges under Xi*, 85 CHINA J. 49 (2021).

⁷³ Zhang, *supra* note 11, at 324.

⁷⁴ ZHANG, *supra* note 12, at 106.

⁷⁵ *Id.* at 110-117.

⁷⁶ 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.

⁷⁷ Thomas Y. Man, *Policy Above Law: VIE and Foreign Investment Regulation in China*, 3 PEKING U. TRANSNAT'L L. REV. 215, 217 (2015).

⁷⁸ *Id.* at 217-218.

⁷⁹ Marcia Ellis et al., *The VIE Structure: Past, Present and Future – Part II*, HONG KONG LAWYER (Jul. 2020), <https://www.hk-lawyer.org/content/vie-structure-past-present-and-future---part-ii>.

casting a bleak outlook for such structures.⁸⁰ 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.⁸¹ For many investors and practitioners, this deliberate omission sent a strong positive policy signal that the Chinese government intends to tolerate the VIE structure.⁸²

B. Law as a Credible Policy Signal

Second, the legislative process serves as a more costly signalling mechanism than policymaking. Power fragmentation is a defining feature of Chinese politics, with each government department pursuing its own unique mission and objective.⁸³ This often leads to departments holding conflicting views on certain issues and sending mixed policy signals. 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.⁸⁴ 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 signalling".⁸⁵ The successful passage of a law is an indication that there is strong political support behind its adoption.⁸⁶ As Eric Rasmusen put it: "victory communicates political power."⁸⁷ As a result, the final laws often represent a compromise that delivers a more credible signal of the prevailing policy preference.

Indeed, the higher the level of the law, the more powerful stakeholders are involved in the legislative process, thus sending a stronger policy signal. During the US-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 intellectual property theft.⁸⁸ From the perspective of the US trade negotiators, Chinese national laws offer more credible commitments to the Sino-US trade agreements.⁸⁹ Because national laws are implemented by many actors, including the various administrative agencies and the judiciary

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ See KENNETH LIEBERTHAL & MICHEL OKSENBERG, *POLICY MAKING IN CHINA: LEADERS, STRUCTURES, AND PROCESSES* (1988); see SUSAN 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 (2014).

⁸⁴ See Jingting Deng & Pinxin Liu, *Consultative Authoritarianism: The Drafting of China's Internet Security Law and E-Commerce Law*, 26 J. CONTEMPORARY CHINA 679, 686 (2017).

⁸⁵ Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 340 (2000).

⁸⁶ *Id.* at 365.

⁸⁷ Eric Rasmusen, *Law, Coercion, and Expression: A Review Essay on Frederic Schauer's The Force of Law and Richard McAdams' The Expressive Powers of Law*, 55 J. ECON. LIT. 1098, 1110 (2017).

⁸⁸ Angela Huyue Zhang, *The U.S.-China Trade Negotiation: A Contract Theory Perspective*, 51 GEO. J. INT'L L. 809, 826-827.

⁸⁹ *Id.* at 827.

at both the local and central levels, it would be more difficult for China to renege on such commitments.⁹⁰

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. The first draft of the E-Commerce Law released in 2017 dedicated eight detailed provisions to the protection of e-commerce data.⁹¹ However, after intensive lobbying from the tech firms, most of these provisions were scrapped in subsequent versions.⁹² The final law, which seems quite lenient, sent a strong pro-growth signal to the industry and the investment community. This light-touch regulatory environment helped fuel the growth of the domestic e-commerce market, which has become the largest since 2013.⁹³ A more recent example is China's easing of overseas data transfers. In September 2023, the CAC released new draft rules rolling back some of the more onerous restrictions on cross-border data transfer, in response to the mounting complaints from businesses and investors in China.⁹⁴ According to the proposed guidelines, the vast bulk of business and personal activity involving cross-border data transfer will no longer need to go through a security assessment.⁹⁵ Instead, businesses only need to conduct self-assessment in many situations, significantly easing their regulatory burden.⁹⁶ This proposed amendment sent a strong policy signal that the Chinese government is trying to ease regulation in order to shore up investor confidence amid an economic slowdown.⁹⁷

C. Law as a Mobilization Device

Milhaupt and Pistor have long succinctly observed that “centralized systems tend to be coordinating, whereas decentralized systems tend to engender a protective function of law”.⁹⁸ 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 and overcome bureaucratic resistance and rigidity.⁹⁹ In fact, this strategy

⁹⁰ *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).

⁹¹ Dianzi Shangwu Fa Cao'an (电子商务法草案) [Draft of the Electronic Commerce Law], DYHZDL.CN (Jan. 4, 2017), <https://www.dyhzdl.cn/k/doc/a83eda6c1611cc7931b765ce050876323112746c.html>.

⁹² Lavender Au, *Why China Crushed Its Tech Giants*, WIRED (Sep. 27, 2021), <https://www.wired.co.uk/article/china-tech-giants-policy>.

⁹³ ZHANG, *supra* note 12, at 99.

⁹⁴ Jiahui Huang, *China Proposes Easing of Cross-Border Data Controls*, WALL ST. J. (Sep. 29, 2023), <https://www.wsj.com/world/china/china-proposes-easing-of-cross-border-data-controls-df3e67e3>.

⁹⁵ *Id.*

⁹⁶ ZHANG, *supra* note 12, at 153.

⁹⁷ *Id.*

⁹⁸ MILHAUPT & PISTOR, *supra* note 55, 7.

⁹⁹ See, e.g., Nicole Ning Liu et al., *Campaign-style Enforcement and Regulatory Compliance*, 75 PUB. ADMIN. REV. 85 (2015); Benjamin van Rooij, *The Campaign Enforcement Style: Chinese Practice in Context and*

traces its origins back to the revolutionary period, where mass mobilization, or yundong, was a cornerstone of Mao's governance approach. Although mass campaigns have largely vanished after Mao, the Chinese government continues to employ campaign techniques, for instance by mobilizing grassroots party networks along with propaganda blitzes intended to enlist mass support.¹⁰⁰ 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.¹⁰¹ This approach underscores the government's reliance not only on the 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.¹⁰² These legal measures are designed to address gaps in existing laws and procedural issues, thereby enhancing the effectiveness of the campaign.¹⁰³ The introduction of new legislation not only raises awareness of government policies but also fosters a higher degree of compliance and responsiveness.¹⁰⁴ As law becomes a source of authority, government intervention also gains more legitimacy among the Chinese public. The information and coordination functions of the 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 the 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

Comparison, in *COMPARATIVE LAW AND REGULATION: UNDERSTANDING THE GLOBAL REGULATORY PROCESS* 217–237 (Francesca Bignami & David Zaring eds., 2016).

¹⁰⁰ Elizabeth J. Perry, *Mass Campaigns to Managed Campaigns: "Constructing A New Socialist Countryside"*, in *MAO'S INVISIBLE HAND* 50 (Elizabeth J. Perry & Sebastian Heilmann eds., 2011) (quoting Zhao Ziyang, the former general secretary of the CCP: "I specifically stated that The Third Plenum resolved that there would be no more mass campaigns. However, people are accustomed to the old ways, so whenever we attack anything, these methods are still used.").

¹⁰¹ 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) (noting that "during 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 (1996).

¹⁰² Sarah Biddulph et al., *Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking*, 34 *LAW & POLICY* 373, 376 (2012).

¹⁰³ *Id.* at 389.

¹⁰⁴ *Id.* at 388.

loans they fund jointly with their partner bank.¹⁰⁵ The next day, the initial public offering of Ant Group, the world's largest fintech firm, was suspended.¹⁰⁶ About a week later, the antitrust authority of the SAMR unveiled draft antitrust guidelines on the platform economy, which aimed to tighten the antitrust regulation of online platforms.¹⁰⁷ The promulgation of these two sets of guidelines within such a short spate of time sent a strong signal of policy tightening. They also served an important coordination role, creating a focal point for the entire bureaucracy that there is an urgent need to curb monopolistic behaviour 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.¹⁰⁸ While the campaign initially centered on regulatory problems in the fintech sector, it quickly spread like wildfire, affecting a large number of sectors permeated by these large online platforms, including e-commerce, ride-hailing, tutoring and others.¹⁰⁹

III. Applying The Expressive Theory to Chinese AI Legislations

Drawing on the insights from the previous Part II, we find that many Chinese AI legislations rely heavily on the expressive powers of the law to enable AI development. Because agencies and courts have significant discretion in enforcing these rules, the pro-growth policy signal these AI legislations convey will play a crucial role in boosting business confidence and guiding future enforcement. Moreover, because these legal measures were jointly deliberated by various bureaucratic departments and industry stakeholders, they also sent a credible policy signal about the policy orientation from the top Chinese leadership. In addition, these AI legislations create a focal point to coordinate various bureaucratic departments and industry stakeholders, calling for a whole of society approach to accelerate AI 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 are also discounted, particularly in the long term. In the following discussion, I will use China's Interim Measures to regulate generative AI and several local legislations as detailed examples to illustrate the information and coordination functions of Chinese law.

