

BASIC ISSUES OF ARTIFICIAL INTELLIGENCE LEGISLATION IN CHINA

Zhang Xinbao

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Amid the intensifying global contention surrounding the governance of artificial intelligence (AI), China has consistently prioritized the establishment of a rule-based framework within the AI sector, integrating AI legislation into its legislative agenda. Currently, China possesses a foundational institutional structure for AI-specific legislation, with the academic community actively contributing insights and proposing two drafts for AI legislation. To ensure that China's AI legislation effectively aligns with the rapid technological advancements, industry transformation, risk governance uncertainties, and the intricate interests involved, it is essential for the legislation to address fundamental concerns regarding its objectives, technical approach, and key interests involved.

I. DUALISTIC OBJECTIVES OF LEGISLATION

The legislative framework for AI in China should prioritize a dualistic approach that balances development and safety, serving as the guiding ideology. It should foster research and development (R&D) applications while simultaneously forestalling major risks, reflecting the dualistic objectives of the legislation.

Under the legislative objective of promoting R&D applications, the regulation of AI should establish a systematic framework for development facilitation. This facilitation framework should broadly reflect two directions: 'empowerment' and 'burden reduction'. It is essential to consider the layered characteristics of the AI industry, as well as the structure and value attributes of the industrial chain. The framework must encompass critical elements and links, including data, computing power, models, hardware, and application scenarios. Furthermore, it should explore and apply open new systems based on the absorption of beneficial rules from domestic and international law-based incentives that promote science and technology.

* Professor of Renmin University of China Law School.

In the context of empowerment incentives: Firstly, it is essential to establish a robust infrastructure support system and innovative development rules for foundational elements and technologies, including data, computing power, algorithms, and models, as well as key R&D in hardware and software. Secondly, it is necessary to devise specific tax incentive policies and regulations aimed at fostering innovation in AI and facilitating the conversion of scientific and technological advancements. Thirdly, there should be an increase in financial subsidies allocated for R&D in fundamental sciences and applied technologies within the realm of AI. Fourthly, it is imperative to enhance mechanisms for talent development and incentives. Additionally, it is crucial to support and guide the development of new mechanisms that correspond with the governance requirements and characteristics inherent to AI. Regarding burden reduction support: Firstly, AI legislation should reasonably define the regulatory scope, clarify the coordination rules among relevant stakeholders, and alleviate unnecessary obligations for R&D entities throughout the R&D process. Secondly, the obligations and responsibilities of stakeholders during the R&D application phase should be proportionate and aligned with their rights and control capabilities. Thirdly, it is effective to employ inclusive and prudent regulatory instruments, such as a regulatory sandbox system.

Under the legislative objective of forestalling major risks, AI legislation should establish a risk prevention system that emphasizes key areas of concern. It must not only target and clearly define the current risks that require urgent attention but also remain dynamically open to assessing and preventing new potential risks. Risk regulation should shift from a singular focus on specific risk management to promoting collaborative governance among diverse stakeholders, implementing effective risk classification and stratification, ensuring comprehensive life-cycle governance, and establishing robust accountability mechanisms.

In the context of dynamic scientific risk assessment: Firstly, it is imperative to discuss and define risks that jeopardize national security and public safety, alongside ethical risks that infringe upon public order and societal morals. Specialized frameworks should be established to prevent these risks, thereby enhancing the capacity for risk prevention and mitigation. Secondly, standardized criteria for preventing AI risks should be established, clarifying general rules and fundamental requirements regarding the robustness and cybersecurity levels of AI, thus improving the safety and

reliability of systems and applications. Thirdly, general rules or foundational risk prevention requirements can be set for various sectors or scenarios, while permitting legislative flexibility to address emerging risks, including systemic risks. Regarding inclusive and prudent risk regulation: Firstly, governance should be predicated on the collaboration of diverse stakeholders, creating a diverse governance system characterized by government oversight, industry self-regulation, and societal engagement. Secondly, it is vital to establish scientific rules for risk categorization and tiered management, dynamically and scientifically evaluate risks, specify regulatory requirements for key risks, and strengthen agile oversight of risks. Thirdly, adherence to the governance logic throughout the entire life-cycle of AI is essential, guiding the establishment of risk management response mechanisms among relevant stakeholders throughout the process, and enhancing the monitoring and management obligations of stakeholders concerning AI applications post-market introduction. Fourthly, establishing a tiered accountability mechanism is crucial, creating specialized agencies to enhance supervisory efficacy, and employing a blend of soft and hard legal instruments to ensure accountability aligns with objectives, control capabilities, and relevant domains.

II. TECHNICAL APPROACH FOR LEGISLATION

Legislation on AI should fundamentally aim for a systematic legal framework, with the current primary objective being the optimization of legislative hierarchy. It is essential to integrate and coordinate existing regulations that pertain to elements of AI, thereby providing foundational rules that offer direction for the systematic development of legislation in this field while clarifying the essential logic of AI governance. Specifically, the AI Law should serve as the foundational legal framework for the AI sector in China, intended to set the tone and clarify the direction. It should explicitly address fundamental issues such as legislative objectives, subjects of regulation, basic principles, significant systems, and general rules (including rights, obligations, and responsibilities), while the specific details of the regulatory framework should be established through administrative regulations, departmental rules, and national standards when the timing is appropriate and after practical validation.