¹⁰⁵ *China Issues Draft Rules to Regulate Online Micro-Lending Business*, REUTERS (Nov. 3, 2020), <https://www.reuters.com/article/china-lending-idUSL1N2HP035>.

¹⁰⁶ Jasper Jolly, *Ant Group Forced to Suspend Biggest Share Offering in History*, THE GUARDIAN (Nov. 3, 2020), <https://www.theguardian.com/business/2020/nov/03/biggest-share-offering-in-history-on-hold-as-ant-group-suspends-launch>.

¹⁰⁷ *10 Highlights of the Antitrust Guidelines for Platform Economy*, KING & WOOD MALLESONS (Nov. 18, 2020), <https://www.chinalawinsight.com/2020/11/articles/compliance/10-highlights-of-the-antitrust-guidelines-for-platform-economy/>.

¹⁰⁸ Zhang, *supra* note 11.

¹⁰⁹ Stephanie Yang, *China's Tech Clampdown Is Spreading Like Wildfire*, WALL ST. J. (Jun. 6, 2021), <https://www.wsj.com/articles/chinas-tech-clampdown-is-spreading-like-wildfire-11622971802>.

1. A Strong Pro-Growth Policy Signal

At first glance, the Interim Measures seem to cast a very wide net.¹¹⁰ This law imposes a broad spectrum of obligations on generative AI service providers, spanning intellectual property (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 AI services shall not infringe IP rights when processing 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.¹¹¹ Importantly, the Interim Measures explicitly confine its scope to “public-facing” AI services, thereby exempting a wide array of generative AI applications intended for enterprises, institutions, and universities.¹¹² This large carve-out is extremely important as it implies that entities engaged in research, development, and application of generative AI technology are not subject to the new law if their services are not publicly available in China. Furthermore, within the scope of public-facing AI services, the law mandates licensing only for those services that have the potential to influence public opinion.¹¹³ This requirement does not extend to other types of AI services, which can be launched in the market without obtaining a prior license. 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 2011.¹¹⁴ Since then, more than 30 pieces of regulation have been promulgated to control online content.¹¹⁵ 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

¹¹⁰ Interim Measures for Generative AI, *supra* note 6.

¹¹¹ Draft Measures for Generative AI, *supra* note 5.

¹¹² Interim Measures for Generative AI, *supra* note 6, art. 2.

¹¹³ *Id.*, art. 17.

¹¹⁴ Hulanwang Xinxu Fuwu Guanli Banfa (互联网信息服务管理办法) [Internet Information Services Management Measures] (promulgated by the State Council, effective Sep. 25, 2000, amended Jan. 8, 2011), GOV.CN, https://www.gov.cn/gongbao/content/2011/content_1860864.htm.

¹¹⁵ *China’s Internet and Media Content Regulation in China*, CHINA JUSTICE OBSERVER, <https://www.chinajusticeobserver.com/law/topics/content-regulation/law?page=1>.

Applications for News and Information Services,¹¹⁶ the 2018 Regulations for the Security Assessment of Internet Information Services Having Public Opinion Properties or Social Mobilization Capacity,¹¹⁷ the 2021 Algorithmic Regulation and the 2023 Deep Synthesis Regulation.¹¹⁸ Additionally, the obligation to register algorithms for AI services influencing public opinion first appeared in the 2021 Algorithmic Recommendation Rules.¹¹⁹ These rules mandated self-assessment reports and filings through the Internet information service algorithm system, a requirement also found in the Deep Synthesis Regulation and Interim Measures.¹²⁰

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 AI-generated content, and training data were subject to stringent criteria such as veracity, accuracy, and objectivity.¹²¹ However, the final version of the law merely obliges service providers to take appropriate measures and exercise due diligence for compliance, shifting liability from strict adherence to a more negligence-based standard.¹²² 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.¹²³ The removal of this three-month deadline alleviates a potentially immense burden on service providers, considering the exorbitant costs of training foundational AI models. The final measure further reduces the obligations previously assigned to service providers,¹²⁴ while offering more flexibility in addressing user violations.¹²⁵ Under the new law, violations are specifically limited to illegal activities, as opposed to the broader category of actions that breach commercial and social

¹¹⁶ Hulanwang Xinwen Xinxi Fuwu Xin Jishu Xin Yingyong Anquan Pinggu Guanli Guiding (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 New Technologies and New Applications for News and Information Services] (promulgated by the CAC, Oct. 30, 2017, effective Dec. 1, 2017), http://www.cac.gov.cn/2017-10/30/c_1121878049.htm.

¹¹⁷ Juyou Yulun Shuxing huo Shehui Dongyuan Nengli de Hulanwang Xinxi Fuwu Anquan Pinggu Guiding (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 CAC, Nov. 30, 2018, effective Nov. 30, 2018), https://www.gov.cn/zhengce/zhengceku/2018-11/30/content_5457763.htm.

¹¹⁸ Algorithmic Regulation, *supra* note 2; Deep Synthesis Regulation, *supra* note 3.

¹¹⁹ Algorithmic Regulation, *supra* note 2, art. 24.

¹²⁰ Deep Synthesis Regulation, *supra* note 3, art. 19.

¹²¹ Draft Measures for Generative AI, *supra* note 5, arts. 4(4) and 7(4).

¹²² Interim Measures for Generative AI, *supra* note 6, art. 4(5) and 7(4).

¹²³ Draft Measures for Generative AI, *supra* note 5, art. 15.

¹²⁴ Interim Measures for Generative AI, *supra* note 6, art. 11. For instance, the ban on profiling users has been removed in the interim measures. Moreover, the interim measure only prohibit providers from illegally preserving user input that could identify users and from sharing user input with others in an unlawful way.

¹²⁵ Interim Measures for Generative AI, *supra* note 6, art. 14; Draft Measures for Generative AI, *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.

ethics in the earlier draft.¹²⁶ Importantly, the final law also incorporated several business-friendly provisions, as will be further elaborated below.¹²⁷

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 this time. Before the promulgation of the Interim Measures, there were many conflicting policy signals regarding China's trajectory of AI governance.¹²⁸ Even if the Chinese government has been very supportive of the AI industry, the CAC's proactive regulatory intervention in AI has made investors extremely wary about investment in the Chinese AI industry. One notable provision in the Interim Measures required AI firms to "uphold core socialist values" in their offerings.¹²⁹ 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."¹³⁰ 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 AI development had gained the upper hand over those pushing for stringent controls. As a Chinese legal scholar astutely put it: "the failure to develop AI is the biggest threat to our national security."¹³¹

The Interim Measures not only sent a pro-growth signal for the AI 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 USD1 trillion of their market capitalization.¹³² The Chinese economy also experienced a precipitous decline in 2023.¹³³ 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 into the real estate market, have significantly undermined investor confidence and thwarted entrepreneurial

¹²⁶ *Id.*

¹²⁷ Interim Measures for Generative AI, *supra* note 6, art. 3.

¹²⁸ Li Yuan, *Why Chatbots like ChatGPT Weren't Invented in China*, N. Y. Times (Feb. 13, 2023), <https://www.nytimes.com/2023/02/17/business/china-chatgpt-microsoft-openai.html>.

¹²⁹ Draft Measures for Generative AI, *supra* note 5, art. 4(1).

¹³⁰ Yuan, *supra* note 128.

¹³¹ Linghang Zhang (张凌寒), Yi Wen Dudong Shengchengshi AI Xingui Liuda Liangdian—Bu Fazhan Shi Zuida de Bu Anquan (一文读懂生成式 AI 新规六大亮点—不发展是最大的不安全) [Six Highlights of the New Generative AI Regulations—Failure to Develop Is the Greatest Insecurity], CAIJING (Jul. 14, 2023), https://www.mycailing.com/article/detail/496986?source_id=40.

¹³² Donny Kwok & Scott Murdoch, *Beijing's Regulatory Crackdown Wipes \$1.1 Trillion off Chinese Big Tech*, REUTERS (Jul. 12, 2023), <https://www.reuters.com/technology/beijings-regulatory-crackdown-wipes-11-trln-off-chinese-big-tech-2023-07-12/>.

¹³³ Edward White, *China's Business Confidence Problem*, FIN. TIMES (Sep. 12, 2023), <https://www.ft.com/content/fb73774a-a130-4769-80a5-6115555b22a1>.

spirits.¹³⁴ Youth unemployment has soared, more than doubling over the last four years and reaching over 20 percent in June 2023.¹³⁵ 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.¹³⁶ Consequently, the Chinese top leadership faced an urgent need to restore confidence to revitalize the rapidly deteriorating economy.¹³⁷

Importantly, the Interim Measures not only sent a pro-growth signal to the business community but also to the regulators, including the various administrative agencies overseeing the AI industry and the different levels of Chinese courts that will adjudicate AI-related infringement lawsuits in the coming years. Indeed, the emphasis the measures placed on a cautious and tolerant approach to AI regulation will dissuade both agencies and courts from adopting stringent regulatory measures, creating a favourable regulatory environment that is conducive to the growth of the AI industry.¹³⁸

2. 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.¹³⁹ These provisions underscore the importance of coordination among various stakeholders involved in AI governance and development, positioning the law as a form of industrial policy. As will be elaborated below, the law advocates for five aspects of coordination: 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 local legislation are aligned with central directives. In fact, this multi-faceted approach to collaboration has outlined China’s strategic vision for AI development and set a blueprint for its regulatory governance. Indeed, this coordination strategy reflects China’s “whole of society” (juguo 举国) approach, which has historically been employed to advance 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 late 1970s.¹⁴⁰ However, it has experienced a resurgence since 2019 as a core strategy to drive breakthroughs in critical

¹³⁴ Scott Kennedy et al., *Experts React: China’s Economic Slowdown: Causes and Implications*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Aug. 30, 2023), <https://www.csis.org/analysis/experts-react-chinas-economic-slowdown-causes-and-implications>; 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>.

¹³⁵ 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>.

¹³⁶ Wakabayashi & Fu, *supra* note 134.

¹³⁷ *Id.*

¹³⁸ 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?barrier=accesspaylog>.

¹³⁹ Interim Measures for Generative AI, *supra* note 6, arts. 5, 6, and 16.

¹⁴⁰ Lin Zhang & Tu Lan, *The New Whole State System: Reinventing the Chinese State to Promote Innovation*, 55 ENVIRON. PLAN A. 201 (2023).

technologies, particularly amid the escalating tech rivalry with the United States.¹⁴¹ Scholars have observed that this new form of techno-economic statecraft is being leveraged by the Chinese government to accelerate the development and application of AI technology.¹⁴²

To be sure, China is not unique in leveraging the coordination capabilities of its legal system to govern AI. The Biden Administration's executive order (EO) on AI safety released in late October 2023 also called upon various federal branches of government to develop policies and initiate actions addressing AI-related issues.¹⁴³ However, there exist fundamental differences between the Chinese and US laws in terms of their objectives and scope. The Interim Measures in China represent a "whole of society" approach, encompassing a broader scope compared to the Biden Administration's "whole of government" strategy. Furthermore, the EO addresses a wide array of concerns prevalent in American society, ranging from AI safety to anti-discrimination, and job loss.¹⁴⁴ In contrast, the Interim Measures primarily target content moderation, while other aspects of AI infringement, particularly concerning large AI firms, are expected to be enforced leniently. Consequently, the Interim Measure appears to encompass a wider range of participation, while the EO provides a more extensive scope in terms of actual protection.

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 AI, this top-down approach in driving AI innovation does not guarantee success. Recent research has indicated that many of China's AI advancements have largely been propelled by bottom-up dynamics, especially through competition among domestic entities such as local governments and businesses.¹⁴⁵ These studies highlight issues of excessive competition among regional governments and lack of cohesive national coordination in China's AI development.¹⁴⁶ 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 relies

¹⁴¹ Xiao Tan & Yao Song, *China Whole Nation Efforts to Advance the Tech Economy*, THE DIPLOMAT (Apr. 21, 2022), <https://thediplomat.com/2022/04/chinas-whole-nation-effort-to-advance-the-tech-industry/>.

¹⁴² 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).

¹⁴³ See *infra* Part IV.

¹⁴⁴ *Id.* That said, the effectiveness of the federal agencies in implementing the EO remains uncertain, given their mixed track records in enforcing past EOs. See Rishi Bommasani et al., *Decoding the White House AI Executive Order's Achievements*, HUMAN-CENTERED ARTIFICIAL INTELLIGENCE (Nov. 2, 2023), <https://hai.stanford.edu/news/decoding-white-house-ai-executive-orders-achievements>.

¹⁴⁵ Jinghan Zeng, *China's Artificial Intelligence Innovation: A Top-Down National Command Approach?*, 12 GLOBAL POLICY 399 (2021).

¹⁴⁶ *Id.*

on market forces and consumer demand.¹⁴⁷ While some scholars argue that there are market failures in producing innovations, others show that state interventions to rectify these failures can also lead to policy failures.¹⁴⁸ 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 AI.

a) Central Bureaucracy

At its core, the Interim Measures represent an effort to orchestrate the various central bureaucratic entities involved in regulating generative AI services. Given AI’s extensive applicability in numerous facets of life, it is more akin to a utility like electricity than a technology limited to specific sectors.¹⁴⁹ This attribute of AI makes it refractory to conventional regulatory approaches.¹⁵⁰ In fact, a single AI 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.¹⁵¹ The evolution of the Interim Measures from its initial to 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 AI services.¹⁵²

Let’s start with the CAC, the powerful internet watchdog in China. The CAC derives its authority from the Central Cybersecurity and Information Commission chaired by President Xi Jinping. Its predecessor, the State Internet Information Office, was part of the CCP propaganda department. 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.¹⁵³ Initially charged with ensuring cybersecurity and information control, the agency has become a formidable data regulator in recent years.¹⁵⁴ 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 has extended its tentacles to the regulation of securities offerings, price discrimination, algorithmic recommendations, and

¹⁴⁷ AMY WEBB, *THE BIG NINE: HOW THE TECH TITANS AND THEIR THINKING MACHINES COULD WARP HUMANITY* (2019); Nils Karlson et al., *Bureaucrats or Markets in Innovation Policy? – A Critique of the Entrepreneurial State*, 34 REV. AUSTRIAN. ECON. 81 (2021).

¹⁴⁸ Karlson et al., *supra* note 147; Yuan, *supra* note 128.

¹⁴⁹ HAROON SHEIKH ET AL., *MISSION AI: THE NEW SYSTEM TECHNOLOGY* (2023).

¹⁵⁰ Gary Marchant, “Soft Law” Governance of Artificial Intelligence, *ESCHOLARSHIP* (Jan. 25, 2019), <https://escholarship.org/uc/item/0jq252ks>.

¹⁵¹ *Id.*

¹⁵² 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 (NDRC), Ministry of Education, Ministry of Science and Technology (MOST), Ministry of Industry and Information Technology (MIIT), Ministry of Public Security, and National Radio and Television Administration.

¹⁵³ 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/>.

¹⁵⁴ *Id.*

many other areas.¹⁵⁵ Yet despite its powerful status, the agency does not hold exclusive regulatory power over AI.

As mentioned earlier, power is fragmented within the Chinese bureaucracy, with each agency maintaining distinct missions and goals.¹⁵⁶ 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.¹⁵⁷ Indeed, AI can raise issues that transcend the traditional focus areas of regulatory bodies, such as health, data privacy, safety, and environmental risks.¹⁵⁸ 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 AI services within their respective domains.¹⁵⁹ 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 Interim Measure added the Law on Scientific and Technological Progress (LSTP) as a legal source in the final version, alongside data and personal information protection laws.¹⁶⁰ 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).¹⁶¹ This inclusion thus underscores the MOST's critical role in AI regulation, particularly in fostering technological advancement and addressing ethical issues in AI. Notably, MOST is the key industry regulator that is responsible for implementing the State Council's AI Development Plan of 2017.¹⁶² It houses the AI promotion offices involving 15 different government departments and ministries, all of which are involved in supporting the national AI plan.¹⁶³ The MOST underwent substantial restructuring in early 2023 aimed at repositioning the ministry more as a policymaker and less as a direct participant.¹⁶⁴ Some of its

¹⁵⁵ 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?barrier=accesspaylog>.

¹⁵⁶ See LIEBERTHAL & OKSENBERG; SHIRK; Zhang, *supra* note 83.

¹⁵⁷ *Id.*

¹⁵⁸ Marchant, *supra* note 150.

¹⁵⁹ Interim Measures for Generative AI, *supra* note 6, art. 16.

¹⁶⁰ *Id.*, art. 1.

¹⁶¹ Kexue Jishu Jinbu Fa (科学技术进步法) [Law on Scientific and Technological Progress] [promulgated by the Standing Comm. Nat'l People's Cong., Jul. 2, 1993, effective Oct. 1, 1993, amended Dec. 29, 2007, Dec. 24, 2021].

¹⁶² Anders Johansson, *China's AI Ecosystem*, CENTER FOR ASIAN STUDIES 14 (Nov. 2022), <https://www.hhs.se/contentassets/bc962221471a415ba8ac01fbbf160277/chinas-ai-ecosystem-nov-2022.pdf>.

¹⁶³ *Id.* at 39-40 (The AI promotion offices involve the MOST, the MIIT, the NDRC, the Ministry of Finance, Ministry of Education, Ministry of Transport, Ministry of Agriculture, Chinese Academy of Sciences, Natural Science Foundation, Academy of Engineering, Health and Family Planning Commission, China Association for Science and Technology, Central Military-Civil Integration Development Committee Office, Ministry Commission Equipment Development Department, Military Commission Science and Technology Committee).