Legislation on AI should reflect the distinctive legislative characteristics that demonstrate the development capacity of China's rule of law. Firstly, it

should aim to address the governance issues of AI that are deeply embedded in Chinese society, embodying the rule of law with Chinese characteristics. Secondly, AI legislation ought to be informed by the requirements of national industrial and technological operations. It should align with the positive law system and established norms, while also drawing upon China's autonomous legal knowledge framework. Additionally, it is essential to judiciously incorporate extraterritorial legal practices and experiences as relevant considerations in the analysis and resolution of domestic challenges. Thirdly, it must adopt a global viewpoint, reflect its national principles, and activate the extraterritorial implications of regulatory frameworks in the governance of AI.

Legislation on AI ought to employ legislative methodologies that establish a framework-oriented structure, distill substantive legal concerns, prioritize the achievement of effective normative direction, and bolster the systematic and coordinated characteristics of the regulatory framework.

III. KEY INTERESTS AND RULE DESIGN

Legislation on AI should be anchored in a human-centric foundational principle. The internal processes associated with the design, development, and implementation of AI technologies must adhere to ethical standards and the rule of law. Concurrently, AI legislation ought to render the development process of AI comprehensible and 'manageable' through external robust legal regulations or flexible norms, along with appropriate oversight and review mechanisms. In alignment with the people-first principle, AI legislation must encompass three critical dimensions of rule design. Firstly, it should establish rules to address long-term and latent ethical risks such as algorithmic discrimination. Secondly, it must ensure that the AI system is accountable and subject to redress while effectively safeguarding the legitimate rights and interests of relevant parties. Thirdly, it should respond to issues of digital education and equitable access to digital resources, particularly considering the digital divide. This includes clarifying the responsibilities of state agencies in enhancing national digital literacy, disseminating information regarding AI-related risks, and providing methods for risk mitigation. Additionally, it should impose reasonable obligations for information disclosure on entities possessing AI technical expertise, ensuring they provide essential information and clarifications to affected individuals

throughout the development and application processes.

Legislation on AI must reconcile the intricate interests of various stakeholders, safeguarding individual rights from unwarranted intrusions while fostering the innovative development of AI algorithms and foundational models. In tackling existing challenges associated with data acquisition, it is vital to establish suitable exceptions or liability waivers. A framework for personal information processing should be established that supports the data training of foundational models and their progression, shifting the focus of personal information protection from pre-collection limitations to enhancing compliant information processing and data utilization by responsible AI entities. Moreover, it is crucial to establish intellectual property regulations and supportive systems that align with the advancement of AI. Additionally, exploring mechanisms for the equitable distribution of rights and interests or profit-sharing is crucial to fostering the growth of the AI sector.

The healthy development of the AI industry ecosystem necessitates a competitive order characterized by diverse stakeholders, differentiated interests, and an open market. Presently, there is a looming threat of technological monopolization in AI development. To preserve a competitive landscape within the AI sector, several key considerations must be addressed. Firstly, at the macro level, it is crucial to develop and enhance competition policies that facilitate the infrastructure growth of intelligent components and create a system for the allocation and utilization of digital resources, thereby effectively lowering costs to market entry. Secondly, AI legislation must comprehensively address the multifaceted structure of the AI sector, instituting core competition principles that foster equitable trade and consumer autonomy. It is essential to incorporate explicit measures targeting monopolistic behaviors and unfair competitive practices enabled by AI, alongside the empowerment of regulatory bodies to formulate specific guidelines. This approach should be complemented by the promotion of inclusive and judicious regulatory frameworks, utilizing soft law mechanisms to assist enterprises in self-assessment and compliance improvement. Thirdly, it is imperative to strengthen the enforcement of antitrust and unfair competition legislation through a holistic strategy that incorporates proactive, continuous, and post-regulatory instruments, thereby enhancing the differentiation and granularity of market supervision measures. Fourthly, exploring novel dynamic regulatory mechanisms, such as regulatory sandbox, can mitigate the compliance burdens linked to risks for small and

medium-sized innovative enterprises by implementing suitable regulations, and specific exemptions, and encouraging self-regulation among businesses, thereby fostering reciprocal innovation in R&D, application, and regulatory mechanisms.

Legislation on AI must effectively address the inherent tensions between international competition and cooperation. To promote international cooperation in AI governance, three key actions are proposed. Firstly, it is essential to advocate for the establishment of a global AI governance mechanism that supports the development of a widely accepted global framework and standards, grounded in a thorough respect for the policies and practices of individual nations. Secondly, fostering international cooperation in AI capacity building is crucial, particularly by enhancing collaboration and assistance directed towards developing countries, thereby bridging the intelligence divide and governance gaps. Thirdly, it is important to promote mutual understanding among nations based on technology and shared values. Concurrently, in the strategic geopolitical landscape of AI governance, where unfriendly nations may interfere in domestic affairs and impose unilateral sanctions or other discriminatory prohibitions and restrictions against Chinese entities and individuals, China will respond with appropriate countermeasures or reciprocal actions based on specific circumstances. Currently, the AI law can establish general rules to guide subsequent legislation and enforcement. Furthermore, in situations where legislative countermeasures cannot be swiftly implemented, it is imperative to enhance the effectiveness of enforcement-based countermeasures and to improve the coordination mechanisms and specific enforcement procedures related to counter-sanctions. Strengthening countermeasure capabilities is vital to combat digital hegemony and safeguard national security.

(Translated by Zhang Qing)
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