¹⁶⁴ Yanhao Huang & Wei Han, *The Remaking of China's Science and Technology Ministry*, NIKKEI ASIA (Mar. 15, 2023), <https://asia.nikkei.com/Spotlight/Caixin/The-remaking-of-China-s-Science-and-Technology-Ministry>.

divisions and fund management authority were transferred to other departments, reducing its direct control over funding.¹⁶⁵ Additionally, a Central Science and Technology Commission was established within MOST to amplify the CCP's influence in scientific and technological innovation.¹⁶⁶ Importantly, the operational responsibilities of this new Commission fall under the purview of MOST, which further enhances MOST's bureaucratic status in formulating and implementing policies in science-related initiatives.¹⁶⁷

In addition to the MOST, the Ministry of Industry and Information Technology (MIIT) and the National Development and Reform Commission (NDRC) are also key players in championing AI developments in China.¹⁶⁸ 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 AI Development Plan.¹⁶⁹ In 2017, the MIIT unveiled a "Three-Year Action Plan for Promoting Development of A New Generation Artificial Intelligence Industry (2018-2020)".¹⁷⁰ In October 2023, the MIIT announced a plan to integrate AI technology into the real economy sector, with an aim towards cultivating the country's intelligent industry and advancing new industrialization.¹⁷¹ In January 2024, the MIIT, in collaboration with six other central departments (not including the CAC), jointly promulgated an opinion aimed at fostering future industrial innovation and development.¹⁷² This strategic directive outlines China's ambition to achieve breakthroughs in 100 critical technologies, with many of them being powered by AI.¹⁷³ 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.¹⁷⁴ Alongside MOST and MIIT, the NDRC is also deeply invested in promoting AI advancement in China.¹⁷⁵ These three agencies thus represent important countervailing forces against the

¹⁶⁵ *Id.*

¹⁶⁶ Jane Cai et al., *Mystery Around China's New Science and Tech Body a Sign of Secrecy to Come, Analysts Say*, SOUTH CHINA MORNING POST (Sep. 4, 2023),

<https://www.scmp.com/news/china/politics/article/3233245/mystery-around-chinas-new-science-and-tech-body-sign-secrecy-come-analysts-say>.

¹⁶⁷ *Id.*

¹⁶⁸ Johansson, *supra* note 162, at 39.

¹⁶⁹ *Id.*

¹⁷⁰ Cujin Xin Yidai Rengong Zhineng Chanye Fazhan San Nian Xingdong Jihua (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 MIIT, Dec. 14, 2017), http://www.cac.gov.cn/2017-12/15/c_1122114520.htm.

¹⁷¹ *MIIT to Cultivate AI to Boost Real Economy, New Industrialization*, GLOBAL TIMES (Oct. 20, 2023), <https://www.globaltimes.cn/page/202310/1300262.shtml>.

¹⁷² Guanyu Tuidong Weilai Chanye Chuangxin Fazhan de Shishi Yijian (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, Ministry of Education, MOST, Ministry of Transport, Ministry of Culture and Tourism, State-owned Assets Supervision and Administration Commission of the State Council, and Chinese Academy of Sciences, Jan. 29, 2024), https://www.gov.cn/zhengce/zhengceku/202401/content_6929021.htm.

¹⁷³ *Id.*

¹⁷⁴ Johansson, *supra* note 162, at 39.

¹⁷⁵ *Id.* See, e.g., Guojia Fagaiwei: Zhichi Kaizhan Tongyong Rengong Zhineng Da Moxing he Chuizhi Lingyu Rengong Zhineng Da Moxing Xunlian (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 AI Models], WALLSTREETCN (Dec. 15, 2023), <https://wallstreetcn.com/articles/3704364>.

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.

b) Industry Participants

Beyond facilitating inter-departmental cooperation, the Interim Measures also explicitly encourage coordination among various stakeholders in the generative AI supply chain, including industry associations, firms, academic institutions, public cultural organizations, and relevant professional bodies.¹⁷⁶ Such engagement reveals the government's ambition to cultivate an innovation ecosystem favorable for AI 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.¹⁷⁷ In the context of AI, some Chinese scholars have adapted this model, demonstrating how collaboration between government, business enterprises, and universities creates conducive conditions for AI advancements.¹⁷⁸

Indeed, many of the major generative AI labs in China have been formed following the Triple Helix model.¹⁷⁹ Research by Jeffery Ding and Jenny Xiao on 26 prominent large-scale pre-trained models released between 2020 and 2022 reveals that more than half have benefited from partnerships with top Chinese universities and research institutions.¹⁸⁰ Local governments have also played a crucial role in nurturing AI labs.¹⁸¹ The Beijing Academy of Artificial Intelligence, which is credited with developing China's first large language model, is a notable example.¹⁸² Established in 2019, this non-profit organization was launched under the joint

¹⁷⁶ Interim Measures for Generative AI, *supra* note 6, art. 5.

¹⁷⁷ James Dzusah & Henry Etzkowitz, *Triple Helix Circulation: The Heart of Innovation and Development*, 7 INT. J. TECHNOL. MANAG. SUSTAIN. DEV. 101 (2008) (the dynamics of this Triple Helix model lies in three major elements: "first, the prominent role of universities, on par with companies and the government in a society based on knowledge; second, the collaborative relationship between the three core institutional spheres; and the helices taking the roles of others.").

¹⁷⁸ *Id.*

¹⁷⁹ To be sure, this model of collaborative AI 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. Dating back to the Cold War era, such collaborations have resulted in ground-breaking technologies like the internet and advanced microchips, which fueled the rise of the US tech sector. Post-Cold War, this model has evolved, with the commercial sector now significantly influencing AI research and a notable decline in the government funding for research. See *Interim Report*, NATIONAL SECURITY COMMISSION ON ARTIFICIAL INTELLIGENCE 24 (Nov. 2019), available at <https://epic.org/wp-content/uploads/foia/epic-v-ai-commission/AI-Commission-Interim-Report-Nov-2019.pdf>.

¹⁸⁰ Jeffrey Ding & Jenny Xiao, *Recent Trends in China's Large Language Model Landscape*, CENTRE FOR THE GOVERNANCE OF AI 5-6 (Apr. 2023), <https://www.governance.ai/research-paper/recent-trends-chinas-llm-landscape>. These include Tsinghua University, Peking University, Beijing University of Posts and Telecommunications, Chinese Academy of Sciences, Renming University and others.

¹⁸¹ *Id.* at 8-9.

¹⁸² *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.

sponsorship of the Beijing government, the Ministry of Science and Technology, and the Municipal Party Committee.¹⁸³ It brings together experts from prestigious institutions like Tsinghua and Peking University and the Chinese Academy of Science, as well as leading technology companies such as Baidu, Xiaomi, and ByteDance.¹⁸⁴

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.¹⁸⁵ According to a 2020 report by the Chinese Institute of New Generation Artificial Intelligence Development Strategies, over 190 AI industry alliances were established by central and local governments by the end of 2019.¹⁸⁶ 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 AI Plan.¹⁸⁷ The AIIA enjoys a very close relationship with the government and is led by key agencies such as NDRC, MOST, MIIT and CAC.¹⁸⁸ It comprises over 500 members including major tech firms, state-owned enterprises (SOEs) and top Chinese universities.¹⁸⁹ The alliance plays a pivotal role in organizing events and conferences, fostering collaboration between government, businesses, and academia.¹⁹⁰ Effectively, these industry associations act as brokers of relationships and influence.¹⁹¹ In some cases, the government has even leveraged them to pick winners among favored companies to receive government subsidies.¹⁹²

c) Data and Computing Power

Data and computing power are crucial for AI, particularly for 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

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.*

¹⁸⁵ Johansson, *supra* note 162, at 41.

¹⁸⁶ There were 83 AI industry alliances in 2017, 117 in 2018 and 190 in 2019. Gang Liu (刘刚), Xin Tiaozhan he Jiyu Xia de Zhongguo Rengong Zhineng Keji Chanye Fazhan (新挑战和机遇下的中国人工智能科技产业发展) [China's AI Tech Industry Development Under New Challenges and Opportunities], CHINESE INSTITUTION OF NEW GENERATION ARTIFICIAL INTELLIGENCE DEVELOPMENT STRATEGIES (Jun. 24, 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 (archived at <https://perma.cc/GZ5V-6SWG>).

¹⁸⁷ Johansson, *supra* note 162, at 41-42.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 41.

¹⁹⁰ *Id.* at 42.

¹⁹¹ Gang Liu (刘刚), Zhongguo Xin Yidai Rengong Zhineng Keji Chanye Quyu Jingzhengli Pingjia Zhishu (中国新一代人工智能科技产业区域竞争力评价指数) [Index for Evaluating the Region Competitiveness of China's New Generation AI Technology Industry], CHINESE INSTITUTION OF NEW GENERATION ARTIFICIAL INTELLIGENCE DEVELOPMENT STRATEGIES (Jun. 24, 2020), <http://www.nkear.com/UploadedFiles/file/区域竞争力评价指数报告2020.pdf> (archived at <https://perma.cc/RDE2-NVK7>).

¹⁹² Ngor Luong & Zachary Arnold, *China's Artificial Intelligence Industry Alliance*, CENTER FOR SECURITY AND EMERGING TECHNOLOGY 8-9 (May 2021), <https://cset.georgetown.edu/publication/chinas-artificial-intelligence-industry-alliance/>.

efficiently.¹⁹³ Historically, China's access to large data sets was seen as an advantage in AI development, particularly in surveillance tasks such as facial or object recognition.¹⁹⁴ However, this edge has diminished significantly with the rise of large language models (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-sourced data, and what is available is often limited in scale.¹⁹⁵ Further complicating the situation, the walled gardens created by Chinese tech giants like Alibaba and Tencent restrict access to social media content, hindering AI's ability to scrape this information.¹⁹⁶ As a result, training of large language model often involves the use of multiple foreign open-source datasets. For example, Baidu's Ernie uses primarily Chinese-language data and English databases like Wikipedia and Reddit.¹⁹⁷ Additionally, the government's strict censorship policies add complexity to this situation. AI platforms offering chatbots must employ reinforcement learning from human feedback (RLHF) to train models in avoiding sensitive topics, bias, and violent language.¹⁹⁸ For Chinese AI firms, using uncensored data complicates the RLHF process, as it increases the risk of generating politically misaligned content.¹⁹⁹

In response to this challenge, several regional governments in Beijing, Shanghai, Shenzhen, Chengdu and Ningxia have unveiled rules to bolster the supply of high-quality training

¹⁹³ Interim Measures for Generative AI, *supra* note 6, art. 6.

¹⁹⁴ 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/>.

¹⁹⁵ AI Da Moxing Xuyao Shenmeyang de Shuju (AI 大模型需要什么样的数据?) [What Data Do AI Large Models Need], HUATAI SECURITIES (May 11, 2023), available at https://www.sohu.com/a/675796857_121697363 (noting that creating high-quality datasets is financially intensive, and there is a general lack of enthusiasm for open-sourcing among Chinese firms. Chinese academia also places a lower priority on dataset creation); *see also* *Just How Good Can China Get at Generative AI?*, THE ECONOMIST (May 9, 2023), <https://www.economist.com/business/2023/05/09/just-how-good-can-china-get-at-generative-ai> (noting that 56% of all websites are in English while only 1.5% are written in Chinese).

¹⁹⁶ THE ECONOMIST, *supra* note 195.

¹⁹⁷ HUATAI SECURITIES, *supra* note 195.

¹⁹⁸ Long Ouyang et al., *Training Language Models to Follow Instructions with Human Feedback*, ARXIV (Mar. 4, 2022), <https://arxiv.org/abs/2203.02155>.

¹⁹⁹ Paul Triolo, *ChatGPT and China: How to Think About Large Language Models and the Generative AI Race*, THE 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/>.

databases.²⁰⁰ In May 2023, the Beijing government announced measures to enhance generative AI services, emphasizing the need for collaboration to integrate and refine pre-training datasets.²⁰¹ By late August 2023, Beijing had released 59 high-quality training datasets from 26 organizations.²⁰² In July 2023, the Shanghai Data Exchange Center developed its own training datasets,²⁰³ while Guangdong established a trial base for a high-quality public Chinese-language database and data annotation platforms in September 2023.²⁰⁴ 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”.²⁰⁵ Within two months, the alliance expanded, introducing the “michao.huafen 1.0” dataset, a dataset featuring filtered and legally compliant Chinese internet media data, contributing over 70 million Chinese data entries.²⁰⁶

²⁰⁰ Beijing Shi Cujin Tongyong Rengong Zhineng Chuangxin Fazhan de Ruogan Cuoshi (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 AI in Beijing] [hereinafter *Beijing's AI Measures*], THE PEOPLE'S GOVERNMENT OF BEIJING MUNICIPALITY (May 23, 2023), https://www.beijing.gov.cn/zhengce/zhengcefagui/202305/t20230530_3116869.html; Shanghai Shi Cujin Rengong Zhineng Chanye Fazhan Tiaoli (上海市促进人工智能产业发展条例) [Regulations for Promoting the Development of the AI Industry in Shanghai] [hereinafter *Shanghai's AI Regulations*], THE PEOPLE'S GOVERNMENT OF SHANGHAI MUNICIPALITY (Oct. 1, 2022), <https://www.shanghai.gov.cn/hqcyfz2/20230627/3a1fcfeff9234e8e9e6623eb12b49522.html>; Shenzhen Jingji Tequ Rengong Zhineng Chanye Cujin Tiaoli (深圳经济特区人工智能产业促进条例) [Regulations for the Promotion of the AI Industry in Shenzhen Special Economic Zone] [hereinafter *Shenzhen's AI Regulations*], SHENZHEN MUNICIPAL PEOPLE'S CONGRESS (Sep. 9, 2022), http://www.szrd.gov.cn/szrd_zlda/szrd_zlda_flfg/flfg_szfg/content/post_834707.html; Cujin Rengong Zhineng Chuangxin Fazhan Zhengce Cuoshi (促进人工智能创新发展政策措施) [Measures to Promote the Innovative Development of AI], THE PEOPLE'S GOVERNMENT OF NINGXIA HUI AUTONOMOUS REGION (Aug. 18, 2023), https://www.nx.gov.cn/zwgk/gfxwj/202308/t20230818_4227239.html; Guanyu Dui “Chengdu Shi Guanyu Jinyibu Cujin Rengong Zhineng Chanye Gao Zhiliang Fazhan de Ruogan Zhengce Cuoshi (Zhengqiu Yijian Gao)” Gongkai Zhengqiu Yijian de Tongzhi (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 AI Industry in Chengdu], CHENGDU MUNICIPAL BUREAU OF ECONOMIC AND INFORMATION SOCIETY (Jun. 1, 2023), https://cdjx.chengdu.gov.cn/cdsjxw/c160798/2023-06/01/content_daab07b1c5834c89bc224b90f46bd93f.shtml.

²⁰¹ Beijing's AI Measures, *supra* note 200.

²⁰² Chunmei Zhou (周春媚), Da Moxing Jiasu Luodi Gehang Geye, Cujin Zhongwen Yuliao Shujuku Jianshe Dada Jiasu (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 Promoting the Construction of Chinese Corpus Database), STCN (Sep. 22, 2023), <http://www.stcn.com/article/detail/988774.html>.

²⁰³ Shanghai Shuju Jiaoyisuo Jianshe Gao Zhiliang Yuliao Ku, Tuidong Rengong Zhineng Da Moxing Chanye Fazhan (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 AI Large Model Industry], SHANGHAI DATA EXCHANGE (Jul. 7, 2023), <https://mp.weixin.qq.com/s/8PXt3KGUu50P349XbPpLSw>.

²⁰⁴ Guangdong Sheng Qidong Gonggong Shuju Biaozhu Xunlian Shidian, Jiang Xiang Rengong Zhineng Chanye Youxu Dingxiang Kaifang Gonggong Shuju (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 AI Industry], WECHAT (Sep. 27, 2023), <https://mp.weixin.qq.com/s/VrZePQR-fOFzXTbj8LmPg>.

²⁰⁵ Ye Li (李晔), Guochan Da Moxing Zuique Yuliao Ku, Zhege Lianmeng Kaiyuan Liang Zhou Huo 18 Wan Xiazai, “Touwei” de Huibao Shi... (国产大模型最缺高质语料, 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?], SHOBSERVER (Sep. 9, 2023), <https://web.shobserver.com/wx/detail.do?id=652551>.

²⁰⁶ *Id.*

The Interim Measures also emphasize the importance of coordinating computing power, a crucial input for training LLMs.²⁰⁷ 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).²⁰⁸ Currently, Nvidia dominates the GPU market with an over 90% share, while Chinese firms have only a negligible presence.²⁰⁹ Recent rounds of US restrictions on China's access to advanced chips and cloud services have posed additional challenges to Chinese tech companies.²¹⁰ In response, China has intensified its efforts in hardware development though it has achieved limited progress thus far.²¹¹ The Interim Measures advocate for indigenous innovation in basic technologies like chips and advocate for the efficient use of computing resources.²¹² In October 2023, China unveiled a plan to boost its computing power by 50% by 2025, with the goal of narrowing the gap with the United States.²¹³ The country 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.²¹⁴ This initiative focuses on building more data and computing centers in China's western regions where utility and land costs are comparatively lower.²¹⁵ In 2023 alone, the MOST approved 25 national AI computing platforms, which serve as public computing centers dedicated to AI training.²¹⁶ In 2024, at least 17 city governments, including Shanghai, have reportedly pledged to provide vouchers to subsidize AI start-ups requiring the use of AI data centers for training their LLMs.²¹⁷

²⁰⁷ Interim Measures for Generative AI, *supra* note 6, art. 6.

²⁰⁸ Zhongguo Suanli, Xiongxin yu Ruanlei (中国算力, 雄心与软肋) [China's Computing Power, Ambitions and Weaknesses], CAIJING ELEVEN (May 4, 2023), https://mp.weixin.qq.com/s/TBy0XDcBk0Cn899Mp_Ku1g.

²⁰⁹ *Id.*

²¹⁰ *Id.* See also Zhongguo Suanli Fazhan Zhishu Baipishu (中国算力发展指数白皮书) [White Paper on China's Computing Power Development Indicators], CHINA ACADEMY OF INFORMATION AND COMMUNICATIONS TECHNOLOGY 13-14 (Sep. 2023), <http://www.caict.ac.cn/kxyj/qwfb/bps/202309/P020230914584614752938.pdf>.

²¹¹ *Id.*

²¹² Interim Measures for Generative AI, *supra* note 6, art. 6.

²¹³ Arjun Kharpal, *China Targets Boost in Computing Power as AI Race with U.S. Ramps Up*, CNBC (Oct. 9, 2023), <https://www.cnbc.com/2023/10/09/china-targets-boost-in-computing-power-as-ai-race-with-us-ramps-up.html>.

²¹⁴ Zijing Fu, *Understanding China's "Eastern Data Western Calculation" Project*, PINGWEST (Mar. 16, 2022), <https://en.pingwest.com/a/9940>; Seaton Huang, *China's Latest National Infrastructure Project Spotlights Computing Capabilities*, COUNCIL ON FOREIGN RELATIONS (Nov. 1, 2022), <https://www.cfr.org/blog/chinas-latest-national-infrastructure-project-spotlights-computing-capabilities>.

²¹⁵ Fu, *supra* note 214.

²¹⁶ Kai Huang (黄锴), 25 Jia Guojia Xinyidai Rengong Zhineng Gonggong Suanli Kaifang Chuangxin Pingtai Quan Mingdan (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 25 China's New Generation of AI Public Computing Power Open Innovation Platforms], WECHAT (Aug. 8, 2023), https://mp.weixin.qq.com/s/q-Zwc3JvAiaNwvVG5iJs_Q.

²¹⁷ *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>.

d) *Global Standards*

China's aspirations extend beyond merely excelling in AI technology; it aims to actively shape the evolving global AI regulatory landscape. The Interim Measures emphasize the importance of international collaboration and endorse China's active role in global AI rulemaking.²¹⁸ In April 2023, China integrated AI governance into its flagship foreign policy, the Global Security Initiative, highlighting AI among twenty priorities for international cooperation.²¹⁹ President Xi Jinping also announced the Global Artificial Intelligence Governance Initiative (the Global Initiative) at the third Belt and Road Forum for International Cooperation (the Forum) held in Beijing in October 2023.²²⁰ The Global Initiative articulates China's stance on AI values and areas for international cooperation, advocating for the increased inclusion of developing countries in global AI discourse and promoting equitable rights and opportunities in AI development and governance for all nations.²²¹ 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 US restrictions.²²² By launching the Global Initiative at the Forum, attended by leaders from over 130 developing countries this year, China sought to establish itself as a leader in AI governance for developing countries in the Global South.²²³

Notably, China's ambition in global AI governance aligns with its broader objective to influence the international order, echoing its initiatives in areas like the global economy, climate change, and cyberspace.²²⁴ With global AI governance being a relatively new field with yet-to-be-established norms, Chinese scholars perceived an opportunity for China to lead in setting global AI standards.²²⁵ Since 2016, China has actively engaged in international AI governance through the United Nations, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Telecommunication Union (ITU).²²⁶ Chinese AI experts are directly contributing to global standard-setting, engaging in negotiations

²¹⁸ Interim Measures for Generative AI, *supra* note 6, art. 6.

²¹⁹ *State of AI Safety in China*, CONCORDIA AI 25 (Oct. 2023), <https://concordia-ai.com/wp-content/uploads/2023/10/State-of-AI-Safety-in-China.pdf>.

²²⁰ Cong Wang & Yeping Yin, *China Launches Global AI Governance Initiative, Offering an Open Approach in Contrast to US Blockade*, GLOBAL TIMES (Oct. 18, 2023), <https://www.globaltimes.cn/page/202310/1300092.shtml>.

²²¹ Quanguo Rengong Zhineng Zhili Changyi (全球人工智能治理倡议) [Global AI Governance Initiative], CYBERSPACE ADMINISTRATION OF CHINA (Oct. 18, 2023), http://www.cac.gov.cn/2023-10/18/c_1699291032884978.htm.

²²² Ana Swanson, *U.S. Tightens China's Access to A.I. Chips*, N. Y. TIMES (Oct. 17, 2023), <https://www.nytimes.com/2023/10/17/business/economy/ai-chips-china-restrictions.html>.

²²³ Dewey Sim, *Belt and Road Forum: China Launches AI Framework, Urging Equal Rights and Opportunities for All Nations*, SOUTH CHINA MORNING POST (Oct. 18, 2023), <https://www.scmp.com/news/china/diplomacy/article/3238360/belt-and-road-forum-china-launches-ai-framework-urging-equal-rights-and-opportunities-all-nations>; Kat Duffy & Kyle Fendorf, *China Unveils Global AI Governance Initiative*, COUNCIL ON FOREIGN RELATIONS (Oct. 20, 2023), <https://www.cfr.org/blog/cyber-week-review-october-20-2023>.

²²⁴ Jing Cheng & Jinghan Zeng, *Shaping AI's Future? China in Global AI Governance*, 32 J. CONTEMP. CHINA 794, 797 (2023).

²²⁵ *Id.* at 798.

²²⁶ CONCORDIA AI, *supra* note 219, at 24-27.

and standard formulation through the the International Organization for Standardization (ISO) and ITU.²²⁷ Despite these efforts, China faces substantial challenges in its endeavor to shape global AI governance. Most AI global initiatives are embedded in the existing global governance institutions that emphasize democratic values such as the G7, European Commission, Council of Europe, and the OECD, from which China is excluded, not to mention those newly created initiatives that are designed to counter Chinese influence in global AI governance.²²⁸ As a result, China's influence remains limited, relying heavily on platforms like the United Nations and standard-setting organizations to exert its influence in global AI governance.²²⁹

e) *Local Governments*

China is a vast country, with 34 province-level administrative divisions, each possessing some level of legislative power to enact local legislations.²³⁰ 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 AI legislations.

Notably, before the Interim Measures took effect, several Chinese cities like Shanghai and Shenzhen had already initiated local AI legislations. In August 2022, Shenzhen introduced the first local legislation specifically designed to encourage AI development within the region.²³¹ The Shanghai city government followed by enacting provisions aimed at transforming the city into a leading hub for AI innovation in China the same year.²³² Similar to the Interim Measures, both the Shenzhen and Shanghai regulations reflect the local regions' ambition in developing AI technology and attempt to coordinate various stakeholders to propel its development.²³³ These local legislations have employed a risk-based regulatory approach: mandating that high-risk AI applications undergo pre-emptive assessment and risk warning, while low and medium-risk applications are subjected to ex ante disclosure and subsequent tracking.²³⁴ However,

²²⁷ *Id.* at 24. In 2020, the China Electronic Standardization Institute, with other experts, proposed a standard that was adopted by an international standards body. *ISO/IEC FDIS 5392 Information Technology—Artificial Intelligence—Reference Architecture of Knowledge Engineering*, INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, <https://www.iso.org/standard/81228.html>; see also Woguo Tichu de ISO/IEC Zhishi Gongcheng Guoji Biaozhun Xiangmu Zhengshi Huopi Lixiang (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>.

²²⁸ Cheng & Zeng, *supra* note 224, at 806.

²²⁹ *Id.* at 809.

²³⁰ Li Fa Fa (立法法) [Legislation Law] (promulgated by the Nat'l People's Cong., Mar. 15, 2000, effective Jul. 1, 2000, amended Mar. 15, 2015, Mar. 13, 2023), art. 63.

²³¹ Shenzhen's AI Regulations, *supra* note 200.

²³² Shanghai's AI Regulations, *supra* note 200.

²³³ Iris Deng, *Shenzhen Aims to Be China's Artificial Intelligence Hub with Special Guideline to Boost Development and Secure Privacy*, SOUTH CHINA MORNING POST (Sep. 7, 2022), <https://www.scmp.com/tech/policy/article/3191630/shenzhen-aims-be-chinas-artificial-intelligence-hub-special-guideline>; Anas Baig, *Understanding the Shanghai AI Regulations*, SECURITI (Sep. 26, 2023), <https://securiti.ai/shanghai-ai-regulation/>.

²³⁴ Shenzhen's AI Regulations, *supra* note 200, art. 66; Shanghai's AI Regulations, *supra* note 200, art. 65.

neither regulation details how to classify different AI 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 AI law, although drafting and public consultation could still be years away.²³⁵ In light of this, local legislations 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 AI, marking the first provincial-level initiative of its kind.²³⁶ Beijing has a strong incentive to push forward the development of generative AI as it was home to 38 of 70 LLMs in May 2023.²³⁷ A common feature of these local legislations 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 AI development in China.

IV. Law as a Competitive Strategy

To be sure, China's introduction of AI legislations has undoubtedly increased compliance burdens for Chinese tech firms. However, their impact on the actual delivery of AI services within China appears limited in practice. A common feature shared by recent Chinese AI legislations is their emphasis on content moderation, aimed at ensuring that AI-generated content does not challenge the CCP's control over public discourse. Thus far, none of these laws have been applied to hold Chinese AI firms accountable for AI-related infringements. Nor has the licensing requirement introduced by the Interim Measures significantly impeded major AI companies from offering public-facing services. This was evident on August 31, 2023, when, just two weeks after the implementation of these measures, 11 AI firms, including SenseTime,

²³⁵ 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 AI law, which offers some expert viewpoints on Chinese AI 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/>. The Law on Artificial Intelligence was included in the 2023 legislative plan by the State Council, but drafting and public consultation could still be years away.

²³⁶ Beijing's AI Measures, *supra* note 200.

²³⁷ Jia Liu (刘佳), Zhongguo Yi You 79 Ge 10 Yi Canshu Da Moxing, Yejie Huyu Jinkuai Jianli Zizhu Chuangxin “Huchenghe” (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 79 Large Models with 1 Billion Parameters, and Industry Is Calling for Establishing a “Moat” for Independent Innovation as Quickly as Possible], YICAI (May 29, 2023), <https://m.yicai.com/news/101769137.html>.

Baidu, and Baichuan, were granted licenses by the CAC to launch their services.²³⁸ By January 2024, over 40 LLMs and related applications had received licenses to provide public services.²³⁹ Notably, since late 2023, the licensing requirement for generative AI services has become less stringent. Lawyers have observed that many AI firms are now merely required to register their security assessment filings with local offices of the CAC, instead of obtaining a license before launching public services.²⁴⁰ This shift marks a significant easing of the regulatory process, reflecting the government's clear emphasis on prioritizing growth and innovation over stringent regulation.

In addition to lenient administrative enforcement, the Chinese judiciary also adheres to Beijing's pro-growth directive by recognizing intellectual property (IP) rights in content created by generative AI 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.²⁴¹ The court 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 AI system.²⁴² The court deemed these inputs as sufficiently original, seeing the generative AI system serving merely as a tool, akin to a camera, to create expressive works.²⁴³ Thus, it concluded that AI-generated images reflecting the original intellectual investment of a human being should be considered works eligible for copyright protection.²⁴⁴ This decision marks a significant departure from the stance of the US Copyright Office and US district courts, which have typically refrained from granting copyright to AI-generated images, even when substantial human efforts were involved.²⁴⁵ In an interview, the presiding judge, Ge Zhu, highlighted the strategic importance of recognizing copyright for AI-generated content, noting that such recognition would incentivize the use of AI for creative purposes, thereby furthering the development of AI technology in China.²⁴⁶

²³⁸ Jing Zhang (张静), Shoupi Guochan Da Moxing Huopi Mianxiang Yonghu Kaifang, Han Shangtang, Baidu, Zhipu AI Deng (首批国产大模型获批面向用户开放, 含商汤, 百度, 智谱 AI 等) [The First Batch of Chinese Large Models Approved for Opening to the Public, Including SenseTime, Baidu, Zhipu AI, etc.], THE PAPER (Aug. 31, 2023), https://m.thepaper.cn/newsDetail_forward_24432246.

²³⁹ Ben Jiang, *China Approves 14 Large Language Models and Enterprise Applications, As Beijing Favors Wider AI Adoption Across Industries*, SOUTH CHINA MORNING POST (Jan. 29, 2024), <https://www.scmp.com/tech/tech-trends/article/3250177/china-approves-14-large-language-models-and-enterprise-applications-beijing-favours-wider-ai>.

²⁴⁰ Interview with lawyers and legal scholars, December 2023, Hong Kong.

²⁴¹ Li Mou Su Liu Mou Qinhan Zuopin Shuming Quan, Xinxi Wangluo Chuanbo Quan Jiufen An (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 Dispute over Authorship and Information Network Dissemination Rights], (2023) Jing Min Chu 11279 ((2023)京民初字第 11279 号), decided Nov. 27, 2023.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Generative Artificial Intelligence and Copyright Law*, CONGRESSIONAL RESEARCH SERVICE (Sep. 29, 2023), <https://crsreports.congress.gov/product/pdf/LSB/LSB10922>.

²⁴⁶ Liu Yang (杨柳) & Rui Fan (樊瑞), Zhuanfang "AI Wen Sheng Tu" An Zhushen Faguan: Tongguo Caipan Gei Xinxing Chanye Wending Yuqi (专访"AI 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 "AI Text-to-Image Generation" Case: Stabilizing Expectations for Emerging Industries Through Court Rulings], CAIJING ELAW (Jan. 3, 2024), https://mp.weixin.qq.com/s/gBlptcixZeUO_spsMdJHA.

In contrast to China's relatively permissive regulatory environment, the EU is implementing a series of legislations to regulate AI 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 AI firms.²⁴⁷ The impending EU AI act, which is expected to be finalized in 2024, will likely impose substantial pre-launch obligations on AI applications.²⁴⁸ The proposed AI Act empowers regulators to impose hefty sanctions, with the maximum fine of up to 7% of worldwide turnover or 35 million EUR—whichever is higher.²⁴⁹ Besides introducing stringent laws, EU enforcers are expected to rigorously enforce them. As EU officials are often viewed as policy entrepreneurs deeply committed to regulatory innovations and law enforcement, the EU is expected to enforce its law rigorously.²⁵⁰

Compared with the EU, the United States has embraced a more decentralized approach to AI regulation.²⁵¹ Thus far, there has been no comprehensive AI law and scant enforcement actions towards AI firms.²⁵² 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 AI.²⁵³ A key stipulation requires developers of powerful AI models to disclose their safety test results.²⁵⁴ However, the executive order lacks clarity on the consequences for companies whose safety tests reveal potential dangers in their models.²⁵⁵ In addition, the executive order mandates that cloud service providers, such as Amazon, Google, and Microsoft, monitor and report foreign customers using large AI models for malicious cyber activities.²⁵⁶ While the executive order represents a major step forward for US AI regulation, it has severe limitations typical of unilateral executive actions.²⁵⁷ Although AI firms operate under a relatively lenient regulatory environment in the United States, they face a very strong and active plaintiffs' bar. Currently, leading AI firms are grappling with private litigation on various fronts, including copyright infringement, data privacy violations, defamation, and

²⁴⁷ 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/>.

²⁴⁸ Alberto Nardelli & Jillian Deutsch, *EU Plans Stricter Rules for Most Powerful Generative AI Models*, BLOOMBERG (Oct. 18, 2023), <https://www.bloomberg.com/news/articles/2023-10-18/eu-plans-stricter-rules-for-most-powerful-generative-ai-models>.

²⁴⁹ *Artificial Intelligence Act: Deal on Comprehensive Rules for Trustworthy AI*, EUROPEAN PARLIAMENT (Dec. 9, 2023), <https://www.europarl.europa.eu/news/en/press-room/20231206IPR15699/artificial-intelligence-act-deal-on-comprehensive-rules-for-trustworthy-ai>.

²⁵⁰ GIANDOMENICO MAJONE, *REGULATING EUROPE* 71 (1989).

²⁵¹ Engler, *supra* note 247.

²⁵² *Id.*

²⁵³ Biden's AI Executive Order, *supra* note 41.

²⁵⁴ *Id.*, section 4.2.

²⁵⁵ Will Henshall, *Why Biden's AI Executive Order Only Goes So Far*, TIME (Nov. 1, 2023), <https://time.com/6330652/biden-ai-order/>.

²⁵⁶ Biden's AI Executive Order, *supra* note 41, section 4.2(c).

²⁵⁷ *What to Know About the New Artificial Intelligence Executive Order*, HOLLAND & KNIGHT (Oct. 31, 2023), <https://www.hklaw.com/en/insights/publications/2023/10/what-to-know-about-the-new-artificial-intelligence-executive-order>.

discrimination.²⁵⁸ The looming threat of the IP litigations are already having an impact on business revenues as they have prompted US AI firms to negotiate licenses with content creators.²⁵⁹

Consequently, compared with the cumbersome regulatory requirements in the EU and the mounting litigation challenges in the United States, China's lax and business-friendly regulatory environment could offer Chinese firms a competitive advantage in the short term. However, this 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.²⁶⁰ 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. Although the verdict may help fuel China's AI ambitions in the short term, it also creates a host of legal and economic challenges. For instance, as creators of similar AI 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.²⁶¹ Additionally, this ruling could trigger an influx of AI-generated content in the Chinese market, potentially discouraging human creators and leading to a decline in the creation of high-quality human-generated data.²⁶² As highlighted in Part II, data is a crucial resource for training LLMs, and the Chinese AI 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 AI development in China.

V. Risk and Cooperation

China's lax regulatory approach towards AI harbours significant hidden risks. First, as elaborated above, the government is invigorating a "whole of society" approach to push forward the development of AI without necessarily taking effective 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

²⁵⁸ 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 (last updated Feb. 29, 2024), <https://chatgptiseatingtheworld.com/2023/12/27/master-list-of-lawsuits-v-ai-chatgpt-openai-microsoft-meta-midjourney-other-ai-cos/>.

²⁵⁹ For example, in July 2023, OpenAI reached an agreement with the Associated Press to use its news content for AI training. Gerrit De Vynck, *OpenAI Strikes Deal with AP to Pay for Using Its News in Training AI*, WASHINGTON POST (Jul. 13, 2023), <https://www.washingtonpost.com/technology/2023/07/13/openai-chatgpt-pay-ap-news-ai/>. 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 AI development. Cristina Criddle et al., *AI and Media Companies Negotiate Landmark Deals over News Content*, FIN. TIMES (Jun. 17, 2023), <https://www-ft-com.ezp.lib.cam.ac.uk/content/79eb89ce-cea2-4f27-9d87-e8e312c8601d>.

²⁶⁰ Toner et al., *supra* note 10.

²⁶¹ Mark A. Lemley, *How Generative AI Turns Copyright Upside Down*, SSRN (last revised Jan. 18, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4517702; see also Zhang, *supra* note 138.

²⁶² S. Alex Yang & Angela Huyue Zhang, *Generative AI and Copyright: A Dynamic Perspective*, SSRN (Feb. 28, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4716233.

governance.²⁶³ 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 some of the most significant policy challenges faced by the Chinese government in recent years, including Covid-19 control, the energy crisis in 2021, the property crackdown, and China's demographic crisis.²⁶⁴

Meanwhile, the Interim Measures exclude enterprise-facing AI applications and internal use from oversight. This leaves a vast array of AI activities, including industrial applications, experiments, and research, largely unregulated. According to Robin Li, the founder of Baidu, as of January 2024, 238 LLMs had been introduced in China, but only about 40 had received regulatory approvals.²⁶⁵ This regulatory gap is particularly alarming given the widespread fraudulent activities in the domestic market.²⁶⁶ Indeed, China, known for its extensive underground economy proliferating counterfeit goods from footwear to online reviews, faces a serious risk of AI being exploited for similar fraudulent purposes. Furthermore, intense competition among Chinese firms has led to a concerning trend of deprioritizing AI safety, increasing the likelihood of AI-related disasters.²⁶⁷ Although the Interim Measures mandate security assessments for public-facing services, they predominantly focus on information control, thereby neglecting other crucial aspects of AI safety. For instance, the Draft Standard from TC260, despite offering detailed criteria on training data and model safety, primarily concentrates on content. This narrow focus overlooks the broader applications of generative AI, which extend far beyond content generation and encompass various industry sectors.

Although China has endeavoured to establish an ethics review system for AI in the past few years, it remains in a nascent stage of development.²⁶⁸ Enforcement is highly decentralized and relies heavily upon self-regulation by academic institutions, research institutes, health organizations and firms.²⁶⁹ Consequently, tracking and assessing the effectiveness of these reviews remain challenging, raising questions about their impact on changing developer behaviour and mitigating potential AI-related risks.²⁷⁰ 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

²⁶³ Zhou, *supra* note 68, at 481. See also generally XUEGUANG ZHOU, *THE LOGIC OF GOVERNANCE IN CHINA: AN ORGANIZATIONAL APPROACH* (2022).

²⁶⁴ ZHANG, *supra* note 12.

²⁶⁵ Jiang, *supra* note 239.

²⁶⁶ 'Deepfake' Scam in China Fans Worries over AI-driven Fraud, REUTERS (May 22, 2023), <https://www.reuters.com/technology/deepfake-scam-china-fans-worries-over-ai-driven-fraud-2023-05-22/>. See also ZHANG, *supra* note 12, at 122-124, 197-200.

²⁶⁷ CONCORDIA AI, *supra* note 219, at 66-67.

²⁶⁸ Guanyu Gongkai Zhengqiu Dui "Keji Lunli Shencha Banfa (Shixing)" Yijian de Gonggao (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], MINISTRY OF SCIENCE AND TECHNOLOGY (Apr. 4, 2023), https://www.most.gov.cn/wsdc/202304/t20230404_185388.html.

²⁶⁹ *Id.*, art. 4. For example, leading academic institutions like Tsinghua University and Shanghai Jiaotong University, as well as organizations such as the Chinese Academy of Science, BGI Tech Solutions, SenseTime, Alibaba, and Ant Group, have started implementing AI ethics reviews.

²⁷⁰ CONCORDIA AI, *supra* note 219, at 17.

RLHF.²⁷¹ As Chinese AI 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.²⁷² Although many Chinese labs have issued non-binding statements and some have even established AI ethics committees to guide firms in ethical decision-making, the practical implementation and adherence to these principles remains very opaque.²⁷³

Notably, although China trails the United States in developing cutting-edged AI models, its AI development and deployment still carry various risks, especially those related to unforeseen accidents.²⁷⁴ Indeed, Bill Drexel and Hannah Kelley have sounded alarms over the risk of AI accidents in China, highlighting its relaxed approach towards technological hazards and its track record of mismanaging crises.²⁷⁵ The escalating risks associated with China's AI 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...global AI governance is only as good as the worst-governed country, company, or technology, it must be watertight everywhere."²⁷⁶ Yet many western politicians and policymakers have been reluctant to engage or cooperate with China on these issues. In 2023, the UK government's invitation to China for the AI safety summit sparked considerable controversy, with former Prime Minister Liz Truss labelling it a mistake.²⁷⁷ Nonetheless, muddling ideology with AI 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.²⁷⁸

Above all, the United States and China, the two most important AI superpowers, should work together to prevent the proliferation of advanced AI systems. Currently, the intense US-China tech rivalry is making it difficult to control AI risks.²⁷⁹ Drexel and Kelley have urged the United States and the global community to intensify monitoring of potential safety issues in Chinese AI labs. The problem, however, is that the United States is becoming less informed about China's AI developments. In fact, recent US 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 US tightening export restrictions on advanced AI chips in October 2023. This action

²⁷¹ *Id.*, at 63.

²⁷² *Id.*

²⁷³ *Id.* at 66.

²⁷⁴ Dan Hendrycks et al., *An Overview of Catastrophic AI Risks*, ARXIV (Oct. 9, 2023), <https://arxiv.org/abs/2306.12001>. In 2023, the Center for AI Safety identified four categories of catastrophic AI risks: malicious use, AI race dynamics, organizational risks, and the emergence of rogue AI systems.

²⁷⁵ Bill Drexel & Hannah Kelley, *China Is Flirting With Artificial Intelligence Catastrophe*, FOREIGN AFFAIRS (May 30, 2023), <https://www.foreignaffairs.com/china/china-flirting-ai-catastrophe>.

²⁷⁶ Ian Bremmer & Mustafa Suleyman, *The AI Power Paradox: Can States Learn to Govern Artificial Intelligence—Before It's Too Late?*, FOREIGN AFFAIRS (Aug. 16, 2023), <https://www.foreignaffairs.com/world/artificial-intelligence-power-paradox>.

²⁷⁷ Nicola Slawson, *Inviting China to UK AI Summit a Mistake, Truss Tells Sunak – As It Happened*, THE GUARDIAN (Oct. 26, 2023), <https://www.theguardian.com/politics/live/2023/oct/26/rishi-sunak-ai-summit-conservatives-labour-keir-starmer-latest-news>.

²⁷⁸ See, e.g., Nancy Boswell, *The Impact of International Law on Domestic Governance*, 97 A.S.I.L. PROC. 133 (2003).

²⁷⁹ Zhang, *supra* note 46.

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.²⁸⁰ Industry analysts have even termed the US export ban as "a huge gift" to Huawei's chip development efforts.²⁸¹ Thus, despite promising signs that the two countries are starting to collaborate on AI safety issues, the ongoing US chip embargo on China continues to pose a formidable obstacle to meaningful cooperation.²⁸² 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 AI safety, the two countries can jointly forge a future where AI technologies are developed and deployed responsibly with adequate safeguards against risks.

VI. Conclusion

Contrary to the common perception that Chinese regulation is constraining its AI 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 AI technologies. On the one hand, it is actively implementing control over AI-generated content. On the other hand, it is signalling to the market and regulatory bodies a lenient and cautious approach towards AI regulation, while coordinating various stakeholders to forge ahead with AI 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 US 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 AI-enabled accidents and even disasters. Therefore, the issues surrounding AI safety in China warrant increased scrutiny from the global AI community and there is a pressing need for international cooperation to address the deficiencies in domestic institutions.

²⁸⁰ Josh Ye, *US Chip Curbs Give Huawei a Chance to Fill the Nvidia Void in China*, REUTERS (Oct. 23, 2023), <https://www.reuters.com/technology/us-chip-curbs-give-huawei-chance-fill-nvidia-void-china-2023-10-20/>.

²⁸¹ *Id.*

²⁸² 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-aac2baadafd9>.